

FRANCE: A HOTBED OF OPPOSITION TO THE TTIP?

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SUMMARY

“ THE EVOLUTION OF FRENCH PUBLIC OPINION IS INTRIGUING ”

Two years after the start of negotiations for the Transatlantic Trade and Investment Partnership (TTIP) in July 2013, the evolution of French public opinion is intriguing.

It was expected that opposition to TTIP would come primarily from France, where public opinion is traditionally wary of trade liberalisation. But in November 2014, when 59% of Europeans and 25 of 28 member states said they were in favour of TTIP, 50% of French held a favourable opinion while the Germans had become the leading opponents of TTIP.

The shift in German public opinion in spring 2014 had not been anticipated, considering that the German economy has turned towards exports and that the German government itself was active in supporting the launch of negotiations.

Public debate over TTIP has only truly manifested in France during the European election campaigns of May 2014, when the minor parties opposed to negotiations put the spotlight on the sanitary, phytosanitary, and environmental issues of the negotiations. The two major political groups adopted a more cautious and even evasive approach, waiting until autumn 2014 to clearly state their positions.

In summer 2014, meanwhile, the inclusion of a mechanism to resolve disputes between investor and state has imposed itself as a source of more mobilising fears and has united a cross-partisan opposition which has contributed to growing doubts over the benefits of the agreement.

“ ATTENTION IS TURNED TOWARDS THE POSSIBILITY THAT THIS ANTI-TTIP DYNAMIC IN GERMANY COULD BE TRANSMITTED TO NEIGHBOURING FRANCE ”

The sceptical nature of German public opinion remains the primary source of contestation. Attention is now turned towards the possibility that this anti-TTIP dynamic could be transmitted to neighbouring France.

The discretion of the government regarding the partnership has acted to contain the cross-partisan opposition to the question of the ISDS without bringing the majority parties to engage more actively in the public debate on the other issues present in the negotiation. But this prudence could very well become problematic as we approach an agreement. On the road to the 2017 presidential elections, François Hollande may find himself embarrassed by TTIP's contents, which for critics could become the new poster child of a poorly-mastered process of globalisation.

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INTRODUCTION

Two years after negotiations began on a Transatlantic Trade and Investment Partnership (TTIP)¹ in July 2013, the trend in French grass-roots opinion is giving cause for concern. Opposition to the TTIP was expected to come primarily from France, where grass-roots opinion is traditionally suspicious of trade opening, but in November 2014, with 58% of Europeans and 25 member states out of 28 voicing support for the TTIP, some 50% of the French were in favour while the Germans, along with the Austrians and the Luxembourgers, had taken the lead among its opponents².

The concern of the European Commission, which has received a mandate to negotiate from the European Council comprising the 28 heads of state and government, and which is going to have to submit the final agreement to a vote by the Council, the European Parliament, and probably national parliaments³, has thus focused more specifically on Germany since the summer of 2014. The upswing in German grass-roots opinion against the TTIP in the spring of 2014 was not expected, given that Germany's economy is based so largely on exports and that its government had played such an active role in support of the negotiations getting under way in the first place.

“ATTENTION IS FOCUSING TODAY ON THE FEAR THAT THE OPPOSITION DYNAMIC MAY ALSO SPREAD TO NEIGHBOURING FRANCE”

The debate sparked by the TTIP varies in intensity according to the country in which it is being conducted and it has crystallised around different fears. While in Germany it has focused on a weakening of the *Länder's* powers on the privatisation of water utilities and in the United Kingdom on safeguards for the National Health System, in France and Austria the first year of negotiations was dominated by concerns regarding sanitary and phytosanitary issues, and the environment. Yet as the summer of 2014 drew to a close, the inclusion in the TTIP of a mechanism for regulating disputes between investors and states (ISDS)⁴ became a catalyst for fears that proved to be far more mobilising on a Europe-wide scale. German grass-roots scepticism continues to be the primary source of opposition, but attention is focusing today on the fear that the opposition dynamic may also spread to neighbouring France.

The public debate on the TTIP only really got off the ground in France with the European election campaign in May 2014. In the course of that campaign the minority parties (the *Écologistes*, the *Front de Gauche*, and the *Front National*) opposed to the negotiations drew public opinion's attention to the issue. The two large traditional political alignments had adopted a prudent stance, sometimes dodging the issue altogether, and had not even clarified their position by the autumn of 2014. But it looks as though the ISDS today is managing to forge a cross-party opposition front that is helping to fuel doubts regarding the partnership's expected benefits.

1. Those in favour use the acronym TTIP (Transatlantic Trade and Investment Partnership), while those opposed to it use the acronym TAFTA (Trans-Atlantic Free Trade Agreement) which harks back to the disappointing results of the NAFTA accord and to the ACTA (Anti-Counterfeiting Trade Agreement), an outright flop.

2. "Eurobarometer Standard 82 Autumn 2014", Survey conducted in November 2014, published in December 2014.

3. Ratification by the national parliaments depends on the scope of the final agreement, on whether it includes issues in connection with which the EU and its member states share jurisdiction, for instance such as certain aspects of the rules governing investments. The French Government, for its part, considers the CETA and TTIP to be mixed agreements (Matthias Fekl addressing a hearing in the Senate on 3 February 2015).

4. RDIE in French or, more often, ISDS in English, the term customarily used in debates.

1. A debate dominated by the minority parties and by civil society

1.1. French public opinion: in swing?

There is not a great deal of data available regarding the French public's stance on the TTIP. The only survey conducted in France, aside from the Eurobarometer polls, was conducted a few days before the European elections in May 2014⁵, when the issues involved in the negotiations burst onto the scene in the public debate. Thus it is hardly surprising that at that time only 44% of the French people admitted to having heard of the TTIP, with the electorate of the far-left and the environmentalists, i.e. those who had been the most vociferous in expressing their opposition to the TTIP, heading the list. What is surprising, on the other hand, is that they broadly approved of the issues that the negotiations were addressing, although they felt that they would prove more beneficial to the United States than to Europe. Some 71% came out in favour of a harmonisation of European and US standards and regulations, while 68% were in favour of the abolition of customs barriers between the European Union (EU) and the United States⁶.

