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Initiating a public dialogue on environment protection in the context of the Transatlantic Trade and Investment Partnership (TTIP) negotiations

Final report

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EXECUTIVE SUMMARY

Negotiations between the EU and the US with a view to concluding a Transatlantic Trade and Investment Partnership were launched in 2013; and by the end of 2016, 15 negotiating rounds had taken place. While the objective of the negotiations is to “strengthen the contribution of trade and investment to fostering jobs, growth, and competitiveness in both economies”, a number of public concerns developed over the course of the negotiations, including concerns on the potential impact on environmental policy and outcomes. The European Parliament requested the Commission to undertake an analysis of potential environmental impacts, and to initiate a stakeholder dialogue in order to identify solutions. This report represents the culmination of a project responding to that request. It is accompanied by Annexes which are published separately: Annex 1, the Background Report; Annex 2, case studies; and Annex 3, reports of the stakeholder workshops.

The general objective of the project has thus been to foster public dialogue on environmental protection in the context of TTIP, including dialogue on different aspects of environmental regulations in the light of potential provisions of TTIP. The project, which began in January 2016, involved a number of stages:

An initial period of desk research and telephone interviews with stakeholders at EU level and in the 9 Member States which were the focus of the project (the Czech Republic, Denmark, France, Germany, Italy, Hungary, Austria, Poland, Slovakia) to identify environmental issues associated with TTIP, which were then set out in a background report (see section 1 below).

Development of case studies looking in detail at a range of areas of potential environmental impact (transport; energy; biodiversity; chemicals) in eight of the focus Member States, and an EU-wide case study looking at experience of the environmental impact of mechanisms aimed at investor protection (the selection of and approach to the case studies is set out in section 2 below).

Nine stakeholder workshops held between June and October 2016 in the capitals of the focus Member States in order to develop a deeper understanding of stakeholder insights, and to test emerging conclusions of the case studies. The approach to the workshops is described below

in section 3.1; the lessons and ideas emerging from the workshops and the case studies are summarised in section 3.

A final phase, reflecting on the lessons and ideas emerging from the stakeholder workshops in order to finalise the case studies, and to develop recommendations on how to enhance positive dynamics between trade and environmental protection and environmental legislation in the context of TTIP. Options and recommendations are set out in section 4.

The focus is on the environmental implications in the EU stemming from potential investor-state dispute settlement mechanism as well as the following policy areas: biodiversity, energy and hydraulic fracturing, chemicals, and CO2 emissions from transport.

While both positive and negative potential impacts were identified in the course of the project, stakeholder attention is overwhelmingly focused on downside risks, particularly those associated with the future flexibility of EU and national legislators to take action on environmental issues once mechanisms such as regulatory cooperation and dispute settlement for investors are in place. The stakeholder engagement element of the project were carried out while the Obama administration was in office; finalisation of an agreement with an incoming Trump administration with a relatively less ambitious approach on environmental issues, in particular on climate change, as well as a radical commitment to deregulation can be expected to increase both stakeholder concerns about environmental impacts, and the real risks of negative environmental outcomes.

In this context, while our assessment of environmental impacts is both more optimistic on potential beneficial impacts, and less pessimistic on potential negative outcomes, than the balance of stakeholder opinion, we nevertheless identify a number of potential routes by which negative impacts could plausibly occur. Moreover, the existence of significant stakeholder and civil society concerns suggests that further reinforcement of the agreement to reduce risks and to seize opportunities for environmental enhancement would be valuable. We identify options both for the agreement itself, and for accompanying measures at national or EU level. These are described in section 4 below, and summarised in Table 1.

Résumé

Les négociations entre l'UE et les États-Unis en vue de la conclusion d'un Partenariat Transatlantique pour le Commerce et l'Investissement (PTCI, ou TTIP en anglais) ont été lancées en 2013, et à la fin 2016, 15 cycles de négociations ont eu lieu. Alors que l'objectif des négociations est de «renforcer la contribution du commerce et de l'investissement à l'emploi, la croissance et la compétitivité dans les deux économies», le public a émis un certain nombre de préoccupations au cours des négociations, en particulier en ce qui concerne l'impact potentiel de l'accord sur les politiques environnementales et sur les résultats environnementaux. Le Parlement européen a demandé à la Commission d'entreprendre une analyse des impacts environnementaux potentiels et de lancer un dialogue avec les parties prenantes afin d'identifier des solutions. Ce rapport représente l'aboutissement d'un projet répondant à ce mandat. Il est accompagné d'Annexes qui sont publiées séparément: Annexe 1, le rapport de base; Annexe 2, les études de cas; et l'annexe 3, les rapports des réunions avec les parties prenantes.

L'objectif général du projet a donc été de favoriser le dialogue public sur la protection de l'environnement dans le cadre du TTIP, notamment sur différents aspects de la réglementation environnementale en lien avec certaines dispositions possibles du TTIP. Le projet, qui a débuté en janvier 2016, comportait plusieurs étapes:

Une première période de recherche documentaire et d'entretiens téléphoniques avec des parties prenantes au niveau de l'UE et dans 9 États membres sur lesquels le projet s'est concentré (République Tchèque, Danemark, France, Allemagne, Italie, Hongrie, Autriche, Pologne, Slovaquie), afin d'identifier les problèmes environnementaux pouvant être liés au TTIP, qui ont ensuite été exposés dans un rapport de base (voir la section 1 ci-dessous).

La conduite d'études de cas examinant en détail les impacts environnementaux potentiels dans plusieurs domaines (transport, énergie, biodiversité, produits chimiques) dans huit des États membres sélectionnés, et une étude de cas à l'échelle de l'UE portant sur l'impact environnemental des mécanismes visant à la protection des investisseurs (la sélection et l'approche pour les études de cas sont décrites dans la section 2 ci-dessous).

L'organisation de neuf ateliers de travail avec les parties prenantes concernées, entre juin et octobre 2016, dans les capitales des États membres sélectionnés, afin de développer une compréhension plus approfondie des positions des parties prenantes et de tester les conclusions dérivant des études de cas. L'approche pour ces réunions de travail est décrite ci-dessous à la section 3.1, et les leçons et les idées ressortant des réunions et des études de cas sont résumées dans la section 3.

Une phase finale, reflétant les leçons et les idées se dégageant des réunions avec les parties prenantes afin de finaliser les études de cas et d'élaborer des recommandations sur la manière d'encourager les dynamiques entre le commerce, la protection de l'environnement et la législation environnementale dans le contexte du TTIP. Les options et les recommandations sont décrites à la section 4.

Le projet s'intéresse en particulier aux implications environnementales dans l'UE découlant du mécanisme de règlement des différends investisseur-État ainsi que des domaines législatifs suivants: biodiversité, fractures énergétiques et hydrauliques, produits chimiques et émissions de CO2 dans les transports.

Bien que les impacts potentiels positifs et négatifs aient été identifiés au cours du projet, l'attention des parties prenantes s'est principalement portée sur les risques susceptibles de réduire le niveau de protection accordé à l'environnement, en particulier ceux liés à la flexibilité des législateurs de l'UE et des États membres de prendre des mesures sur les questions environnementales, une fois que les

futures mécanismes tels que la coopération réglementaire et celui sur le règlement des différends pour les investisseurs seraient en place. Les parties prenantes du projet ont été impliquées dans ce projet alors que l'administration Obama était en fonction. On pourrait s'attendre à ce que la finalisation d'un accord avec l'administration Trump, dont l'approche peut être qualifiée de relativement moins ambitieuse en ce qui concerne les questions environnementales (en particulier au sujet du changement climatique), et plus radicale en ce qui concerne la déréglementation, puisse accroître à la fois les préoccupations des parties prenantes au sujet des impacts environnementaux, et les risques réels de résultats négatifs pour l'environnement.

Dans ce contexte, tandis que notre évaluation des impacts environnementaux est à la fois plus optimiste quant aux éventuels effets bénéfiques et moins pessimiste quant aux éventuels résultats négatifs que l'opinion globale des parties prenantes, nous identifions néanmoins un certain nombre de situations possibles au cours desquelles les impacts négatifs pourraient se matérialiser de façon plausible. En outre, les préoccupations de la part des parties prenantes et de la société civile sont telles qu'il semble utile de renforcer l'accord afin de réduire les risques et de saisir les opportunités d'amélioration environnementale. Nous décrivons dans la section 4 ci-dessous les options possibles à la fois pour l'accord lui-même ainsi que pour les mesures d'accompagnement au niveau national ou communautaire. Celles-ci sont également résumées dans le tableau suivant.

Zusammenfassung

Die Verhandlungen zwischen der EU und den USA mit dem Ziel des Abschlusses einer Transatlantischen Handels- und Investitionspartnerschaft (TTIP) begannen im Jahr 2013. Bis Ende 2016 fanden 15 Verhandlungsrunden statt. Die Verhandlungen zielen auf eine Stärkung der Beiträge von Handel und Investitionen zur Förderung von Beschäftigung, Wachstum und Wettbewerbsfähigkeit beider Wirtschaftsräume ab. Parallel hierzu kamen in der öffentlichen Diskussion eine Reihe von Bedenken über den Verlauf der Verhandlungen auf, einschließlich von Befürchtungen über die möglichen Auswirkungen auf die Umweltpolitik und deren Wirkungen. Das Europäische Parlament forderte die Kommission auf, eine Analyse der potenziellen Auswirkungen auf die Umwelt zu erarbeiten und einen Dialog zwischen Stakeholdern einzuleiten, um Lösungen zu entwickeln. Dieser Projektbericht präsentiert die wesentlichen Ergebnisse dieser Arbeiten, ergänzt um drei separat veröffentlichte Anhänge: Hintergrundbericht (Annex 1), Fallstudien (Annex 2), sowie Berichte zu den Stakeholderworkshops (Annex 3).

Allgemeines Ziel dieses Projektes war es, den öffentlichen Dialog zum Umweltschutz im Kontext des TTIP-Abkommens zu fördern, einschließlich eines Dialoges zu verschiedenen Aspekten umweltrechtlicher Regelungen im Zusammenhang mit denkbaren Regelungen im Rahmen des TTIP-Abkommens. Das Projekt begann im Januar 2016 und lief in verschiedenen Schritten ab.

Startphase mit systematischer Sichtung vorhandener Informationen und Daten, sowie mit Telefoninterviews auf EU-Ebene und in 9 Mitgliedstaaten, die den Schwerpunkt des Projektes bildeten (Deutschland, Dänemark, Frankreich, Italien, Tschechische Republik, Ungarn, Österreich, Polen, Slowakei), um Umweltaspekte mit TTIP-Bezug zu identifizieren. Die Ergebnisse finden sich im Hintergrundbericht (siehe Abschnitt 1).

Erarbeitung von Fallstudien, die die potenziellen Umweltfolgen in einer Reihe von Bereichen (Transport, Energie, Biodiversität, Chemikalien) in 8 Mitgliedstaaten im Detail betrachten, sowie einer EU-weiten Fallstudie, die die Erfahrungen mit Umweltauswirkungen von Inverstorschutzmechanismen untersucht. Abschnitt 2 erläutert die Auswahl und den Ansatz dieser Fallstudien.

9 Stakeholderworkshops zwischen Juni und Oktober 2016 in den Hauptstädten der 8 ausgewählten Mitgliedstaaten um ein besseres Verständnis der Perspektiven von Stakeholdern zu erhalten und um

erste Schlussfolgerungen aus den Fallstudien zur Diskussion zu stellen. Abschnitt 3.1 erläutert den Ansatz der Workshops. Die Schlussfolgerungen und Ideen aus den Workshops und den Fallstudien finden sich in Abschnitt 3.

Schlussphase um die Schlussfolgerungen und Ideen aus den Workshops und den Fallstudien kritisch zu würdigen und um Empfehlungen in Richtung einer positiven Dynamik zwischen Handel, Umweltschutz und Umweltgesetzgebung im Kontext von TTIP auszuarbeiten. Abschnitt 4 enthält die entwickelten Optionen und Empfehlungen.

Der Schwerpunkt liegt auf den umweltbezogenen Folgen in der EU im Zuge von potenziellen Streitschlichtungsmechanismen zwischen Investoren und Staaten, sowie mit Blick auf die folgenden Politikbereiche: Biodiversität, Energie und Fracking, Chemikalien, sowie transportbedingte CO₂-Emissionen.

Während das Projekt sowohl positive als auch negative potenzielle Auswirkungen identifizierte, richtet sich die Aufmerksamkeit von Stakeholdern weitaus überwiegend auf Nachteile und Risiken. Im Mittelpunkt steht dabei die zukünftige Handlungsflexibilität der EU und nationaler Gesetzgeber, falls Mechanismen etwa zur regulatorischen Zusammenarbeit und zum Investorenschutz in Kraft treten. Die Gespräche mit Stakeholdern fanden unter der Obama-Administration statt. Ein Abschluss der Verhandlungen unter der nachfolgenden Trump-Administration, mit einem im Vergleich niedrigeren Anspruchsniveau im Umweltbereich (besonders mit Blick auf Klimawandel, aber auch einem deutlichen Bekenntnis zu Deregulierung), lässt erwarten, dass sowohl die Besorgnisse von Stakeholdern wachsen dürften, wie auch die realen Risiken mit Blick auf negative Auswirkungen auf die Umwelt.

Die hier vorgelegte Einschätzung der Umweltauswirkungen fällt optimistischer zu den positiven Auswirkungen und weniger pessimistisch zu den potenziellen negativen Auswirkungen aus als in der Gesamtschau der Einschätzung der Stakeholder. Nichtsdestotrotz identifiziert die Analyse eine Reihe von plausiblen Wirkungsketten durch die negative Wirkungen eintreten könnten. Die deutlichen Bedenken von Stakeholdern und der Zivilgesellschaft legen nahe, das Abkommen in jenen Bereichen zu stärken, die helfen Risiken zu verringern und Möglichkeiten zu nutzen, die für die Umwelt förderlich sind. Dies betrifft sowohl das TTIP-Abkommen selbst, wie auch begleitende Maßnahmen auf Ebene der EU bzw. der Mitgliedstaaten. Diese Optionen finden sich in Abschnitt 4 und sind in der folgenden Tabelle zusammengefasst.

Table 1: Discussed policy options

Issue	Proposed policy option	TTIP text or accompanying measure?	Risk mitigation or opportunity optimisation
Investor protection: Right to regulate	Further clarification	TTIP text	Risk mitigation
Investor protection: Investment Court System	Proposed improvements on: Appointments; Appellate mechanism; Future expansion of ICS; SMEs	TTIP text	Risk mitigation
Right to regulate	Further clarification	TTIP text	Risk mitigation
Biodiversity: harmful impact of competitiveness pressures in agriculture	exclusion of the agriculture sector from TTIP	TTIP text	Risk mitigation
Biodiversity: impact on organic farming	Increased support for organic farming	Accompanying measure	Opportunity optimisation
Biodiversity: risk of intensification in response to competitive pressures	Enhanced greening under the Common Agricultural Policy	Accompanying measure	Risk mitigation
Energy: Potential for encouragement of investment in clean energy	Favourable treatment of trade and investment in renewable energy	TTIP text	Opportunity optimisation
Energy: Risk of hampering efforts to build a domestic clean energy sector	Exemption from public procurement rules for measures aimed at local content in clean energy	TTIP text; potentially also accompanying measures	Risk mitigation
Energy: Right to regulate on extraction techniques	Specific protection of right to regulate on extraction techniques	TTIP text	Risk mitigation
Energy: risks to policies encouraging grid access for renewables	Commitment to continued support, and/or text to allow discrimination in favour of renewable sources	TTIP text and/or accompanying measures	Risk mitigation
Energy: cheap energy imports benefiting from absence of carbon price	Allow discrimination against energy sources on the basis of a failure to internalise external environmental costs	TTIP text	Risk mitigation
Energy: competitive advantage for US producers not facing a carbon price	TTIP rights and obligations to be made dependent on continued implementation of the Paris Agreement	TTIP text	Risk mitigation and opportunity optimisation
Transport: increased GHG emissions associated with increased transport	Inclusion of commitments to bilateral action on transport emissions	TTIP text	Risk mitigation and opportunity optimisation
Transport: increased GHG emissions associated with increased transport	Unilateral application of the Emissions Trading System to aviation and maritime transport	Accompanying measure	Risk mitigation
Potential enhanced opportunity for commercialisation of electric vehicles	Emphasise the importance of, and secure commitment to, early action to create a favourable regulatory climate	TTIP text and/or accompanying measures	Opportunity optimisation
Non-sustainably produced biofuels take an increased share of the EU market	Robust commitments, either in TTIP or in EU legislation, to biofuels sustainability	TTIP text and/or accompanying measures	Risk mitigation
Chemicals: application of precautionary instruments could be compromised	Clarification that environmental standards, and standards of precaution, will not be lowered	TTIP text and/or accompanying measures	Risk mitigation
Chemicals: opportunities to reduce duplicative testing	Joint commitment to work focused on reducing duplicative testing without compromising standards	TTIP text and/or accompanying measures	Opportunity optimisation

1 Initial identification of environmental impacts of TTIP

1.1 Findings of the Background report

The background report presented as appendix A was prepared in the first months of 2016 as the first stage in our identification of potential environmental impacts. It thus represents a picture of stakeholder concerns, relevant literature, and other documentation, at that point, although it has been updated in a number of places to reflect subsequent developments in the negotiations.

TTIP negotiations started in 2013 and by the end of 2016, 15 negotiating rounds had taken place. As the background report identifies, the prospect of an agreement provoked considerable concerns among a range of European interest groups, politicians, and citizens. The background report was based on a review of the literature on TTIP and environment, the identification of stakeholder concerns through desk study (including media analysis) and interviews, and legal analysis on some key issues under debate, such as the right to regulate, the precautionary principle and investor state dispute settlement. The literature review and stakeholder consultations took place both at EU level and for the nine selected Member States which were the focus of the study (the Czech Republic, Denmark, Germany, France, Italy, Hungary, Austria, Poland and Slovakia). Based on this analysis, we identified a number of issues that are of key relevance in the debate on TTIP and environmental protection, and which were further explored through case studies in the next phase of the report.

The aim of TTIP is to increase trade and investment between the EU and the US, which in turn is expected to result in job and growth creation on both sides of the Atlantic. Given this aim, the background report looked first into the economic impacts expected from TTIP. There have been various studies on the economic impact of TTIP. The main study prepared for the EC is the CEPR (2013) study¹, which estimates that, once TTIP is fully implemented, GDP is expected to increase by 0.3 and 0.5 percent², meaning that every year GDP is expected to be 0.3 to 0.5 percent higher than if TTIP were not implemented. A recent study by WTI (2016) prepared for the American Chamber of Commerce to the EU (AmCham)³ assesses the impact also at Member State level. The study finds that Member States with a deeper economic relationship with the US are expected to experience higher positive income level effects, ranging from 0.1 to 1.6 percent.

When turning to the impact of TTIP on the environment, we distinguish between two types of effects: impacts on environmental indicators, and impact on environmental protection. The first type of effect stems from changes in economic growth and patterns of economic activity

¹ Centre for Economic Policy Research, 2013. Reducing Transatlantic Barriers to Trade and Investment: An economic assessment, London

² Depending on the assumption for liberalisation: with more liberalisation, more growth is expected

³ WTI, "TTIP and the EU Member States"

(trade, sector composition), which will in turn have an impact on the environment (e.g. CO₂ emissions, water and energy use, climate change, etc.). There are not many studies in this area. The Ecorys (2016) Trade SIA⁴ provides a detailed environmental impact analysis. The study reports an increase of 0.2 percent in energy and in CO₂ emissions. The change in emission of air pollutants ranges between -0.1 and 0.2 percent. Also the CEPR study does include some environmental indicators. It expects global CO₂ emissions to increase by 0.02 to 0.07 percent, while in the EU an increase of 2.7 and 3.6 Mt CO₂ reductions is expected. With respect to land use for production it is estimated that intensity of land use will increase by 0.1 percent in the EU while at world level no changes are expected. Buongiorno et al. (2014)⁵ analyse the impact of TTIP on the consumption and production of different wood products. Although expected increases are modest, at around 2 percent, they do expect higher production levels outside the EU, implying that more timber needs to be logged, with a risk of increasing the amount of illegal logging. Alongside the literature, stakeholder analysis showed that the main concern with respect to immediate environmental impacts was related to CO₂ emissions as a result of increased transatlantic trade, and hence increased transport.

A larger number of studies, and also the public debate, have focused on the second type of effect: the impact of TTIP on environmental protection. The key issue of debate is the way in which TTIP affects the EU's and Member States' ability to maintain and/or develop environmental policies and regulations. This concern stems from two main channels in TTIP:

- **Regulatory co-operation.** As both parties want to remove unnecessary barriers arising from differences in regulation, it is envisaged to improve regulatory compatibility between the EU and US, e.g. through harmonisation of standards or mutual recognition. Opponents fear that this may lead to a lowering of EU standards. In addition, they fear that the use of the precautionary principle, which is an important aspect in EU (environmental) policy, may come under pressure. Stakeholders particularly pointed to the importance of the precautionary principle in the context of GMOs, chemicals and hydraulic fracturing, as these are areas where US regulation significantly differs from the EU regulations or Member State policies.

