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## Common Commercial Policy of the European Union and its significance to the world trade. Transatlantic Trade and Investment Partnership case study

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## **Common Commercial Policy of the European Union and its significance to the world trade. Transatlantic Trade and Investment Partnership case study**

### **1. Introduction**

During a long history of its existence, Common Commercial Policy (CCP) has taken a role that goes much further than EU's voice in the international market. In this paper I try to evaluate significance of the CCP for the EU and to understand its role in the global perspective. The main hypothesis posed in the analysis concerns low politicization of the European commercial policy and relatively high commitment to free and fair development. History of legal and substantial CCP formulation and its current practical realization has been chosen as the subject of the analysis. Transatlantic Trade and Investment Partnership is considered as a case study of the policy.

Methodology used in the research is based on descriptive and inductive approaches. Narration about Europe's role in the world market development has been made through the prism of the history of the CCP constituting. Particular events, legal amendments and disputes analysis creates a general picture which lets to make some inferences.

First chapter of the paper includes a short overview of the CCP legal and substantial origins. Author indicates some symptomatic points which constituted the modern EU trade policy after 1992. Second chapter consists of the CCP direct implementation to the current Community politics. Special attention was focused on the EU's role in the WTO, Generalized System of Preferences and Free Trade Agreements (FTA) establishment. The last part continues the previous description and serves as a case study of the particular FTA and significance of the CCP for the global market as a whole.

The literature on the subject of the 1<sup>st</sup> and 2<sup>nd</sup> chapters is enormous. From the theoretical policy formulation point of view A. Moravcsik (1998) and A. Lang (2011) analysis turned out especially helpful. The works of T. Perisin (2013), R. Bermejo Garcia (2012), R. Garcíandia Garmenda (2012), B. Wardhaugh (2013), J. Kiwerska (2013), S. Woolcock (2012) and A. C. Robles (2008) constituted a backbone of the CCP history and its current implementation. Because of the big variety of the publications this list seems to be extremely partial, however it is inevitable for such widely analyzed issue. TTIP-related problem, on the other side, lacks a comprehensive analysis based on the scientific approach. This deficiency is leveled out by the great variety of think tanks analysis. Reports of B. Heid and S. Lehwald's from Bertelsmann Stiftung (2013) and J. Francois et al. from the Centre for Economic Policy Research (CEPR) were taken as the basic assessments of the TTIP's consequences.

## 2. History and Significance of the Common Commercial Policy for EU

Simon Hix and Bjorn Hoyland enumerate three types of European external economic policies: 1) a single set of rules on the importation of goods; 2) bilateral and multilateral trade agreements between the EU and other states and trading blocs; 3) cooperation and trade policies with developing countries (Hix, Hoyland, 2011, pp. 305–306). In the present paper the CCP would be narrowed to the 2<sup>nd</sup> type of the external economic policy. While the Directorate-General for Trade in the European Commission sets the direction for trade and investment “in and out of the EU” (*General*, 2016), CCP will be considered by the author as a modus operandi of the common market relations toward third countries. The Transatlantic Trade and Investment Partnership (TTIP) would be studied as an example of the EU’s foreign commercial policy and its role in the global trade.

CCP was constituted in the Treaty of Rome as a contribution of the EEC “to the progressive abolition of restrictions on international trade”. Following the trend embedded in the GATT the Member States obliged themselves to co-ordinate their trade relations with third countries on the way to lower customs barriers.<sup>1</sup> Uniformity of external commercial actions became a core of the European Community. Art. 113 Sec. 1 enumerated the principles which constituted the base of the CCP: uniform tariff rates, tariff and trade agreements, export policy and measures to protect trade in case of unfair business practices. These principles could be seen as three pillars of the Policy.

The Treaty of Rome pointed that agreements in the area of trade should be concluded by the Council on behalf of the Community. Art. 111 authorised European Commission to conduct negotiations over tariffs. Non-Tariff Barriers negotiation, however, were not assigned to it at the time. Commercial policy toward third countries was brought to the Community level and, therefore, became a matter of European supranational power. It was a logical outcome of the establishment of the customs union (Smith, 2015, p. 286). Andrew Moravcsik underlines that the Treaty launched a process rather than completed it (Moravcsik, 1998, p. 157).