Yet at the same time, almost two-thirds of French respondents (63%) felt that the negotiations would primarily benefit the United States, and 45% felt that they would actually be a threat to the EU, while 50% felt that they would be an even greater threat to France. Only the UMP's⁷ electorate felt that the agreement would be more of an opportunity (42%) than a threat (37%) for the EU. The most sceptical respondents were to be found among the FdG and FN electorates, a broad majority of whom argued that the plan was a threat to Europe and an even greater threat to France.

Moreover, the prospect of a dispute between an investor and a state being settled before an international arbitration tribunal rather than in a French court was rejected by a majority of French respondents (71%) from every social class and of every political leaning. And lastly, the confidentiality surrounding the negotiations was held to be "not normal" by 70% of the French people, while only 29% felt that it was "normal, in view of the strategic issues involved both for the United States and for the EU".

**“ IN NOVEMBER
2014, 50% OF FRENCH
RESPONDENTS BEING IN
FAVOUR OF THE TTIP”**

Six months later, in November 2014, a Eurobarometer survey⁸ suggested that French grass-roots opinion was very much split over the TTIP, with only 50% of French respondents being in favour of it. Yet despite support for the TTIP not diminishing by anything like the drop in support noted in Germany⁹, in Austria and in Luxembourg, French grass-roots opinion nevertheless appeared to hold a very ambivalent stance on the prospective partnership.

5. This CSA survey was conducted between 14 and 16 May 2014 on behalf of daily *L'Humanité* with a sample of 1,010 respondents representing a cross-section of the population over the age of eighteen.

6. The responses were fairly similar from all social classes and political leanings, apart from the more lukewarm responses from the Front de Gauche and the Europe Ecologie Les Verts electorates.

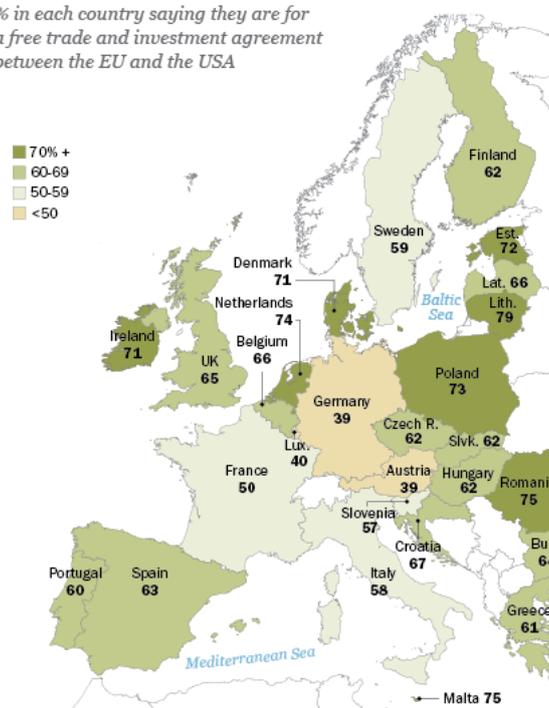
7. UMP (Union for a Popular Movement) called The Republicans since the 29 May 2015, FdG (Left Front), FN (National Front), PC (Communist Party), EELV (Europe Ecology The Greens).

8. "Eurobarometer Standard 82", *Ibid.*

9. The fact that German grass-roots opinion turned against the TTIP as a result of the NSA eavesdropping affair would suggest that the two issues are closely related. "Germany's Pivotal Role on the Way to TTIP", Peter Sparding, GMF, November 2014.

GRAPH 1 ► EU support for a free trade agreement with the US

% in each country saying they are for a free trade and investment agreement between the EU and the USA



Note: In Cyprus, not pictured, 59% support a EU-US trade agreement.
Source: November 2014 Eurobarometer survey.

PEW RESEARCH CENTER

Source: [Pew Research Center](#), based on November 2014 Eurobarometer survey.

1.2. Active opposition to the TTIP

The vote of French MEPs on the mandate to negotiate for the European Commission in May 2013 already hinted at the trends that were going to surface among the political parties in the European election campaign a year later.

Eleven French MEPs in the Greens group, the FdG and FN MEPs, one centrist MEP, and three PS MEPs voted against the start of negotiations on the TTIP, while twenty-two UMP MEPs and three centrist MEPs voted in favour. The Modem MEP's and eight PS MEP's abstained, while certain PS and UMP MEPs and the single MPF MEP failed to take part in the vote¹⁰. In other words, the Greens, FdG and FN MEPs were against, while the UMP MEPs were for, and the Modem and PS MEPs had reservations.

While the majority political parties in certain member states such as Finland¹¹ or Spain are in favour of the TTIP, in France the discretion displayed by the major political parties, namely the PS and the UMP, during the first year of negotiations has been replaced by a debate dominated by civil society and by the minority parties.

“OPPOSITION TO THE TTIP MOBILISES PRIMARILY THE MINORITY POLITICAL PARTIES”

Opposition to the TTIP mobilises primarily the minority political parties, such as Europe Ecology - The Greens, the FdG, the PC, and the FN, all of which officially committed to opposing the negotiations during European election campaign in May 2014. In the view of MEP Yannick Jadot, vice-presi-

10. "L'UE devrait-elle créer un marché unique avec les États-Unis ?", project « Droit d'inventaire - Droit d'inventer », Jacques Delors Institute, May 2015.