Some stakeholders also consider the plans to inform the other party about changes in existing policies and plans for new policies or regulations, and to involve them as a stakeholder, to be a possible risk for environmental protection, as this could lead to more effective opposition to plans for new regulation, and could possibly delay the decision-making process.

- **Investor protection.** TTIP could provide protection to foreign investors through the possibility of Investor-State Dispute Settlement (ISDS), or through the more recent EC proposals for an Investment Court System (ICS). The regulatory chill argument stems from the risk that governments may become more cautious in introducing new policies or regulations in the area of environment (or other areas) because of the fear that those would potentially trigger costly ISDS/ICS procedures against them.

⁴ "Trade SIA on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA – draft Final Report" – Ecorys, November 2016

⁵ Buongiorno, J., P. Rougieux, A. Barkaoui, S. Zhu, P. Harou. 2014. Potential impact of a transatlantic trade and investment partnership on the global forest sector. *Journal of Forest Economics* 20:252-266.

We conducted legal analysis into the effects of ISDS on the right to regulate and on the precautionary principle. This analysis suggested that the risks put forward by many stakeholders with respect to ISDS and the right to regulate are smaller than they are suggested. Arbitral practice has demonstrated that non-discriminatory regulations in the public interest are not compensable, and the inclusion of safeguard provisions in the TTIP would further mitigate the risk of regulatory chill. With respect to the precautionary principle, current information available about the negotiations suggests that the text related to this principle could be further improved.

Other concerns that have been raised in the debate include a slowing in deployment of renewable energy and related technologies due to cheap shale gas imports from the US, food safety concerns related for example to pesticide residues in food and the possible presence of endocrine disruptors in US imported food products, and the lack of transparency of the negotiations.

The research at Member State level showed that the main arguments presented above are also discussed in most of these countries, although in some countries the debate on TTIP has been more intensive than in others. For example, in many of the Eastern EU Member States, the TTIP debate has not figured highly on the broader political agenda. Based on our analysis, we agreed with the Commission that we would undertake additional analysis through case studies for a number of policy areas and Member States, further details of which are provided in section 2.

2 Case study identification

2.1 Identification of specific areas for investigation

The preliminary stakeholder interviews at EU and Member State level, and the literature review, carried out in the first stage of this project (see Annex I for country by country summary) suggest that there are a relatively small number of environmental policy issues that are of concern to stakeholders. In particular there are concerns about the potential implications of the Investor State Dispute Settlement mechanism (or of the Commission's proposed alternative, the Investment Court System), and about the risks of regulatory chill. Other issues of concern to stakeholders relate to the future implementation of the precautionary principle, particularly in relation to policy on chemicals (in a broad sense, including the presence of chemicals in products), or to GMOs; and to the implications of a free trade agreement for future climate and energy policy, particularly in the context of Member State policies on hydraulic fracturing (fracking), and in the context of transport. In addition to environmental policy challenges, there were also a number of wider stakeholder concerns, particularly in relation to the impact on the model of agricultural production in individual Member States, with related environmental impacts.

2.2 Member State focus of case studies

The project team was asked to develop nine case studies, which had to cover at least three of the Member States identified by the Commission for analysis, and at least three areas of environmental policy. On the basis of the initial analysis of stakeholder views and studies carried out to date, and in order to maximise the relevance of the case studies for the stakeholder workshops, the study team proposed that eight of the Member States should be the specific focus of one case study each on a specific area of environment policy. In addition one overarching case study on the issue of the Investor State Dispute Settlement (and the alternative Investment Court System proposed by the Commission) and the implications for environmental policy be developed.

Each of the areas selected for the individual Member State case studies was the subject of an initial policy brief, setting out the background to the issue, and defining questions for further analysis in the Member State concerned. The topics were allocated for analysis at Member State level on the basis of a combination of the relevance of industrial sectors, and the focus of the concerns or interests expressed among stakeholders, both in response to our questions and in the wider public debate.

Table 2 below presents the allocation of case study subjects per Member State, and indicates the section of this report containing a summary of the case study.

Table 2: List of case studies

Member State/ EU coverage	Case study subject	Summary information
EU general	Investor protection	Section 3.3.1.1
Czech Republic	Chemicals	Section 3.3.5.1
Germany	Transport	Section 3.3.4.3
France	Energy	Section 3.3.3.3
Italy	Transport	Section 3.3.4.1
Hungary	Biodiversity and agriculture	Section 3.3.2.3
Austria	Energy	Section 3.3.3.1
Poland	Biodiversity and agriculture	Section 3.3.2.5
Slovakia	Biodiversity and agriculture	Section 3.3.2.1

2.3 Methodology and format for case studies

The final case studies are presented in Annex 2 to this report. The case study on investor protection took the form of a literature review and analysis of the environmental policy impact of existing investor state dispute settlement provisions in bilateral investment treaties between EU Member States and the US, an assessment of the potential impact of the Commission’s proposed Investor Court System, and of possible improvements to the text.

For the Member State case studies on individual aspects of environmental policy, the case study authors (who were either native or fluent speakers of the relevant national language) investigated the background to the issue in the relevant Member State through a desk study involving an identification of relevant national data and policy. The positions of relevant stakeholders were then identified, with interviews held to seek more information and probe further on stakeholder views of potential environmental impacts. Potential impacts were listed systematically, with an identification of the potential extent of the impact, an initial assessment of its perceived probability, and any proposals or ideas emerging from the review of background information or the interviews which would help either to mitigate negative impacts on the environment, or to enhance benefits.

The initial findings of the case studies, particularly in respect of the identification of the background to the issue and the potential impacts, were then set out in background documents which were shared with stakeholders in advance of the workshops, and presented by researchers at the workshops. The case studies were then finalised in the light of the discussion and ideas generated by the workshops. Each individual potential impact is separately identified, along with the potential mechanisms for optimising environmental outcomes (either by mitigating negative impacts or facilitating positive impacts).

3 Workshops

3.1 Outline of the approach to organisation of the workshops

The project involved a series of 9 workshops in the capital cities of the Member States chosen for particular attention, starting in June 2016, and ending in October 2016; the dates and subject matter of the workshops, together with an indication of the section of this report where a summary of the workshop can be found, are presented in Table 3 below. It should be noted that the period in which the stakeholder workshops were held was characterised by some elements of uncertainty over the status of the negotiations, both in relation to the EU's position (with individual EU Member State ministers or governments expressing scepticism about the prospects for, or benefits of, reaching an agreement with the US), and in relation to the US administration's position (with a less liberal approach to trade issues being adopted by both candidates in the Presidential election campaign, and significant concerns about the approach to both trade and environmental issues of the eventually successful candidate, now President Trump).

Table 3: List of Member State workshops

Member State	Cast study subject	Date	Summary information
Slovakia	Biodiversity – Slovakia	17 June 2016	Section 3.3.2.2
Italy	Transport – Italy	13 July 2016	Section 3.3.4.2
Denmark	Investor Protection- EU-28	30 August 2016	Section 3.3.1.2
Hungary	Biodiversity – Hungary	8 September 2016	Section 3.3.2.4
Czech Republic	Chemicals – Czech Republic	15 September 2016	Section 3.3.5.2
Austria	Energy – Austria	20 September 2016	Section 3.3.3.2
Poland	Biodiversity - Poland	23 September 2016	Section 3.3.2.6
Germany	Transport – Germany	6 October 2016	Section 3.3.4.4
France	Energy - France	13 October 2016	Section 3.3.3.4

The workshops were designed to offer stakeholders a general opportunity to express concerns or hopes for TTIP and its environmental impact; and then to focus on the particular issue identified in the relevant Member State case study, with a view to testing stakeholders' views, and developing proposals for how to improve environmental outcomes. All workshops (except that in Denmark) were held in the national language of the relevant Member State, with project team members either speaking in that language, or participating through an interpreter; this approach was adopted to maximise the opportunity for stakeholders to express themselves freely, and to ensure that views were gathered not just from the participants most confident in expressing themselves in English.

The exception to the approach outlined above was the workshop in Copenhagen; which, while it offered a similar general opportunity to stakeholders to offer views on environmental impacts of TTIP, was held in English, and focused on the EU-28 wide case study on investor protection, rather than on a specific Danish case study.

In most cases, the events were held at the offices of the European Commission in the relevant capital (and we are grateful to Commission staff in the capitals for their help in making the workshops

possible). Stakeholders were identified on the basis of the project team country expert's knowledge of the stakeholder community, and study of the debate on TTIP, with additional suggestions from Commission offices. One aspect which arguably limited participation was that the project did not foresee a budget to cover travel expenses for participants; while this would not be a significant constraint on stakeholders already or easily present in the capital, there were some stakeholders who were prevented from attending. A lesson for future similar stakeholder engagement events would be to consider the potential for facilitating participation from a wider selection of voices, including those from rural or distant areas of the relevant Member State. An additional issue in one Member State was that some environmental stakeholders with strong views on TTIP declined to participate, apparently out of concern that the project was biased against their arguments.

In some cases, in consultation with the Commission, we adapted the core structure of the workshop (for example, shortening them to ensure we had wider participation). The core structure involved a presentation of the aims of the project, followed by an opportunity to raise and discuss general issues in relation to TTIP and the environment; a presentation of key elements of TTIP relevant to the case study, followed by an opportunity to raise issues for further discussion. Participants were asked to raise issues by summarising them on sticky notes, and then explaining them to the wider group; issues were then clustered, and key topics selected for more in-depth discussion, in break-out groups where appropriate. Details of the approach adopted for each workshop are included in the workshop reports in Annex 3.

3.2 Key common themes emerging from the workshops

A summary of the main points emerging from each of the workshops is included below in section 3.3. A number of areas of stakeholder comment stand out, however, as being relevant across the range of workshops, and the subjects discussed. These are briefly outlined in sections 3.2.1 to 3.2.4 below. An additional general comment is that the workshop format proved in most cases effective in encouraging discussion of options which could address concerns raised by stakeholders. For many environmental stakeholders, the key point they wished to register was that the best way of avoiding negative impacts from TTIP was not to proceed with the agreement; and for some sectoral stakeholders (particularly in agriculture), the best way of avoiding negative impacts was to exclude the sector from the deal. However, having lodged these points, they were then prepared to consider what they regarded as second-best, but potentially valuable, options to optimise outcomes in the event of TTIP applying, or applying to their sector.

3.2.1 Transparency

A common concern expressed at all the workshops was with the level of transparency surrounding the negotiations. In particular, stakeholders at several events were frustrated at being asked to give their views on the impacts of a text that they could not yet read even in a full draft form. This is clearly a challenge for agreements that go beyond strict trade issues such as tariffs, and address issues such as the treatment of investments, or regulatory approaches: democratic societies are used to a much higher level of dialogue on domestic legislative texts (including those negotiated through the EU co-decision process) than is likely to be feasible in a bilateral negotiation in a trade context.

A more nuanced concern raised by some stakeholders was with the complexity and wide scope of the proposed agreement, and the challenge (even for well-informed stakeholders) to grasp what was at stake or understand the potential combined effect of different chapters of the potential agreement. While Commission efforts to provide (some) documentation were noted, this was not always considered satisfactory; and explanatory information was generally regarded as *parti pris*.

3.2.2 Impact on current regulation, and future regulatory flexibility

A major theme of stakeholder concern in discussions on the environmental impact of TTIP, as reflected in the Background Report, has been the potential for a reduction in governments' flexibility to regulate

to deliver environmental outcomes. This either finds expression as a concern that TTIP will directly override particular environmental policies or legislation; or through concerns about a “regulatory chill” effect, whereby government at EU or national level would hesitate to introduce ambitious new rules because of concerns about losing cases under the arrangements for enforcing investors’ rights under the agreement, or because of the new regulatory cooperation process. These concerns were, as expected, reflected in the workshop discussions. The workshop format allowed for some probing of the precise mechanism by which regulatory flexibility would be harmed, although stakeholders often remained sceptical when their attention was drawn to Commission statements on the EU’s position, and to assertions that concerns were based on misunderstandings of the agreement.

3.2.3 Environmental impacts of greater transatlantic trade

An issue that emerged particularly, but not only, in discussions in the workshops focused on transport issues was the direct impact of increased transatlantic trade on environmental outcomes, for example through the increased emissions of greenhouse gases and air quality pollutants attributable to increased international transport, or the risks associated with energy imports from the US based on unsustainable production methods (such as certain biofuels, or unsustainable shale gas extraction).

3.2.4 Positive opportunities in relevant sectors

The extent to which stakeholders in different Member State workshops were interested in identifying positive opportunities emerging from TTIP for the delivery of environmental objectives varied. In a number of workshops there was suspicion that focusing on this angle was an attempt to distract attention from environmental risks. In others, however, issues of relevance to maximising opportunities for EU green economy businesses, particularly SMEs, were considered and ideas put forward for maximising the opportunities. As a rule, the positive potential foreseen by the Commission for environmental benefits resulting from processes such as regulatory cooperation, or from shared EU/US approaches to international issues, did not generate enthusiasm among stakeholders.

3.3 Summaries of case studies and workshop discussions

3.3.1 Investor protection: case study findings

The case study (the full text of which is included in Annex 2 – examined the experience of ISDS cases brought under Bilateral Investment Treaties between EU Member States and the US; and broader case law relating to international investors and the environment in EU Member States. In the light of these, and of broader experience under ISDS, it considered the Commission's proposed Investment Court System, and offered a number of observations and suggestions, set out below in section 3.3.1.1. The issues raised were then discussed at a workshop in Copenhagen (see section 3.3.1.2).

3.3.1.1 Case study findings

Provisions in the Commission's proposed text on an Investment Court System generally offer greater protection for the State's ability to achieve public policy goals, such as environmental protection, without attracting liability, than is usual for investment treaties. This is primarily achieved by confining the scope of fair and equitable treatment and indirect expropriation, which are the two standards of treatment in investment treaties that provide the greatest potential constraints on a State's ability to achieve public policy goals.

Before looking more closely at these two standards, it may be worth questioning what exactly Section 2, Article 2(1), which is concerned with the 'right to regulate', does. This paragraph provides:

The provisions of this section shall not affect the right of the Parties to regulate within their territories through measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity.

This provision on the 'right to regulate' may however just be window dressing. To say that a State has a right to regulate is not to say much. No tribunal has ever doubted that a State has the right to prescribe laws and exercise regulatory authority within its territory. The real question is the extent to which the legal obligations a State has accepted, affect that unobjectionable starting point. Virtually every treaty, whether it is an investment treaty, a human rights treaty or a treaty regulating air traffic affects a State's right to regulate. The real question is therefore the extent to which the specific standards of treatment set down in the proposed treaty affect the State's right to regulate.

One of the overriding themes of the proposed treaty is the confining of the standards of treatment and therefore the broadening of the State's ability to achieve public policy goals without attracting liability. The way in which the proposed treaty confines fair and equitable treatment is the most obvious example of this. Section 2, Article 3(2) provides a specific list of circumstances in which fair and equitable treatment may be breached. They involve high thresholds. The threshold of 'manifest arbitrariness' in Article 3(2)(c) is one clear example of that. The greater specificity in Article 3 compared to how most treaties deal briefly and vaguely with fair and equitable treatment may be welcomed. However, it may equally be questioned whether the thresholds now set out are unrealistically high with the consequence that the level of investment protection provided is no longer meaningful. Some further consideration could be given as to whether the thresholds in Article 3(2) really need to be so high. Why should investors not be protected against arbitrary conduct? Why should they only be protected against manifestly arbitrary conduct?

One perhaps surprising element of the way in which the proposed treaty deals with fair and equitable treatment is its preservation of the controversial concept of 'legitimate expectations'. Article 3(4) provides that:

When applying the above fair and equitable treatment obligation, a tribunal may take into account whether a Party made a specific representation to an investor to induce a covered

investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.

It seems to be the case, however, that the frustration of a legitimate expectation within the meaning of this paragraph does not itself give rise to a breach of fair and equitable treatment, but is simply one relevant factor when considering whether one of the high thresholds set down in Article 3(2) have been met. This is what is suggested by the opening words of the paragraph ('When applying the above fair and equitable treatment obligation, a tribunal may take into account ...'). In other words, if the frustration of the legitimate expectation does not involve 'manifest arbitrariness', or does not reach one of the other thresholds listed in Article 3(2), then there is no breach of fair and equitable treatment. For greater certainty, it could perhaps be more expressly stated that the frustration of a legitimate expectation does not by itself give rise to a breach of fair and equitable treatment.

The proposed treaty also goes to some effort to confine the scope of a compensable indirect expropriation. The proposed treaty concedes that it is a fact-sensitive question, but the following statement of general principle with which Annex 1 to Section 2 ends seems a sensible way of balancing this obligation against a State's ability to achieve genuine public policy goals:

For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Party that are designed and applied to protect legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity do not constitute indirect expropriations.

One potentially important omission from this statement of general principle is the relevance of any specific commitments made by the State to the investor. Even if specific commitments are not meant to be relevant in the sense that a breach of these specific commitments is not meant to render an indirect expropriation compensable, then that could perhaps be stated expressly.

One standard of treatment in the proposed treaty that may represent a significant constraint on a State's ability to achieve public policy goals, and to which more serious thought could be given, is the umbrella clause set down in Section 2, Article 7:

Where a Party either itself or through any entity mentioned in Article X [Definition of "measures adopted or maintained by a Party"] has entered into any contractual written commitment with investors of the other Party or with their covered investments, that Party shall not, either itself or through any such entity breach the said commitment through the exercise of governmental authority.

This could potentially undermine the ways in which the proposed treaty confines fair and equitable treatment. A breach of such a contractual written commitment through the exercise of governmental authority would attract liability even if the breach did not involve, for example, 'manifest arbitrariness', or did not cross any of the other high thresholds required for a breach of fair and equitable treatment. Article 7 may also be difficult to reconcile with the general statement in Article 2(2):

For greater certainty, the provisions of this section shall not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.

Article 7 may have the effect of preventing a State from changing its legal and regulatory framework where it has entered into a written contractual commitment with an investor even if there are genuine

public policy reasons for changing that framework; or in cases where the legislature takes a different view on the public policy objectives to be pursued than the branch of the executive which had entered into a contract. Given the efforts that have been taken to confine the scope of fair and equitable treatment in order to preserve the State's ability to achieve public policy objectives, it may be questioned whether the inclusion of such an umbrella clause in the proposed treaty is consistent with the treaty's aims.

3.3.1.2 Copenhagen workshop outcomes

The Copenhagen workshop considered the emerging findings of the EU-28 case study on the Investor–State Dispute Settlement (ISDS) / Investment Court System (ICS) mechanism. The first session was devoted to reviewing the principal issues identified in the on-going research, in relation to the interplay between TTIP and environmental protection in the EU. Then, particular attention was paid to the case study dealing with ISDS and ICS, looked at through a Danish lens. Finally, stakeholders were invited to offer recommendations for the negotiation process and for further dialogue around the subject.

Stakeholders identified the following issues as important in the context of the interplay between TTIP and environmental protection, and in particular from a Danish point of view:

Harmonisation of regulatory standards met with mixed thoughts. On the one hand, the effort required to harmonise two essentially different “cultures” and legalistic traditions might create stagnation, and might prevent regulatory changes needed to respond to and allow innovation and entrepreneurial development. It was also considered a potential challenge to preserving European and Danish standards. On the other hand, a closer dialogue among regulators could offer opportunities for improvements in practice.

Consumer protection was considered potentially at risk under TTIP. There could be risks to public health and safety that need to be studied in more detail. For example, TTIP could make it more difficult to ensure the **traceability of GMOs**, and also of food products that contain genetically modified ingredients. At the same time, **prices** of consumer products should decrease, with TTIP leading to enhanced competition.

TTIP might undermine the Danish policy of supporting and fostering home-grown industries through the allocation of national **subsidies**. It could also be a threat to **labour standards** in Denmark.

TTIP could set a **global precedent**, in terms of bringing together trade and market dynamics with the need for global environmental standards. It could also allow for an intensified multilateral cooperation on environmental protection and combating climate change.

Economic gains that TTIP could bring to Europe and Denmark remain greatly **uncertain**. In particular, it is not clear to what extent the Partnership would open up public procurement markets in the US for Danish companies. However, TTIP could bring opportunities for European companies exporting **green technologies**.

Having introduced the European Commission's proposal on the ICS, the project team discussed the current legislative framework for environmental public policy in Denmark and highlighted the

interplay with the aforementioned TTIP- chapter. Stakeholders then identified the following key issues for TTIP, the ICS and environmental public policy in Denmark:

More clarity is needed on whether judges are **appointed to sit in the ICS on a six-year basis**, or whether they are **appointed to rule on specific cases**. Also, it is currently not clearly established whether judges are assigned full-time to the ICS, or whether they are able and allowed to **sit on other courts** in the same time period.