While the period between 1958 and 1962 is seen as a fixing of the common trade framework the following decade of the CCP development could be entitled as elaboration of the system. In the 60s Community became a single “World Trading Power” (Coppolaro, 2013). Harmonized external tariffs policy became a pattern for the implementation of the next CCP pillars. GATT Kennedy Round (1963–1967) tested capacity of the Commission to generate proposals, mediate for a common stance and negotiate on the international arena. GATT talks turned out that decision making and, hence, commercial policy, rest in the hands of the member states. So-called 111 Committee or 113 Committee consisted of senior national servants and appointed by their governments became a main instrument to oppose CCP supranationalization. Special Committee assisted international negotiations in which Commission was taking part in order to defend national interests. Struggle over the role of CCP external representative between Commission and member states, however, accelerated elaboration of com-

<sup>1</sup> Chapter 3 (Articles 110–116) of the Treaty of Rome regulated the aims, common actions and strategies of the CCP.

mon commercial priorities and acceptable compromises.<sup>2</sup> After Kennedy Round, for instance, EEC substantially reduced its external tariff protection and therefore market integration reached the point of no return (Moravcsik, 1998, p. 236). Since then, Commission's role as the European mediator emerged.

Moravcsik finds that in the 1970s, a period of European integration stagnation, Community significantly consolidated and innovated substantive policy-making (Moravcsik, 1998, p. 312). While nearly all the decisions in the Council during this period were unanimous under the Treaty, CCP issues required Qualified Majority Voting (QMV). It means that Community finally agreed on the shape of the CCP institutional and procedure frame, nevertheless it lacked consolidation of the substantive policy-making mentioned by Moravcsik. Simply put, Europe needed a comprehensive vision of the consolidated external commercial policy.

Francois Duchene in 1972 proposed an idea of Civilian Power Europe (CPE) (Duchene, 1972, pp. 32–47; Duchene, 1973, pp. 1–21). According to the CPE theory, trade was recognized as one of the main pillar of the European Community's external policy. Jan Orbie, however, underlines that in spite of the CPE popularity amongst policy-makers and academics, it is difficult to find out what exactly its supporters mean (Orbie, 2006, p. 123). Till promulgation of the Single European Act (SEA) EC's vision was still formulating. Francois Duchan's notion of a „civilian power Europe” was symptomatic of the lack of comprehensive and sustainable Common Commercial Policy. On the other hand trade policy obviously commenced to gain its importance in European external policy frame.

Michael Smith poses that during the 70s a series of mechanisms through which the national foreign policies coordinated its policies emerged (Smith, 2015, p. 286). Concentration of the commercial policy powers at the Community level has been augmenting through the following decades. Single European Act located CCP in the very centre of the framework for EC international policy. Commission has gained the power to execute several protectionist policy instruments such as anti-dumping measures, countervailing duties, Voluntary Export Restraints (VER) arrangement etc.

New phase of the European trade policy started at the beginning of the 1990s. Art. 113(1) of the Treaty of Maastricht stated that CCP shall be based on uniform principles in: 1) tariff rates; 2) the conclusion of tariff and trade agreements; 3) the achievement of uniformity in measures of liberalization; 4) protecting measures in the event of dumping or subsidies. Art. 115, on its part, underlines that measures of the CCP should be taken into accordance with any Member State and give the priority to those which cause the least disturbances. Use of this safeguard clause has declined as the Commission has begun the process of bringing Member States deviations under the CCP (Cleireacain, 1990). In terms to enhance and consolidate common trade policy, complaints and weak points of the European economies have been considering at the level of bilateral bargaining between EU and third countries. Seamus O'Cleireacain (1990), describing the gaps of the CCP in 1990, stated that some of them had been consistent

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<sup>2</sup> Lucia Coppolaro (2013, pp. 62–64) and Andrew Moravcsik (1998, pp. 235–237) are rather sceptical on the issue of Commission's role in the EEC Trade Policymaking for GATT negotiations. They converge at the point that governments paid closer attention to the Commission only when its proposals fitted to the interests of the member states.

with the Treaty of Rome and the GATT and some of them less. Therefore elimination of the CCP gaps had direct correlations with stable EU trade policy implementation.

After 1992 further substantial legal supranationalization of the CCP has made any new steps. Art. 113(4) of the Treaty of Maastricht required QMV to issue negotiation mandates to the Commission or to approve agreements negotiated by the Commission. Posterior Treaties have not changed this rule. Due to Opinion 1/94 of the European Court of Justice (ECJ) European Commission represents all of its Member States. However it also acknowledged that competence to conclude General Agreement on Tariff in Services (GATS), Trade-Related Aspects of Intellectual Property Rights (TRIPs) is shared between Community and Member States (*Opinion*, 1994). Internally they might have different opinions on trade issues, but externally EU has a unified position (Perisin, 2013, p. 77). On the other side practice convinces that CCP is not homogeneous and amidst numerous Treaty amendments there are certain legal clauses that could be used to tackle down EU trade initiatives.