11. "Political parties support TTIP", *Finland Times*, 20 March 2014.

dent of the Foreign Trade Committee and spokesman on TTIP-related issues for the Greens-EFA Group, it is necessary to reject and to combat “all attempts to weaken national and European regulations regarding the environment, health and the protection of workers, consumers, and personal data”. Jean-Luc Mélenchon (FdG), for his part, pointed out that he has been warning of the dangers implicit in trade negotiations with the United States since 2008; while Marine Le Pen (FN) deplored “free-marketeering savagery” with “its levelling of standards to the lowest common denominator, its proposal for private justice for multinational corporations and a host of other dangerous measures”.

The liberal affiliation of the centrists (UDI, Modem) with the Alliance of Liberals and Democrats for Europe Group has not prompted them to back the TTIP. On the contrary, scepticism was the stance they displayed in the European election campaign, while UDI-Modem ticket leader Marielle de Sarnez complained of a “bargain basement” partnership “which would undermine the tough nature of European quality standards and norms.” Opposition was even more clearly expressed by the UDI, which issued a communiqué explaining their objection¹², backed up by the words from its vice-president Jean Arthuis, who said that a federal Europe should be built before negotiating the TTIP¹³. While the Modem began to address the issue less in the summer of 2014, Arthuis regularly reiterates the UDI’s opposition.

While the trade unions in northern Europe, which depends on international trade to a greater extent and whose trade union history is somewhat different, are more in favour of the TTIP (Swedish trade union federation Saco and the two other major Swedish confederations TCO and LO are in favour of the TTIP), in France numerous trade unions (the Farmers’ Confederation, the General Labour Confederation - CGT -, the United Trade Union Federation - FSU -, Workers Force - FO -, the Solidary Trade Union and the National Coordination of Port and Kindred - CNTPA -) are calling for a halt to the negotiations.

Civil society groups opposed to the TTIP include Attac France, Les Amis de la Terre, France Nature Environnement, anti-shale gas militants and a variety of citizens’ associations.

The primary fears harboured by these opponents to the negotiations revolve around a lowering of European standards in the areas of health, crops and the environment, the deregulation of public utilities, safeguarding traditional farming, and the designation of origin (for wine and cheese in particular).

This opposition became organised through a petition against the partnership project entitled “Stop TTIP” launched over the Internet in 24 member states in the summer of 2014. The petition garnered one million signatures in less than two months. Yet while it had attracted 1.65 million signatures by 8 April 2015, over half of them (975,680) were German, compared to 224,233 Britons and 102,310 French citizens¹⁴; in other words, Germany totalled almost five times more than the United Kingdom and ten times more than France, not to mention fifty times more than Italy. German civil society groups appear to have played a proactive role in this mobilisation, because the signatories at that date included fourteen French groups¹⁵ and twenty-five British groups, but compared to a staggering one hundred and fourteen such groups in Germany.

While social networks play a crucial role in structuring opposition compared to the role played by the traditional media, it is worth pointing out that debating activity on Twitter in July 2014 was far lower in France than in Austria, Germany, or Belgium¹⁶.

12. “The UDI Opposes the Transatlantic Free-Trade Agreement”, 2 April 2014.

13. “Seven Good Reasons for Opposing the Transatlantic Treaty”, Jean Arthuis, *Le Figaro*, 10 April 2014.

14. <https://stop-ttip.org/fr/signatures-selon-les-etats-membres/>

15. AITEC, Attac France, Collectif Causse Méjean – Gaz de Schiste NON, collectif citoyen les Engreniers, Collectif Roosevelt, Confédération paysanne, Ensemble, Europe Écologie les Verts, Foodwatch France, France Nature Environnement, Les Jeunes Écologistes, Non au Grand Marché Transatlantique – Stop TAFTA, Nouvelle Donne, Saveurs au Naturel, TTIP-CETA Non Merci.

16. “#TTIP: the structure of the debate on the Transatlantic Treaty on Twitter”, Nikos Smyrniotis, 22 July 2014, *Ephemerion* (sample of 20,000 tweets with the words TTIP and/or TAFTA between 16 and 22 July 2014).

GRAPH 2 ▶ The structure of the Transatlantic Treaty debate on Twitter



Source: Nikos Smyrniatos, 22 July 2014, Ephemeron (sample of 20,000 tweets with the words TTIP and/or TAFTA between 16 and 22 July 2014).

Yet the debate in France is at its strongest among the groups representing civil society, organised in an association known as “Stop TAFTA”. On 9 July 2014 the association managed to mobilise one hundred personalities from the worlds of show business, politics, higher education, and the media to speak out “against the free-trade treaty”¹⁷. Numerous departments, municipalities, and regions have also expressed their opposition by declaring themselves “TAFTA-free zones”¹⁸.

GRAPH 3 ▶ Map of communities declaring themselves “TAFTA-free”



Source: Collectif “Stop TAFTA”, on 4 June 2015.

Demonstrations or mobilising events calling for a halt to the negotiations were held throughout France in conjunction with the international day against free-trade treaties held on 18 April 2015¹⁹. Yet Attac Germany reported that of the more than seven hundred demonstrations planned throughout the world in protest against

17. “Rocard, Alevêque, Charb... 100 Personalities Say “No” to the Transatlantic Treaty”, Le Parisien, 9 July 2014: The signatories include former Prime Minister Michel Rocard, Jean-Luc Mélenchon (FdG), deputies (EELV) Yannick Jadot and Karima Delli, sociologist Dominique Méda, philosopher Étienne Balibar and philosopher Marcel Gauchet.

18. List on: <https://stoptafta.wordpress.com/mobilisations/>

19. Interactive map showing the agenda of conferences and demonstrations throughout Europe: <https://www.globaltradeday.org/>

free-trade treaties, over two hundred were held in Germany with one particular rally attended by approximately 23,000 people in Munich. Meanwhile, the “Stop TAFTA” group reported only seventy or so events in France.