The ICS needs to elaborate further on who will bear **court costs**, including expenses incurred by 3rd party judges. It is also not sufficiently specified in the Commission's proposal, where the respective **roles of the Commission and of individual Member-States** begin and end when handling investment cases.

A positive aspect of the ICS lies in its more **explicit interpretation** of terms such as "unfair treatment", in comparison with the initial ISDS-proposal.

TTIP could **boost Denmark's competitiveness**, enabling increased exports of "**green**" **products and technologies**, but this was arguably dependent upon the ICS, rather than ISDS entering into force. In order to boost Danish exports, the ICS should guarantee **non-discrimination**, including **safeguards against American protectionism**, as well as the preservation of the **right to regulate** in Denmark and Europe.

The ICS raises fears of **sovereignty loss**. It might constrain the ability of Member-States to issue laws and regulations, particularly on environmental protection and sustainability policies. The effect of a **regulatory chill** would be a natural consequence. Caution about the role of foreign investors was expressed: the legal route offered by the ICS might pressure governmental authorities when determining environmental and economic policies.

Stakeholders also asked whether the dispute settlement mechanism would enhance our ability to move forward with environmental protection multilaterally and globally. Rather than serving as a step towards an **international rule of law**, it might pose an **obstacle** on this path.

At the same time Danish investors, such as pension funds, would be in a better position to **protect their investments**. This might have positive environmental impacts, encouraging for instance investments in the renewable energy sector.

SMEs need additional funding to help finance legal counsel and costs associated with arbitration cases. The process should also be particularly swift, where SMEs are among the parties involved.

Out of the above listed issues, stakeholders selected two subjects for further discussion and analysis: Investments; and the Right to Regulate. These were pursued in the final session, with the following conclusions and recommendations put forward.

Investments

TTIP and the ICS offer opportunities to improve **transparency and predictability** of both environmental and investment provisions in the EU and in the United States. This transparency of regulatory objectives, and predictability of investments outcomes are key for foreign investors. However, **TTIP needed to do more to encourage SMEs to invest**. From an environmental perspective, SMEs are very valuable as they tend to act as the disruptive players, pushing forward green

technologies. In order for them to keep afloat under the ICS-regime, extra streams of **funding** are needed to bear the cost burdens of bringing cases forward to ICS.

States should remain **free to issue subsidies**, and in a larger sense, to make use of all economic instruments available, including taxation policy, for the purposes of environmental protection and regulation.

TTIP and the ICS should foresee some **compensation** in case of indirect expropriation due to environmental protection reasons. This might stem from a collective fund or an insurance set up for this purpose. It would compensate companies' losses, by which they would no longer feel pushed to take the court route and bring their case before the ICS.

Ability to regulate

In order to protect states' right to regulate, the ICS should clearly **exclude environmental regulations from its definition of "indirect expropriation"**. It should endorse precaution as a basic principle, thereby giving a clear signal that environmental protection is a legitimate rationale for regulation.

We need to make sure that TTIP does not hinder states from protecting **nature reserves and landscapes**.

Potential compensation should not exceed legitimate **expectations**; it was important to **narrow down and clarify** interpretations of what constitute legitimate expectations. The **sustainable development agenda and 2030 objectives** should be incorporated as a cornerstone, with a clear expectation of a steadily improving trajectory of protection standards over the longer term. This should also be a **part of TTIP's SDG-chapter**.

The ICS should be a **dynamic mechanism**. When global policy objectives on sustainability change in the future, the ICS should be able to adapt and adjust accordingly.

The ICS and all staff involved should rely on an **adequate knowledge** of environmental public policy, in particular about Best Available Techniques (BAT) & Best Environmental Practices (BEP).

Incorporating the Sustainable Development Goals (SDGs) into the ICS and TTIP is important beyond investor protection – it will also play a key role in regulatory cooperation. Once harmonised regulations are concluded, it will be very complex to introduce changes unilaterally. Therefore, from the outset, the regulatory framework under TTIP should be underpinned by the **Paris Accords and other multilateral agreements**.

The final exercise collected recommendations for further dialogue around TTIP in Denmark and the EU, with the following ideas put forward:

We need **more documentation and reference cases to support or disprove political claims** that often lack accuracy, such as the projections of economic growth level under TTIP. A **fact-checking** approach, such as practised on US television channels during the election campaign, could be helpful.

More details on the **legislative post-TTIP environment** would be required to feed the debate, particularly on the distribution of competences and responsibilities. How would regulatory

cooperation function in practice, and what procedures are involved? On which institutional levels will they be implemented?

The role of the European Commission is primarily to negotiate the agreement, and secondarily to communicate on TTIP. Therefore, communication efforts on TTIP need to be handled principally by the Member States, in particular **National Parliaments**.

The space for dialogue and public debate on TTIP has for many years been dominated by opposing voices. There is a need to **showcase, through key messages**, what the **objectives** of the negotiators are, and what we intend to **gain** from this Agreement. It is also important to demonstrate more openness about the uncertainties and challenges that we are facing. A Q&A facility could allow the public to ask questions and obtain more detailed information.

The EU should send a clear message that our **norms and standards will remain safeguarded**. Although there is a certain level of transparency, it is not visible enough to the public.

3.3.2 Biodiversity: case study findings and workshop summaries

3.3.2.1 Slovakia case study

In Slovakia, some non-governmental organizations, media articles and academics have expressed concern that in the long run the TTIP may endanger diversity of species and the continuation of small scale organic farming, and may contribute to relaxation of EU regulations for pesticides and GMOs.

According to the updated National Biodiversity Strategy to 2020, the most important future threat to biotopes in Slovakia is agriculture and forestry exploitation. Data from EU and national reports confirm that the decrease of the diversity of species of animals and plants is indeed marked in Slovak agricultural land. While there is a lack of empirical data that can be used to evaluate change in biodiversity in Slovakia, which makes it difficult to determine whether the decrease follows Slovakia's accession to the EU's single market, academic articles point to a steady decrease in the diversity of plants and animal species over recent decades. In this respect, a public debate on improving biodiversity protection appears necessary, including in the context of the TTIP.

Small-scale farming is often perceived to be under pressure globally, as a result of competitive pressures. In Slovakia, as in some other EU countries that belonged to the former Soviet bloc, the situation is a bit different. Agriculture was collectivized in the 1950s; agro-cooperatives characterised Slovak agriculture until 1989, when the land was returned to private hands. Currently, many small farmers operate in Slovakia with 38% of agricultural land being managed by farms smaller than 2 hectares, in a structure with many significantly larger farm holdings. The balance in numbers terms between small and large farms has remained stable for the last 5 years. On the other hand, small farmers find it more and more difficult to compete with cheaper imported products, for example from Spain or Italy; many Slovak farms therefore rely on subsidies to sustain their business. There is a fear shared amongst stakeholders that this competitive pressure would increase due to the TTIP and small farms could gradually disappear. To address this risk, Slovak state and local authorities are committed to supporting small farmers and ensuring that regional marks would be protected under the TTIP.

US agriculture, compared to the EU, is characterized by greater industrialization and a greater scale of production of agri-food and animal products such as meat and milk. This industrialization is also linked to higher use of pesticides – more substances are allowed for the treatment of plants in the US, and rules on pesticide residues allowed in food products are less stringent than in the EU. Slovak stakeholders have expressed concerns that chemical pesticides would regain popularity in the EU in order to respond to competition from high-production systems in the US. However, the EU is firm when it comes to its regulation of dangerous substances in pesticides and is ready to maintain its strict rules even after the TTIP. Moreover, the EU allows only very low residues of pesticides in food products (one of the lowest in the world) and TTIP will not influence this regulatory approach. Thus, farmers will not be able to use more pesticides than now. If farmers who currently produce organically resort to pesticides, they risk losing existing quality-conscious customers, so they will be less likely to do so.

The EU is responsible for decisions on whether GMOs may be cultivated or marketed on the EU territory, with an important role for the European Food Safety Authority (EFSA) in assessing safety and environmental impacts of GM varieties, and a role for Member States in either endorsing or withholding consent for Commission decisions. Only one crop has been approved at European level, although 5 are awaiting a decision on authorization. Since 2015, however, Member States have had the flexibility to decide whether or not to allow cultivation of each approved GMO variety on their territory; while some Member States have taken advantage of this flexibility, and excluded cultivation, Slovakia has not. All products containing GMOs must be clearly labelled. However, Slovak consumers are not in favour of consuming genetically modified food and the market interest in such products is low. In Slovakia, despite Commission statements that regulation of GMOs will not be affected the agreement, stakeholders fear that due to the TTIP and its provisions on regulatory cooperation, GMOs would gradually become more widely used and marketed in the EU, and the obligation to label their presence in food will disappear. Currently, the EU takes a precautionary approach to the regulation of GMOs, and there is no clear evidence that regulation of GMOs would be eased due to the TTIP. Also, the consumer preferences in Slovakia are clearly not favouring GMOs and if these preferences continue, the import of US GMO goods (i.e. those containing EU approved GMO plants and marked according to the EU rules) is unlikely to be successful in Slovakia.

3.3.2.2 Bratislava workshop summary

The morning session was devoted to reviewing the principal issues identified in the ongoing research, in relation to the interplay between TTIP and environmental protection in the EU. Then, particular attention was paid to the case study dealing with biodiversity in Slovakia. Finally, stakeholders were invited to express their recommendations for the negotiation process and for further dialogue around the subject.

Stakeholders ranked the following issues as important for Slovakia:

Food safety – regulation of pesticide residue levels and the use of hormones

Food self-sufficiency - protection of local produce, including SMEs and smallholder farms

Use of **natural resources**

Agricultural practices and standards

Biodiversity and protection of species

Stakeholders were invited to vote for the themes which they would like to discuss and elaborate in-depth in relation to the TTIP. General agreement was reached on the principal relevance of (1) GMOs, and (2) species.

Stakeholders then identified and discussed what they considered as positive, neutral and negative impacts in these particular areas, should TTIP be implemented. The impacts discussed were not limited to biodiversity in Slovakia, or indeed to the environmental sphere. On GMOs, the workshop revealed a high level of concern about the quality of foodstuffs as well as the preservation of agricultural biodiversity. Stakeholders noted a potential trend toward larger-scale, more intensive and monocultural agriculture, at the expense of traditional, smallholder farms and of standards relating to soil, water and public health. At the same time, stakeholders anticipated a decline in prices, an enhanced use of technological innovations as well as product diversification. The increase in imports could also translate into a reduced stress on natural resources in Slovakia.

Biodiversity impacts foreseen by stakeholders ranged from the decline of agro-biodiversity, threats to bees and other endangered species, and a weakened public interest in natural resource management. On the other hand, stakeholders considered that TTIP offered some opportunities, in terms of setting ambitious shared environmental standards; and increasing the supervision of national and regional bodies over natural resources.

Lastly, stakeholders offered recommendations for further dialogue around TTIP, in particular:

The need for more translated information from the European Commission (in Slovak);

Closer involvement of national Parliaments;

Closer involvement of stakeholder groups at the local level;

The establishment of a non-governmental umbrella group charged with the dissemination of information.

3.3.2.3 Hungary case study

The agriculture sector plays an important role in Hungary's economy. In 2015, it contributed 3% to the country's GDP. As a result of Hungary's favourable climatic conditions and good quality soil a wide range of crops are cultivated, primarily cereals (wheat and maize) and industrial crops (sunflower and rapeseed). Around 57% of the country's total territory – around 5.3 million hectares – is arable land, which is above the EU28 average, while the average size of agricultural holdings is below the EU28 average at 8.1 hectares. Given the large area of cultivated land in Hungary and the extensive methods used on small farms agricultural practices have important implications on biodiversity and are tied together in many ways, including for instance via pesticide use.

Hungary's strong policies on genetically modified (GM) crops are also a key defining factor of the country's agriculture sector. Since 2006 Hungary has been following a GM-free agriculture production strategy which is also re-iterated in the Hungarian Constitution. Justifications put forward to ban the cultivation of GM crops in the country are the precautionary principle and scientific evidence of negative impacts. At the same time, economic considerations also seem strong as Hungary is a significant GM-free seed exporter within the EU and the world.

Overall, the public debate on TTIP is not very well developed in Hungary and it is focusing only on a limited number of issues. The general public and key stakeholders seem to be mainly concerned with the fear of loosening some of the EU's environmental standards, primarily linked to the agriculture sector (GM crops and pesticides). The proposed investor protection mechanisms have also created opposition within the public and experts. Concerns have been raised by many stakeholders around these two issues, including the government, opposition political parties, civil sector and academia.

This case study, building on an extensive review of literature and media outputs, interviews with key stakeholders and a national workshop in Budapest, identified three main considerations in relation to the potential impacts of the TTIP agreement on Hungary's biodiversity within the agriculture sector. Firstly, concerns were raised by numerous stakeholders that competitive pressure on the agriculture sector arising from the TTIP agreement could lead to a shift in agricultural practices with negative impacts on biodiversity. Secondly, and closely linked to the first concern, workshop participants expressed their fear of the agreement's potential impact on ecosystem services, in particular relating to the increased use of pesticides affecting pollination and water and soil quality. Thirdly, a very strong fear has been present in media debates and was expressed by civil society, public authorities and academia related to the potential weakening of EU regulation on GM crops. This has in particular translated into a fear of losing the GM-free status of Hungary's agricultural production.

In order to address these fears and to mitigate the identified risks a set of recommendations have been explored and suggested. The provision of sufficient funding to ensure and maintain the sustainability of the agricultural sector in Hungary has emerged as an issue on multiple platforms. This could for instance include the further strengthening of the greening measures within the EU's Common Agriculture Policy or providing sufficient funding for organic agriculture both at the EU and national level. Furthermore, a set of underlying principles have been formulated by key stakeholders, including among others, (i) ensuring the full application of the precautionary principle during the harmonisation process of EU and US environmental legislation and (ii) eliminating the investor protection mechanisms from the agreement.

3.3.2.4 Budapest workshop summary

The morning session was devoted to reviewing the principal issues identified in the ongoing research, in relation to the interplay between TTIP and environmental protection in the EU. Then, particular attention was paid to the Hungarian case study dealing with biodiversity within the context of the

agriculture sector. Finally, stakeholders were invited to express their recommendations for the negotiation process and for further dialogue around the subject.

During the first session on the main concerns and opportunities relating to TTIP, Stakeholders offered views and explained their concerns about the following issues:

- TTIP's impacts on the European and Hungarian perspective towards sustainable development;
- TTIP's impact on the food sector (impacts on prices, competition and quality of the products);
- TTIP's impact on technological developments;
- TTIP's impact on energy and pollution; and
- TTIP's socio-economic impact.

The second session was focused on the topics of biodiversity within the agriculture sector. Stakeholders considered the following issues as important for Hungary:

- Ecosystem services and environmental safety;
- Intensification of the agricultural sector;
- Socio-economic impacts;
- Issues around Genetically Modified Organisms (GMOs); and
- Lack of information and transparency about the ongoing negotiations.

Stakeholders were invited to vote for the topics which they would like to discuss and elaborate in-depth, in relation to the TTIP and environmental protection as well as regulations in the context of the proposed treaty. General agreement was reached on the principal relevance of (1) ecosystems and environmental safety, with the issues of (2) the intensification of the agricultural sector and (3) the socio-economic impacts of TTIP, also regarded as worthy of further discussion. Stakeholders identified and discussed what they identified as negative, neutral and positive impacts in these particular areas, should the TTIP-agreement be implemented. The listed impacts were not limited to the sphere of biodiversity, but went beyond the environmental aspects.

On the question of ecosystem services and environmental safety, the workshop revealed high concern about two main issues: the contamination of the Hungarian environmental sphere (due to an increased use of pesticides and chemical agents within the agriculture sector) and the potential loosening of standards and regulations in the agricultural sector. In particular, deregulation could also increase the pressure on the environment because the increased competition would lead to a more intensive exploitation of the territory and to higher levels of pollution. With regards to ecosystem services, participants expressed their concerns in relation to pollination, regulating services linked to water and soil quality, as well as recreational ecosystem services. At the same time, stakeholders envisaged some positive outcomes at the level of R&D, which might bring concrete opportunities to exploit green technological innovations. Some opportunities related to the spread of best practices in the sector were also foreseen.

The second area discussed, intensification of agricultural activities, was closely linked to the previous one. The main concern was again about the dangers that the environment would face, from the increased use of herbicides and pesticides to the decrease in the quality of water to soil erosion. Stakeholders also identified a potential trend, within a potentially larger and more integrated trans-Atlantic market, toward a massive access of cheap, but low-quality food products, due to the loosening

of standards. Alongside these environmental issues, stakeholders expressed their concerns about the economic perspectives of Hungary. They envisaged a negative impact on the employment level in the agricultural sector, due to increased mechanisation and to the difficulties that SMEs would have to confront. The latter is particularly significant; stakeholders were concerned about the risks of monopoly power in the sector, with a consequent overall increase of food prices. According to stakeholders' view, this could represent a major threat to the whole Hungarian organic farming system. On the other hand, stakeholders also considered a potential improvement of the overall efficiency of the production, the possibility that the prices might actually decrease, and a general improvement of the living standards, thanks to greater intensification.

Finally, stakeholders considered it important to take specifically into account the socio-economic impacts of TTIP, focusing on the loss of competitiveness of European agriculture and the consequential higher vulnerability of rural areas.

A final exercise identifying recommendations led to the following suggestions:

Eliminating the ISDS system from the negotiation;

Strengthening the EU's Cohesion Policy in order to achieve better financial equality, which would help countries with different economic and social backgrounds to better respond to TTIP's impacts, especially regarding the agricultural sector;

Developing a coherent EU soil policy;

Ensuring funding for organic farming and positive changes in agriculture sector, including the further use of greening measures under the EU's Common Agricultural Policy (CAP).

Ensuring that the EU environmental policies and the precautionary principle are the (non-negotiable) starting points of the negotiations;

Developing alongside the TTIP agreement another agreement on innovation and knowledge sharing;

Ensuring that Member States have more margin to develop their policies and objectives in terms of environmental protection; and

Ensuring full transparency.

3.3.2.5 Poland case study

Biodiversity in Poland is among the richest in Europe. It is protected by a dense network of nature conservation measures and environmental laws established at both national and EU levels. Biodiversity protection is part of a wider sustainable development policy pursued by Polish public authorities, aiming to ensure that environmental considerations go hand in hand with social and economic ones. Economic growth, however, remains the country's priority since Poland's transition to a market-based economy in early 1990'.

Public debate on TTIP in Poland is not very well developed, which can be explained by limited awareness of TTIP related issues among Polish general public. Biodiversity issues are discussed as a side issue of the leading thread in the debate related to potential impacts of international trade liberalization on the agricultural sector. Agriculture constitutes an important part of the Polish economy; despite its relatively low productivity, it sustains an income of a large part of Polish population. Low productivity results from the sector's structure; there are very many small agricultural holdings in Poland and many farms apply extensive agriculture models. The case study identified two main considerations in terms of potential impacts of TTIP on biodiversity in Poland.

The first concern, raised by numerous stakeholders from civil society and public authorities, is a risk that competitive pressures growing following the TTIP agreement will affect the current farming practices in Poland with a detriment to agricultural biodiversity. This effect can be mitigated by, among other measures, (i) a strong stance of the EU, ensuring that TTIP does not lead to a downward harmonization of EU and US environmental legislation, and (ii) Common Agriculture Policy measures to support biodiversity protection.

The second issue is an opportunity for Polish agriculture to use these competitive pressures to develop specialized brands that would promote Polish agricultural products, emphasising their healthy and nature-friendly properties and recommending them as an alternative to the foods produced on an industrial scale with an intense use of chemicals and GMOs. This opportunity has been identified by a range of stakeholders from the government, industry associations, academia, and civil society. They stress that this impact depends on and can be enhanced through information campaigns, creating or increasing demand for foods produced in ways that respect biodiversity, health and other values such as climate and animal welfare. This opportunity is also to some extent contingent on the Common Agriculture Policy measures rewarding ecosystem services provided by EU farmers.

3.3.2.6 Warsaw workshop summary

The morning session was devoted to reviewing the principal issues identified in the ongoing research, in relation to the interplay between TTIP and environmental protection in the EU. Then, particular attention was paid to the Polish case study dealing with biodiversity within the context of the agriculture sector development. Finally, stakeholders were invited to express their recommendations for the negotiation process and for further dialogue around the subject.

The second session was focused on the topics of biodiversity and agriculture sector development. Stakeholders considered the following issues as important for Poland:

Policy environment; primarily the potential impact of TTIP on drafting European and Polish policies specifically on water, soil protection and climate. In particular, stakeholders noted that the ISDS mechanism could cause some imbalance in the political and legal system of Poland and the EU, leading to a loss of autonomy during the policy-making process.

