TTIP – US Ambassador's note to EU Perm Reps

27 May 2016

EU-US agricultural trade and TTIP impact

<u>US argument</u>: The EU is currently running a large trade surplus for agricultural products and US exports less to the EU than to other parts of the world.

It is correct that the EU exports more to the US, but the EU exports high value products subject to **low or zero tariffs** in the US, so this reflects US consumer demand. TTIP's outcome on tariffs will hardly benefit such EU exports to the US. For instance, the trade surplus in favour of the EU on spirits and beer alone amounts to 4.4 billion EUR (more than 20% of the EU surplus) while tariffs are duty free on both sides of the Atlantic.

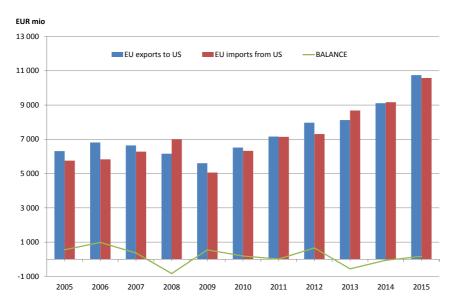
US has a **large surplus in agricultural commodities** (of 2 bn EUR) and other primary products (including fruit and vegetables, nuts) of 2.3 bn EUR, whereas EU has a surplus in exports of processed foods (without wine) such as meat preparations, cheese, olive oil (2.6 bn EUR) or food preparations (e.g. chocolate, cereal preparations) of 1.3 bn EUR.

EU exports meet **US requirements and US consumer preferences**, and US exporters of products where the US is competitive such as poultry can do the same. Poultry suppliers from Brazil or Thailand, with no FTA, do exactly that today when exporting to the EU - US suppliers are welcome to follow suit.

The EU exports processed, high value products, which cannot be easily substituted (because of consumer preferences) whereas US products are standardized commodities which are easily substitutable.

The positive trade balance is essentially a result of the EU exports of wines and spirits and beer to the US. When disregarding these products, trade is almost fully balanced:

EU-US trade balance in agriculture, without wines and spirits and beer, 2005-2015



<u>US argument</u>: A number of reports have indicated that the US will benefit more from TTIP than the EU: this is due to high EU tariffs. (...) That being said, we expect there will be real gains for your farmers and producers, especially in the dairy and wine sectors.

Although the study prepared by the **US Department of Agriculture** (USDA) has some serious flaws in its modelling scenarios - from assuming the removal of selected non-tariff measures such as the ban of the use of growth promoters and hormones in the livestock sectors, to assuming full duty elimination even on our most sensitive products - for the sake of the argument let's look at the findings of that study.

The USDA study projects that the abolition of customs duties and quantitative restrictions could result in additional US agricultural exports worth 5.5 billion dollars, considering data from 2011, and the EU exports to the US would rise in return only 0.8 billion dollars. The USDA study confirms that the US has more to gain on tariffs than the EU in TTIP. This stems from the simple fact that EU agricultural tariffs are significantly higher than US ones.

The study shows substantial gains for US agriculture if tariffs and some non-tariff barriers are fully removed by the EU side. In the applied scenarios the US is a clear winner in trade in agricultural products in TTIP. The EU does not, however, assume full liberalisation for EU import-sensitive products, for which meaningful market access may be granted through tariff quotas. Nor would the EU make any change to its food safety law.

It is clear that such an imbalanced result in case of full liberalization in agriculture is another argument in favour of alternative approaches to full liberalization for EU import-sensitive products.

This also means that it is all the more important to minimize losses that may affect EU farmers and to seek gains in areas other than tariffs. Enhanced protection of EU Geographical Indications, not addressed in the USDA study, is one of such gains. Improved access to the US market through resolution of non-tariff issues represents another goal the EU is pursuing in these negotiations.

EU gains on dairy and wine pointed out by the US Ambassador would only be effective if other elements than tariffs (non-tariff barriers in particular SPS barriers, geographical indications, wine) are addressed, but there has been very little progress on that, in particular on geographical indications and wine. Some progress has been seen on SPS barriers on both sides but more work needs to be carried out.