1.3. Discreet defence of TTIP

The *Transatlantic Trends* survey conducted on behalf of the German Marshall Fund in June 2014²⁰ suggests that the UMP is more broadly in favour of closer ties with the United States (42%) than the PS (29%), but while the UMP may be rooting for the TTIP, it is certainly being discreet about doing so in order to reassure its sovereignist wing, and its support is in any case pegged to certain terms. Without adopting a direct stance on the TTIP in its platform ahead of the European elections in May 2014, the UMP stated that “the era of the purely naive opening up of our markets must be changed [...] in the context of the free-trade agreements with the United States; we must join together to defend a realistic approach”, based in particular on the principle of reciprocity in the opening up of public markets, transparency in negotiations, the adoption of ethical, health, social, and environmental standards governing imports and so forth. Yet despite that, UMP Senator Jean Bizet still voiced the fear that agriculture might be an adjustment variable in the negotiations, especially in connection with dairy products, in view of the fact that cheese imports are rising in France and that the end of the milk quota system at the end of March 2015 is giving cause for concern to politicians elected in milk-producing regions.

The MEDEF (Movement of Businesses in France), representing employers, is more openly in favour of the TTIP. It considers that the negotiations are promising and it is in favour of a more ambitious and better-balanced agreement based on the principle of reciprocity and on fair ground rules between European businesses and their US competitors. It is also in favour of the inclusion of an ISDS.

The CGPME (General Confederation of Small and Medium Business Employers) is favourable to the TTIP as a whole and, in particular, to the chapter devoted to small and medium businesses, which it considers to be “crucial for boosting the beneficial impact of this agreement on small and medium businesses and for helping them to increase their trade with the United States;” while in 2012, small and medium businesses accounted for 88% of European companies exporting to the United States, with 28% of overall European exports to the United States.

Yet the most noticeable absentees from the debate are the representatives of French businesses, who, while they intervene in public debates on a case by case basis, never commit as a group to backing the project the way, for instance, Germany’s major car manufacturers have done.

“BETTER TO GET MORE CLOSELY ANCHORED TO A DYNAMIC ECONOMY LIKE THAT OF THE UNITED STATES THAN TO NOTHING AT ALL”

The primary argument put forward by those in favour of the TTIP is the cost of failure to adopt it, as for instance when Minister Nicole Bricq argued that it is “better to get more closely anchored to a dynamic economy like that of the United States than to nothing at all”, or when Secretary of State Fleur Pellerin, speaking on 17 June 2014, mentioned the need to address the issue of “US trade’s shifting centre of gravity towards the Pacific”. While the emerging economies’ output overtook that of the old industrially advanced countries in 2012, the geopolitical argument for adopting a more proactive approach to preempt

that competition was stressed when the negotiations began, yet the TTIP’s supporters never actually used it to then develop a narrative for grass-roots benefit. The difficulty in assessing the TTIP’s impact on job creation and the doubts voiced regarding the accuracy of the research conducted by various institutes have diverted attention away from the economies of scale that regulatory convergence would offer businesses, with small and medium businesses heading the list.

20. “*Transatlantic Trends Key findings 2014*”, German Marshall Fund of the United States, 2014, p. 17.

1.4. The undecided camp is a majority but it is increasingly sceptical

Harbouring “extremely serious reservations regarding the opportunity of this agreement”, the Socialist Party displayed a hesitant, divided stance over the Transatlantic project in June 2013. Its primary need to avoid the risk of undermining the government, particularly at a time when the FN was expected to make huge gains in the elections of 2014 and 2015, did not help to forge a consensus among the French Socialists.

In the European elections in May 2014, the PS did admit that the TTIP could bring certain benefits, but they continued to stand by their stiff terms for its ratification, including: no weakening of European standards (maintaining the precautionary principle, especially with regard to sanitary and phytosanitary standards); the exclusion of data protection from the negotiations (maintaining European legislation); strict regulation of the financial markets; no circumventing of (European or national) democratic legislative procedures; implementation of the basic ILO standards at the federal and state levels in the United States; and transparency in the negotiations. The party criticised the demagoguery implicit in certain criticisms voiced by the TTIP’s opponents, but at the same time it opposed the ISDS²¹.

The French Confederation of Workers (CFDT), for its part, is hedging its bets. It does not reject the agreement on principle but it is maintaining a watchful stance. Marcel Grignard argued in May 2014, when he was the organisation’s national secretary and its spokesman for international affairs, that “concluding this treaty can be an opportunity for reaffirming fundamental citizens’ and employees’ rights and for boosting environmental safeguards”²². Yet the CFDT rejects the inclusion of an ISDS as it stands, considering it too loosely structured, and it would prefer a different solution.

The National Federation of Farmers’ Unions (FNSEA) does not reject the idea on principle either, but it voiced reservations as early as in the spring of 2014 and it continues to “keep an eye on the way negotiations are moving forward” because it fears that the TTIP might call into question the French food model, and that “France stands to lose a great deal more in the agricultural, food, and even, to some extent, cultural sectors than it stands to gain in others”²³.

2. The French Government’s cautious approach

“THE GOVERNMENT HAS SHOWN ITSELF NOT TO BE TOO COMFORTABLE WITH THE WHOLE AFFAIR”

Since the approval of the mandate to negotiate, in which the French Government won the exclusion of the audio-visual sector on the grounds of a “cultural exception”, the government has adopted a discreet stance and shown itself not to be too comfortable with the whole affair.

Unlike Angela Merkel, David Cameron, or Mariano Rajoy, who regularly reiterate their support for the negotiations, French President François Hollande has only once addressed the TTIP issue in an official capacity, when he met with Obama in Washington in January 2014: “We have everything to gain from moving rapidly forward, otherwise we well know that the fears, threats and tension will build,” he said, noting the predominance of a cautious approach to the issue.

And it was only in the course of a debate with FN vice-president Florian Philippot on 12 March 2015 that the minister of economic affairs, Emmanuel Macron, adopted a public stance on the TTIP, while his German

21. “TTIP: We Must Not Give In to Demagoguery”, 22 May 2014.