Agro-ecology; mainly a potential shift in agricultural practices. According to stakeholders, a likely increase in exploitation of monocultures would cause a crisis of more traditional

agricultural systems, such as crop rotation, and inhibit further development of organic farming.

GMOs; stakeholders considered GMOs as one of the main threats against Polish biodiversity because their dissemination might increase among Polish farms in response to increased competitive pressures.

Water, environment and climate; all likely to be negatively affected by TTIP according to the stakeholders' view. In their opinion, adoption of the agreement would apply an augmented pressure on the agricultural sector, with consequent soil erosion and increased levels of pollution. TTIP was also associated with the risk of a sharp decline of food and environmental standards.

Economy; stakeholders foresaw a scenario of lower prices and higher competitiveness, as a result of an increased liberalisation of the market. According to their view, the economic structure of the sector could present more specialised farms in order to resist an increased competitive pressure.

Structure of agricultural farms; particularly the current Polish model of farming, based on small farm holdings. TTIP could put at risk the future of thousands of young farmers, with a consequent effect of rising unemployment levels.

Model of agriculture; stakeholders considered the impact of TTIP as a potential threat to the current model of agriculture, foreseeing future intensification of the agriculture sector as an implication of the adoption of the agreement..

Stakeholders were then invited to vote for the topics which they would like to discuss and elaborate in-depth, in relation to TTIP and environmental protection as well as future regulation in the context of the proposed treaty. With all the topics receiving the same amount of votes, stakeholders agreed to reframe the discussion around two broader themes: (1) structure of the agricultural system and economy, and (2) GMOs and agricultural ecology. Within this context, stakeholders identified and discussed what they recognised as negative, neutral and positive impacts in these particular areas, should the TTIP-agreement be implemented.

With regard to the structure of the agricultural system and the economy, much of stakeholders' attention focused on the issue of competition and its impact. Stakeholders envisaged a situation, whereby smaller and more ecological farms in Poland disappear because of competition pressures and lower prices, with consequent high costs in terms of unemployment. On the other hand, the remaining farms might be forced to adopt a monoculture system, with more intensive exploitation of the soil and other natural resources. Such transition would be facilitated by a parallel decline of environmental standards. Nevertheless, stakeholders also considered that the debate around TTIP and agriculture sector development could increase people's awareness about important issues such as food and ecology, consequently redirecting their consumption preferences towards more local and sustainable products.

The issue of GMOs and ecology was linked with the discussion on the structure of the agricultural system and the economy. Stakeholders considered the end of the more traditional and ecological system of farming as a major threat to the environment. A more modern and competitive system would imply greater use of pesticides and GMOs, with a greater risk for biodiversity loss, especially within insect species useful in agriculture. At the same time, lower environmental standards would accelerate exploitation of the soil and other natural resources. Again, the only hypothetical

opportunity recognised by stakeholders concerned an increase of public awareness about the issues of GMOs, with more attention allocated to the labelling system.

A final exercise identifying recommendations led to the following suggestions:

Exclusion of the agricultural sector from the negotiations;

Inclusion of a provision within the treaty, leaving to the European Union the opportunity to completely ban GMOs and Glyphosate;

Ensuring an appropriate amount of time between the end of the negotiations and possible signature of the agreement in order to allow for a public debate about the text to take place;

Rejection of the merger between Bayer and Monsanto by the European Union, given the additional pressure it will impose on the agricultural sector after the signature of TTIP agreement;

Improvement of the level of transparency and information available about the negotiations; the draft should be translated and debated in public.

3.3.3 Energy: case study findings and workshop summaries

3.3.3.1 Austria case study

The power sector in Austria is characterised by a high proportion of renewable energy, with the highest share of renewable sources in electricity generation in the EU. The most relevant energy policies in Austria include the Energy Strategy, Green Electricity Act and Climate Protection Act.

TTIP is a controversial issue in Austria. There are stakeholders that see it as an opportunity for Austrian energy sector and others that regard it as a threat. TTIP supporters stress that simplified standardisation of products and removal of trade barriers can reduce costs for the manufacturers and lead to more exports. At the same time it is vital to make sure that TTIP will be negotiated in a way that will not undermine EU interests.

According to some stakeholders, TTIP might bring benefits to the Austrian energy industry (including renewable energy) and increased competition between the EU and USA might improve the quality of energy grids. The criticism regarding TTIP and its possible negative impact on the environment focuses predominantly on the investor-to-state dispute settlement (ISDS)/ investment court system (ICS), which is seen as potentially leading to 'regulatory chill' and resulting in weaker energy and climate policies, including the threat of hydraulic fracking being introduced in Austria. Stakeholders also fear that TTIP could lower environmental standards in the energy and climate field. In addition, some stakeholders have stated that TTIP could increase imports of fossil fuels from the US, thus decreasing fossil fuel prices on the European market, which in turn could hamper the development of renewable energy and lead to higher environmental impact.

In order to improve the current draft of the agreement, it has been suggested that it should include a principle that higher national standards should continue to be fulfilled. This means that if a US industry would like to export its goods to the EU, they should comply with the higher European standards. The same would count for European industry exporting its products to the US. Such a principle could lead to higher environmental standards being adopted on both sides of the Atlantic. Stakeholders have also suggested removing the ISDS/ICS mechanisms from the agreement.

3.3.3.2 Vienna workshop summary

The morning session was devoted to reviewing the principal issues identified in the ongoing research, in relation to the interplay between TTIP and environmental protection in the EU. Then, particular attention was paid to the case study dealing with energy policies and the energy mix in Austria. Finally, stakeholders were invited to express their recommendations for the negotiation process and for further dialogue around the subject. Stakeholders considered the following issues as important for Austria:

The potential for smart grids and high voltage grids being run by US operators; what would be the impacts? There was a need for state regulation, a public supply mandate, and state-led public infrastructure.

ISDS and the right to regulate, or to raise taxes; and how they interact with a progressive ratcheting-up of regulations, and target priorities for energy policies.

Environment, clean technologies, and CO2 emissions.

The transition from fossil energies to renewable energies.

Maintaining high regulatory standards and energy efficiency.

The risk of increased coal and gas imports, and exposure to LNG prices.

Stakeholders were invited to vote for the topics which they would like to discuss and elaborate in-depth, in relation to the TTIP and environmental protection and regulation in the context of the proposed treaty. General agreement was reached on the principal relevance of (1) energy grids and infrastructure being operated by the state, (2) target priorities and the regulation of the energy sector, and (3) the environment, technologies and CO₂ emissions.

Consequently, stakeholders identified and discussed what they identified as negative, neutral and positive impacts in these particular areas, should a TTIP agreement be implemented. The impacts were not limited to the impact of energy policies in Austria, or to environmental policy more broadly.

The stakeholder discussion focused on the state and future of the economy, the environment and the energy sector in Austria and Europe. Nonetheless, such trade perspectives depended on setting high standards, which in the eyes of the stakeholders remained a fundamental element of the negotiations and of the eventual agreement. Thus, as for the area of energy grids and infrastructure, the workshop revealed high levels of concern about the potential for operation of parts of the public infrastructure by private investors aiming for a high profit. This, stakeholders argue, might not be in the public interest, potentially putting energy grids at risk of collapsing. While stakeholders stressed that network operators should be bound by national regulations without allowing for specific escape possibilities, they also acknowledged that heightened competition between the EU and USA might improve the quality of energy grids. Further, stakeholders stressed the need for national energy efficiency standards to be upheld.

For the second area discussed, the issue of target priorities and the regulation of the energy sector, stakeholder discussion focused on the investment-intensive character of the sector, noting that investor protection could have both positive and negative impacts on the field and the environment. Since energy is a systemic and highly sensitive field also in regard to climate protection, stakeholders emphasised the need for regulations and feared the potential loss of opportunities for political engagement. Stakeholders strongly questioned the character and implementation of ISDS and ICS, advocating for more transparency and a more 'neutral' selection of judges.

Considering the third cluster identified, namely the topic of environment, technologies and CO₂ emissions, the stakeholders stressed the aspect of harmonisation. Impacts foreseen by the stakeholders range from potentially positive long-term impacts on the areas of nanotechnology, electro-mobility, and chemicals based on current regulatory similarities in EU and USA legislation, as well as concerns regarding the harmonisation of the automotive and cosmetics sector. Furthermore, while strongly emphasising the risks of a harmonisation process, stakeholders consider the range of opportunities offered by TTIP, pointing out the benefits of a potential race-to-the-top effect and increased competition for the protection of the environment.

A final identified recommendations for further dialogue around TTIP. While the key challenge, as expressed by stakeholders, revolves around a lack of transparency, which prevents a more accurate analysis of TTIP and its potential impacts, the exercise led to the following key proposals:

Enhanced transparency and need for dissemination of information;

Inclusion of sustainability standards in the treaty;

Exclusion of security of energy supply impacts from the negotiations;

Enhanced transparency over ISDS/ ICS implementation;

Ensuring a race-to-the-top and no decrease in the quality of standards;

Enhanced public debate, through enhanced information-sharing and an improved technical and political coordination – “more dialogue than monologue”

3.3.3.3 France case study

France's energy mix relies on three main energy sources – nuclear, natural gas, and renewables. The two main energy carriers: natural gas and nuclear fuel are mostly imported. The country has a vast potential to further exploit domestic renewable energy sources, and sits on what is estimated to be a large deposit of shale gas. The central government has recently set a clear strategy for renewable energies deployment and lowering GHG emission-intensity of the country's economy; it has also banned shale gas exploration and extraction through hydraulic fracturing. The ban reflects the strong public opposition to hydraulic fracturing in France, mainly due to environmental concerns regarding water quality, air pollution, risks of increased seismicity and deterioration of natural rural areas. Anti-shale gas campaigners from the 'No to Shale Gas' (fr. "Non au Gaz de Schiste") coalition express concern about TTIP negotiations; they fear that increased competitive pressure will push the French government to revise its 'anti-fracking' policy. The public concern in this respect links to an investor-state dispute settlement mechanism (whether ISDS or ICS) under TTIP. The perceived risk is that the threat of legal action could reduce the room of manoeuvre of the national lawmakers, even though they may want to strengthen the environmental framework relevant to hydraulic fracturing in the future. Taking at face value the EU's position papers and proposal text published during the negotiating process, this concern seems to be unjustified. The EU is striving to ensure that TTIP does not affect its or the Member States right to regulate and would like both Parties to the Agreement to recognise and protect each their respective rights to regulate their own domestic environmental protection at the levels they deem appropriate, 'in a manner consistent with internationally recognised standards and agreements'.

The stakeholders who reject hydraulic fracturing have also often extended their opposition to imports of liquefied natural gas (LNG) which has been obtained through such techniques abroad. Notably, the current Minister of the Environment, Energy and the Sea, Ségolène Royal, called it a paradox to import gas extracted through a method that is banned in France for environmental reasons. Despite this position, however, two important contracts for the supply of LNG were recently concluded between French companies (partly state-owned) EDF and ENGIE, and US export companies. While TTIP may further facilitate exports of LNG from the US to the EU (depending on regional prices); and the environmental impacts of hydraulic fracturing are relatively well-documented – the probability of spill-over environmental impacts of EU domestic gas demand is rather high.

As for renewable energy, its deployment is welcomed by a majority of the French population, but very little debate exists with regard to the potential impacts of TTIP on the sector's development. Where some see a risk that increased transatlantic trade and competition rules under TTIP could undermine French efforts to develop renewable energy, others see an opportunity. The potential benefit, they argue, could stem from the ISDS/ICS mechanism ensuring greater investment certainty for renewable energy project promoters. However, in general, hopes for enhanced exchange of renewable energy technologies are rather low. It is argued that this sector, in order to be beneficial to the host state, develops mostly locally, or is supplied by the most cost-competitive, non-TTIP partners such as China. Nevertheless, some expect that strengthened collaboration could lead to a better competitive position in the delivery of specific renewable energy services, especially in the field of technology development. In general, regardless whether negative or positive, the impacts of TTIP on the renewable energy sector will largely depend on the major policy initiatives in the US and EU, following successful ratification and entry into force of the UNFCCC Paris Agreement.

At this stage of research, five main perceived impacts were identified:

Reduced capacity of central government and local authorities to support the development of renewable energy;

Corporate interests influencing national energy policy;

Impacts of shale gas activities on water resources;

Other environmental and health impacts of shale gas exploration and exploitation;

Climate impacts of hydraulic fracturing and LNG imports;

Trade benefits in the field of clean energy technologies.

The main proposed solution from stakeholders is to incorporate the UNFCCC COP21 commitments into the TTIP agreement, with a binding and ambitious sustainable development chapter, and specific provisions on renewable energy. Stakeholders proposed also: establishing a tax on fuels in the transport (including maritime) and a common price for carbon; phasing out of fossil fuel subsidies; having renewable energy technology in open source (no patents etc.); and only entering free trade agreements with countries that have ratified and apply the Paris Agreement.

3.3.3.4 Paris workshop summary

The first session was devoted to reviewing the principal issues identified in the on-going research on the interplay between TTIP and the energy mix in France. Then, particular attention was paid to three potential impacts identified by stakeholders, which were further explored and elaborated. Finally, stakeholders were invited to express their recommendations for the negotiation process and for further dialogue around the subject.

Stakeholders identified the following key issues around TTIP, environmental protection and the energy mix in France, as well as the impacts they expect the agreement will translate into:

Energy strategy

TTIP can facilitate a **cross-Atlantic exchange of innovative technologies**, and hence, an improved access to renewable energies.

It remains to be seen whether TTIP will have any substantial impacts on the energy sector. The Partnership is not expected to impact export levels nor pricing strategies of American crude oil. At the same time, stakeholders expect a **harmonisation of natural gas prices** as a result of TTIP.

Reciprocity

Reciprocity was a major element in stakeholders' discussions on TTIP. Questions were voiced as to the **prevailing norms** in case of a conflict, the current guarantees of a **full reciprocity** between the US and the EU, as well as the approach toward **subsidies and state support** that the agreement will adopt.

At the same time, it was considered impossible to grant full and exhaustive reciprocity in a trade agreement; on a sectoral basis, the proof of the pudding is in the eating.

TTIP also raises questions on the **ability of national, regional and local governments to regulate**, and to freely determine policies in the area of taxation, energy transition and climate adaptation.

Norms and standards

Stakeholders believed that TTIP should **state in a more explicit fashion**, which norms, rules and regulations will apply on both sides of the Atlantic. It should also describe more plainly, which actors will be responsible for **certification and supervision of compliance**.

It was argued that a substantial **gap** remains between private business practices in the US and the EU, particularly when it comes to **social and environmental standards** these businesses (need to) adhere to.

Environmental impact

An increase in trade will carry an inevitable environmental burden, with higher **carbon impacts** of energy exports and imports.

Stakeholders referred to the significance of the **Paris Agreement**, wondering about the leverage of this Accord within the negotiations and, as such, within the forthcoming agreement.

Competition

It was expected that European energy-producing companies will suffer from the TTIP agreement. This was due to what was considered an **unfair and distorted** competition with American producers, seen as a direct result of divergent norms and regulations.

Low-carbon and “green” technologies might fall victim to an influx of cheaper energy sources, imported from the US.

Out of the above-mentioned issues, the participating stakeholders selected three subjects that merited further discussions and analysis: competition, reciprocity, and energy strategy. For each subject, they identified a range of potential impacts within the environmental sphere as well as beyond (social, political, technological, market-related, etc.).

Lastly, insights were combined in a collection of recommendations to enable positive impacts and mitigate negative effects of TTIP on French climate and energy policies. Also, stakeholders offered recommendations for **further dialogue and communication around TTIP** in France and the EU. This final exercise led to the following key outcomes:

Efforts need to be made to guarantee a **level-playing field**, whereby norms and standards can be aligned according to global benchmarks (i.e. ILO). Therefore, the EC needs to find ways for its trade to avoid unfair treatment under the **Buy American Act**.

Harmonisation of norms and standards should follow an **incremental, gradualist approach, sector by sector**. Sectors that are not politicised, considered less strategic, should be dealt with first.

TTIP needs to promote **sectors that are substantially lowering their carbon footprint**. At the same time, more transparency is needed on subsidies.

The EC should work towards **mutual recognition of conformity assessment methodologies**.

In the advent of unequal levels of reciprocity, it is crucial to obtain **detailed insights into the decision-making procedures and mechanisms** within TTIP, as well as into actor(s) tasked with enforcement of such decisions – this analysis should also clarify differences in jurisdiction between the US, the EU and the federal/national states.

The **ability of local governments to regulate** should be safeguarded.

TTIP should include **ambitious and shared objectives**, underpinned by a global vision that looks at the **entire product life-cycle**.

The role and powers of the **Clean Energy Ministerial** should be strengthened, in order to advance technology transfer between both sides of the Atlantic.

3.3.4 Transport: case study findings and workshop summary

3.3.4.1 Italy case study

The transport sector is the second highest sector in terms of CO₂ emissions in Italy, responsible for 28.4% of total emissions, behind energy industries. Since peaking in 2007, emissions have progressively decreased over time, due to the economic recession and the penetration of low emitting vehicles into the market. Of all modes, road transportation is the most widely used in Italy holding the highest share of emissions (81%) – effectively above the EU average equal to 71.8%. Domestic aviation and maritime transport are responsible, respectively, for 9.6% and 8.8% of total CO₂-transport emissions. The large share of motor vehicles in Italy – which is characterised by the largest motorisation rate in Europe (619 vehicle for 1000 inhabitants) after Luxembourg – has important implications for CO₂ emissions and other air pollutants, environmental and health issues.

Despite the key role of the transport sector in Italy, the country lacks a consistent policy framework for 2020 and a longer-term vision on transport decarbonisation. For instance, there is no overarching legislation setting out the Italian government’s approach to curbing carbon emissions from transport for 2020 and beyond. There are a number of (non-binding) national energy and climate strategies, largely driven by EU policies, which have been followed up by legislative measures, and have ensured progress towards mitigation targets. These focus on the reduction of GHG emissions from transport, the promotion of energy efficient vehicles, the support to a modal shift from road to other modes of transportation, and increasing the use of alternative fuels (mainly biofuels).

Transport and automobile is one of the sectors included in the currently negotiated TTIP agreement, with implications for the production of CO₂ emissions and other environmental and health related issues in Italy and Europe. It also represents a very important sector for the Italian economy. Nonetheless, the public debate on TTIP and transport seems rather marginal in Italy. The Italian Government, a number of political parties and independent experts have showed support to the agreement as an opportunity for economic development and develop environmental benefits. TTIP is seen as having the potential to support ambition in setting environmental standards and in developing the commercialisation of green technologies linked to transport. On the other hand, most stakeholders and civil society organisations have raised a number of concerns with regard to TTIP’s potential to lower environmental standards, increase CO₂ emissions due to trade, worsen health problems linked to transport, and in relation to the implications of the Investor-State Dispute Settlement (ISDS) mechanism.

Building on an extensive review of literature and media outputs, interviews with stakeholders and a national workshop in Rome, this case study identified six main elements in relation to the potential impacts of the TTIP agreement on CO₂ emissions from transport in Italy:

Impacts on the regulatory framework on emission standards;

Opportunities from large scale commercialization of electric vehicles;

Opportunities from digitalization of the transport sector;

Climate and health impacts of increased transport-related CO₂ emissions due to higher trade between the EU and the US;

Increased trade in road vehicles counteracting efforts towards sustainable mobility;

Impacts from increased imports of fossil fuels or biofuels not meeting EU sustainability criteria.

In order to enhance the opportunities identified and address the potential risks of TTIP, a number of recommendations and suggestions have emerged. The inclusion of binding provisions defining regulatory cooperation or safeguards in relation to the EU's emission standards for vehicle emissions emerged multiple times in interviews and at the workshop. This could for instance apply to current or future standards that may be negotiated between the EU and the US. Continued work on relevant international platform (e.g. UNECE) for the harmonization of standards was also encouraged. It was also suggested that the TTIP agreement is made subject to a full impact assessment, including the assessment of health and environmental impacts. In order to mitigate the potential impacts of increased CO₂ emissions, investments in renewable energy (e.g. sustainable biofuels) and fuel efficiency across transport modes was also highlighted. At EU level, the importance of creating an integrated EU transport system was stressed, which would improve clarity in policy direction and support investments in green technologies for transport. In addition, the revision of the Emission Trading Scheme, by including transport-related emissions, and the introduction of an EU-wide carbon tax were stressed.

3.3.4.2 Rome workshop summary

The workshop was opened by a first session about the main environmental issues identified in relation to TTIP. Stakeholders discussed the matter and considered the following issues as the most relevant:

Impacts on standard setting and mutual recognition;

Impacts on health and the environment;

Impacts on markets, investments and competition;

Impacts on technology;

Impacts on horizontal elements.