Following signing Maastricht Treaty CCP has extended its scope. Opinion of the European Court of Justice 1/1994 stated that TRIPs and GATS “do not fall within the scope of the common commercial policy” (*Opinion*, 1994). The Treaty of Nice, although, authorized Commission to negotiate and conclude agreements “in the fields of trade in services and the commercial aspects of intellectual property” (Art. 133(5) of the *Treaty of Nice*). The Lisbon Treaty has enlarged this platform of the CCP. From 2010 it included also audio-visual, cultural, social, education and health services (Art. 188c (1) and (4) of the *Treaty of Lisbon*). Relevant agreements, however, requires unanimity in the Council. Inclusion of these services to TTIP bargaining raises strong objections in the society. Nevertheless the Title II of the Lisbon Treaty for the first time included ordinary legislative procedure concerning CCP. Art. 207(3) (former art. 133 TEC) required such procedure to “adopt the measures defining the framework for implementing the CCP.”

After 2009 TFUE finally secured direct interconnection of CCP and EU Foreign Policy. Preamble explicitly refers to global trade by statement “desiring to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade.” Final sentence of the art. 207(1) underlines that commercial policy is a part of “Union’s external action”. The first sentence of the above mentioned article made CCP more cohesive while mentioning “commercial aspects of intellectual property” it included TRIPs and GATS to the European trade policy. For the understanding of the next chapter it is significant to stress the importance of the art. 3(5) TEU. It states that Union shall “contribute to peace, security, the sustainable development of the Earth [...], free and fair trade [...], protection, observance and development of international law, including respect for the principles of the United Nations Charter.”

Through the years CCP has become one of the basic instruments of the EU external policy. Today the title concerning CCP is situated at the very beginning of the Part V “The Union’s External Action” of the TFEU and such an exposure is especially meaningful. Trade became the main instrument of European influence to the world. Generally the process of CCP supranationalization has become an unprecedented example of international integration.

### 3. EU as a Modern Trade Power: The Wolf in Sheep's Clothing?

Andrew Moravcsik poses that the most persistent and powerful source of European integration over the past four decades has been economic, in particular commercial, interest rather than realization of federalist ideas (Moravcsik, 1998, p. 473). This assumption casts light on the reasons of extremely fast creation of the Common Market and CCP. Such an understanding of the EU Commercial Policy could be seen legitimate. Although Moravcsik himself mentions that "in exceptional cases geopolitical motivations appear to have played an important role" (Moravcsik, 1998, p. 476). Current chapter of the paper is dedicated to the EU participation in bilateral, regional and multilateral trade agreements. Describing the CCP in action we will try to find whether it has been being rather a manifestation of lucrative trade interests or combination of good political will and sustainable economical development.

Basically agreements concluded by the Community with third countries indicate the following order of EU commercial priorities: 1) agreements establishing a customs union; 2) agreements establishing a free trade area (FTA); 3) the granting by the Community of unilateral trade preferences; 4) application of the most favoured nation (MFN) clause in trade relations (Goralski et al., 2008, p. 273). Transatlantic Trade and Investment Partnership (TTIP) is acknowledged to be a free trade area, though agreements establishing a customs union would not be considered in the current analysis. Case studies of the EU's attitude towards above mentioned agreements will be conducted in the present chapter.

From the very beginning of the European Community integration European Coal and Steel Community (ECSC), EEC and finally EU has been a special member of the GATT/WTO. Effectively and formally it was recognized as a regional trading block (RTB) and became a deviation from the MFN principle. Therefore certain ambiguity came up. Prior to ratification of the EEC Treaty its content had been communicated to the GATT contracting parties, though ECSC States demonstrated their commitment to fulfill GATT obligations (Bermejo Garcia et al., 2012, p. 52).<sup>3</sup> EEC, on the other hand, received the right to use MFN clause voluntarily with some exceptions embedded in art XXIV of the General Agreement. EC was recognized as GATT contracting party which significantly raised its role as distinct political body.<sup>4</sup> Willing to stay in the international trade organization EEC was gaining the possibilities to shape it. Following GATT rounds proved it.

Basically looking at the statistics of EEC's average tariff level through the years its commitment to world trade liberalization looks obvious. A fall of average common customs tariff from 8.2% in 1972 to current 2–3% level demonstrates European open door trade policy. General movement toward customs duty lowering, internal market harmonization of standards and therefore non-tariff barriers unification for third countries has been in the very centre of CCP. During the following GATT rounds different divisive barriers to trade have been negotiating and breaking down. For instance Multi

<sup>3</sup> Such conduct of the ECSC authors refer to the European "attitude to compromise."

