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1. Welcome Message by LAwTTIP coordinator

Dear reader,

Welcome to the forth issue of the Jean Monnet Network LAwTTIP Newsletter. Published twice a year, this Newsletter aims to present the research and training activities carried out by the LAwTTIP Network members, as well as their planned future events.

The Newsletter also includes insights and comments on major legal and judicial developments in the field of the EU Common Commercial Policy, as well as a selection of relevant publications and events promoted by other institutions.

Wishing you a Happy New Year,

Warm Regards,

Federico Casolari

2. Past Activities

UNIBO TTIPills Lecture

Bologna,
14 December 2018

On 14 December 2018, the International Research Centre on European Law (CIRDE) of the University of Bologna hosted **Christopher Vajda**, the UK Judge at the ECJ, who held a lecture on “**Achmea case and the Autonomy of EU law**”. Besides illustrating the main points risen in the *Achmea* judgement and the potential consequences for the intra-EU Bilateral Investment Treaties (BITs) still in force between EU Member States, it was also the occasion to discuss with the attendees about recent trends concerning the inclusion of investment chapters and ISDS within FTAs negotiated and concluded by the Union with third countries.



2nd KCL TTIPills Lecture Series Event 2018-2019

London,
11 December 2018

In collaboration with King's Forum on International Dispute Resolution, the Jean Monnet Network LAWTTIP organised the [second KCL TTIPills lecture](#) on the topical matter of the future of Investment Protection post Brexit. The lecture held by **Andrea K. Bjorklund**, a Full Professor and the L. Yves Fortier Chair in International Arbitration and International Commercial Law at McGill University Faculty of Law. The seminar, entitled “**Investment Protection in a Post-Brexit Era**”, also hosted as speakers Jean-Michel Marcoux, PhD in Law from the University of Victoria, Dr. Holger Hestermeyer, Shell Reader in International Dispute Resolution at KCL, and Professor Yarik Kryvoi, Senior Research Fellow in International Economic Law and Director of the [Investment Treaty Forum](#).

1st KCL TTIPills Lecture Series Event 2018-2019

London,
6 November 2018



The KCL Centre of European Law, in collaboration with the Jean Monnet Network LAWTTIP organised the [first KCL TTIPills lecture](#) for the a.y. 2018/2019. The seminar, entitled “**Investing in a ‘Minefield’? Shareholder Voting in Chinese Securities Markets**”, was held on the 6th November 2018 at King's College London by **Chao XI**, Professor of Law at Faculty of Law of the Chinese University of Hong Kong. It was the occasion to debate on the progressive EU-based investors' access to China's securities markets. Indeed, even though a stock trading link between the

London Stock Exchange and Shanghai Stock Exchange is set to be unveiled by the end of 2018, corporate governance experts have warned that the Chinese markets are a ‘potential minefield’. Of fundamental concern is the power of foreign investors to vote on the affairs of the Chinese firms in which they invest. This lecture was thus of value to Europe-based investors considering to avail themselves of the fresh investment opportunities in China's stock markets. It also helped securities regulators in Europe to gain a deeper and more sophisticated understanding of China's securities regulatory practice, so as to enable them to cooperate with their Chinese counterparts in a more effective manner.

1st LAWTTIP Young Researchers Workshop

London,
17-20 October 2018

The King's College London Centre of European Law hosted the **I LAWTTIP Young Researchers' Workshop “Beyond TTIP: A New Season for EU FTAs?”**. The [event](#),

which took place in London from 17 to 20 October 2018, gathered starting scholars together with experts and more experienced academics, discussing the most relevant legal perspectives flowing from the recent practice on EU FTAs. The first session, chaired by [Prof. Rapoport](#) from the University of Rennes I, was dedicated to analysing the different policies and fields regulated by this kind of agreements according to a horizontal perspective. The second and third panels, chaired by [Prof. Casolari](#) from the University of Bologna, focused on the evolution of ISDS and the current challenges related to dispute settlement in the field of investments as well as on the wider EU investment policy. The fourth and fifth sessions, chaired by [Prof. Bosse-Platière](#) from the University of Rennes I, addressed the major issues concerning EU trade and investment policies. The last one, under the guidance of [Prof. Tridimas](#), dealt with the different dispute settlement mechanisms set in the EU FTAs. The Workshop ended with an event organised by the **Young European Lawyers Network** on the consequences of Brexit. The panel, which included Dr Maria Laura Marceddu, Dr Simon Tans, and Dr Gabriele Gagliani, discussed the uncertainties arising out of Brexit in trade related fields: the future relations of the UK with the EU, the freedom of movement of workers, and the rules on intellectual property. A report of the conference is available [here](#). An executive summary of the Workshop will be soon published within the LAWTTIP webpage.