The second session focused on aspects related to TTIP and the transport sector. The stakeholders considered the following aspects most relevant to Italy:

The risk of decreasing ambition of the European emission standards;

The increase of transport (CO₂ and non-CO₂) emissions and, therefore, the implications for the agreement's environmental sustainability;

Issues related to market access of Italian companies, especially SMEs, in the US market;

Interactions between TTIP and other international agreements (e.g. COP21).

The stakeholders were invited to vote on the long list above with the aim to select two topics for more in-depth and elaborate discussion. General agreement was reached on the (1) harmonisation of (emission) standards, and (2) market access for transport sector companies. Stakeholders were subsequently invited to identify and discuss negative, neutral and positive impacts in relation to the selected topics, should the TTIP agreement come into force. The impacts identified were not limited to transport emissions in Italy, but exceeded the environmental sphere.

As to the harmonisation of emission standards linked to TTIP, the workshop revealed a high concern in relation to an increase of CO₂ emissions in transport and the risk of losing the momentum in relation to decarbonising the transport sector in Europe. As a result, stakeholders considered the risk of a slowed pace of European legislative initiatives to curb emissions, as well as increasing pressure on the environmental components, such as natural resources. In the context of a potentially larger and more integrated trans-Atlantic market, the stakeholders identified a potential trend toward heavier burden on local SMEs, which will possibly struggle to enter the US market and maintain a competitive advantage in Europe and beyond. According to some stakeholders, this might lead to a process of delocalisation of national enterprises. At the same time, stakeholders anticipated a decline in tariffs between the US and Europe, which might bring concrete opportunities to market green technologies. In addition, the stakeholders discussed that the negotiations could also lead to an internal process of economic and policy reform within the European Union.

With regard to the issue of market access, the debate among stakeholders strongly focused on the current and future state of the economy in Italy and Europe. Nonetheless, such trade opportunities remain conditioned upon the setting of ambitious environmental standards, which for the stakeholders remained a fundamental element of the negotiations and of the future agreement. Impacts foreseen by stakeholders range from the difficulties of small, local firms to cope with competitors on an unprecedented scale, to the impossibility to determine responsibilities in case of environmental degradation. As expressed by some stakeholders, the key open question is around the lack of transparency on the negotiation process and the textual agreement, which prevents a more accurate analysis of TTIP and its potential impacts. On the other hand, the stakeholders considered the range of opportunities offered by TTIP in terms of a wider choice of goods and services granted to consumers and the possibility for high quality products to enter the US market (appropriately labelled).

Finally, the stakeholders provided recommendations for mitigating the negative impacts of TTIP and enable opportunities. The creative ideas and recommendations provided by the stakeholders are summarised below:

General recommendations

The ISDS/ICS mechanism should be eliminated from the agreement;

TTIP negotiations should be made public in order to allow European citizen to get involved;

The inclusion of a specific chapter devoted to SMEs, which clearly outlines in which way the agreement would affect them, is needed;

The agriculture and energy chapters should be eliminated from the agreement;

The inclusion of a binding clause guaranteeing that what is foreseen in the sustainable development chapter of the agreement is complied with was stressed;

An independent impact assessment on the agreement should be undertaken.

Transport-related recommendations

Harmonisation of emission standards

Initiatives and local consultations should be strengthened to foster citizen ownership;

Specific provisions requiring compliance with current international climate obligations (i.e. the Paris Agreement) should be included in the agreement;

Provisions or mechanisms ensuring the safeguard of the current European emission standards should be included in the agreement;

A full impact assessment of the economic, social, environmental and health impacts of TTIP on transport emissions should be undertaken;

The precautionary principle should be fully applied;

Clarity on the legal nature of the TTIP agreement and any direct impact on the EU decision-making process subsequently to its adoption should be ensured.

Market access

The exclusion of energy intensive sources (e.g. oil / tar sands) from the agreement should be pursued;

Prioritisation and strengthening of environmental criteria in public procurement should be ensured;

Clear provisions and obligations with regard to the origin, traceability and labelling of products exported to/imported from the US should be included in the agreement.

Recommendations to enhance public dialogue on TTIP

Enhanced transparency and dissemination of information on the negotiation process and the text of the TTIP agreement should be ensured, including information campaigns by relevant actors, appraisal studies and impact assessments, public events and consultations;

Improved technical and political coordination at national level should be pursued.

3.3.4.3 Germany case study

The US is Germany's main trade partner in terms of exports. The most important German commodities for export in 2015 were automobiles and automobiles parts. In this context, the most relevant transport/CO₂ emission policies in Germany include Bundesimmissionsschutzgesetz (BImSchG, Federal Emission Control Act) and the strategy for an integrated transport policy ("Umweltverträglicher Verkehr 2050").

TTIP is a controversial issue in Germany, however, it is rarely discussed in the context of transport/CO₂ emissions. The main argument in relation to this environmental area is that TTIP might intensify traffic between the US and Europe and as result increase emissions of greenhouse gases (including CO₂) and air pollutants. In addition, stakeholders fear that TTIP will undermine the climate policy and lower European environmental standards in the field of transport. Based on the premise that no unilateral adjustment of US standards to the EU takes place during the TTIP negotiations, the harmonization of standards based on the precautionary principle would lead to a softening of this principle towards the „risk-based“ US approach, thus lowering environmental standards in the EU, including the transport area. In addition, it was stated that the investor-to-state dispute settlement (ISDS)/ investment court system (ICS) will most probably favour international investors and cause 'regulatory chill', where the state, both in the US and in the EU, will make present and future legislation (especially the environmental aspects) less strict in order to avoid being sued by international corporations. Finally, TTIP could lead to international spill-over effect of common standards to third parties (harmonization of standards on the international level) and integration of international obligations (particularly climate protection).

In order to improve the current draft of the agreement, it should include a principle that higher national standards should be fulfilled. This means that if a US industry would like to export its goods to the EU, they should comply with the higher European standards. The same would count for European industry exporting its products to the US. Such a change could lead to higher environmental standards on both sides of the Atlantic. Furthermore, national workshop participants stated that a more strategic orientation of the EU's trade policy is needed that should be considered in negotiations with other countries and regions. In addition, it was suggested to remove the ISDS/ICS from the agreement.

3.3.4.4 Berlin workshop summary

The negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU have given rise to public debates on the agreement's potential environmental implications. Therefore, the European Commission's Directorate- General Environment has launched a research project to initiate, foster and enhance an informed and solid public discussion on the relationship between the proposed TTIP-agreement and environmental protection, policy, legislation and standard-setting at EU-and national levels. This report covers the results of the eighth TTIP Stakeholder Dialogue Workshop, which was held in Berlin, Germany on 6 October 2016 and which specifically focused on the transport sector and CO₂ emissions in Germany.

The Stakeholder Dialogue workshop was organised by the Institute for European Environmental Policy (IEEP), together with Ecorys and Prospex, who welcomed 5 participants in the German capital. These carefully selected stakeholders represented interest groups, NGOs and civil society. Through a participatory process, the project's research findings were introduced, upon which stakeholders voiced their views and expectations in a targeted and interactive dialogue.

The morning session was devoted to reviewing the principal issues identified in the ongoing research, in relation to the interplay between TTIP and environmental protection in the EU. Then, particular attention was paid to the case study dealing with the transport sector and CO₂ emissions in Germany.

Finally, stakeholders were invited to express their recommendations for the negotiation process and for further dialogue around the subject.

Stakeholders considered the following issues important for Germany:

International spill-over – Common standards – spill over to third parties; integration of international obligations (particularly climate protection); harmonization of standards on the international level; international marine and air transport should be addressed globally; Is TTIP the appropriate place to discuss transport issues (or rather WP29)?

Consumption of resources - Increased competition – increased resource efficiency; Fuels from tar sands, the deep sea and fracking; planetary boundaries

Advancement of standards or step back – ensure that no race-to-the-bottom but race-to-the-top will be adopted; more legal security and coherence; need to consider other trade agreements; uncertainty concerning discriminatory practices – concern that high standards will be regarded as discriminatory; certification market – possible end of private certifications; impacts of harmonization of standards – need to consider direct environment; potential to break market monopolies

Potential loss of democratic processes/ possibilities of influence due to the Investment Court System.

Lack of discussion around Indirect mechanisms impacted by TTIP – e.g. the same environmental standards applied when importing products;

Lack of transparency regarding the negotiation process – which was very technical and hard to interpret.

Stakeholders were invited to vote for the topics which they would like to discuss and elaborate in depth, in relation to the TTIP and environmental protection and regulation in the context of the proposed treaty. General agreement was reached on the principal relevance of the following clusters: (1) International spill-over, (2) Consumption of resources, and (3) advancement of standards or step back. Consequently, stakeholders identified and discussed what they would want/ not want in these particular areas, should the TTIP-agreement be implemented. The listed impacts were not limited to the impact of the transport sector and CO₂ emissions in Germany, but exceeded the environmental sphere.

The stakeholder debates strongly focused on the state and future of the economy, the environment and the transport sector in Germany and Europe. As for the topic of standards, the workshop revealed a high concern that standards might be watered down by a race-to-the-bottom. Rather, stakeholders argued, a race-to-the-top should be contractually ensured. Further, workshop participants emphasized that high standards should not be subject to legal scrutiny on grounds of allegations of discrimination. While stakeholders acknowledged that the harmonization of standards will potentially reduce bureaucracy, costs and the time it takes for a product component to enter the market, they also argue that the executive authorities could be weakened. The workshop further established the need for a common transatlantic stance to be represented in future international negotiations taking into account international civil law; thus, potentially spreading high environmental standards to third countries. Moreover, stakeholders raised the concern that TTIP would currently only include rather general statements on sustainability and would not ambitiously enough contribute to the raising of standard levels. Regarding the topic of marine and air transport, stakeholders highlighted that there are both studies predicting a significant increase of emissions in relation to TTIP as a proposal

concerning emissions trade in air transport has failed facing resistance by international partners, as well as studies predicting a rather limited impact.

Another point that was stressed by stakeholders concerns the topic of resources and the standards regulating its consumption. While considering the negative environmental impacts caused by an increased resource production in the EU and Germany, stakeholders argued that such a development would be acceptable if it substituted production processes in countries with lesser environmentally safe standards. Further impacts considered during the workshop include a perceived lack of reliable data available on the potential increase of CO₂ emissions through TTIP, as well as the general question raised concerning the suitable forum to discuss environmentally responsible trade agreements.

In the last session, old and new insights were combined in collecting recommendations for further dialogue around TTIP. This final exercise led to the following key outcomes:

There is a need for **enhanced transparency** and for **dissemination of information**;

An **enhanced public debate** is necessary, through enhanced information-sharing and early involvement of civil society and stakeholders, and encouragement of civil participation;

We need to use the potential to **transform the automotive industry** and expand public transport;

It should be a **living agreement**: a working group should be set up on regulatory coherence – and further evolution of TTIP should be encouraged;

TTIP should incorporate **marine and air transport**, as well as the **Paris agreement**;

The EU's **common trade values** need to be defined; European trade policy should be streamlined and should demonstrate that EU is a reliable trade partner; other international treaties and obligations should accordingly be integrated;

Regulatory cooperation should involve international organizations and other stakeholders; it should be opened up for ISO 26000 standards, for example.

3.3.5 Chemicals: case study findings and workshop summary

3.3.5.1 Czech Republic case study

The National Impact Study acknowledges that the chemical industry creates many jobs on both sides of the Atlantic, and that its production is an essential input to other industries. The majority of European exports are exported with zero duty, with 25 % of the total amount of European exports taxed to the degree of 0 to 10 %. Full trade liberalization of duties would have a positive impact on the industry and potential growth of Czech exports will be expected in rubber-making and plastic-making industries within car manufacturing components. The Czech regulatory framework is organized around the EU regulation REACH; regulatory cooperation under TTIP can potentially impact this EU regulatory framework, as well as other related policies. However, the potential for regulatory cooperation is mitigated by the fact that the EU and US approaches towards the regulatory framework of the chemical industry are rather different.

As the TTIP negotiations progressed, the Commission has made clear that TTIP would not hamper the regulatory policies anchored in REACH and thus the registration system put in place in the EU. Nevertheless, both Czech and EU stakeholders identified several risks of pursuing a long-term regulatory cooperation between the EU and US. One risk mentioned frequently is that of weakening the implementation of REACH and its cornerstone precautionary principle, due to competitive pressures and the interests of multinational chemical companies. Other issues raised relate to a fear of weakened regulation of pesticides and their residuals in food, and of the chemical composition of consumer goods, for example toys. Also, it has been pointed out that where new evidence of dangerous substances and processes emerges, fast reactions from the side of regulator are needed, and regulatory cooperation may extend the reaction period and slow down possibly necessary actions.

Besides these risks, some possible synergies which could benefit environmental protection may be found through regulatory cooperation, despite the different regulatory approaches of the EU and US, since many areas present opportunities for meeting shared objectives without compromising regulatory principles. Sharing information about the effects and impacts of chemical substances plays a crucial role for the partnership. It would bring benefits to trade and increase safety for humans and support environmental protection. In a broader perspective, the institutionalisation of consultation processes with EU members and the public, which could be joined by American institutions (e.g. EPA), could prove valuable. More intense cooperation in research and development, including development of new chemical substances and testing of their safety could be also one of the benefits.

3.3.5.2 Prague workshop summary

The morning session was devoted to reviewing the principal issues identified in the ongoing research, in relation to the interplay between TTIP and environmental protection in the EU. Then, particular attention was paid to the case study dealing with the chemical industry and its regulation in the Czech Republic. Finally, stakeholders were invited to express their recommendations for the negotiation process and for further dialogue around the subject.

Stakeholders considered the following issues as important for the Czech Republic:

Regulation – including issues such as the impact on existing regulatory processes, and alignment of classification and labelling of chemicals; copyright monopoly on chemical formulae; the potential for a common early warning system; the need for compliance with REACH principles; the need to regulate chemical substances in cosmetics; the need to allow for future enhancement of EU standards; the precautionary principle; cooperation in R&D and its links to competition between manufacturers; the potential increased choice due to increased trade; the potential for enhanced power for international corporations (change in political culture); potential risk of having a higher level of chemicals in the natural

environment and in food, and the risk of looser GMO legislation; hydraulic fracturing; higher emissions due to increased transport; and impacts on biodiversity and on animal testing

Cooperation – including issues such as how to align the precautionary principle with the USA approach; common rules and procedures; the potential for sharing knowledge of the use of substances and products; impacts on the ability to respond to a threat and share information on tests results and potential risks (early warning system); improved decision-making for consumers; a safe and predictable law-making environment for companies; the need for cooperation on R&D to identify innovative solutions; eco-friendly innovations and their links to improved competitiveness; transparency;

Risks/fears – the need to preserve the precautionary principle in Europe, maintain antibiotic efficiency; the potential impact of pesticides currently not used in the Czech Republic (on biodiversity, bees etc.).

Markets - competitiveness of producers; export opportunities; equal opportunities to access a market; eco ideology vs. innovation.

Global corporations - evolution of alternatives; global assertion of the best standards; REACH global reference material; the sensitive question of globalisation of cosmetics and pharmaceuticals.

Stakeholders were invited to vote for the topics which they would like to discuss and elaborate in-depth, in relation to the TTIP and environmental protection and regulation in the context of the proposed treaty. General agreement was reached on the principal relevance of the following clusters: (1) regulation, (2) cooperation, and (3) risks/fears. Stakeholders then identified and discussed what they would want/ not want in these particular areas, should the TTIP-agreement be implemented. The impacts considered were not limited to the impact of the chemical industry and its regulation in the Czech Republic, and covered issues beyond environmental policy.

The stakeholder discussion focused on the current and future state of the economy, the environment and the chemicals sector in the Czech Republic and Europe. On the regulation of chemicals, the workshop revealed a high level of concern regarding the potential for change to existing EU regulations, and the potential loss of high standards. While emphasizing the potentially negative impacts such changes could have on the environment and the precautionary principle, stakeholders also debated the positive impact regulation and improved transparency could have on removing barriers. In particular, a unified approach to terminologies and labelling used in the chemical sector could potentially lead to increased public awareness and understanding. Moreover, stakeholders highlighted the need to maintain the REACH regulation and to spread high environmental standards globally. Further impacts foreseen by stakeholders ranged from potentially positive aspects such as

the development of new technologies and procedures through increased cooperation in R&D, to potentially negative consequences for biodiversity, or impacts arising from hydraulic fracturing.

While the key challenge identified by the stakeholders in the workshop concerned a perceived lack of transparency, which made a more accurate analysis of TTIP and its potential impacts difficult, recommendations for further dialogue around TTIP were identified, including:

The need for enhanced transparency and for dissemination of information;

The importance of actively involving all available concerned actors (stakeholders, countries, use of expert groups);

The need for a clear specification of the mandate;

The importance of defining red lines (e.g. to preserve the powers and competence of national governments, animal testing, hydraulic fracturing, intervention in REACH);

The need to maintain the state's right to regulate

The desirability of an enhanced public debate, through enhanced information-sharing and an improved technical and political coordination with contact points.

4 Emerging policy options

4.1 Typology of policy options

Based on the concerns and potential impacts identified through the research and stakeholder interviews leading to the Background Report, through the case studies, and through discussions in workshops in 9 EU capitals, and based on our analysis of those concerns, the research team has identified a number of emerging policy options on how to enhance positive dynamics between trade and environmental protection. These include a mix of options which are aimed at optimising potential positive impacts; and options which are aimed at mitigating potential negative impacts. The options which aim at mitigating potential negative impacts combine a number which are focused on the text of the agreement itself (including in some cases issues already identified in the EU negotiating position, but which we assess as requiring a particular priority in the negotiations), and a number of accompanying measures, where public policy at EU or Member State level could be adjusted to manage the potential impacts.

The options are outlined in the table below, and described in detail in sections 4.2 to 4.7. Section 4.2 covers ideas of general application, including those emerging from the analysis of investor dispute settlement provisions. Sections 4.3 to 4.7 look in turn at ideas emerging from the case studies and workshops on specific areas of environmental policy (biodiversity, energy, transport, and chemicals issues). Some approaches – such as the exclusion of a whole sector from the application of the agreement – are dealt with in individual subject areas.

Table 4: Policy options discussed

Issue	Proposed policy option	TTIP text or accompanying measure?	Risk mitigation or opportunity optimisation
Investor protection: Right to regulate	Further clarification	TTIP text	Risk mitigation
Investor protection: Investment Court System	Proposed improvements on: Appointments; Appellate mechanism; Future expansion of ICS; SMEs	TTIP text	Risk mitigation
Right to regulate	Further clarification	TTIP text	Risk mitigation
Biodiversity: harmful impact of competitiveness pressures in agriculture	exclusion of the agriculture sector from TTIP	TTIP text	Risk mitigation
Biodiversity: impact on organic farming	Increased support for organic farming	Accompanying measure	Opportunity optimisation
Biodiversity: risk of intensification in response to competitive pressures	Enhanced greening under the Common Agricultural Policy	Accompanying measure	Risk mitigation
Energy: Potential for encouragement of investment in clean energy	Favourable treatment of trade and investment in renewable energy	TTIP text	Opportunity optimisation
Energy: Risk of hampering efforts to build a domestic clean energy sector	Exemption from public procurement rules for measures aimed at local content in clean energy	TTIP text; potentially also accompanying measures	Risk mitigation

Energy: Right to regulate on extraction techniques	Specific protection of right to regulate on extraction techniques	TTIP text	Risk mitigation
Energy: risks to policies encouraging grid access for renewables	Commitment to continued support, and/or text to allow discrimination in favour of renewable sources	TTIP text and/or accompanying measures	Risk mitigation
Energy: cheap energy imports benefiting from absence of carbon price	Allow discrimination against energy sources on the basis of a failure to internalise external environmental costs	TTIP text	Risk mitigation
Energy: competitive advantage for US producers not facing a carbon price	TTIP rights and obligations to be made dependent on continued implementation of the Paris Agreement	TTIP text	Risk mitigation and opportunity optimisation
Transport: increased GHG emissions associated with increased transport	Inclusion of commitments to bilateral action on transport emissions	TTIP text	Risk mitigation and opportunity optimisation
Transport: increased GHG emissions associated with increased transport	Unilateral application of the Emissions Trading System to aviation and maritime transport	Accompanying measure	Risk mitigation
Potential enhanced opportunity for commercialisation of electric vehicles	Emphasise the importance of, and secure commitment to, early action to create a favourable regulatory climate	TTIP text and/or accompanying measures	Opportunity optimisation
Non-sustainably produced biofuels take an increased share of the EU market	Robust commitments, either in TTIP or in EU legislation, to biofuels sustainability	TTIP text and/or accompanying measures	Risk mitigation
Chemicals: application of precautionary instruments could be compromised	Clarification that environmental standards, and standards of precaution, will not be lowered	TTIP text and/or accompanying measures	Risk mitigation
Chemicals: opportunities to reduce duplicative testing	Joint commitment to work focused on reducing duplicative testing without compromising standards	TTIP text and/or accompanying measures	Opportunity optimisation

4.2 Policy options, including on investor protection, relevant to a range of environmental issues

4.2.1 *Investor protection: Clarification of the agreement to further protect the “Right to Regulate”*

4.2.1.1 Issue identified

Investment protection, and in particular the Investment Court System (ICS), have been raised by stakeholders as potentially having an indirect effect on environmental protection. The main concern from an environmental point of view is related to its possible effect on the right the right to regulate: will governments be able to introduce or revise environmental policies and regulations? There are concerns that including investment protection and ICS in TTIP may lead to challenges from US investors, which in turn may lead to high costs (if a dispute is settled in favour of the investor) or even to a regulatory chill (a situation in which governments do not introduce new/ revised regulation/policies because they fear this will lead to investor-state disputes).