<sup>4</sup> Bermejo Garcia and Garcíandia Garmenda fairly underline that EC could be recognized by the GATT as the "supranational entity with strong influence." This, however, was not favourable to any party (Garcia, Garmenda, 2012, p. 53).

Fibre Arrangement (MFA) after 31 years of existence was eliminated by the EU in 2005. MFN clause rests fundamental type of commercial agreement for EU. In 2008 about 85% of total EU imports entered under the MFN regime (Trade, 2011). Thus European leadership in customs duties elimination has not been just a way to open foreign markets but political course which substantially affected EU position in world trade chain.

Although some fields of industry were more difficult to open for international competition. Textiles, steel, paper, aluminum, some areas of machinery and automobile sector for long years were lying in the field of European protectionism.<sup>5</sup> This point, however, seems to need closer attention. Tamara Perisin groups European impediments to international trade into three main types: 1) Protection of domestic production and stimulation of intra-EU trade ("Fortress Europe"); 2) Problematic process of EU internal decision-making; 3) Legislative outcome that cause obstacle to trade (Perisin, 2013, p. 80–85). Therefore analyze of different aspects of EU activity in the international trade frame requires considering that its common stance is frequently formed by the difficult web of the particular interests. Whether Common Agricultural Policy (CAP), for instance, is widely recognized as EU protectionist measure, GMO-ban seems rather as a lack of consensus. Nevertheless Andrew Lang relevantly finds that in the first three decades of the GATT history some protectionism of the West countries was natural to save "delicate compromise between international liberalization and domestic stability" (Lang, 2011, p. 196). An ontological course towards multilateral trade system after Second World War seems indisputable. Common customs tariff which directly correlates with MFN principle in the teeth of some protectionist notions has been formulating according to above mentioned theoretical attitude.

General System of Preferences (GSP) is the second type of CCP execution. It differs from the MFN clause by its unilateral application. In 1968 United Nations Conference on Trade and Development (UNCTAD) recommended the creation of a GSP with the idea of granting trade preferences to all developing countries by developed ones. In 1971 EC implemented GSP for the first time. While GATT had made reciprocity a basic rule for the further trade relations development GSP, on its part, played a role of a helping hand to developing commerce. "Trade not Aid" required to open West markets to third countries more than latest were able to do. Community commitment to the development cooperation was reflected in the Treaty of Maastricht and included developing countries integration to the world economy (Art. 130(a) of the *Treaty on European Union*). Art. 209 of the TFEU requires account to be taken "of the objectives of development cooperation in the policies it (the EU) implements which are likely to affect developing countries."

Currently Community applies GSP with ACP (African, Caribbean and Pacific) States, the Commonwealth of Independent States (CIS) and the Andean Community. Detailed evaluation of the GSP regime on the export to Europe of mentioned regions and particular countries requires wide analysis and seems hard to define. Interconnection of different variables makes direct GSP influence unclear. Nonetheless more than 40 years history of preferences proves its necessity and interest from the part of developing economies.

<sup>5</sup> GATT Kennedy round could be seen as good case study of braided European trade interests and good will (Coppolaro, 2013, pp. 197–204).

After 1<sup>st</sup> of January 2014 32 countries lost the possibility to access EU market under GSP, 54 countries are continuing to benefit with privileged access to EU market but no longer covered by GSP clause and 90 states remain beneficiaries of GSP. European Commission from the beginning of 2014 concentrated its preferential trade treatment on the group of 49 least developed countries (LDC) “to better cater for their specific needs” (*Practical*, 2013). A new program GSP+ otherwise seems to be an example of using GSP and thereof CCP as a political tool.<sup>6</sup> Preferential trade treatment of some countries by the EU is directly related with implementation of international human rights, labour rights and environmental and good governance conventions. New GSP+ policy after mid-term evaluation was recognized having “low net benefit” implication; however its utilization at all and examples of some countries (for instance Sri Lanka) demonstrate its ability to attract trade partners (*Mid-term*, 2010). The question “Why does still 85% of the EU import enter under MFN clause?” could be logically posed. The authors of the report underline that difference between EU customs tariff under MFN clause is around 2.5% lower than under GSP regime for 93 of 114 countries. The difference between the MFN and GSP tariffs is greater than 5 per cent for only five countries (*Mid-term*, 2010, p. 46). Therefore changing attitude toward ACP, CIS and Andean Community countries in the last years is symptomatic. While MFN regime developing stuck in the Doha Round, GSP is a way of moving forward toward least developed countries and prevention of their marginalization on international arena. Thus EU seems to have substantial vision of CCP toward developing countries. While general EU trade policy pretend to be uninvolved, more detailed system of preferences is correlated with certain political conditions.