Non-tariff barriers

<u>US argument</u>: The following EU table on the ability of the EU and US to export single commodities is "highly misleading". (...) EU non-tariff barriers have virtually eliminated many of our key exports.

	US States able to export	EU Member States able to export to the US		
	to the EU			
Beef		3 out of 28 (IE, LT and NL)		
Sheep and goat meat		0 out of 28		
Pork		13 out of 28		
Poultry meat	50 out of 50	0 out of 28		
Egg products		1 out of 28 (NL)		
Fruit and vegetables		Very limited market access,		
		per single fruit per single country		

The statement of the US Ambassador is not supported by any specific argument. The table is NOT misleading and provides an accurate picture of the situation with regards to SPS issues. It should be added that the EU cannot export any **Grade A dairy**¹ products, and that export of safe **raw milk based soft cheeses** (of less than 60 days) to the US is banned.

It is also correct that the EU has to submit applications to the US for each commodity, and Member State by Member State. The overall time it takes for the US to finalise a first time **import approval procedure** is unnecessarily long, costly, complex and overly burdensome. Such a procedure can take several years without any certainty on when trade can start to take place.

EU non-tariff "barriers", as referred to by the US Ambassador, must correspond to EU requirements related to hormones in beef and pork or pathogen reduction treatment for poultry. These are requirements applied to all imports, not barriers, and suppliers like Brazil and Thailand for poultry simply comply.

<u>US argument</u>: We can resolve many of our issues by basing our trade measures on the common language of science and doing a better job explaining them to consumers. The United States is following this approach on EU export priorities such as beef and apples and pears.

The EU continues to see significant undue delays in the processing of reinstatement of Member States for **beef** exports. Pending the process Member States cannot export beef to the US. On the contrary, alleged delays in the processing of applications of **biotech** products do not prevent US operators, in particular the **soybean** industry, to export to the EU. In 2015, the US soybean and soymeal exports, consisting mostly of GMO products, reached EUR 2.1 billion.

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¹ "Grade A milk products" include pasteurised milk and milk based products (fluid milk, cream, cottage cheese and yoghurt) and are regulated under a US Federal/State cooperative programme.

On the other hand, Member States applications for exports of **apples and pears** have been pending since 2007 with the US Administration. In January 2016, USDA APHIS published draft rules for public comments but extended the deadline even though the projected market value of EU exports would represent maybe 0.5% of the US market. As a result, EU producers will still not be able to start exporting apples to the US in 2016, unless they want to use the burdensome and economically unviable preclearance procedure which requires US inspectors to be present on Member State territory during the growing season at the expenses of exporters.

Specific sectors

Dairy/Cheese

<u>US argument</u>: EU cheese exports to the US are sky-rocketing, while little volume of US cheese is exported because the EU market is closed and restricted by high tariffs (for all dairy products). The EU exports nearly \$1 billion of dairy products to the US each year; we export about \$6 million to the EU, less than we export to Trinidad of Tobago and its 1.3 million inhabitants.

The EU is the **biggest cheese producer in the world**, and notably, as referred to by the US Ambassador, it exports high value cheeses appreciated by US consumers. The strong competition they are faced with in Europe also explains the limited export to the EU.

Any comparison such as the one done by the US Ambassador with **Trinidad and Tobago** is meaningless as in the same vein it is true that:

- the EU exports more milk powders to Trinidad and Tobago than to the US.
- the EU exports more apples to Sudan than to the US.
- the EU exports more beef to Gabon than to the US (3 times as much in 2015).

The EU is ready to open its dairy market and its tariff offer on the table reflects this ambition.

On dairy, the EU is also expecting to see important non-tariff issues addressed, such as sanitary (Grade-A equivalence) and Geographical Indications.

The claim of US dairy industry that US dairy export is banned because of EU lower **somatic cells** counts standard is plainly wrong. In 2011, the US National Milk Producers Federation submitted a proposal to reduce somatic cells counts from 750,000 to 400,000 (i.e. the EU level) but the proposal was turn down by the US National Conference on Interstate Milk Shipments (on a vote of 26-25). This shows that US dairy producers can satisfy EU requirements.

Wine and spirits

<u>US argument</u>: US trade deficit on sparkling wine and good performance of EU wine exports.