4.2.1.2 Plausibility and seriousness of impact

In terms of evidence, our analysis shows that the risk of ISDS causing regulatory chill are much smaller than suggested by various stakeholders. Looking at claims under existing agreements, the majority of ISDS claims do not challenge legislative or regulatory measures taken by a government per se. Rather, they are administrative in nature: arising in the context of a pre-existing contract, permit, license or promise by a government. In addition, arbitral practice has demonstrated that non-discriminatory regulations in the public interest are not compensable. Another argument against (or limiting) the possible regulatory chill effect of investment protection and ICS, this effect would not be ISDS-limited but would also apply to domestic judicial procedures (with all implications related to compensation and potential invalidation of government measures), so that the “additional” regulatory chill effect from ICS will be relatively small.

Despite the probability that the risks for regulatory chill are much smaller than suggested by some stakeholders, we cannot rule out that either our assessment is wrong, or that this effect may occur. Especially with respect to an anticipatory chill (i.e. not reacting to a specific investor-state dispute, but not introducing policy measures out of fear that this may lead investor-state disputes), it is difficult to find evidence that not introducing a certain policy or measure is the result of fear of investor-state disputes. In case this effect does occur, it could have a large impact. The exact size of the effect will of course depend on the specific policy measure.

4.2.1.3 Idea proposed, and intended benefits

There are roughly two ideas that have emerged in the study. The first is relatively simple: not including ICS or ISDS in TTIP. This way any possible risks in the area may be avoided.

The second idea is to include safeguard provisions in the TTIP agreement to further mitigate the risk of regulatory chill or of high costs for governments to adjust or introduce policy measures.

A third option, to provide even further clarity, may be to also emphasize the right to regulate in the field of environment (among others) in a Joint Interpretative Instrument, using CETA as an example. This will also help to further mitigate the above identified risks.

4.2.1.4 Implementation

The first idea, not including ICS (or other forms of ISDS) in TTIP would avoid the risk that the right to regulate would be affected. This would mean that foreign investors could only challenge policy measures by going to the domestic court system. The main disadvantage of this approach is that foreign investors could face discrimination vis-à-vis domestic companies in these courts. This may be

due to the politically sensitive nature of certain disputes and/or the unwillingness of some domestic courts to apply international law even if mandated to do so. Another potential issue may be more politically related: whether the EU and US will agree to non-enforceable provisions. It could make it more difficult for example to insist on investor state dispute settlement provisions in trade and investment agreements with other parties.

The second option concerns including specific provisions on this in the text. The text the Commission has proposed for [the sustainable development and ICS] chapters in principle secures the “right to regulate”. Nevertheless, legitimate doubt remains as to the attitude the ICS or other tribunals would take in the event of a conflict between those provisions and the principle of fair treatment. Moreover, the ability for a Member State to prove that policies or legislation which is in principle protected under these provisions has not been implemented in ways which involve unnecessary and unfair disadvantage to US investors is uncertain.

In the analysis, two options for better protection of the right to regulate have been identified.

The **first possible improvement** is to include explicitly in the agreement that **the frustration of a legitimate expectation does not by itself give rise to a breach of fair and equitable treatment**. The current EU text proposal (“When applying the above fair and equitable treatment obligation, a tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.”) is more implicit on this.

The **second possible improvement** would be to **delete or revise the umbrella clause**. This clause is set down in Section 2, Article 7:

“Where a Party either itself or through any entity mentioned in Article X [Definition of ‘measures adopted or maintained by a Party’] has entered into any contractual written commitment with investors of the other Party or with their covered investments, that Party shall not, either itself or through any such entity breach the said commitment through the exercise of governmental authority.”

This clause could potentially undermine the ways in which the proposed treaty confines fair and equitable treatment. A breach of such a contractual written commitment through the exercise of governmental authority would attract liability even if the breach did not involve, for example, ‘manifest arbitrariness’, or did not cross any of the other high thresholds required for a breach of fair and equitable treatment. Article 7 may also be difficult to reconcile with the general statement in Article 2(2):

For greater certainty, the provisions of this section shall not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor’s expectations of profits.

Article 7 may have the effect of preventing a State from changing its legal and regulatory framework where it has entered into a written contractual commitment with an investor even if there are genuine public policy reasons for changing that framework; or in cases where the legislature takes a different view on the public policy objectives to be pursued than the branch of the executive which had entered into a contract. This clause therefore may limit the State’s ability to achieve public policy objectives, including policies on environmental protection, and therefore should be removed, or be rephrased in such a way that it is compatible with the other statements to ensure the right to regulate.

The **third option** is to **further emphasize the right to regulate in a separate document**, like the Joint Interpretation Instrument (JII) that has been agreed for CETA. It specifies how various provisions of

the agreement should be interpreted and is a legally binding document, but does not change the text of the agreement. It needs need to be taken into account in dispute-settlement procedures that may arise under the agreement. Adding a similar instrument to TTIP will further reduce any uncertainty in this field. The text in CETA is as follows:

“CETA preserves the ability of the European Union and its Member States and Canada to adopt and apply their own laws and regulations that regulate economic activity in the public interest, to achieve legitimate public policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and data protection and the promotion and protection of cultural diversity.”

4.2.1.5 Conclusions and recommendation

Based on the analysis, we conclude that the risk related to a reduced right to regulate resulting from including investment protection and ICS in TTIP, can be addressed by proper text provisions in the agreement, combined with explicit recognition of the right to regulate in a Joint Interpretative Instrument (JII). Compared to excluding investor-state dispute settlement mechanisms altogether from TTIP, this seems to better address the concerns raised, while avoiding the disadvantages of possible unfair treatment of foreign investors. At the same time, it should be noted that there is still some elements of the proposed ICS that need be clarified (see next issue) before of the costs and benefits of different options could be fully compared. In addition, at this point in time, it is not clear to what extent the EU proposals will make it to the final text of the agreement.

4.2.2 *Investor protection: potential impacts of the proposed Investment Court System*

4.2.2.1 Issue identified

The enforcement mechanism for investor protection has received a lot of criticism from stakeholders in the debate on TTIP. This partly relates to observations based on currently prevailing approaches in international investment agreements. Some of the concerns raised have been addressed by the EU’s proposal for an investment court system (ICS), which deviates from current practice. Among others, it contains elements that will increase transparency of the process and that will improve impartiality of judges (the ad hoc character of their appointment for specific cases as is currently practice would make arbitrators less impartial and independent than judges with a life-long or fixed-term appointment).

Nevertheless, not all elements have been worked out in detail, and this leads to stakeholders questions or concerns. It should be noted that most of these (except the right to regulate, see previous section) relate to the functioning of ICS in general and do not have a specific link with (the possibility of) environmental protection (except the right to regulate, see previous section). The specific issues raised in our stakeholder consultations relate to the following elements:

- Nature of judicial appointments and implications for impartiality and costs
- The introduction of an appellate mechanism
- Possible expansion of the ICS approach to other (possibly multilateral) agreements
- The access of SMEs to ICS.

4.2.2.2 Plausibility and seriousness of impact

Here we provide a brief assessment of the questions raised. They do not always point to specific concerns, but rather a need for more information to properly assess the proposal. As noted above most of these issues have no direct link with environmental protection, but if the ICS system is not set

up properly, it could indirectly affect environmental protection. The plausibility and seriousness of impact therefore cannot be assessed.

Judicial appointments

The issues raised related to the possibility for an ICS judge also to continue to be a judge in other (national, state, EU or federal) courts, which could in turn affect the net costs of the new institution, and how judges are allocated to cases, which may create tension between avoiding conflict of interest concerns (e.g. through random selection) and the potential for finding (mutually acceptable) judges with expertise in respect of specific, complex and technical cases.

Appellate mechanism

An appellate mechanism is in general welcomed as it reduces the scope for errors of law and errors of interpretation. However, how this mechanism would exactly look like has not been specified. E.g. in CETA the EU and Canada agreed to promptly adopt a decision of the CETA Joint Committee which will include further technical elements necessary to make the Appellate Tribunal operational.

Expansion of the ICS approach

Different rules on costs and different perceived approaches to dispute settlement may lead to the ISDS mechanisms being preferred to the ICS if investors have a choice of approaches (for example, a US/Korean joint venture in the EU). In addition, a multilateral system may reduce the costs of ICS. Although the EU aims for further expanding this approach in other trade and investment agreements (like it has already done in its agreements with Canada and Singapore), it is important that what will be agreed in TTIP will make such an expansion/multilateralization possible.

SMEs and ICS

SMEs may need more help to ensure they could enforce their rights, including through mechanisms such as the ICS. While the Commission's ICS proposal includes a number of provisions aimed at facilitating access for SMEs, these are all dependent on further agreement, either by the Party against whom an SME brings a claim, or further development (for example, supplemental rules on the maximum costs to be faced by SMEs); and other elements of the text (for example, the requirement for the costs of proceedings to be borne by the unsuccessful disputing party) could have a disproportionate dissuasive effect on SMEs. In the context of this study, it is relevant to note that SMEs are considered to be more associated with investment in disruptive and green technologies. Further improvements could include an explicit recognition that Parties may provide financial help to SMEs in bringing cases (for example, sharing half of the costs).

4.2.2.3 Idea proposed, and intended benefits

Given the intense debate on ICS, the exact set-up and functioning of ICS, and how it addresses concerns raised by stakeholders in the debate should be clearly communicated. The above elements need to be worked out in more detail. Further stakeholder engagement activities to discuss the pros and cons of certain approaches will help to take all possible concerns and possible creative ideas on board. Communication in plain language will help to create a better understanding of stakeholders.

A second option is to build in a review mechanism. Given the various changes compared to "more traditional" investor-state dispute settlement mechanisms, it may be good to include the need to carry

out a review of the set up and functioning of the ICS after 2 and 5 years, which may help to address any problems that may arise in practice.

4.2.2.4 Implementation

At this moment, it is unclear to what extent the EU text proposals on ICS will make it to the final agreement, as ICS has been criticised as well (e.g. the US Chamber of Commerce expressed concerns that it weakens investment protection).

Next to the possibility of political barriers, there seem to be no obvious barriers to extend stakeholder consultations in the area, as it may well have implications beyond TTIP. A proper engagement with all stakeholders concerned (business, judicial experts, NGOs, etc.) would therefore be recommended.

Including a review of ICS in TTIP after a certain amount of time is not expected to raise difficulties in terms of implementation.

4.2.2.5 Conclusions and recommendation

Although ICS addresses some of the concerns raised by stakeholders in respect of investor dispute settlement mechanisms, it has not taken away all opposition, and not all elements have been worked out in detail. Given the sensitivity of the topic and the fact that its impact may extend beyond TTIP, further public engagement with various stakeholders is recommended, in order to find an optimal approach. For further reducing any possible risks related to the set-up and functioning of ICS, a review mechanism (evaluation) after a certain period of time could be included in the agreement.

4.2.3 Improve clarity on “right to regulate”

4.2.3.1 Issue identified

TTIP, it has been argued, could directly affect the ability of the EU and its Member States to decide which technologies can be used within the EU, with resulting harm, or the risk of harm, to environmental objectives on issues such as biodiversity, climate mitigation, and the protection of human health. A potentially more powerful indirect impact weakening environmental protection could emerge as a result of the impact of increased EU/US trade on the internal political balance of decisions on regulation. For example, EU farmers facing greater competition as a result of trade liberalisation might successfully argue for a lower regulatory burden, in order to regain competitiveness, or to be able to compete on equal terms with US producers facing lower environmental standards.

Both of these concerns were raised in the Hungarian and Polish case studies on biodiversity, including through stakeholder interviews and in the stakeholder workshop, and by Slovakian and Czech stakeholders in the workshops. In addition, environmental NGOs including Greenpeace have campaigned at EU level against what they see as a threat to the EU’s ability to decide for itself which GMOs and pesticides to authorise.

4.2.3.2 Plausibility and seriousness of impact

DG Trade has published a fact sheet explaining that each of the Parties to TTIP would retain the ability to determine for itself which products to authorise, based on regulatory principles which may differ from those applied by the other Party. On this basis the EU would be able to maintain its existing controls on GMOs and pesticides, including those which allow Member States to decide for themselves whether to authorise a particular product.

In principle, DG Trade’s approach should provide a degree of reassurance to those who fear that regulatory decisions would be taken out of the EU’s hands. However, the position appears less clear

from the text which has been tabled by the Commission for negotiation. The draft chapter on regulatory cooperation proposed by the EU says:

“Nothing in this Chapter shall affect the ability of each Party to:

- (a) Adopt, maintain and apply measures without delay, in accordance with deadlines under its respective regulatory or administrative procedures, to achieve its public policy objectives ... at the level of protection it considers appropriate, in accordance with its regulatory framework and principles;*
- (b) Provide or support services of general interest, including those relating to water, health, education or social services;*
- (c) Apply its fundamental principles governing regulatory measures in its jurisdiction, for example in the areas of risk assessment and risk management.”*

The key phrases which protect the EU’s right to determine its own risk posture are “at the level of protection it considers appropriate” and “apply its fundamental principles”. Unfortunately, however, the wording put forward by the EU only means that the EU’s ability to regulate in this way is safeguarded from other provisions in the Chapter on regulatory cooperation. It does not say that the EU may regulate regardless of the other provisions in TTIP. A number of stakeholders have expressed concern, for instance, that regulatory decisions made by the EU using different principles to those adopted by the US might come under attack via the investor dispute mechanism. In order to assert the primacy of the EU’s regulatory principles over all elements of TTIP, different wording is needed as proposed below.

The absence of any reference to the precautionary principle in the Commission’s proposed text for TTIP’s sustainable development chapter has also drawn adverse comment, even though the Commission’s factsheet addresses the issue, stating that the EU will continue to have freedom to apply the principle.

It is plausible that a perception by EU producers in a particular sector, for example agriculture, of increased competition might lead to pressure in favour of reduced levels of environmental regulation, for example a relaxation of the regulation of pesticides. The current debate over the continued authorisation of glyphosate demonstrates how difficult it can be to determine regulatory standards for agriculture.

4.2.3.3 Ideas proposed, and intended benefits

Two ideas have been discussed in this context. The first is to change the text of the regulatory cooperation chapter to make clear that nothing in the rest of TTIP prevents the EU from setting its own regulatory standards according to its own principles. The purpose of this would be to increase the legal certainty that decisions on other parts of TTIP could not outweigh the EU’s right to decide its own regulation. In addition, a more explicit provision would provide reassurance to stakeholders.

The second approach would be to add text to the sustainable development chapter making it clear that either of the Parties may apply the precautionary principle. If the first idea is adopted, the main purpose of adding a reference to the precautionary principle would be to reassure stakeholders, but with a subsidiary impact of providing a statement of intention for future regulatory policy in the EU.

4.2.3.4 Implementation

Implementation of both ideas would involve changing text which the Commission has already tabled (or amending US proposals which we have not seen). It is possible that the US might view favourably an EU attempt to safeguard its right to enjoy higher regulatory standards which might reduce the

competitiveness of its exports. However, there would be more direct impacts on potential US exports, so negotiations would probably be difficult.

There is also potential for adverse impact. Currently, there are other provisions in the EU's negotiating text, such as those in the sustainable development chapter, which might slow or prevent a regulatory "race to the bottom". These would have no impact if the regulatory principles were clearly sovereign.

A specific reference to the precautionary principle should be easier to negotiate with the US (provided it was obvious that the US itself was not expected to apply it). However, it would beg the question of why other regulatory principles were not also mentioned, with the possible implication that these were of lesser importance.

4.2.3.5 Conclusions and recommendation

Making regulatory principles explicitly invulnerable to other TTIP provisions would probably be hard to negotiate, and would need careful drafting in order not to increase the parties' scope for a regulatory "race to the bottom". Nevertheless we think it worthy of further investigation since the current text does not obviously deliver the clarity of the DG Trade factsheet, and so presents risks at least to the acceptability of a TTIP deal to stakeholders.

4.3 Biodiversity policy options

A number of the options identified in section 4.2 above could have particular relevance to biodiversity protection, or have been raised by stakeholders interested in biodiversity or agriculture and participants of the relevant workshops; for example, the reinforcement of the right to regulate, and the specific reference to the precautionary principle.

In addition to these cross-cutting issues, three further options were identified specific to biodiversity and agriculture which are detailed in the below sections.

4.3.1 Excluding agriculture from the scope of the agreement

4.3.1.1 Issue identified

Opening up EU agriculture to increased competition might result in lower margins for EU farmers, who might respond by intensifying production. This in turn might lead to a loss of biodiversity. This concern was expressed by interviewees and workshop participants in all three case studies for which biodiversity was a focus – Hungary, Poland and Slovakia.

4.3.1.2 Plausibility and seriousness of impact

An increase in competition is highly likely, particularly in the ruminant sector where EU farmers are currently protected by generally high tariffs, and some US systems achieve significantly lower production costs. It is also likely that EU farmers would respond to such pressure in ways which harmed biodiversity, for example by removing landscape features such as trees in order to increase production, increasing the use of fertiliser and pesticide, or abandoning hill farms which can provide valuable habitat.

4.3.1.3 Idea proposed, and intended benefits

Exclude all or some sectors of agriculture from the agreement, with a view to avoiding an increase in competitive pressure. This idea was put forward by the Polish farmers' Union, the Polish agriculture Ministry and in the Polish workshop. It would clearly need to be reflected in the text of TTIP itself.

4.3.1.4 Implementation

The complete exclusion of agriculture from TTIP would be hard to achieve. The US has a longstanding offensive interest in the EU market for beef, for example. A more achievable goal might be to protect EU biodiversity by offering market access, as far as was negotiable, in sectors such as pigs or poultry whose biodiversity benefits are significantly lower. Whilst the Commission's published negotiating mandate appears to provide sufficient scope such a posture, a deal on this basis would be likely to cause problems for those Member States (including Poland) which have large pig and/or poultry sectors. In addition, the US is unlikely to find access to the EU's relatively more competitive pig and poultry markets as attractive as the beef sector.

4.3.1.5 Conclusions and recommendation

Excluding agriculture altogether from TTIP does not at present appear feasible. Trading off market access to the pig and poultry sectors in return for continuing protection for ruminants is likely to

benefit biodiversity, but is also likely to be unpalatable to some Member States and of limited interest to the US.

4.3.2 Increased support for Organic Farming

4.3.2.1 Issue identified

Organic farming might be adversely impacted by additional competition, or alternatively might be a response to it as EU farmers sought to differentiate their products from US imports. Farming in areas of high nature value might also be affected by competitive pressure.

4.3.2.2 Plausibility and seriousness of impact

An adverse impact on organic farmers' margins would occur if US imports depressed prices for agricultural products in general, and EU and other consumers were not prepared to increase the price premium they paid for organic. Any increase in direct competition from US organic produce would also have an impact. A reduction in organic farming would be likely to lead to greater pesticide and artificial fertiliser use which would impact biodiversity.

Additional pressure on high nature value farming would have complex effects, since not all land of high nature value (often referred to as "HNV") is suitable for more intensive farming. In this case abandonment rather than intensification might be the result. Abandonment can have negative or positive effects on biodiversity depending on the location of the farm.

Any measure which increased the proportion of EU land which is farmed organically or which is HNV farmland would benefit biodiversity.

4.3.2.3 Idea proposed, and intended benefits

Increase financial support to organic farming. Investigate the scope for a certification system for HNV farming. These accompanying measures would aim both to protect existing levels of organic and HNV farming and to increase them. An HNV certification system might require changes to the TTIP text to ensure that the label was protected.

4.3.2.4 Implementation

Member States currently fund organic farming from their Rural Development Programmes, and have freedom to increase that funding subject to other pressures on their RDP budget. Measures could be taken at European level – for instance, by increasing the proportion of expenditure which Member States can finance from European funds above its current level of 75% - to encourage Member States to devote a higher proportion of their budget to organic farming. However, there is no guarantee that Member States would respond to a reduction in the co-funding requirement by increasing the funding they made available for organic farming, or that more farmers would take it up if they did.

It would also be possible to increase the limits which are set on the level of payments which Member States may make to organic farmers. Once again, there would be deadweight. In addition, there is a risk that doing so might result in these payments being regarded as "coupled" and thus trade-distorting. Whilst the EU currently has ample room in its "amber box" to accommodate a reclassification of spending on organic farming, it is unlikely that the US would respond favourably to an increase in coupled payments.