22. http://www.cfdt.fr/portail/actualites/international/europe/ttip-les-syndicats-europeens-et-americains-posent-leurs-conditions-srv1_211117

23. <http://www.terre-net.fr/actualite-agricole/politique-syndicalisme/article/la-fnsea-craint-une-remise-en-cause-du-modele-alimentaire-francais-205-100812.html>

counterpart Sigmar Gabriel regularly addresses the issue, stating again in Berlin on 23 February 2015 that “we need these negotiations if we wish to enforce ground rules to govern globalisation”.

Prudence has also been cast aside by the minister of foreign affairs, Laurent Fabius, who was in favour of merging the foreign trade and foreign affairs portfolios during a government reshuffle in August 2014, but who is “not a priori for or against”: “If we can have a treaty allowing Europe and France to boost their presence in the United States, why not? But only on condition that our interests are safeguarded”²⁴.

The government has been highlighting a set of broad principles: the need for “transparency”, “respecting collective preferences”, “maintaining states’ rights to regulate” and a “high standard of protection for health and the environment,” as well as protecting European agriculture’s interests.

When all is said and done, the government has adopted its strongest stance on the need for transparency in the negotiations, in particular by calling from the outset for the mandate to be published. Nicole Bricq launched a public consultation process in March 2013 for all French players affected by the negotiations, going on to set up a strategic tracking committee in October 2013, which Matthias Fekl subsequently reorganised into two groups (one for parliamentarians, the other for civil society). Yet Attac-France, the Farmers’ Confederation, the Friends of the Earth, and the Solidary Trade Union decided in March 2015 to pull out of the committee, deploring it as a parody of democracy.

Concern is building in France over the notion that the French Government may have already used the ace up its sleeve by barring the audio-visual industry from the negotiation mandate when other major issues are at stake, particularly in connection with French agriculture – in particular, with regard to an increase in US import quotas.

“SHIFT IN OPPOSITION TO THE TREATY IN TWO AREAS: THE TECHNICAL DETAILS AND GROWING FEAR THAT THE TTIP MAY HAMPER THE LEGISLATIVE CAPACITY”

Yet today the French Government’s cautious approach is having to address a shift in opposition to the treaty in two areas.

One of these concerns the technical details. As the Commission, under the new trade commissioner Cecilia Malmström, gradually defines its red lines in connection with the various issues involved²⁵, irrational fears over the import of hormone-ridden beef or of chlorinated chicken are giving way to fears over more technical issues, such as the choice of a positive or negative list for those public utilities which could be affected by liberalisation, or whether or not the ISDS should be retroactive with regard to investments made in the past and so forth. The other shift in opposition to the treaty is a growing fear that the TTIP may hamper the legislative capacity both of the EU and of its member states.

While many continue to deplore the negotiations’ opaque nature, despite the publication of the European negotiators’ positions²⁶ in connection with a large number of issues, a dual fear continues to hold sway: namely that details may escape citizens’ notice, and that public authority (and democracy with it) may be jeopardised by the multinational corporations and by the United States. In that regard, the ISDS, which combines technicality with the balance of powers between business and government, has succeeded in triggering very broad cross-party opposition.

24. “Transatlantic Treaty: Laurent Fabius Is ‘Neither For Nor Against’”, *La Tribune*, 17 July 2014.

25. No products currently banned on the European market may be imported; European standards must not be lowered; states must be free to decide whether or not they wish to privatise certain public utilities and to backtrack if they wish; and so forth.

26. [DG Trade Website](#).

3. The ISDS: a catalyst for opposition

3.1. Fears shared at the highest level

The fears triggered by the inclusion of an ISDS²⁷ have been allayed both by the delay in the publication of the mandate to negotiate (which certain member states blocked for fully eighteen months); and by the complexity of regulatory convergence (never attempted before now on such a scale in any previous trade agreement, and not easy for the general public to grasp). Above and beyond the mutual recognition of standards whose precautionary level is considered equivalent, would the Europeans not be dependent on the United States for the adoption of future standards?

The strongest criticism of the ISDS concerns the risk of a “regulatory freeze,” in other words the temptation for a government to withdraw or to amend a given regulation if it runs the risk of having to pay out major compensation to an investor capable of proving indirect discrimination. While unable to directly force the government to withdraw the regulation, the ISDS would increase the feeling already sparked by the opening up of the markets, namely that governments are gradually losing their regulatory independence. And the creation of a regulatory cooperation council for the adoption of future standards, a proposal put forward by the European negotiators in the eighth round of negotiations (2–6 February 2015), only made that fear stronger, despite the council’s lack of legally binding powers²⁸.

“ THE FRENCH DEPUTIES AND SENATORS CAME OUT AGAINST BUILDING THE ISDS INTO THE MANDATE TO NEGOTIATE THE TTIP ”

In the spring of 2013 the French deputies²⁹ and senators³⁰ came out against building the ISDS into the mandate to negotiate the TTIP. Only a small number of responses came from France during the public consultation on the ISDS conducted by the European Commission between March and July 2014, accounting for 6% of the total number of responses, as opposed to 21.8% from Germany, 22.6% from Austria and 34.8% from the United Kingdom.

TABLE 1 ► Distribution of replies, by member state

MEMBER STATE	NUMBER OF REPLIES	%OF TOTAL
United Kingdom	52,008	34.8
Austria	33,753	22.6
Germany	32,513	21.8
France	9,791	6.5
Belgium	9,397	6.3
Netherlands	4,906	3.3
Spain	2,537	1.7
<i>Sub-Total</i>	<i>144,905</i>	<i>97</i>
Other member states	4,494	3
<i>Total</i>	<i>149,399</i>	<i>100</i>

Source: European Commission, “Report on the online consultation on investment protection and investor-to-state dispute settlement in the Transatlantic Trade and Investment Partnership agreement”, 13 January 2014, p. 10.