First of all, the US is producing only two thirds of the wine it consumes and hence, it is highly **dependent on imports**. The EU, on the other side, is the largest wine producer in the world, producing 8 times as much as the US and specifically 12 times as much **sparkling wine** as the US.

The import of EU wines reflects these facts as well as US consumer preference for many EU high-value added and prestigious wine names (Champagne, Chianti, Rioja...).

Tariffs in both the EU and the US are not high. The EU has already proposed in its current tariff offer a reciprocal elimination of tariffs.

It is essential in TTIP to address non-tariff issues related to wine. The EU has made a proposal for a set of comprehensive rules on wine, based on the 2006 bilateral agreement for trade in wine, which should correspond to the level of ambition of both sides. However, the EU has not seen any substantial engagement from the US due to the **opposition of the US wine industry**.

Poultry

<u>US argument</u>: While in theory the US can ship poultry, the EU does not allow the use of Pathogen reduction treatments despite the fact that EFSA issued a positive opinion back in March of 2014 and this prevents US exports.

The US can export poultry to the EU, <u>subject to compliance with EU food hygiene standards</u>. Other countries such as Brazil or Thailand, with no FTA with the EU, are able to meet those standards without recourse to carcass wash treatments, and export massive volumes of poultry to the EU.

With regard to the use of **peroxyacetic acid** (PAA) for the reduction of bacterial contamination during the processing of carcasses and meat of poultry, the European Food Safety Authority, issued a positive opinion with conditions and questions. This requires a further careful evaluation before it can be properly applied. The Commission is currently considering the dossier and will determine its position taking into account all relevant elements, including food safety considerations, the views of Member States and the European Parliament, as well as citizens' concerns about PAA itself and more generally the (preservation of) EU farm-to-fork approach to food safety.

Biotech - GMOs

<u>US argument</u>: EU should abide by the regulatory timelines established in its own regulations. Slowness of EU approval process creates a trade barrier.

While the alleged delay in the EU GMO approval process might indeed require particular attention from the US suppliers to avoid trade disruptions due to asynchronicity of GMOs' approvals, at the same time it should be stressed that the system is functioning, with 21 GMOs approved by the EU in 2015. Trade in soybeans, which is the US main export commodity is flowing:

Soybeans and soymeal	2010	2011	2012	2013	2014	2015
US exports to the EU EUR million	1.308	1.047	1.260	2.023	1.983	2.139

It should also be noted that the EU and US hold a regular, bi- annual dialogue on GMOs where issues of mutual interest in relation to regulatory aspects are discussed in full transparency.

EU-28 (Single Entity)

<u>US argument</u>: EU is asking to be treated as single entity for food safety but in the EU authority on this still rests with the MS, not the Commission. The failure of one MS would mean that no MS would be eligible to ship to the United States.

Such a situation should not happen if the US applies a proportionate and risk-based approach to food safety. With respect to animal health, the EU applies **regionalisation** in accordance with the SPS agreement and for food safety, the EU has put in place a strict control system and the Commission operates a Rapid Alert System which allows a swift removal of unsafe products from the food chain and maintain the integrity of the EU internal market. All EU Member States work under the same harmonised EU framework and implementation is carried out by Member State authorities. A failure of one authority should not mean that all Member States could not be eligible to ship to the US. Indeed, the US should apply only measures which are not more trade-restrictive than required.

Fruit and vegetables

<u>US argument</u>: Bilateral trade in fresh fruits and vegetables is low between the EU and the United States. However, the EU shipped over a \$1 billion worth of processed fruits and vegetables in 2015 compared with \$170 million from the United States.

This is not correct, the US is running a large trade surplus on fruit and vegetables with the EU, mainly due to US export of **nuts** (which count as fresh fruit). In 2015 the US shipped €2.7 billion worth of nuts (mainly almonds, pistachios, walnuts) to the EU, whereas the EU sold only €88.6 million to the US. At present, nuts are the US top export item to the EU. This trade can take place because the EU has accepted to put in place pre-import checks for almonds from US, thus alleviating potential costly stoppages at EU borders.