For the EU “an open trade regime is vital to enhance external competitiveness and economic growth” (*Trade*, 2011, p. 7). This theoretical attitude is important to understand the source of the European political will to establish FTAs with third countries. Free Trade Areas are the youngest form of CCP execution which entered EU agenda in the 1990s. While American foreign commercial policy took a path of isolationist trade policy at the period, European Commission enforced CCP based on multilateral denominator.<sup>7</sup> Stephen Woolcock names this period as a time of technocratic policy. According to him, during the period CCP has not been highly politicized and finally was titled “economic diplomacy” (Woolcock, 2012, p. 51–52). European Commission started to export successful experience of European regional economic integration to international trade regime. Because of the U.S.’s unwillingness to continue talks in the WTO frame the process of global commerce regionalization naturally emerged. Though, EU started to influence international trade liberalization through wide range of FTAs negotiations.

Describing the reasons for free trade areas establishment between EU and third countries a significant division should be made. Difference amongst the EU-Central America FTA and EU-South Korea FTA, for instance, seems obvious. While free

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<sup>6</sup> Some scholars named it inconsistent with WTO law and supposed that there could be more effective system of human rights linkage with trade. For instance see Wardhaugh (Wardhaugh, 2013, pp. 827–846).

<sup>7</sup> More on the issue of American protectionism from 1990 till Obama election see J. Kiwerska (2013), J. Stachura (2002).



trade area establishment with high developed country does not look suspicious, the same agreement with a much poorer partner requires higher responsibility from the EU. Alfredo C Robles conducting a research on the issue of EU-Mercosur and EU-Southern African Development Community (SADC) FTAs establishment concludes that increase of developing economies trade surpluses with the EU should be “at the very least” place (Robles, 2008, p. 194).<sup>8</sup> EU FDI stimulation in the region is seen by him as the main economical goal which fits to the European pro-development agenda. Such a view is deeply rooted in a wide public opinion that Europe is responsible for the world and should continue to perform a role of *Civilian Power* mentioned in the previous part of the paper. Otherwise “trade facilitation” (i.e. reducing the cost of trade through investment in infrastructure) was recognized as a main pillar of the Bali package in 2013. It means that WTO “regulatory frontrunners” themselves are consciousness of the great importance of FDI flows between regions. Though creation of the free trade areas with Mexico, Colombia and Peru, Morocco, Tunisia, Egypt, Jordan, SAR etc. and talks over FTA establishment with a long list of South-East Asian states (i.e. India and Indonesia) can be perceived as an active participation in increasing of the before cited “external competitiveness and economic growth.”

FTAs bargaining between high developed states, on its part, concerns another set of goals and instruments. Clear lucrative interests of stakeholders are commonly approved in the society and following preference granting logic does not apply to these agreements bargaining. While tariff lowering is a basic instrument of first type of FTAs, than Non-Tariff Barriers (NTBs) to trade elimination is an essential part of the second type of agreements. Authors of the Economic Impact of the FTA between EU and Korea Report agree that “NTBs play a crucial role in the effects of the EU-Korea FTA” (Decreux et al., 2010; *Opening*, 2013, p. 63). It is commonly agreed that NTBs breakthrough would bring 80% of the perceived benefits in case of TTIP signing. However such NTBs elimination should take into consideration developing countries. Too high standards could create unnecessary obstacles to international trade and deeper differences between particular regions. The issue of the international standards formulation arises at this point, however it goes far beyond the subject of this article (see for instance Das, 2003, p. 107–108).

So what is the CCP significance for the international trade regime? From the very beginning of European integration process EEC has been creating its own pattern for global changes. Liberal multilateral regime of economies has been playing a role of the main theoretical vision of the international market development. Basically general CCP evaluation gives an ambiguous answer. EU explicitly makes a distinction between its partners and executes a policy of double standards.<sup>9</sup> This attitude ignites certain accusations of foreign trade politicization. In spite of criticism and undefined character of Civilian Power Europe theory it perfectly fits to CCP role explanation in the international arena. Being the most *communautaire* European policy it applies preferences with certain conditions and amidst WTO impasse continues to build interdependent trade regime based on the regional agreements. EU certainly moves from the old general tariff lower-

<sup>8</sup> Analysts also agree that FDI flows could be both reduced and increased by FTA establishment between EU and third country. See *Ex-Post Assessment* (2011, p. 68).

<sup>9</sup> Bananas dispute was a good case study of the issue. See Bart (2014, p. 284).

ing towards creation of the international trade standards. That is why CCP perception as a “soft” economic power determines its strong leverage in negotiations.