27. Fully 108 bilateral investment agreements signed by France currently contain an ISDS (Matthias Fekl addressing a hearing in the Senate on 3 February 2015).

28. The council would be devised as a platform for the exchange of information between regulators so as to facilitate the potential adoption of a common standard if both sides are aiming to achieve equivalent objectives.

29. Report drafted on the Foreign Affairs Committee’s behalf regarding the proposal for a European resolution on the mandate to negotiate a free-trade agreement between the United States of America and the European Union, by Seybah Dagoma, 28 May 2013, National Assembly.

30. European resolution on the start of negotiations with a view to establishing a Transatlantic Partnership, Senate, 9 June 2013.

Yet the sheer magnitude of the total number of responses obtained (almost 150,000) and of their critical tone marked a turning point, and criticism of the ISDS only grew in France through the autumn of 2014. In late November the two houses of parliament rejected the inclusion of an ISDS in the CETA agreement with Canada.

After already voting in May 2014 for a resolution involving safeguards against the presence of an ISDS in the TTIP, on 23 November 2014 the National Assembly adopted a resolution explicitly opposing the inclusion of such a mechanism in the two agreements, and calling for Chapters 10 and 33 in the CETA treaty on the protection of foreign investments to be revised. The resolution also called for detailed information on “the modalities governing the composition, referral, decision and oversight of the regulatory cooperation process.” On 27 November 2014 the Senate, in its turn, adopted a motion “calling on the government” to take effective action in the revision of the same two chapters, 10 and 33, in the CETA treaty in order to ensure the full right of public authorities to exercise their sovereignty and their right to regulate; before unanimously voting, on 3 February 2015, in favour of a proposal for a European resolution (PPRE) calling for the arbitration mechanism planned for the CETA and devised for the TTIP to be set aside unless an improvement in the mechanism can be negotiated.

These resolutions, while not binding, point out the clear opposition of the country’s politicians to the inclusion of an ISDS as it stands, while the chain of successive appointments to the post of foreign trade secretary³¹ since negotiations got under way has not helped to forge consistency in official communication on the issue. Nicole Bricq faulted the mechanism on 30 January 2014, stating that “France is not in favour of the inclusion in the agreement of a clause for regulating disputes between investors and states³²”. Fleur Pellerin, for her part, sang the mechanism’s praises to deputies in June 2014. Laurent Fabius deferred to the results of the consultation. And Matthias Fekl, while initially expressing reservations, has since adopted an attitude of firm opposition to the prospect.

3.2. Franco-German hesitations

While Germany’s minister for economic affairs, Sigmar Gabriel, hinted in September 2014 that Germany would veto ratification of the CETA if it included an ISDS, France was still only voicing “reservations,” with Matthias Fekl pointing out during a senate hearing that France had never asked for an ISDS to be built into the mandate to negotiate. In view of France’s dithering (frowned upon in Berlin) and of the support evinced by fourteen member states³³ for the inclusion of an ISDS, Sigmar Gabriel backtracked, arguing that “if the rest of Europe wants this agreement, then Germany has no choice but to approve”.

“IT WAS ONLY IN JANUARY 2015 THAT MATTHIAS FEKL ADOPTED A FIRM STANCE AGAINST THE INCLUSION OF AN ISDS”

It was only in January 2015, in a joint communiqué, that Matthias Fekl adopted a firm stance against the inclusion of an ISDS in the final agreement, stating: “We will never agree to private jurisdiction called into play by multi-national corporations deciding governments’ sovereign policies, especially not in such areas as health or the environment³⁴”.

This common Franco-German position calling for a review of the CETA treaty was followed on 23 February 2015 by a statement issued by Sigmar Gabriel arguing that “we need an investor protection regime for a new generation,” and adding that “including the clause within TTIP would allow Europe to set the ‘gold standard’ for future trade deals”. At the same time, a note issued by the General Secretariat for European Affairs (SGAE) to French MEPs called for avoiding totally shutting the door to any kind of mechanism for regulating investor-state disputes. Matthias Fekl, who said that he had not approved the note, joined his German counterpart in proposing the establishment of a permanent court of arbitration.

31. Four different people have held the foreign trade portfolio since the negotiations first got under way: Nicole Bricq (June 2012–March 2014), Fleur Pellerin (March 2014–August 2014), Thomas Thévenoud (August 2014) and the current incumbent, Matthias Fekl.

32. Interview, *La Tribune*, 30 January 2014.

33. Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Malta, Portugal, Spain, Sweden and the United Kingdom.

34. “Birth of a Franco-German Front Against Arbitration in the Context of the TTIP”, *Euractiv.fr*, 14 January 2015.

What might still have been interpreted as a prudent stance on the government's part helped to strengthen the opposition to the ISDS expressed by the French Socialist delegation in the EP. It was thanks to an initiative taken by that delegation that the Socialists and Democrats group adopted a firm stance against the ISDS on 4 March 2015. The issue also sparked cross-party fears right across the EP. While the Committee on International Trade (INTA) had to pass judgment on a non-binding resolution determining the limits the European Parliament will place on TTIP, many of the 900 amendments demanded by the parliamentarians on this draft resolution concerned the ISDS, and six of fourteen EP commissions consulted were opposed to an ISDS.

However, during the vote on this resolution in the INTA Committee on 28 May 2015, approved 28 to 13, all S&D deputies aside from Emmanuel Maurel supported the resolution which in itself does not oppose the inclusion of an ISDS and calls for a reform of the arbitration tribunals. The resolution recommends to take up Cecilia Malmström's propositions presented to the Committee on May 7, advocating a "permanent solution" with publicly designated, independent judges, public auditions, and an appellate mechanism, all while respecting the courts of the EU and its member states. The right to regulate in the public interest would be protected and frivolous lawsuits prevented. In the medium-term, a public International Investment Court could be created to settle investment disputes.