<u>US argument</u>: While the United States might be able to technically ship fruit and vegetables to the EU, in reality, many of our exports are effectively blocked because of overly-restrictive maximum residue level (MRL) requirements for crop protection products. Many of these EU MRLs are set lower than the internationally recommended, or CODEX, standards for no discernible scientific reason.

The EU pesticide residue limits are based on a scientific risk assessment no different from the US. In fact, the US operates a much stricter regime as, for pesticide not approved in the US, the FDA applies a zero tolerance while the EU applies a Maximum Residue Limit at the level of the limit of detection. US approach has serious negative impacts on EU exports such as **olive oil**.

With respect to **apples**, trade data demonstrate that the US can and does export to the EU. In 2015, the US exported for close to 9 million euros of apples. US concern may refer to the removal of the authorisation of Diphenylamine (known also as DPA) pesticides in 2009 in the EU. The non-renewal of DPA was due to concerns for consumers exposure identified by the European Food safety Authority. The Commission set a Maximum Residue Limit at 0.1 mg/kg while in principle such limit should have been set at the level of detection (0.01 mg/kg). Monitoring data on residues of DPA in apples show that the US has no problem to comply with the current MRL.

Eggs

<u>US argument</u>: The EU alleges that only one Member State (the Netherlands) can ship egg products, while since June 2015, 10 EU Member States have shipped over 69.5 million dozen eggs to the United States. To state that the EU lacks access for eggs is a deliberate attempt to skew the facts.

There is no misrepresentation of the situation: the EU is not alleging that it cannot export eggs in shell, to which the figure for the 10 Member States refers, but **egg products**.

In 2014 and 2015, the US did import significant volumes of shell eggs from the EU, due to the major Avian Influenza outbreak which wreaked havoc US egg production and resulted in a dire shortage of fresh eggs in the US. In a normal production year, no European shell eggs are exported to the US.

Pork

<u>US argument</u>: US ships only a small amount of pork to the EU due to a number of non-tariff barriers, the most notable of which are trichinella testing requirements that are not even applicable for pork raised in the United States. In 2015 US \$20 million of pork to Europe, while in 2013 Europe shipped over \$200 million of pork to the United States.

With respect to pig meat, US exports are not blocked. Under current EU legislation, trichinella controls in pig meat production and systematic controls at slaughter can be waived for pigs from holdings under "controlled housing conditions" in low risk countries. The Commission has requested the US to provide adequate information demonstrating that the US has a low risk with respect to trichinella. The Commission still awaits the US reply.

On the other hand, the US has so far refused to recognise as equivalent EU visual *post mortem* inspection procedures, although these procedures are in line with Codex standard (and have been recognised by Canada in particular). Nevertheless, EU producers still manage to export pig meat to the US under US disproportionate requirements.

Geographical Indications

US argument: EU GIs have marginal economic relevance, with 0.1% of EU GDP

GIs are estimated to account for 0.4% of EU GDP (and not 0.1%), but 30% of EU ag exports to the US. They are a success story of the EU's reformed, forward-looking ag policy.

The GDP argument is flawed: the US **beef** sector accounts only for about 0.2% of the US GDP, but would the EU question that beef matters to the US in TTIP?

The EU has taken a pragmatic approach on GIs (with a short list of key names, not the thousands recognised in the EU).

<u>US argument</u>: The EU agricultural producers hold 12 thousand trademarks (TMs) in the US [hence they do not need additional protection for their GIs!].

While the numbers cited by the US Ambassador might be accurate, the EU continues to perceive a number of shortcomings regarding the ability of the US TM system alone to protect GIs adequately in order to avoid a misuse of their reputation and consumer deception/confusion on the US market place.

In general terms, EU foodstuffs GIs, even when they secure a TM, are still confronted with a **low level of protection** - they are often confronted with competitors using qualifiers as like, type, style, etc. – and they have to face prohibitive costs of enforcement: the TM holder must control its TM on the market and prevent/challenge abuses and oppose registrations of conflicting TMs. This entails high costs for the GIs owners, which may become prohibitive notably for less known names and smaller GI associations.

The EU, since the inception of TTIP, has signalled its intention to find solutions within the boundaries of the existing US systems, provided that these offer a satisfactory outcome to the EU negotiating objectives.

