



Report on THESEUS International Summer School and Simulation Exercise

## The Transatlantic Trade and Investment Partnership

22-27 June 2014, Brussels

One year after the launch of negotiations over a Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States, the free trade negotiations have become one of the most controversial issues of public debates in many EU member states. Contested issues range from the consequences of transatlantic regulatory cooperation for the regulatory sovereignty of the EU and its member states to the implications of the inclusion of Investor-State Dispute Settlements (ISDS) in the agreement for its democratic legitimacy.

The 2014 THESEUS Summer School, which took place between 23 and 27 June 2014 in Brussels, invited 30 selected and motivated students from a great number of European and non-European countries to engage with these issues. Part of the summer school was the PROTEUS simulation exercise in which the participating students simulated European Council negotiations over the adoption of a mandate for EU free trade negotiations with the United States.

The first three days of the summer school gave the participating students intensive training by academics and practitioners about legal, political, economic and societal aspects of the TTIP negotiations. The lectures and panel contributions provided valuable insights and greatly helped the students to simulate European Council negotiations over the remaining two days. The lectures, panels and simulations were supervised by **Dr Robert Kissack (Institut Barcelona d'Estudis Internacionals)** who acted as the Resident Researcher of the THESEUS Summer School. Thanks to his numerous insights and his relentless effort to help, Kissack gave the participating students invaluable assistance to structure the negotiations, develop negotiating strategies and draft the texts for the Council Resolutions.

**Dr Robert Kissack** also launched the lecture sessions by a talk on the relationship between multilateralism and bilateral agreements. He posed the question whether the TTIP negotiations were a consequence of the failure of multilateralism or rather a condition for further successful multilateralism. He contrasted the current multi-polar anarchical global order with the US-dominance in negotiations over the General Agreement on Tariffs and Trade (GATT) in the 1980s and argued that the TTIP negotiations did not replicate the dynamics of previous GATT negotiations. Based on this, he sketched preconditions under which TTIP could act as a nucleus for future multilateral agreements. Besides, Kissack commented more specifically on the EU's role in external trade policy. He concluded that although bilateralism and multilateralism might seem like opposites, they were in practice often interwoven.

**Dr Peter van Ham (Clingendael Institute)** provided a state of the art report on TTIP. He explained previous attempts to launch transatlantic free trade negotiations and indicated

the main challenges for the current negotiations – in particular in the areas of regulatory convergence and regulatory cooperation. Besides, he raised the question whether the EU and the US could even afford a failure of TTIP given its political importance for the transatlantic relationship. Van Ham looked at likely responses to TTIP by China and outlined effects of a potential transatlantic deal on third countries associated with one of the two negotiating blocks, in particular on Turkey. Nonetheless, he stressed the current political window of opportunity and called for a case of political brinkmanship.

**Professor Marc Bungenberg, LL.M. (University of Siegen)** spoke about the development of European trade policy and sketched the expanding content of bilateral EU free trade agreements. He not only linked this development to new horizontal EU competences in trade-related issues since the coming into effect of the Lisbon Treaty, but also to external effects such as the increasing number of regional trade agreements. Bungenberg furthermore drew attention to the emerging ‘spaghetti bowl’ of Bilateral Investment Treaties which in his view lacked, an overarching basic multilateral agreement. He concluded with some remarks on the advantages and drawbacks of the proposed ISDS.

**Martti Kalaus and Alberto Rodas (Secretariat Committee on International Trade, European Parliament)** presented the role of the European Parliament before, during and after the trade negotiations and outlined the internal organisation of the European Parliament on trade issues. They also addressed investment protection and outlined challenges for TTIP negotiations when talking about regulatory convergence. Besides, they explained the ‘negative list approach’ and the ratification process of a potential deal with the United States.

**Professor Christian Tietje (University of Halle-Wittenberg)** spoke about environmental protection and regulatory cooperation in the context of TTIP. He outlined rules of the World Trade Organization (WTO) on Technical Barriers to Trade and explained the existing US-EU Mutual Recognition Agreement. Based on the contents of this agreement, he described differences in the regulatory approaches of the US and the EU and illustrated these differences by talking about the regulation of automobiles in both systems. He also emphasised the inclusion of sustainable development and environment protection articles in recently concluded EU free trade agreements, and underlined the guarantee of rights to regulate and maintain a high level of environmental protection.