Professor Lucia Serena Rossi has been appointed judge of the ECJ

In July 2018 [Professor Lucia Serena Rossi](#), LAWTTIP Coordinator from September 2016, has been appointed judge of the European Court of Justice for the period from 7 October 2018 to 6 October 2024. She took the **oath** before the Court on 8 October 2018. [Here](#) the Press Release of the Court of justice concerning her entry into office. Professor **Federico Casolari** replaced Professor Rossi in the role of **Project Coordinator**.

3. Future Activities

III LAWTTIP Joint Conference

London,
21-22 March 2019

The **Centre of European Law** at King's College London, together with the International Research Centre on European Law of the University of Bologna and IODE - Institut de l'Ouest: Droit et Europe of the University of Rennes 1, is hosting the III LAWTTIP Joint Conference, which will be held in London on 21-22 March 2019. The Conference on “**EU Law, Trade**

Agreements, and Dispute Resolution Mechanisms: Contemporary Challenges” will focus on two themes: it will examine the role of the European Court of Justice in EU external relations, and also explore, on a comparative basis, dispute resolution systems in international trade law, including multilateral and bilateral treaties. The underlying theme of the conference will be dialogue among international and regional institutions as a tool to overcome fragmentation and implement the rule of law in the international economic relations of the EU. More specifically, the conference aims at contextualising the judicial system of the EU in the regime of protection of the rule of law and individual rights created by international trade and investment agreements. The aim is to stimulate a debate between speakers and participants on how regional/local systems of protection of rights – such as the EU – do not exist in vacuum but are necessarily part of an international network of protection. The **CJEU President Koen Lenaerts** will deliver the opening address. [Here](#) the **Call for Papers** (submission deadline: **10 February 2019**).

4. Major developments in the EU Common Commercial Policy

WTO reform: EU proposes way forward on the functioning of the Appellate Body

In response to the conclusions of the **European Council** of 28 June 2018, on 12 September 2018 the **European Commission** proposed a [Concept Paper](#) illustrating its comprehensive approach to improving the functioning of the WTO in crucial areas. Indeed, according to the document, the rules-based multilateral trading system - which is facing its deepest crisis since its inception - needs to move on a positive path and towards the **modernisation of the WTO**. On the basis of this commitment, on 26 November 2018, the EU together with other members of the WTO - Australia, Canada, China, Iceland, India, Korea, Mexico, New Zealand, Norway, Singapore and Switzerland – unveiled a [proposal](#) for concrete changes to overcome the current deadlock in the WTO Appellate Body. Indeed, while acknowledging the successful contribution of the **dispute settlement system** to the security and predictability of the multilateral trading system as well as the essential role of the **Appellate Body** in preserving the rights and obligations of the members under the covered agreements, the mentioned members called on all members to **fill the vacancies** on the Appellate Body and to **amend** certain provisions of the **Understanding on Rules and Procedures Governing the Settlement of Disputes** (“**DSU**”). In particular, the proposals include the necessity to set rules on the selection process, transitional rules for outgoing Appellate Body members as well as to ensure that appeal proceedings are finished on time in line with the 90-day timeframe set out in the WTO rules. Moreover, as of issues of law covered in the panel report, it is suggested to clarify that domestic legislation is not covered and that the Appellate Body should only address issues necessary to resolve the dispute. Finally, according to this proposal it would be worth introducing annual meetings between WTO members and the Appellate Body to discuss in an open way systemic issues or trends in jurisprudence. At the same time, the EU – alongside China and India – has also made proposals to reinforce the Appellate

Body's independence and impartiality and to improve its efficiency. These include having a single, longer term for Appellate Body members of 6 to 8 years, as well as increasing the number of members from 7 to 9 working full-time, to support the Appellate Body's capacity to deliver. The proposal was then officially presented at the [meeting](#) of the **WTO General Council** on **12 December 2018**.