Annex – recent steps taken to solve SPS concerns

The US

- Lifted the ban on BSE and reinstated NL and IE for **beef** export
- Approved LT for **meat** exports
- Approved NL for egg products exports
- Approved ES for apricots and avocados exports
- Recognised EU's regionalisation measures for a number of animal diseases such as avian influenza, Newcastle disease, African swine fever, classical swine fever

The EU

- Approved lactic acid for **beef** carcass decontamination
- Approved 17 **GMOs** in 2015 as a package
- Urgently recognised US Pest Free Areas for Ash **Wood** Borer in December 2015 to allow US export to continue pending a longer term solution.
- Extended the provisional MRL for fosetyl in **almonds** in January 2016 (with a retroactive effect on 1 January) to allow US almonds to continue to enter EU market
- Approved an import tolerance for residues of Chlorothalonil in cranberries.

Animal products

Beef: US can export subject to SPS requirements, in particular hormone ban. Other countries (Argentina, Brazil, Australia, Uruguay, etc.) do export to the EU.

EU: only IE, LT and NL can export. Applications of 16 other Member States are pending with FSIS, with no or little progress.

Sheep meat: US can export, and did export in 2015.

For the EU, no Member State can export to the US as USDA FSIS has not yet published its requirements which would allow EU Member States to export. During the April 2016 round in New York, USTR promised that the draft rules will be published for public consultation "very very soon". We still have not seen them.

Poultry: US can export subject to compliance with EU hygiene requirements which are similar for other countries such as Brazil, Thailand, Ukraine which export to the EU. Main constraint for US industry concerns pathogen reduction treatments not allowed in the EU.

Pig meat: US can export subject to ractopamine free requirement.

Egg products: The US can export. For the EU, only the Netherlands is approved for export (since June 2015). 8 EU Member States applications are pending approval by the US.

Dairy products: The US can export subject to compliance with EU hygiene rules (including EU somatic cell count requirement). We have a disagreement with the US on this issue as the issue considers it a quality issue, while for the EU is a food hygiene issue.

The EU can export cheeses to the US except **raw milk based cheese** of less than 60 days, which implies that all soft cheeses produced from raw milk are de facto banned in the US.

The EU cannot export any **Grade A** dairy products, as FDA has not yet concluded the equivalence determination for applicant Member States. FDA audits of FR, IE and NL have not yet been published one year after the audit took place without any explanations.

Plant products

Soybean and soymeal, maize and maize products: The US can and does export huge volume of soybean and soymeal products subject to one requirement i.e. GMOs are approved in the EU when shipments contain GMOs. As far as we are aware, the US applies the same requirements.

As of today, 12 GM soybean events and 28 GM maize are approved in the EU for food and feed use.

Member States cannot export wheat (application from LT, HU and BG are pending with APHIS).

Citrus fruit: EU market is open subject to phytosanitary requirements (i.e. fruit must originate from pest free areas or pest free orchard for Citrus Black Spot and Citrus Canker diseases). The US does export to the EU. We are discussing with APHIS the possibility to streamline our requirement.

For the EU, only Spain has been approved for export of citrus fruit to the US.

Apples and Pears: EU market is open. The EU imports from a range of countries such as South Africa, Chile, FYROM, China as well as the US.

USDA APHIS has published draft rules last January and subsequently extended the comment period. Despite commitment of Ambassador Froman to help EU farmers, in particular PL apple producers, to cushion Russian embargo, the approval process is not due to be completed in time for the 2016 production.

Apricots: ES has been approved in September 2015 and may start to export to the US in 2016.

The US can export.

Peaches and nectarines: The US can export. For the EU no Member State can export. APHIS is still processing ES application.

Campanula: DK has submitted an application in 1990. APHIS is still in the process to produce a Pest Risk Assessment after more than 25 years. US can export Campanula plants.

Pesticide residues

The US applies a zero tolerance for non-approved pesticide residues which creates a huge uncertainty for EU export, in particular of olive oil. The EU applies the Limit of Detection as a de facto zero.

The EU has tried to address the issue with EPA and FDA, but so far, limited progress has been made.

On the other hand, the Commission has swiftly addressed the issue of fosetyl residue in almonds to extend the provisional Maximum Residue Limit to maintain existing trade flow.