Just after, Matthias Fekl addressed the Trade Commissioner on June 1 with the French propositions which push for a permanent court for future treaties (with a mandate of 6 years and a period of quarantine for arbitrage activity, stabilisation of jurisprudence, and application of financial sanctions to deter frivolous lawsuits, etc.).

“ THE VOTE IN THE EP:
SIGN OF APPEASEMENT OR
PROVOCATION
FOR THE ANTIS”

It remains to be seen if the vote on the resolution on TTIP in the European Parliament's plenary session scheduled for June 10 and postponed due to new amendments put forth by parliamentarians will reflect a certain appeasement of debates, or if it will continue to provoke opposition to the ISDS and more largely to TTIP while, as for, Marine Le Pen, the FN leader launched a campaign against TTIP on May 18.

In this context, attention has been focused on the risk of contagion from German opposition, given that the rejection of globalisation mentioned (in particular) as an explanation for this strong criticism³⁵ is even stronger in France.

4. The “TTIP” debate reflects French fears

4.1. The French public's ongoing discomfort with the globalisation process

The French Government's prudence in this debate can be explained by its memory of the failure of the Multilateral Agreement on Investment (MAI) in 1998, caused by France's withdrawal from negotiations due to growing grass-roots opposition. And the referendum campaign on the treaty establishing a European Constitution in 2005 was also marked by growing opposition to the construction of Europe among left-wing sympathisers, based primarily on considerations of a social and economic nature, and by broader opposition to the “liberalising globalisation process.”

A comparison of the perception of globalisation in eight member states in 2007³⁶ indicated that the French were far more pessimistic than their neighbours even back then. The establishment of anti-globalisation movements

35. “The EU-US Free-Trade Agreement Is Stirring Up People's Passions in Germany”, *Libération*, 18 April 2015.

36. “The Perceptions of Globalisation”, Kairos Future - Foundation for Political Innovation, ed. Elvire Fabry, 2007.

in France was due primarily, at the time, to the fact that the country saw globalisation above all as a “political project which needs to be managed and steered” rather than as “an inevitable economic phenomenon on which politics can, or must, exercise an influence,” which was how a majority of respondents perceived it in the rest of Europe. The French public’s ongoing aversion to globalisation is honing in on the long-term political feasibility of this project, depending on whether the TTIP is seen as something that makes it possible to “regulate the globalisation process,” or as something that strengthens that process by liberalising trade even further.

The Eurobarometer for 2003 already pointed to France and Greece as being the two countries in which a positive perception of the impact of globalisation was weakest (27% and 30% of respondents respectively), and that trend was confirmed by the Eurobarometer for 2009 which, referring to France, spoke of a “particularly acute fear of globalisation.”³⁷ The French (76%), together with the Greeks (84%), were the Europeans who subscribed the most broadly to the view that globalisation benefits big business alone and not the man in the street.

“ IN THE SPRING OF 2014 FRANCE IS ONE OF THE SURVEYED COUNTRIES IN WHICH CONFIDENCE IN INTERNATIONAL TRADE HAS

WANED THE MOST SINCE 2007” In the spring of 2014, a poll conducted by the Pew Research Center³⁸ suggested that of the seven countries involved in the survey, Italy and France are the two in which confidence in international trade has waned the most since 2007 and in which people are least convinced that international trade helps to create jobs and to increase wages.

On the global level, international trade appears still to be seen as a good thing by a broad majority (81%). In Europe, the perception is still very positive in Germany (90% in 2014, as opposed to 91% in 2002) but it has plummeted both in Italy (down 21 percentage points to 59% in 2014) and in France (down 15 percentage points to 73% in 2014).

TABLE 2 ▶ Perceptions on international trade

	TRADE IS GOOD %	TRADE INCREASES WAGES %	TRADE CREATES JOBS %	TRADE LOWERS PRICES %	FOREIGN COMPANIES BUYING COMPANIES IS GOOD %	FOREIGN COMPANIES BUILDING FACTORIES IS GOOD %
Spain	91	28	56	22	43	85
Germany	90	28	43	26	19	66
United Kingdom	88	34	50	24	39	82
Greece	79	21	44	35	31	67
Poland	78	38	51	26	40	75
France	73	14	24	28	32	75
United States	68	17	20	35	28	75
Italy	59	7	13	22	23	61

Source: Pew Research Center, “Spring 2014 Global Attitudes Survey”. Q27-Q32

The Eurobarometer survey conducted a few months later, in November 2014, indicated that within the EU it is the French who continue to harbour the greatest mistrust of globalisation, free trade, competition, and big business. With only 32% holding a positive view, they are the most sceptical regarding the globalisation process, on a par with the Cypriots and the Greeks; whilst the Scandinavian countries are more positive towards

37. Eurobarometer 72; Survey conducted in October and November 2009.

38. “Faith and Skepticism about Trade, Foreign Investment”, Pew Research Center, 2014. Survey conducted between 17 March and 5 June 2014.

it, and 47% of the British and 45% of the Germans hold a positive view of it³⁹. France is also the member state least in favour of free trade (54% hold a positive view of it, as against 74% in Germany and 77% in the United Kingdom. It is worth noting that the Austrians, who are highly critical of the TTIP, are aligned with the French in their attitude to free trade, with 59% considering it a good thing).

Despite there being half as many small and medium exporting businesses in France than there are in Italy and three times fewer than there are in Germany, mistrust of big business continues to be strong in France. With only 50% holding a positive view of big business, France is one of the seven member states with 50% or fewer positive views, almost on a par with the United Kingdom (49%) and with Germany (48%).

In the autumn of 2014, French grass-roots opinion was the least positive in Europe towards competition (61%, as opposed to 86% of Danes, who are the Europeans most in favour of it, and 77% of Germans)⁴⁰. On average, 86% of Europeans consider that competition offers consumers greater choice (that is 4 percentage points up on 2009) as against a mere 16% of French people; and 84% of Europeans think that it allows consumers to benefit from better prices, as opposed to only 20% of French respondents⁴¹. While 75% of Europeans believe that competition among businesses fosters innovation and economic growth, that belief is subscribed to by a mere 21% of French people. Yet the French rank only tenth on the list of countries most strongly in favour of protectionism, which puts them behind even the United Kingdom.