#### 4. Toward Unification: TTIP Impact on World Trade

In the event that there is a successful conclusion and signature of the Transatlantic Trade and Investment Partnership, there will be an integration of the U.S. and EU markets. This accounts for half of the world's GDP. While the negative and positive direct quantitative effects of the agreement for the signatories have been widely described in various publications, the impact of TTIP to third countries is less clear. This is not however quite testament to its insignificance. Should there be a harmonization or mutual recognition of standards on both sides of the Atlantic, could this create a significant impact on a global scale?

##### 4.1. Quantitative estimations

Experts of the Centre for Economic Policy Research (CEPR) have estimated that TTIP impact on GDP for the EU and the U.S. will range between 0.2% and 0.5% for the less ambitious and ambitious scenarios respectively. Thus real per capita incomes have a chance to gain 0.27% (standard deviation is 0.13%) or 4.95% (deviation 1.58%) (Francois et al., 2013, p. 45). Analysts underline the fact that trade between partners will increase in both cases. This effect, however, would constitute only 20% of the Treaty impact on international market.

According to the European Commission “rough calculations” labour market may result in an increase by several million of new jobs related to exports in the EU (*Transatlantic*, 2013). Bertelsmann-IFO study prognoses 0.13% and above 0.5% employment rise for two scenarios, CEPR assessment is more optimistic and predict around 1.27% boost (Francois, 2013, p. 80; Heid et al., 2013, p. 36). Employment level changes in third countries are hard to assess. European Commission is rather optimistic on this point. Its main hypothesis poses that more growth and income in EU-US companies means more import from third economies (*Transatlantic*, 2013). This chain reaction involves new job creation also.

TTIP direct impact on third countries according to different reports basically seems to be scant. Bertelsmann study estimated that ambitious Treaty would rise average global per capita income by 3.27% (Heid et al., 2013, p. 43). Such an increase, however, would significantly differ in particular regions. BRICS, for instance, could face losses from 0.4% to 3.2% of GDP per capita (Heid et al., 2013, p. 42). Though one could say that TTIP nicknaming as an “economic NATO” has a real grounds but it is worth to notice that geopolitics is rather far from the CCP goals. Canada, Mexico, Norway, Turkey, South Atlantic countries and Japan in mid and long term can experience losses exceeding 5% of GDP (Wasinski, 2015, p. 2).<sup>10</sup> Nevertheless Low Income Countries

<sup>10</sup> Sub-heading “Western Allies May Feel Marginalized” is rather question than statement while author itself poses that it will take years for such a strong effect to be seen.

(LIC) risk to sustain the most dramatic losses from Transatlantic FTA establishment. Because of close traditional trade contacts with France and Belgium North and West African economies can lose from 1% to 7% of their real per capita incomes and from 2% to 4% in case of deep liberalization (Heid et al., 2013, s. 28). Hence scrupulous assessment of the TTIP influence on particular countries, regions and global trade as a whole became one of the main EU priorities in terms of “external competitiveness and economic growth” development goals.

Generally analysts are agree that TTIP accord based on the custom rates lowering only tends to have scant effects or even bring looses to global economy. Global interest to Transatlantic FTA has been reasoned by the expectations that it would bring something essentially new to the world trade. That is why the majority of publications concern a new standards bargaining which has an opportunity to change the pattern of current FTA agreements’.

#### *4.2. Spillover impact*

A huge number of the EU and the U.S. citizens are concerned that signing TTIP could result in the lowering of the existing standards in the areas of environmental protection, health, safety of workers and consumers. However the European Commissioner for Trade Cecilia Malmstrom has repeatedly emphasized that the discussions are rather about the opportunities to achieve mutual recognition than the necessarily the harmonization of standards. Mutual recognition of Sanitary and Phytosanitary (SPS) rules, Technical Barriers to Trade (TBT) or Technical Standards, for example, would be particularly beneficial for 43 Low Income Countries (LIC), for which the U.S. and EU are among their top ten trading partners. As the authors of the in-depth analysis of the possible impacts of TTIP on developing states noted “there is a great potential for simplification and cost-saving for third countries” (Manrique et al., 2015, p. 9). Some of the countries seem to manage current U.S. and EU rules effectively, and some less. Supposing that SPS, TBT and Technical Standards would be commonly agreed, movement towards these standards in the global market in the medium and even short term could be anticipated.