Either of these proposed changes would require legislation via the co-decision process.

A certification scheme for produce from HNV farms would need there to be an agreed definition of such farms, which does not currently exist. The term is applied in different ways in different Member States. A suitable definition would need to be agreed in time for changes to be made to the TTIP

agreement so that it could be protected. Negotiating such changes would be difficult if the US felt that its farmers were less likely to be able to achieve the new certification.

4.3.2.5 Conclusions and recommendation

The EU could try to protect (or increase) organic farming by encouraging Member States to offer more funding in total and/or enabling them to offer higher payments to farmers, although the extent to which such changes worked would depend on Member States' willingness to provide more funding as well as farmers' willingness to take it up. Designing the measures would be straightforward, but implementation would require the co-decision procedure.

4.3.3 *Enhanced greening under the Common Agricultural Policy*

4.3.3.1 Issue identified

Opening up EU agriculture to increased competition might result in lower margins for EU farmers, who might respond by intensifying production. This in turn might lead to a loss of biodiversity. This issue was identified in all three case studies for which biodiversity was a focus – Hungary, Poland and Slovakia – and by both interviewees and workshop participants.

4.3.3.2 Plausibility and seriousness of impact

An increase in competition is highly likely, particularly in the ruminant sector where EU farmers are currently protected by generally high tariffs, and some US systems achieve significantly lower production costs. It is also likely that EU farmers would respond to such pressure in ways which harmed biodiversity, for example by removing landscape features such as trees in order to increase production, increasing the use of fertiliser and pesticide, or abandoning hill farms which can provide valuable habitat.

Depending on the choices made by Member States as to which options to offer to farmers, the CAP's greening provisions can offer significant latitude. Where this is the case, it can be possible for significant damage to biodiversity to occur despite the protection afforded by greening and other CAP measures. For instance, a farmer who meets greening requirements by growing nitrogen-fixing crops may still be able to remove valuable habitat such as trees.

4.3.3.3 Idea proposed, and intended benefits

Strengthen protection for biodiversity through the "greening" provisions of the Common Agricultural Policy. This would be an accompanying measure, intended to ensure that farmers receiving direct payments from the CAP continued to manage their land in such a way as to benefit biodiversity.

4.3.3.4 Implementation

There are undoubtedly ways in which those provisions of the CAP's greening measure which protect biodiversity might be strengthened. For example, a very simple change would be to increase the percentage of an arable farmer's land which must be managed as ecological focus area. Rules for how ecological focus area is delivered might also be tightened, for example by further restricting the use

of pesticides, or by narrowing down the range of options which Member States can offer, restricting it to those judged to offer the greatest benefit to biodiversity.

Implementation would be challenging since farmers would point to the increase in competition (whether actual or perceived) as a reason why tougher environmental conditions should not be attached to their payments.

4.3.3.5 Conclusions and recommendation

It is plausible that farmers might respond to an increase in competition in ways which damage biodiversity. The CAP's greening measures could probably be developed in ways which strengthen their biodiversity benefits, but farmers would be likely to argue that such changes increased their costs and so exacerbated the problems caused by increased competition in the first place.

4.4 Energy policy options

4.4.1 Favourable treatment of trade and investment in renewable energy

The CETA text includes a provision (article 24.9 (2)) requiring that “The Parties shall, consistent with their international obligations, pay special attention to facilitating the removal of obstacles to trade or investment in goods and services of particular relevance for climate change mitigation and in particular trade or investment in renewable energy goods and related services.”

4.4.1.1 Issue identified

A (theoretically) more efficient allocation of investment resources as a result of the increased range of options available to EU and US investors should in principle lead to faster deployment of funds to projects in emerging low carbon technologies. However, there is a risk that this could be slowed or frustrated in the event of slow identification of regulatory burdens, or the development of competing regulatory systems for new technologies (e.g. battery technologies, driverless vehicles, etc.).

4.4.1.2 Plausibility and seriousness of impact

It is difficult to assess the potential impact in advance; and in principle TTIP provides mechanisms which should be able to address it, in particular the regulatory cooperation approach. However, in the absence of a clear programme of intended progress on specific issues, it could take some time for the regulatory cooperation mechanisms to operate effectively.

4.4.1.3 Idea proposed, and intended benefits

The CETA text includes a provision (article 24.9 (2)) requiring that “The Parties shall, consistent with their international obligations, pay special attention to facilitating the removal of obstacles to trade or investment in goods and services of particular relevance for climate change mitigation and in particular trade or investment in renewable energy goods and related services.” While it is unclear exactly how operational this will be in practice, similar mechanisms to favour renewable energy investment (and potentially also energy efficiency investment) could be envisaged in TTIP. This option could include, for example, a focus through the regulatory cooperation mechanism on enhanced standardisation to facilitate deployment of renewable technologies, or innovative energy efficiency technologies. Areas of potential interest could be identified through discussion with industry and engineering experts, but could include: energy storage technologies; electric vehicle components; battery technologies; etc.

4.4.1.4 Implementation

Discussion with US negotiators could lead to an agreement on an ambitious programme of regulatory cooperation to remove obstacles to clean technologies, particularly those with the potential for a significant contribution to climate mitigation. However, the current context of US policy on climate mitigation is uncertain; it may therefore be important to ensure that the regulatory cooperation approach adopted does not risk favouring fossil fuel technologies, and for EU negotiators and legislators to be vigilant on this point.

4.4.1.5 Conclusions and recommendation

While the approach adopted under CETA has some advantages, it needs greater detail to ensure that it is effective in operation. And while it should be relatively low-risk to develop a shared approach on climate objectives with Paris Agreement parties which are committed to implementing a quantified reduction in their greenhouse gas emissions, the approach of the current US administration remains

unclear, and there are risks that the US side could seek to use a regulatory cooperation approach to create a more favourable situation for some fossil fuels.

4.4.2 Enhanced rights for Parties in respect of renewable energy or energy efficiency

4.4.2.1 Issue identified

A concern raised by stakeholders in the case studies and in workshops was that the prohibition of local content requirements could hamper efforts to build a domestic renewables or energy efficiency sector through such measures. Similar issues are also raised as a concern in respect of investor protection mechanisms.

4.4.2.2 Plausibility and seriousness of impact

In principle, local content requirements in the EU already face significant hurdles under public procurement legislation, so it is unclear if a significant additional challenge to them is created by TTIP. There is also some risk that EU clean technology businesses aiming to benefit from new public procurement opportunities in the US could themselves be negatively affected by measures, particularly in the context of an America First approach to TTIP implementation in the US.

4.4.2.3 Idea proposed, and intended benefits

The approach suggested is agreement with the US on a suitable addition to the text to create an exemption from public procurement constraints from measures aimed at promoting local content as part of time-limited strategy to develop markets for renewables, energy efficiency, or other specified clean energy technologies as part of an energy sector decarbonisation strategy.

4.4.2.4 Implementation

This approach would require tabling additional text in discussion with the US. It may also be necessary, in the event of such an approach being adopted, to clarify the potential scope created by such provisions when taken together with existing EU public procurement law. The potential negative impacts on EU businesses may also need to be monitored.

4.4.2.5 Conclusions and recommendation

The use of local content requirements in energy contracts is potentially an important mechanism for enabling the development of new local and regional markets for the supply of clean energy services, and securing both local economic benefits from, and broader local support for, ambitious decarbonisation targets. While making provision for it in TTIP is potentially difficult, particularly in the light of the current restrictions on such requirements in EU law, further analysis could nevertheless usefully be devoted to the potential benefits of such requirements and the extent to which EU legislation and policy could make greater room for them.

4.4.3 Further clarification of the right to regulate on extraction techniques

4.4.3.1 Issue identified

The “Right to regulate” is addressed as a general issue at section 4.2 above. There are a number of areas in the EU’s proposals for the text of TTIP which provide clarity on the right of parties to regulate, for example on raw materials and energy extraction. However, stakeholders in the workshops on energy were concerned that these provisions might not provide sufficient defence against cases brought by investors under the Investment Court System, and might not provide sufficient clarity.

4.4.3.2 Plausibility and seriousness of impact

While it seems likely that, provided TTIP includes clear enough guarantees of respect for the principle of parties making regulatory decisions on matters such as energy, these would provide sufficient scope

for Member States and (as appropriate) the EU to regulate on issues such as hydraulic fracturing, until this is tested legally it is difficult to be certain. For example, a national decision to ban hydraulic fracturing might be adopted in the context of a media and political debate emphasising the foreign nature of investors, and (if there are no domestic investors concerned) it might be difficult to demonstrate that similar decisions would have been taken regardless of the nationality of the investor.

4.4.3.3 Idea proposed, and intended benefits

The idea put forward by several stakeholders is simply to ensure that the text of TTIP contains an explicit provision making it clear that parties retain the right to ban specific extraction technologies such as hydraulic fracturing, regardless of other rights and provisions of the agreement. The purpose would be to create unambiguous certainty, potentially providing a measure of reassurance on the impact of TTIP to individuals and groups concerned about hydraulic fracturing.

4.4.3.4 Implementation

The proposal would require the drafting and negotiation with the US of specific text. Detailed analysis would be necessary of the potential implications of such text; in particular, by creating a strong presumption that the “right to regulate” provisions already put forward by the EU needed further reinforcement in this specific area, is there a risk that creating clarity for hydraulic fracturing comes at the cost of reducing clarity for other potential areas of regulation?

4.4.3.5 Conclusions and recommendation

While there appears to be significant stakeholder interest in this relatively simple idea, its potential benefits in terms of clarity for decisions on hydraulic fracturing would need to be balanced against the potential downsides for the interpretation of the right to regulate in other policy areas. Investing effort to ensure that generic right to regulate text is watertight may be a more fruitful approach.

4.4.4 Clarify the role of continued support for renewables

4.4.4.1 Issue identified

There is concern that the import of cheap US gas from fracking could undermine renewable generation in the UK and across Europe. Reasons are both the potentially relatively higher cost of renewables in the event of imports of cheaper fossil fuels driving down energy prices; as well as the potential for a provision in TTIP stating that electricity utilities in the U.S. and EU shall not discriminate “between types of energy” in granting access to the grid.

4.4.4.2 Plausibility and seriousness of impact

The relevant text appears to create a fairly clear risk of damage to policies favouring the grid access of renewably-generated energy.

4.4.4.3 Idea proposed, and intended benefits

These concerns could be addressed either by a commitment to continued subsidy and support through effective mechanisms to increase the proportion of energy from renewable technologies (as a set of accompanying measures), or, more directly, through text ensuring that discrimination is allowed as part of a wider strategy to improve the market position of renewable energy sources, as part of an energy decarbonisation strategy, and in particular in the early years of introduction of new clean technologies.

4.4.4.4 Implementation

This approach would require ensuring that text allowing for such discrimination in favour of renewable energy is incorporated into the relevant provisions of TTIP. Failing agreement on such text, clarification

by the EU negotiators of the expected impact on policies favouring renewable energy could help to clarify for public authorities the flexibilities open to them.

4.4.4.5 Conclusions and recommendation

Further measures to ensure that the text of the agreement does not hamper policies to encourage the deployment of renewable energy would be worthwhile.

4.4.5 Allow discrimination between energy sources on the basis of a failure to internalise external environmental costs

In addition (see above) to allowing discrimination in favour of renewable or low-carbon sources of energy, discrimination against energy which has not been subject to an internalisation of its external environmental costs could be allowed. For example, imports of LNG whose extraction and liquification has not been subject to adequate environmental controls, including the application of a carbon price, could have their access to the EU market restricted, or taxes imposed to ensure fair competition for indigenous low carbon energy sources.

4.4.5.1 Issue identified

Concern has been expressed by stakeholder about the potential impact of fossil-based energy imports from the US which benefit from favourable economic conditions of production as a result of the absence of a carbon price. A resulting reduction in energy prices would have a negative impact on the market conditions for other sources, including low carbon energy such as renewables. Stakeholders were concerned that this represented unfair competition; and risked increasing the cost to the public sector of measures to encourage renewable energy.

4.4.5.2 Plausibility and seriousness of impact

The potential impact of increased imports seems reasonably direct and predictable; however, some expert stakeholders commented during our research that TTIP would not in itself have any significant impact on US exports to the EU, which were already possible, and would be determined by issues such as the prevailing market price.

4.4.5.3 Idea proposed, and intended benefits

Mechanisms to apply a carbon price to energy imports could be considered, particular in the event of US implementation of its mitigation obligations under the Paris Agreement was viewed as unsatisfactory. Changes to the TTIP text are likely to be needed to ensure that such discrimination is allowed.

4.4.5.4 Implementation

In addition to changes to the TTIP text, legislation to identify energy imports which had not been subject to a carbon price would be required. This could be difficult; particularly where differential

application of climate mitigation policies in different US states led to a variety of carbon prices being imposed.

4.4.5.5 Conclusions and recommendation

While it is unlikely to prove straightforward to negotiate an agreement on such an approach with the US, further assessment of the feasibility of this option (and of the challenges involved in implementing it) should be undertaken.

4.4.6 *Requiring continued adherence to and implementation of the Paris Agreement*

4.4.6.1 Issue identified

There was widespread concern among stakeholders over the seriousness of the US's mitigation policies particularly in the event of an electoral win by President Trump; in the absence of a serious commitment to implementation of mitigation policies, including an effective carbon price, US energy products, and US production more generally, could be regarded as securing an unfair competitive advantage by free-riding on the mitigation policies being pursued by other economies.

4.4.6.2 Plausibility and seriousness of impact

At the time of writing of this report, it is unclear what the Trump Administration's position is on the Paris Agreement, although a number of comments before and after the election from the president and his advisers have created concern. While the direct price impact, and thus the impact on competitiveness, of a failure to implement the US nationally determined contribution under the agreement are likely to be limited in the short to medium term, there could nevertheless be a negative impact on the willingness of specific sectors in the EU (for example, agriculture) to support ambitious mitigation policies, if they perceived themselves to be under pressure from US imports.

4.4.6.3 Idea proposed, and intended benefits

An alternative approach to that proposed in section 4.4.5 above would be to make improved access for energy products, other energy-related commitments under TTIP, or even implementation of the agreement as a whole, dependent on implementation by both parties of the Paris Agreement. Tying the US in to implementation would clearly have a range of benefits, not limited just to ensuring fair terms of trade for EU products.

4.4.6.4 Implementation

Text making implementation of TTIP dependent on full implementation by both parties of their obligations under the Paris Agreement would be relatively straightforward to develop, on the basis of a strengthened version of the references to Paris in CETA.

4.4.6.5 Conclusions and recommendation

Depending on the Trump administration's final position on climate mitigation policy, this approach could be one of a number of defining questions on whether the EU should proceed with TTIP. While the balance of advantage for EU policy objectives of such an approach is beyond the scope of our research, it seems clear that failure to secure such a commitment from the US would lead to significant environmental damage, and measurable (if minor) price disadvantage to EU producers.

4.5 Transport policy options

4.5.1 Action to tackle emissions from international transport – within TTIP

One of the direct transport impacts of increased trade as a result of TTIP is the associated increase in aviation and maritime activity, leading to an increase in emissions (both of greenhouse gases, and of air quality pollutants). Action could be taken to tackle emissions in the text of TTIP – for example, commitments in the trade and sustainable development chapter could include a shared endeavour to seek effective policies in ICAO and the IMO aimed at limiting, and reducing, emissions from aviation and maritime transport (the Commission’s current proposed text on “trade favouring low-emission and climate-resilient development” does not mention transport emissions). Even more ambitious text – although unlikely to be acceptable to the US – could stress the potential for bilateral cooperation in the introduction of emissions controls, including through emissions trading mechanisms, on transatlantic transport emissions even in the event of a continuing absence of credible initiatives from ICAO and IMO.

4.5.1.1 Issue identified

One of the direct transport impacts of increased trade as a result of TTIP is the associated increase in aviation and maritime activity, leading to an increase in emissions (both of greenhouse gases, and of air quality pollutants). In theory, this would not be a major problem to the extent that the external environmental costs of transport are fully reflected in its price: however, international transport tends to have very weak mechanisms to deliver either climate or air quality objectives.

4.5.1.2 Plausibility and seriousness of impact

The impact is relatively straightforward, although the extent will depend on changes in trade patterns, and also on the extent and effectiveness of policies to address transport emissions. The draft final report of the Sustainability Impact Assessment⁶ estimates an increase in maritime emissions of between 502 Kt and 1004 Kt CO₂, and an increase in aviation emissions of between 681 Kt and 969 Kt CO₂, depending on the level of ambition of the scenario chosen. Similar scales of increase are foreseen for key air pollutants including NO_x and SO_x. While the relevant international organisations (ICAO and IMO) are taking some initial steps to address emissions, it seems unlikely that international measures will be introduced at a speed or level of stringency likely significantly to reduce the potential impacts, or to ensure that external environmental impacts are fully integrated in the price of transport.

4.5.1.3 Idea proposed, and intended benefits

Action could be taken to tackle emissions in the text of TTIP – for example, commitments in the trade and sustainable development chapter could include a shared endeavour to seek effective policies in ICAO and the IMO aimed at limiting, and reducing, emissions from aviation and maritime transport. The Commission’s current proposed text on “trade favouring low-emission and climate-resilient development” does not mention transport emissions explicitly. Even more ambitious text – although unlikely to be acceptable to the US – could stress the potential for bilateral cooperation in the introduction of emissions controls, including through emissions trading mechanisms, on transatlantic transport emissions in the event of a continuing absence of credible initiatives from ICAO and IMO.

4.5.1.4 Implementation

The idea proposed would require incorporation of a number of key elements in the text of the agreement, particularly in the trade and sustainable development chapter. Further action would then be needed to ensure that both the EU and US parties to the agreement implemented their shared

⁶ “Trade SIA on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA: Draft Final Report”; Ecorys, November 2016. Available at:

<http://www.trade-sia.com/ttip/publication-of-the-draft-final-report/>

commitments; and in any case, international progress on tackling aviation and maritime emissions might not be achievable, given reluctance from other parties. Bilateral action, however, through the joint introduction of emissions trading constraints for, would remain possible, and would potentially help to shift international attitudes; but may be regarded as implausible given previous and current US administration resistance to action in this field.

4.5.1.5 Conclusions and recommendation

Attempts to address the problem of increased transport emissions by internalising the environmental costs should be undertaken in negotiations with the US; but appear unlikely to lead to significant results. Alternative, unilateral, options may need to be considered, as discussed in section 4.5.2 below.

4.5.2 Action to tackle emissions from international transport – accompanying measures

4.5.2.1 Issue identified

In the absence of, or in addition to, specific commitments in the TTIP text, or in the event of the US side subsequently failing to deliver action on international transport emissions, it would be possible for the EU legislator to take unilateral action to tackle international transport emissions. The options for addressing the problem in the text of the agreement described in section 4.5.1 above are likely to face significant reluctance from the US negotiators, particularly in the light of changing US policy on climate and environment issues.

4.5.2.2 Plausibility and seriousness of impact

See section 4.5.1.2 above.

4.5.2.3 Idea proposed, and intended benefits

Currently, application of the EU Emissions Trading System to international aviation is suspended, pending discussions in the ICAO. It would be possible either to apply ETS requirements to international aviation, as envisaged in the original legislation, in response to the slow and disappointing nature of ICAO proposals; or, in a more targeted way, apply ETS to transport with partners with which the EU has a free trade agreement, in recognition of the likely additional transport pressures thereby created.

4.5.2.4 Implementation

Different approaches would be needed for aviation and maritime emissions. On aviation, the ETS directive currently exempts international aviation temporarily from the obligation to comply; the Commission is due to report on the ICAO efforts to address GHG emissions, and to make proposals as appropriate. Simply failing to extend the current exemption would bring international aviation, including US/EU flights, into the scope of the ETS; if, on the other hand, an extension of the current exemption is agreed by the co-legislators, a separate proposal amending the ETS directive could always be adopted if considered appropriate. For maritime emissions, a separate proposal would be

needed, with potentially significant prior policy development to identify the best approach to applying the ETS to maritime transport operators.

4.5.2.5 Conclusions and recommendation

Action to address the carbon impacts of an increase in international transport as a result of TTIP is relatively straightforward in principle, although likely to be controversial with the US and with other trading partners.

4.5.3 *Opportunities from commercialisation of electric vehicles*

4.5.3.1 Issue identified

Deployment of electric vehicles could be accelerated by regulatory cooperation to address existing and emerging challenges – including for driverless vehicles. While in principle TTIP could lead to enhanced opportunities for the deployment of electrical vehicles, and for a more rapid transatlantic sharing of relevant technological developments, this will depend to some extent on the shared willingness of the EU and US sides to take forward an ambitious programme of support, and tailored regulatory approaches.