This ambivalence towards protectionism may reflect greater expectations with regard to the regulation of globalisation and of free trade rather than a temptation to clam up. Matthias Fekl certainly reflected that position when he said: "I am not a mindless fan of globalisation, [but] France does not aspire to cut itself off from the rest of the world or to cut itself out of the flow of international trade"⁴².

Figures for trade between France and the United States suggest that, despite the country's economy being less dependent on exports than those of other member countries (Germany in particular), it is no less strongly integrated with the US economy for all that.

4.2. Traditional mistrust of the United States

The special bond between France and the United States, which Nicole Bricq suggests vacillates "between an attitude of fascination and irritation," imparts an impassioned tone to the debate on the TTIP, heightened by the eavesdropping affair involving the NSA (the US security agency) and its wiretaps in Europe, and by the stiff fine levied by the United States on BNP Paribas. Angela Merkel complained to Barack Obama about the fact that she herself had been spied on, but the French Government failed to do so when negotiating the weight of the fine levied on BNP Paribas in New York.

Everyone's attention is focusing on the TTIP, while the EU is busy simultaneously conducting negotiations with Japan (the world's third largest economic powerhouse after the United States and China, and the second most important destination for French exports in Asia after China), which the public debate is totally ignoring. Yet those negotiations, too, concern lifting customs barriers, particularly with regard to the agricultural sector, and opening public markets up even further.

39. "Eurobarometer Standard 82 Autumn 2014", *Ibid.*

40. *Op.cit.*

41. "The Eurobarometer Flash 403", Survey conducted in September 2014; published in March 2015

42. "Matthias Fekl: The French Parliament Will Have the Last Word", *Marianne*, 10 November 2014.

“ THE MISTRUST
TOWARDS THE UNITED
STATES CANNOT BE
EXPLAINED SIMPLY BY
CONCRETE FACTS AND
FIGURES”

The mistrust harboured by French grass-roots opinion towards the United States cannot be explained simply by concrete facts and figures. The state of trade and investment ties between France and the United States shows that the two countries' economies are already heavily integrated.

In 2014, the US market was French exports' leading market outside the EU (or in sixth place, if we include the EU member states), the second most important country of origin of imports outside the EU, and the foremost area of French investment abroad, ahead of Belgium. Joint analyses conducted by the WTO and the OECD⁴³ calculating trade in terms of value added (rather than sheer volume) even hint that France exports more to the United States than it does to Germany.

In 2014, France ranked third on the list of EU member states exporting to the United States and fifth on the list of EU member state importing goods and services from the United States⁴⁴.

France's trade deficit with the United States fell to 2.35 billion euro in the first quarter of 2014, as against 5.6 billion euro in 2013. The sector showing the most important net export balance is the agri-food industry.

The United States is also the prime destination for direct French investments abroad (148 billion euro in investment stock at the end of 2013). French companies have over 3,600 branches in the United States, employing more than 560,000 people. The turnover generated by French company branches in the United States is more than seven times higher than the value of French exports⁴⁵. And by the same token, the United States was still the leading foreign investor in France in 2014 (accounting for 25% of FDI), ahead of Germany with 13%, and the country's most important foreign employer⁴⁶. AFII figures suggest that these investments generate approximately 440,000 jobs in France.

43. France exports more to Germany and other European partners in terms of sheer volume, but a part of those exports comprises intermediate goods and services which are then incorporated into other goods and services for third-country markets, including the United States. "France's Leading Trade Partner Isn't Germany... but the United States", *Challenges*, 31 January 2013. "New OECD and WTO Analyses Highlight the Development of World Trade", OECD, 16 March 2013.

44. <http://www.census.gov/foreign-trade/statistics/highlights/top/top1412yr.html>

45. Ministry of Foreign Affairs website consulted in April 2015: <http://www.diplomatie.gouv.fr/fr/dossiers-pays/etats-unis/la-france-et-les-etats-unis/>

46. "Overview of Foreign Investments in France in 2014", Business France, 2014.

CONCLUSION

The discretion displayed by the government so far in connection with this issue has helped to contain cross-party opposition over the ISDS issue, yet without encouraging the majority partners to play a more proactive role in the public debate over other issues in the negotiations. But that discretion may well start to prove problematic as the agreement gradually looms ever closer. Without a real effort to inform the public and to trigger a debate - to which the French Government itself must also contribute - widespread mistrust of the European Commission⁴⁷, of the current government, and of political parties as a whole may well fuel the mobilisation of opposition within civil society.

“AN EMBARRASSING ISSUE AS HE MOVES TOWARDS THE PRESIDENTIAL ELECTION IN 2017”

Attention is also focusing on the “frondeurs,” or rebels, a group of Socialist deputies opposed to the policies pursued by François Hollande and by Manuel Valls. Despite their weak score during the PS Congressional vote on May 21, they may well adopt a stronger position on this issue behind Emmanuel Maurel, a member of the EP’s International Trade Committee, distinguish themselves. François Hollande may find this issue to be a thorn in his side as he moves towards the presidential election in 2017.

If the economic situation fails to improve, the TTIP could also become the new bugbear of a badly handled globalisation process, although some analysts are pointing to the German economy’s relatively good state of health as being one of the reasons why they have more “time to address societal debates than their French neighbours”⁴⁸.

47. The French ranked twenty-third out of the twenty-eight member states in terms of their confidence in the European Commission in the autumn of 2014. “Eurobarometer 82”, *Ibid.*, p108.

48. “The EU-US Free-Trade Agreement Is Stirring Up People’s Passions in Germany”, *Libération*, 18 April 2015.

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