The question of including an Investor-State Dispute Settlement (ISDS) mechanism in TTIP is intensely discussed. The elaboration of clauses such as including a code of conduct for arbitrators, the “loser pays” principle, the mandatory transparency of the arbitration process, “only states can bring complaints” rule and establishment of an international investment court to replace bilateral schemes may be an example for new FTAs in the future. “The Economist” summed up the impact of the ISDS on state sovereignty as “the only power they are giving up is the right to behave badly” (*A Better*, 2014, p. 10).<sup>11</sup> Therefore the agreement on ISDS will make a huge contribution to the “standardization” of the instrument to new FTAs and global trade standards as a whole.

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<sup>11</sup> There are several opportunities of investor protection. They are well-described by the researchers. Nobel laureate in economics Joseph E. Stiglitz (2015), for instance, poses that insurance against this risk provided by the World Bank Group’s Multilateral Investment Guarantee Agency, and the United States’ Overseas Private Investment Corporation is more sovereignty-secure option.

Otherwise developing countries could face disadvantages compared to EU and U.S. investors if they are not covered by the investor protection provisions (Manrique et al., 2015, p. 9). Bearing in mind that different kinds of ISDS clause are already function in almost 3000 trade agreements over the world its inclusion in the biggest FTA accord seems logical.

In understanding the scale of the possible impact of TTIP on third countries, analysts suggest that, in short or medium term, the question of openness to new members or inclusion of an accession clause to the Agreement will arise (Mildner, 2013). The Congressional Research Service report for members and committees of the U.S. Congress clearly poses the question about the possibility of building an “open” or “living” agreement (Akhtar, 2014, p. 41). Commissioner Malmstrom has also spoken about the chances of “other countries to join existing EU FTAs, including TTIP”. There are, however, diametrically opposing views on this idea on the part of the experts. Patrick Messerlin (2015, p. 16) of the Centre for European Policy Studies argues that such a Preferential Trade Agreement (PTA) between the two largest world economies may be “a source of discriminations on an unprecedented scale” toward third countries. The negative impact would depend on the depth of the changes and the height of the protection of the signatories. It nonetheless remains a fact that negotiators and observers already today consider different variations of inclusion of third countries in the Agreement or the way they could adapt to its standards. Thus it is important to pay attention not only to the direct implications of the U.S. and EU preferences, but rather also to take into account the indirect spillover effect as long-term and systemic factor. Analysts of the United Kingdom Parliament have noted that “financial compensation to those countries is not the solution: instead, UK and EU Aid should be targeted to help them to be able to continue to compete for their export markets” (*Environmental*, 2015).

The willingness to take advantage of the strengths of TTIP is likely to cause a chain reaction in trade negotiations. In trying to enter U.S. and EU markets, the governments of third countries will be encouraged and even forced to raise their standards. Turkey, Canada and Mexico already have expressed their interest in joining the Agreement. Some even show TTIP as an opportunity “to upgrade” NAFTA. It should be also stressed that negotiations on the Trans Pacific Partnership (TPP) have been concluded and this will be one of the largest Preferential Trade Agreement (PTA) in the world. The new template based on common TTIP standards would be a significant precedent.

EU-U.S. FTA talks could be used as a particular case that reveals gaps in the CCP. Following TTIP talks France forced European Council to exclude from the European Commission’s mandate audiovisual contents. It referred to above mentioned art. 188c (4) of the Lisbon Treaty which requires unanimity to adopt agreements in the field of trade in cultural and audiovisual services. In October 2015, 19 EU members prohibited the cultivation of a group of genetically modified crops awaiting EU regulatory approval (Stearns, 2015). Therefore during bargaining some red lines were drawn for the Commission. While member states are unanimously agreed on the general pattern for TTIP bargaining, nevertheless some disputable issues indicate borders of the CCP competence on the one hand and exemplify a path of further policy coherence development. In the event that there is successful conclusion of TTIP talks a level of

its ratification (communautaire or by the national parliaments), for instance, would be an important precedent for CCP supranationalization. Hard TTIP bargaining, though, raise a lot of questions which help improve common trade policy.

Regardless of the geopolitical consequences of signing a far-reaching version of TTIP, the economic situation makes its successful conclusion an imperative. In this case, the U.S. and EU will shoulder the burden of being “regulatory frontrunners” (*Impact*, 2013, p. 31). Harmonization or mutual recognition of standards is likely to become the part of the work program for the development of world trade which is currently stuck in the WTO’s Doha Round. Therefore national and international business should expect a positive impetus for the global market from the closed door deliberations on TTIP.