4.5.3.2 Plausibility and seriousness of impact

While it is difficult to quantify the potential impact of shared and ambitious standards on the future development of electrical and low-carbon transport, it seems clear that a joint endeavour to maximise the potential could have value.

4.5.3.3 Idea proposed, and intended benefits

Ensuring that the text of TTIP, or accompanying documents and political statements, emphasise the importance of early and ambitious cooperation in this area, with the objective of early adoption of a sufficiently ambitious, harmonised set of standards on relevant technologies, including battery technologies, and allowing for innovation.

4.5.3.4 Implementation

Discussion with US negotiators to test the idea could also include a discussion of whether the most appropriate means of taking it forward was in the text of the agreement itself, or in the form of political declarations or shared declarations.

4.5.3.5 Conclusions and recommendation

While statements of intent on regulatory cooperation do not ensure that progress will be made, they potentially create favourable conditions for it.

4.5.4 *Addressing risks of imports of non-sustainable biofuels and other energy products*

4.5.4.1 Issue identified

There is a risk that biofuels produced in the US (or, as a result of US investment, in the EU) which do not in practice deliver real CO₂ emissions savings, or which create other risks (biodiversity or other

damage during cultivation of the relevant materials, for example) could have access to a greater share of the market as a result of TTIP.

4.5.4.2 Plausibility and seriousness of impact

While we have not analysed the extent of the potential impact, it seems plausible. Improved opportunities for both the export of US biofuels, and for US investment in biofuels production in the EU, are implicitly among the results of TTIP.

4.5.4.3 Idea proposed, and intended benefits

The risk identified could be addressed by the adoption of robust standards at EU level as part of the current climate and energy package (an accompanying measure); or more directly in the text of TTIP or in accompanying documents through a joint EU/US commitment to the adoption of ambitious sustainability standards through the regulatory cooperation process. It should be noted that a robust demonstration of the emissions reduction benefits of biofuels ultimately requires the economy producing them to be monitoring emissions and sequestration of carbon in accordance with the UNFCCC inventory guidelines, and implementing quantified emissions reduction targets such as those adopted under the Paris Agreement.

4.5.4.4 Implementation

The approach to be adopted would depend on the extent to which US interlocutors were keen to cooperate in ensuring the carbon emissions benefits and wider sustainability of biofuels production. A commitment to the development of an ambitious and robust joint approach through the regulatory cooperation process, followed by convincing action, could have significant benefits in encouraging wider global adoption of credible sustainability standards. In the absence of such an agreement in principle, or in the event of it being difficult to secure practical implementation of a credible approach, it would be possible for the EU to adopt robust criteria for the emissions reduction integrity and wider sustainability of biofuels in domestic legislation.

4.5.4.5 Conclusions and recommendation

The twin-track approach suggested above, with an initial attempt to secure a robust shared approach through the regulatory cooperation process, followed by unilateral action if necessary, seems to have few downsides.

4.6 Chemicals policy options

4.6.1 Chemicals: risks to application of the precautionary principle

4.6.1.1 Issue identified

Chemicals is a much discussed topic in the TTIP debate. Although positive impacts are expected from the agreement, the main topic of the debate concern the possibility to maintain REACH and other standards with respect to chemical and application of the precautionary principle. Due to the large differences in EU and US legislation, stakeholders fear that standards for chemicals (including under REACH) could be lowered and the precautionary principle could be weakened when the negotiators pursue regulatory cooperation. This could then result in lower social and environmental standards and protection. It should be noted that these concerns do not only relate to chemicals covered by REACH but also to chemical products more broadly, such as pesticides and cosmetics.

Another negative impact mentioned by stakeholders is related to the process of regulatory cooperation. More specifically, in some cases (e.g. dangerous substances) regulators are required to act swiftly if a ban on certain chemicals is needed. Regulatory cooperation by means of more dialogue and discussion between EU and US legislators could slow down this procedure, and hence pose a threat to the environment (and/or public health).

4.6.1.2 Plausibility and seriousness of impact

The European Commission has consistently argued that TTIP will not impact REACH or lower other standards that may affect the environment. Not all stakeholders are convinced that this will be the case. Given the EU's statements and explanations the plausibility that standards will be lowered is considered low. Lower standards and changes to REACH in particular would not be publicly acceptable, nor would it be supported by the EU Member States or the European Parliament who will eventually vote over the final agreement. In case this standards will still be lowered under TTIP, it will depend on the specific standard that would be lowered how serious the effect will be.

With respect to the application of the precautionary principle there are some risks that the EU practice may not be compatible with the TTIP agreement. Exact wording in the agreement is important, and at this stage the legal status of the "precautionary measures" included in the text is unclear. The distinction between the terms "precautionary principle" and "precautionary approaches" is crucial from a legal perspective, as it determines the difference between what is legally binding (the principle) and what is non-binding (the approaches). These two terms are used interchangeably in speeches when the European Commission reassures that the issue will not be touched upon in the negotiations. A non-binding precautionary approach would not prevail over binding treaty obligations regarding economic matters. Moreover, the term 'precautionary approach' is only used in two textual proposals, in trade in goods and custom duties, and in sustainable development. There is also no reference in the services, or regulatory cooperation chapters.

With respect to regulatory co-operation and process of dialogue and consultations there are fears that the proposals of the EU and US chemical industries will inter alia "*freeze progress in regulating toxic chemicals*". On the one hand, it is not expected to lead to additional consultations, as the current text proposals indicate that US stakeholders can participate in the consultation processes that the EU and many of its Member States already have in place. On the other, if they make substantial contributions in these consultations, this could lead to longer timeframes and a slowdown of the decision-making process. In terms of emergencies where a ban needs to be put in place, we do not expect that the consultation processes apply, as is currently also not the case in the EU. In general, we therefore do not expect a significant impact in this area. However, it re-emphasizes the importance of the

precautionary principle: in case the evidence is not clear from the consultations, it is important that policies could be provisionally applied if there are serious environmental (or health) concerns.

4.6.1.3 Idea proposed, and intended benefits

Two ideas have emerged during our analysis and consultations.

The first idea is that the EU should make it more clear that REACH and environmental standards will not be lowered as a result of TTIP. Next to defining and clearly communicating the red lines (e.g. stand on animal testing, intervention in REACH, etc.) that cannot be crossed in TTIP, both to the US and to the public, specific text provisions in the TTIP agreement and in addition addressing this issue in a Joint Interpretative Instrument (similar to CETA) may help to reduce this risk.

The second idea relates to improve texts related to the precautionary principle, which would require more explicit and well-drafted justification clauses for measures taken on the basis of the precautionary principle in each chapter of the TTIP.

4.6.1.4 Implementation

With respect on not lowering environmental standards, explicit provisions could be included in the text provisions of TTIP, in particular in the regulatory co-operation chapter. Similar to CETA, it could also help to add a Joint Interpretative Instrument, which ensures that environmental protection will not be lowered.

“CETA explicitly recognises the right of Canada and of the European Union and its Member States, to set their own environmental priorities, to establish their own levels of environmental protection and to adopt or modify their relevant laws and policies accordingly, mindful of their international obligations, including those set by multilateral environmental agreements. At the same time in CETA the European Union and its Member States and Canada have agreed not to lower levels of environmental protection in order to encourage trade or investment and, in case of any violation of this commitment, governments can remedy such violations regardless of whether these negatively affect an investment or investor's expectations of profit.”

With respect to the idea on the precautionary principle a clear starting point would be the common guidelines on the precautionary principle as developed by the European Commission itself, stating that the precautionary principle shall be informed by three specific principles: (1) the fullest possible scientific evaluation, the determination, as far as possible, of the degree of scientific uncertainty; (2) a risk evaluation and an evaluation of the potential consequences of inaction; and, (3) the participation of all interested parties in the study of precautionary measures, once the results of the scientific evaluation and/or the risk evaluation are available. In addition, the five general principles of risk management remain applicable when the precautionary principle is invoked:

- Proportionality between the measures taken and the chosen level of protection;
- Non-discrimination in application of the measures;
- Consistency of the measures with similar measures already taken in similar situations or using similar approaches;
- Examination of the benefits and costs of action or lack of action;
- Review of the measures in the light of scientific developments.

If only the European Commission were to include these guidelines in its textual proposals, it would allow a harmonisation of legitimate precautionary action across the Atlantic, or, at least, a mutual recognition of what concerns justified precautionary measures affecting trade and / or investment.

This would much increase the chance that in case a dispute would arise, the competent adjudicatory authority would be able to give prevalence to the precautionary principle.

The political feasibility of this option is less clear. There are different views on the precautionary principle on both sides of the Atlantic. Nevertheless, it is clear that this will be an important element to get political support for the agreement in the EU.

4.6.1.5 Conclusions and recommendation

Many stakeholders fear that environmental safety standards could be lowered because of TTIP. They are concerned that standards (incl. REACH) and the precautionary principle will be weakened. To address these concerns, we recommend to include explicit text provisions on this in the agreement, possibly added by a statement in a Joint Interpretative Instrument

The European Commission should further clarify its stand on protection of the precautionary principle. Including the EC guidelines on the precautionary principle in the agreement may be a way to achieve that this principle can be applied. The political feasibility of this option may however be lower.

4.6.2 Chemicals: maximising the opportunities for reducing duplicative testing

4.6.2.1 Issue identified

TTIP is also expected to bring gains, both for the sector and the environment. Lowering tariffs, and increasing cooperation in some areas (e.g. unification of terminology and labelling) will reduce trade and production costs for firms, resulting in economic benefits, such as production and export growth. Increased transparency and cooperation is also likely to be beneficial for the environment. A reduction in duplicative testing combined with exchange of information on test results could for example lead to a lower need of animal testing and to more efficiency.

4.6.2.2 Plausibility and seriousness of impact

As for the positive impacts mentioned above – economic gains and environmental gains – they are likely to occur. Similar results are presented by other studies like Ecorys (2016), WTI (2016), CEPR (2013), but also the EU chemical industry and environmental NGOs have acknowledged these positive outcomes. Again, the size of the impact will depend on in which areas gains are actually achieved.

4.6.2.3 Idea proposed, and intended benefits

The main benefits expected by stakeholders from the agreement relate to the possible reduction of duplicative testing, and exchange of information on test results, as stated above. This would therefore need to be an important focus in the negotiations. Consultations with experts is needed to ensure that avoiding double testing will not lead to lower (environmental but also e.g. health) safety levels.

4.6.2.4 Implementation

Given that both Parties are likely to benefit from this idea, no strong opposition is expected. Nevertheless, the framework for this exchange of information should be worked out in more detail. There may be issues related to intellectual property rights, or vested interested (e.g. from the institutions involved in testing) that may create some barriers to the idea in practice. Setting up a general framework to define the conditions under which exchange of information will take place or under which duplicative testing can be avoided will therefore be important.

4.6.2.5 Conclusions and recommendation

There are possible benefits from cooperation with US legislators in terms of sharing information and testing results, which may also avoid duplicative testing. Next to economic benefits, there may also be environmental benefits (e.g. reduce the need for animal testing, more knowledge on environmental effects related to certain products/processes). Nevertheless, a framework is needed to enable this which needs to be worked out in detail, with inputs from experts and other stakeholder groups.

4.7 Other issues: transparency and stakeholder dialogue

Based on the stakeholder engagement process as part of the project, including interviews with stakeholders, and the stakeholder workshops in 9 EU Member States, the project team is able to distill a few points for reflection that were raised directly or indirectly by the stakeholders.

4.7.1 High level of transparency of information

One of the issues discussed during the workshops was the amount of information available on the TTIP negotiations and the positions being adopted by the European Commission. Stakeholders that had consulted the European Commission website⁷ appreciated the level of information available and the access granted to negotiating texts and position papers. It was recognized that information was not available in all official languages but that efforts had been made to supply documents in different languages. However, in every workshop a portion of the stakeholders had not consulted the European Commission website and were therefore unaware of the information available. Other channels of information and communication in Member States appear to have had limited impact on these stakeholders. An issue to consider is the balance between traditional media and online tools when engaging different stakeholder groups and in disseminating information on the TTIP negotiations.

4.7.2 Transparency has limits.

In all workshops, stakeholders had different interpretations or understandings of the positions being adopted by the European Commission in the TTIP negotiations. Having access to the negotiating texts and position papers was certainly helpful and informative, but this still left considerable room for stakeholder to interpret the positions taken by the European Commission differently. In particular, stakeholders held different views on what the European Commission was trying to achieve and the likely consequences of the positions adopted in the TTIP negotiations. An issue to consider is how the European Commission can provide stakeholders with information that clarifies the negotiating texts and the anticipated consequences / obligations of the positions taken.

4.7.3 Stakeholder dialogue meetings create confidence

In all workshops the stakeholders indicated that they greatly appreciated the opportunity to discuss and engage with the issues being negotiated under TTIP. This is clearly reflected in the evaluation reports from each workshop. The workshops provided a non-confrontational forum for dialogue between stakeholders who hold very different opinions and beliefs about the value of trade agreements in general and about TTIP in particular. This dialogue helped clarify the positions being taken and the rationale behind strongly held beliefs, creating opportunities to identify areas of common interest and agreement. At each workshop there were multiple occasions when misconceptions or “myths” surrounding TTIP were addressed and corrected. An issue to consider is how the European Commission can facilitate this exchange of views in a format that is trusted by the stakeholders and that generates a greater level of confidence.

4.7.4 Dialogue is not the same as consultation

The stakeholder workshops created opportunities for effective dialogue, but the participants did not confuse this with a consultation process aimed at creating or building a negotiating position. The stakeholders did not expect their views to have a direct impact on the position of the European Commission; rather the dialogue should act as a catalyst for answering questions, clarifying ambitions, identifying expectations for the negotiations and (very importantly) correcting myths and misconceptions. This dialogue was greatly appreciated by stakeholders and is a positive impact resulting from the project. However, a number of stakeholders commented that the dialogue seemed

⁷ <http://ec.europa.eu/trade/policy/in-focus/ttip>

to be happening very late in the negotiating process; and potentially too late to have an impact on outcomes.

5 Recommendations and conclusions

The value of a project which involves the development of a stakeholder dialogue rests largely in the contributions and ideas of the stakeholders themselves, as set out in the summaries of the workshops we have set out in section 3 above. The project team has further developed some of the emerging ideas, and also developed some ideas of our own in order to respond to issues identified by the stakeholders; these are outlined in section 4 above. In each case, we have offered some initial views on both the plausibility of the issues identified, and on the feasibility of the ideas put forward. This final section points to some common themes, and identifies some further issues for consideration arising from the changed context in which this final report is written, following the change in the US administration.

Stakeholder engagement

It is clear that the TTIP negotiations have not enjoyed enjoy broad popular support in Europe and are often viewed negatively by a variety of stakeholder constituencies. The availability of EU negotiating texts and position papers have greatly enhanced the transparency of the TTIP negotiations, but have not created a shared understanding of the motivations and consequences of concluding the agreement; and the necessarily restricted nature of a bilateral negotiation can create fresh concerns that agreements are being made behind closed doors. Stakeholder engagement that facilitates dialogue, allows participants to clarify issues and develops a better understanding of the goals (expectations) of the European Union can, however, be highly effective.

Consequently, the project partners can only recommend to include an effective stakeholder dialogue process in any continuation in the TTIP or other similar negotiations. Ideally, this process would start early during the negotiations, thereby seeking to avoid the evolution of any misconceptions from the beginning.

Options based on limiting the scope of the agreement

Another important issue which constrains stakeholder engagement is the sheer complexity of a bilateral trade negotiation which covers such a broad range of economic relations between two major economies. References relevant to the “right to regulate”, for example, are likely to require a good understanding of the interactions between a range of different chapters of the agreement before their scope can be interpreted. Experience of stakeholder responses to unauthorized leaks of negotiating texts also suggests that the absence of references to environmental issues in one area of the agreement can lead to concerns that the issue has been forgotten or ignored by negotiators. One, natural, response of stakeholders to this complexity, which emerged in a number of the workshops, is simply to insist that their sector (agriculture, for example) should be excluded from the agreement; or that specific statements that the agreement does not limit the right of parties to regulate to achieve particular outcomes (e.g. banning hydraulic fracturing; banning GMOs) should be included. In general, our assessment is that these options are likely either to make an agreement impossible to reach (if all sectors in which one party’s producers risked being at a competitive disadvantage were excluded, the rationale for having a trade deal at all would be significantly impaired), or to carry risks for other areas of environmental protection policy (an absolute statement of the right to regulate on one technology could be read as implying that there is scope to question the right to regulate on other technologies).

Clarifying the implications for key regulatory principles

Options aimed at incorporating key principles of European policy, such as the precautionary principle, are theoretically attractive, and emerged from a number of the case studies and stakeholder workshops. Variations on this theme therefore feature in a number of places in section 4 above.

However, they are likely to run into long-standing US concerns about the application of the precautionary principle being used to discriminate against disruptive technologies, and it is difficult to foresee that they would form part of the text of an eventual agreement. Moreover, they do not appear to be essential in practice: the EU should retain the right to regulate under all foreseeable versions of the agreement, and the Treaty principle of precaution should continue to guide the exercise of that right to regulate. There may, however, be scope for interpretative documents, either bilaterally (along the lines of the joint EU-Canada Interpretative Instrument on CETA⁸), or unilaterally, which clarify the EU's position on the precautionary principle, and which (by clarifying the parties' thinking at the point of signing the agreement) potentially have a beneficial impact on future interpretation.

Addressing the new negotiating context

This report was developed on the basis of analysis, and of discussions with stakeholders, carried out before the November 2016 US Presidential Election. The election of a president with a radically different approach to international cooperation in general and to trade agreements in particular creates a new context for TTIP, the implications of which are as yet unclear. There are, however, some clear potential implications for environmental policy aspects of the agreement. For example:

Climate: A number of declarations by President Trump during the election campaign suggested that he would wish to pull the US out of its commitments under the Paris Agreement; and even if the US remained formally party to the Agreement, it seems highly unlikely that implementation of climate mitigation action will be ambitious, or amount to the application of economy-wide carbon constraints equivalent to the impact of a carbon price.

Regulatory policy: An early executive order⁹ from President Trump introduces a number of constraints on regulatory activity in the US, including a requirement on agencies to identify two regulations for repeal for every new regulation promulgated; and a requirement that the net costs of regulations may not rise. The interaction of this order and the potential regulatory cooperation provision of TTIP are unclear, but it seems likely that this approach, combined with stated administration positions on the US economy being over-regulated, will lead to an approach which is not compatible with the strongly state preference of EU stakeholders to avoid a regulatory "race to the bottom".

The approach to protecting the delivery of environmental objectives therefore needs to respond to this new context. Some of the approaches identified in section 4 above already do this: in particular the suggestion that continued implementation of the Paris Agreement, or an insistence on the internalization of external environment costs, should be treated as essential by the EU. There may also be scope to incorporate language aimed at avoiding the risk of significantly lower environmental standards in the agreement on regulatory cooperation, or in any interpretative statements. The regulatory cooperation process could, by enabling the EU to offer comment and advice on new deregulatory proposals, have some value in avoiding harmful deregulatory measures, and helping the US to focus on options which are compatible with the EU's approach to better regulation. There is also, however, a clear risk that there would be a steady divergence of regulatory standards between the

⁸ See Council document 13541/16 "Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States", available at:

<http://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf>

⁹ Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs; January 30, 2017.

Available at: <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>

two economies, with implications for the relative competitiveness of key sectors, and for the environmental footprint of EU imports of US goods and services.

Broader application of approaches identified in this report

The principal impact of the new administration's currently stated approaches on trade, and on environmental regulation, is thus to make an agreement both less likely to be reached, and (if it were reached) more likely to carry risks for environmental outcomes, and to create renewed concern among EU stakeholders. However, the approaches identified in discussions with stakeholders and outlined in section 4 are potentially capable of wider application to bilateral and multilateral trade negotiations, and we recommend further discussion of these and related ideas with stakeholders at an early stage in the development of the EU negotiating position on trade negotiations.

Annex 1: Background report

The Background report is published separately.

Annex 2: Case studies

The following case studies are published separately:

1. Case study: The Investor-State Dispute Settlement;
2. Case study: Biodiversity in Slovakia;
3. Case study: The impacts of TTIP on biodiversity in Hungary within the context of the agriculture sector;
4. Case study: The impacts of TTIP on biodiversity in Poland within the context of the agriculture sector development;
5. Case study: Energy in Austria;
6. The impacts of TTIP on energy choices in France;
7. The impacts of TTIP on CO₂ emissions from transport in Italy;
8. Case study: CO₂ emissions from transport in Germany; and
9. Case study: Chemical policy in the Czech Republic.

Annex 3: Workshop reports

The following workshop reports are published separately:

1. Workshop report: Copenhagen;
2. Workshop report: Bratislava;
3. Workshop report: Budapest;
4. Workshop report: Warsaw;
5. Workshop report: Vienna;
6. Workshop report: Paris;
7. Workshop report: Rome;
8. Workshop report: Berlin;
9. Workshop report: Prague

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