Recent developments in the field of investments at EU level

On 19 July 2018, the European Commission published a [Communication](#) to the European Parliament and the Council of the European Union entitled "**Protection of Intra-EU Investment**". In this document, the Commission stresses its long-standing position that **intra-EU bilateral investment treaties** (BITs) are incompatible with EU law as highlighted by the ECJ's judgment in the *Achmea* case. The communication also recalls the most relevant substantive and procedural standards in EU law for cross-border investments within the EU in order to dispel any perception that, as a result of the *Achmea* judgment, EU law does not provide for adequate safeguards for intra-EU investors. The aim of the guidance recently adopted has been, according to the Commission, to support the business environment for EU investors, helping them to defend their rights before national administrations and courts and sustaining Member States to protect the public interest in accordance with EU law.

With regard to the **external dimension** of investments, as recognised in the European Commission reflection paper of 10 May 2017 on [Harnessing Globalisation](#), there are increasing concerns about foreign investors' strategic acquisitions of European companies with key technologies. These concerns called into question the capacity of the current regulatory framework to address them. On 14 September 2017 the Commission issued a [proposal](#) for a **Regulation establishing a framework for screening foreign direct investments** as part of the trade package presented in the 2017 President Juncker's State of the Union speech. On **20 November 2018**, the European Parliament, the Council and the Commission reached a **political agreement** on the Commission proposal aimed at creating a **cooperation mechanism** where Member States and the Commission will be able to exchange information and raise specific concerns; allowing the Commission to issue opinions in cases concerning several Member States, or when an investment could affect a project or programme of interest to the whole EU, such as Horizon 2020 or Galileo; encouraging international cooperation on investment screening policies, including sharing experience, best practices and information regarding investment trends; reaffirming that national security interests are the responsibility of Member States and that, therefore, it will not affect the Member States' ability to maintain their existing review mechanisms, to adopt new ones or to remain without such national mechanisms.

In parallel to this proposal, the Commission is completing a **detailed analysis** of the **foreign direct investment flows into the EU** and has set up a **coordination group** with Member States to help identify joint strategic concerns and solutions in the area of foreign direct investment.

Alongside these advances, in the field of investments the EU is leading the way towards the **multilateral reform of the investor-state-dispute-settlement** (ISDS) system. On 22 November 2018, the Belgian Minister for Foreign Affairs, Didier Reynders, hosted a High-Level Event attended among others by Commissioner Malmström, Anna Joubin Bret, the Secretary of the United Nations Commission on International Trade Law (UNCITRAL) and Meg Kinnear, the Secretary General of the International Centre for Settlement of Investment

Disputes (ICSID). In her [speech](#), Cecilia Malmström reported the progress made within the UNCITRAL for negotiating the agreement on the **Multilateral Investment Court**. From 29 October 2018 to 2 November 2018, the Working Group (WG) III of the UNCITRAL started the discussions on step II of the mandate, i.e. desirability of the reform, as per the [Secretariat's note](#). In April 2019 is expected the fourth [meeting](#) of the WG for concretely starting to find solutions to the ISDS reform.

EU Commission publishes the Second Annual Report on the implementation of Free Trade Agreements



On 31st October 2018, the EU Commission published the [second Annual Report](#) on the **implementation of free trade agreements**. The report covers 35 of the most economically significant EU trade agreements with 62 partners in effect in 2017. As the first report published in November 2017, the second Annual Report is meant to increase awareness and transparency on how the Commission implements free trade agreements, in line with the EU Commission's "[Trade for All](#)" Communication.