The first panel of the PROTEUS-THESEUS Summer School 2014 took up the question whether TTIP could be a stepping stone for a global trade agreement. **Professor Zaki Laidi (Sciences Po Paris)** argued that both the EU and the US were currently dissatisfied with the multilateral framework. He noted that the WTO principles of consensus-rule, the Single Undertaking and special treatment for developing countries were in deep crisis. Since the Cancún Ministerial emerging economies enjoyed a de facto veto power. On issues becoming increasingly important today, the WTO rules remained weak. Laidi linked the EU narrative on and preference for multilateralism to its own political nature.

**Bahadır Kaleağası (TÜSiAD)** sketched current global trade patterns, referring in particular to the growing importance of global value chains, expanding trade in services, international investment and the growing number of preferential free trade agreements. He also recalled the evolution of the EU in becoming a global actor and described how this development could have an impact on the coming into effect of TTIP.

**Dr Suparna Karmarkar (Bruegel)** picked up on the relationship between TTIP and GATT and considered the implications for the structure of TTIP to act as a stepping stone for a future multilateral agreement. She argued that both the timing and the form of the multi-

lateralism of TTIP matter. Furthermore, Karmarkar shed light on expected gains and losses of a potential TTIP-deal for China and India. She concluded by considering what effect current US-led attempts to create regional trade agreements have on EU preferences for multilateralism.

**Professor Steffen Hindelang (Free University of Berlin)** provided background information on ISDS. He defined investment protection in general and ISDS in particular. Based on this, he identified a number of contentious issues with regard to ISDS and e.g. commented on the integrity of arbitral proceedings, financial risk, the lack of corrective mechanisms, the consistency of arbitral decision-making and the right balance between private and public interests. Subsequently, Hindelang pointed out alternatives to ISDS and proposed possible reforms to address some of the contentious issues of the existing legal framework.

The second panel of the PREOTEUS-THESEUS Summer School 2014 dealt with the political and economic relevance of TTIP. **Luca di Carli (DG Trade, European Commission)** outlined the economic importance of TTIP with regard to the reduction of trade barriers, improved market access, regulatory issues and the setting of global rules which address WTO-plus issues. He moreover stressed the political importance of TTIP in restating the transatlantic relationship. Also Di Carli replied to issues around ISDS.

**Hosuk Lee-Makiyama (European Centre of Political Economy)** recalled the two narratives surrounding TTIP and commented on criticism of ISDS by some EU member states. He also drew attention to the distribution of competences in the US system and named the effects that its structure could have on the ratification of a possible deal. Lee-Makiyama shared his views on the US' sequencing of TTIP with regard to Trans-Pacific Partnership (TPP) and commented on the politicisation of trade issues.

**Jacques Pelkmans (Centre of European Policy Studies)** linked the discussions about TTIP to the search for better trade regulation and outlined different degrees of regulatory cooperation and convergence. He contrasted the US' and EU's regulatory systems and indicated some of the preconditions for regulatory simplification in various sectors.

**Professor Dirk de Bièvre (University of Antwerp)** picked up on expected gains from a TTIP deal for various sectors. He also outlined likely consequences for the global trading system if the TTIP-deal should fail. Besides, de Bièvre commented on claims stating that the trade negotiations were influenced and steered by multinational companies.

The third panel of the PREOTEUS-THESEUS Summer School 2014 examined societal challenges and the public perception of TTIP. **Dr Stormy-Annika Mildner (Federation of the German Industry/BDI)** described the public perception of TTIP in Germany and proposed answers on why the negotiations have met so much criticism. She presented opinions shared in online media as well as by businesses, trade unions and consumer protection and environmental organisations. Afterwards, she suggested a set of structural, social, domestic and international political reasons for the opinions voiced by different German actors.

**Dr Gerry Alons (Radboud University Nijmegen)** revisited earlier attempts to start EU-US trade negotiations and laid out reasons for their failure. She then pointed out the conditions which were likely to lead to a success this time. Alons drew attention to the current state of multilateral policies as well as a convergence of agricultural policies across both systems. She also elaborated on the trade-off between secrecy of negotiation results vis-à-vis the public as well as the negotiating counter-party.

Day 4 and day 5 of the PROTEUS-THESEUS Summer School 2014 were dedicated to the simulation of European Council negotiations over an EU mandate for the launch of trade

negotiations with the United States. **Professor Wolfgang Wessels (University of Cologne)** and **Professor Stephan Hobe (University of Cologne)** supervised the negotiations. On Friday afternoon and after many rounds of intensive negotiations, the participants of the PROTEUS-THESEUS Summer School 2014 were happy to have successfully adopted a comprehensive mandate by the European Council for the launch of negotiations over a TTIP with the US.

This report was written by Matthias Götz.