“The Economist” notice, that the current FTA negotiation “may exhaust political capital that could be better spent on global efforts” sounds more like a question (*Canada*, 2013, p. 18). WTO frame comes across as more efficient and short path towards trade liberalization. EU, however, chose a tedious course of regional market integration. One could say that certain set of reasons enforced Europe to take such direction. Nevertheless these reasons did not influence U.S. trade policy alike. Exhausting bureaucratic bargaining is suitable for CCP which was creating the same way.

So why instead of WTO deadlock removing CCP pours oil in the flame? Using a historical retrospective attitude it could be suggested that further trade liberalization goes through partial regionalization. European regionalization of the 1950–60s could be taken as GATT countering nevertheless it created a global trade power which fostered international market. Therefore “spaghetti bowl” of regional and bilateral trade agreements is filling current WTO gap (*No more*, 2014, p. 10). EU turns out in the very centre of this global process.

## 5. Conclusion

After reading this paper CCP could seem to be too altruistic. High moral goals, fair trade, sustainable development, human rights defending are not commonly perceived as the political virtues. Certain prism, however, let us to understand significance of the EU foreign trade policy for the global market.

EU participation in the GATT/WTO and substantial vision of the international trade guided by the liberal doctrine is closely connected to the spillover approach. By influencing international trade Europe is exporting its values. Although profound commitment to preferential treatment of developing and least developed countries creates a field of instability. That is why low CCP politicization hypothesis posed in the paper correlates with high level of ambiguity and even inconsistency. Trying to create a homogenous system of world trade, EU faces a need of special treatment of some economies. Doubling of standards, therefore, inevitably takes on some characteristics of politicization.

TTIP bargaining is more than creation of the biggest FTA. Being “regulatory frontrunners” EU and U.S. are working on the issues that tend to be a pattern for the global market development. Though, ISDS, for instance, is not the matter of the particular

clause in the particular trade agreement, but search of the golden mean between FDI flow increase and preserving public order. TTIP talks in the context of further WTO regionalization, however, raise a lot of questions for the CCP and challenge its vision of the global trade regime. On the other side searching for the consensus between a waste numbers of actors seems to be an affordable goal for the well-know European bureaucrats.

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### Summary

The main aim of the paper involves evaluation of significance of the Common Commercial Policy (CCP) for the EU and understanding of its role in the global perspective. Transatlantic Trade and Investment Partnership (TTIP) bargaining is analysed through the prism of the CCP's formation history, objectives, achievements and unresolved issues. An important result of the research is the conclusion that European's/EU's attempts to provide depoliticized common trade policy collide with its objectives of values' exporting. Commitment to preferential treatment of developing and least developed countries creates a field of instability and endangerment of a double standards. Current EU-U.S. Free Trade Agreement talks remain a particular case that reveal gaps, but also achievements of the CCP and its role in the global trade. TTIP negotiations are a milestone in a process of the global trade standards elaboration. If exhausting bureaucratic bargaining looks uncomfortable for the U.S.' *realpolitik*, it perfectly suits to the CCP which was creating the same way.

**Key words:** CCP, EU-U.S. trade, trade standards, TTIP

### **Wspólna Polityka Handlowa Unii Europejskiej i jej znaczenie dla handlu światowego. Studium przypadku Transatlantyckiego Partnerstwa w dziedzinie Handlu i Inwestycji**

#### **Streszczenie**

Główny cel niniejszej pracy obejmuje ocenę znaczenia Wspólnej Polityki Handlowej (WPH) dla UE i zrozumienie jej roli w perspektywie globalnej. Pertraktacje w sprawie Transatlantyckiego Partnerstwa w dziedzinie Handlu i Inwestycji (TTIP) są analizowane przez pryzmat historii formacji, celów, osiągnięć i kwestii nierozwiązanych WPH. Ważnym wynikiem badania jest stwierdzenie, że Europejskie/Unijne próby prowadzenia odpolitycznionej wspólnej polityki handlowej kolidują z jej celami eksportu wartości. Zobowiązanie do preferencyjnego traktowania rozwijających się i najsłabiej rozwiniętych krajów stwarza pole niestabilności i zagrożenia podwójnych standardów. Aktualne rozmowy w sprawie strefy wolnego handlu pomiędzy EU i USA pozostają szczególnym przypadkiem, który ujawnia braki, ale także osiągnięcia WPH



i jej rolę w handlu światowym. Negocjacje TTIP są kamieniem milowym w procesie opracowania globalnych standardów handlowych. Jeżeli wyczerpujące biurokratyczne pertraktacje wyglądają niewygodnie dla *realpolitik* Stanów Zjednoczonych, to świetnie pasują do WPH, która była tworzona w ten sam sposób.

**Słowa kluczowe:** Wspólna Polityka Handlowa, handel UE-USA, standardy handlowe, TTIP