According to the report, the trend is particularly **positive** with regards to the "new generation" EU trade agreements. EU exports continue to grow, in particular for transport equipment like railways and tramways – registering a 108% increase vis-à-vis the previous period – or mineral fuels and oils (51% increase). In relation to agri-foods trade, EU exports under comprehensive trade agreements concluded after 2006 increased by 6.2%, a higher rate than EU agri-food exports overall (which increased by 5.1%). In particular, it deserves to be stressed that, as reported on 21 September 2018 on occasion of the [first anniversary](#) of the provisional entry into force of the Comprehensive Economic and Trade Agreement between the EU and Canada (**CETA**), the agreement is already starting to deliver for EU exporters. Specifically, machinery and mechanical appliances, which make up one fifth of EU exports to Canada, are up by over 8%. Pharmaceuticals, which account for 10% of the EU exports to Canada and are up by 10%. Other important EU exports are also on the rise: furniture by 10%, perfumes/cosmetics by 11%, footwear by 8% and clothing by 11%. In terms of agricultural products, there are also some encouraging figures: exports of fruit and nuts increased by 29%, chocolate by 34%, sparkling wine by 11% and whisky by 5%.

As regards **regulatory obstacles** to trade, EU trade agreements last year made it possible to open the Mexican market to European health products, while also opening the Chilean and Peruvian markets to some EU agri-food exports and paved the way for EU companies to bid in public tenders in Georgia, Moldova and Ukraine. When it comes to the promotion of EU standards and **sustainable development**, thanks to specific provisions in EU trade agreements, partners such as Canada and Mexico ratified International Labour Organisation Conventions last year, offering greater protection to workers.

This notwithstanding, the report also acknowledges that some **concrete problems** persist. It is still necessary, indeed, that partner countries improve in their institutional capacity to exercise control and surveillance on food safety and GIs protection as well as to suspend restrictive measures against EU exports. At the same time, the Commission recognises that EU exporters do not benefit from duty rebates as they have insufficient knowledge of the trade agreements or experience difficulties with the administrative procedures. The monitoring of

trade obstacles needs to be intensified together with Member States, both within the EU and in the rest of the world. The recently established **FTA Coordinators' Network** and the **Expert Group on Trade and Sustainable Development** are dedicated to the implementation of trade agreements and complement the work done in the **Trade Policy Committee** and the **Market Access Advisory Committee** to remove and prevent barriers to trade with non-EU - countries. Other initiatives include improving online tools such as the [Market Access Database](#) and the [Trade Helpdesk](#), and providing step-by-step guidance to businesses that want to make the most out of the recent EU trade agreements with Canada and Japan.

Update on major trade and investment negotiations between the EU and third countries

Over the last months a number of improvements have been made with regard to FTAs negotiations between the EU and third countries. On July 17, 2018, EC President Jean-Claude Juncker and Japanese Prime Minister Shinzo Abe signed the **Japan–European Union Economic Partnership Agreement (JEEPA)**. The [INTA Committee](#) gave greenlight on November 2018 and the European Commission now expects the agreement enters into force in early 2019. Given that investment protection and investor-State dispute settlement (ISDS) were left out of the JEEPA,



legal problems at the EU level and political opposition in EU Member States might be avoided. Even though not included in the JEEPA, investment continues to be negotiated between the two partners. On July 11, 2018, the chief negotiators of both partners acknowledged a “large degree of convergence on investment protection standards” but noted that certain positions still need to be reconciled, particularly regarding dispute settlement. Indeed, while the European Union is committed to advancing its Investment Court System (ICS) proposal, Japan is reportedly unwilling to agree.

On July, the Commission also published reports from the first rounds of trade negotiations with [Australia](#) and [New Zealand](#), as well as a set of EU text proposals covering 12 negotiating areas presented in the talks with Australia and proposals covering 11 negotiating areas presented to New Zealand. Officials from the EU and Australia met in Brussels from 2 to 6 July 2018 and the first round of EU-New Zealand FTA negotiations was held from 16 to 20 July 2018 in Brussels. Moreover, from 8 to 12 October 2018, the second round of negotiations with New Zealand took place in Wellington to bridge between both sides' positions in a number of areas.

Between August and September, **Gambia** and **Mauritania** signed the [Regional Economic Partnership Agreement \(EPA\)](#) between West Africa and the EU, signalling one essential step forward the adoption of the Agreement, which will be open after Nigeria's ratification. Economic Partnership Agreements (EPAs) are trade and development agreements negotiated between the EU and African, Caribbean and Pacific (ACP) partners engaged in regional economic integration processes. The EPA with West Africa covers goods and development cooperation, and also includes the possibility to hold further negotiations on sustainable development, services, investment and other trade-related issues in the future.

On September 2018, the 34th negotiating round between the teams of EU and **Mercosur** started in Montevideo, Uruguay. The EU is negotiating a trade deal with the four founding Mercosur States - Argentina, Brazil Paraguay and Uruguay - as part of a broader Association Agreement between the two regions. The goals of the new EU-Mercosur trade deal are to remove trade barriers and help EU firms – especially smaller ones – to export more products. Moreover, the agreement should strengthen people’s rights at work, foster higher environmental protection standards, encourage companies to act responsibly, and uphold high food safety standards, protect quality EU food and drink products from imitations. Since these negotiations were resumed in October 2016, the Commission has published a series of reports summarising the progress made during the negotiation rounds.

On 17 October 2018, the European Commission adopted the **EU-Vietnam trade and investment agreements**, the first step for their signature and conclusion. The EU-Vietnam Free Trade Agreement is intended to eliminate over 99% of all tariffs, and partly remove the rest through limited zero-duty quotas. The agreement also contains a chapter on sanitary and phytosanitary measures, to make trade in plant and animal products easier. Further, the FTA opens Vietnam’s public procurement market and commits Vietnam to a high level of protection that goes beyond the standards of WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement to protect EU innovations. Importantly, the EU-Vietnam FTA develops in the framework of the EU-Vietnam Partnership and Cooperation Agreement which allows measures considered as appropriate in the case of breaches of human rights, including the suspension of the Trade Agreement. It also includes a robust and comprehensive chapter on trade and sustainable development, with an extensive list of commitments. In terms of dispute settlement mechanisms, the trade mechanism set up in the FTA is faster and more compelling than the WTO system. As for the IPA, the EU-Vietnam agreement includes modern rules on investment protection enforceable through the new Investment Court System, which ensures that the right of the governments on both sides to regulate in the interest of their citizens is preserved. The Commission is now submitting to the Council the proposals for signature and conclusion of both agreements. Once authorised by the Council, the agreements will be signed and presented to the European Parliament for consent. Once the European Parliament has given its consent, the trade agreement can then be concluded by the Council and enter into force. The Investment Protection Agreement with Vietnam will be ratified by Member States according to their respective internal procedures.

On 22 October 2018, the EU and **Indonesia** completed the 6th round of negotiations for a Comprehensive Free Trade Agreement. The negotiations for a free trade agreement were officially launched on 18 July 2016. Of particular interest is still whether the Agreement will be divided in an Investment Protection Agreement and a Free Trade Agreement, analogously to Singapore and Vietnam. As in the case of the IPA with Vietnam, the Free Trade Agreement should also develop a key aspect of the overall relationship between the EU and Indonesia which is framed by the EU-Indonesia Partnership and Cooperation Agreement, entered into force on 1 May 2014. The next round of negotiations is planned for 11 to 15 March 2019 in Brussels.

Despite these and previous trade successes, as deeply reported on occasion of the **EU Trade Policy Day** held in Brussels on **27 November 2018**, the challenges continue to grow and the threats to the open-trading system to multiply. During the event organised by the European Commission, policy-makers and citizens have asked themselves many questions and seek answers and reassurances about the benefits of trade to all. How can Europe best tackle these challenges? Could it turn them into opportunities? Which fora are going to be the most relevant for enforcing rules and upholding a rules-based system? How can we ensure continued support for open trade in societies faced with rapid economic and social change, driven by the technological revolution? How far will a ‘Europe that protects’ by levelling the

playing field through fairer and more ethical trade win support for open markets? What does the evolving backdrop mean for EU trade policy as we prepare to transition to a new Commission and a new European Parliament? The registrations of the event are available [here](#).

5. Relevant publications

New publications (July - December 2018)

Monographs, collective works and book chapters

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6. News

Conference on “China’s ‘Authoritarian Advance’ and the Future of the EU-China Strategic Partnership”

London,
14 January 2019

Together, the EU and China make up a third of the global GDP and their relations encompass a regular annual summit and ministerial meetings as well as over 60 sectoral dialogues also on trade and investment issues. Moreover, 2018 marked the 15th anniversary of the adoption of the **EU-China Strategic Partnership**, as most recently expressed through the [EU-China 2020 Strategic Agenda for Cooperation](#), the highest-level joint document in EU-China relations. But where is this partnership heading to and to what extent are the power relations balanced between the two parties? The [event](#), organised in the framework of the 2018/2019 Debating Europe Seminar Series, will take place on 14 January 2019 at the **Queen Mary University of London**. The speaker, [Dr Matthieu Burnay](#), and the guests will aim to answer these and many more questions with the interactive involvement of the audience.

EFILA Annual Conference “The EU and the future of international investment law and arbitration”

London,
31 January 2019

With the entering into force of the Lisbon Treaty the EU has become a dynamic policy actor in international investment law and arbitration. In particular, within the context of the increasing public concerns against TTIP, BITs and ISDS, the European Commission has been active in reshaping the **investment law and arbitration landscape**, for example with the EU-Singapore and EU-Vietnam FTAs, which contain many new proposals such as the investment court system (ICS). Another area in which the increasing influence and interaction between investment law and EU law is particularly visible is the Energy Charter Treaty (ECT). The European Federation for Investment Law and Arbitration ([EFILA](#)) organises the 2019 Annual Conference to take stock of these developments by discussing the EU’s external investment policy generally, by focusing specifically on the EU’s approach towards Asia and by analysing the EU’s impact on the ECT. [Here](#) the detailed draft programme.

ESIL IG International Economic Law “Trade Agreements and the Rule of Law”

Göttingen,
3 April 2019

On the occasion of the [2019 ESIL Research Forum](#) on “The International Rule of Law and Domestic Dimensions: Synergies and Challenges” in Göttingen, 4-5 April 2019, the [ESIL International Economic Law Interest Group](#) and the Jean-Monnet Chair will jointly convene a [full day workshop](#), which will take place on Wednesday, April 3, 2019. The workshop will focus on **Trade Agreements and the Rule of Law** and will address two different topics. The first one on Preferential Trade Agreements will tackle the recent conclusion of a number of trade agreements, such as the ones of the European Union (*inter alia* CETA, EU-Singapore, EU-Japan), the successor agreement to NAFTA between Canada, Mexico and the United States (USMCA) and the Trans-Pacific Partnership (TPP-11), which urgently calls for an assessment with respect to their merits and their potential impact on the international trade order as such. The second one on the Rule of Law and International Economic Law will be devoted to explore the significance of the rule of law for international economic law and *vice versa* in the various areas of international economic law, including *inter alia* trade and investment law, the law of regional economic integration and intellectual property as well as to address issues such as access to justice, legal security, legitimacy and transparency.

Call for Papers - 2019 ESIL Annual Conference

Athens
12-14 September 2019

The [2019 ESIL Annual Conference](#) will take place in Athens on 12 -14 September 2019 and will be devoted to the theme “**Sovereignty: a concept in flux?**”. State sovereignty, both one of the fundamental principles as well as an underpinning of public international law, faces numerous challenges that call into question its basic contours. The time is ripe to revisit sovereignty, a concept so broad and yet instrumental to the current structure of the international legal order. The aim of the Conference is to encourage a vigorous and fruitful exchange of ideas that will appeal to academics, researchers, students, and practitioners. In keeping with ESIL tradition, the Conference will feature keynote speakers, a closing discussion round table, and six fora, exploring the normative, theoretical and practical aspects of sovereignty. In this vein, distinguished and leading scholars will shed light on the various aspects of contestation of statehood, attempt to paint the picture of modern sovereignty of States in financial matters, examine whether the judicialization of international dispute resolution is today threatened by new and/or traditional sovereignty conceptions, address the conceptual problems posed by cyberspace, and discuss current events and future challenges that relate to State sovereignty. In addition, twelve agorae will examine particular facets of sovereignty. Among the others, Agora VIII will have the theme “**Defending Sovereignty. Protectionism in International Trade and Investment**” and will focus on the challenges posed to the international legal order in the field of trade and investment by the adoption of protectionist policies as expression of traditional sovereignty. Agora speakers will be selected on the basis of abstracts submitted in response to the [call for papers](#) within **31 January 2019**.



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Jean Monnet Network LAWTTIP

Based on a consortium among the **International Research Centre on European Law of the University of Bologna**, the **Centre of European Law of the King's College London** and the **Institut de l'Ouest Droit et Europe of the University of Rennes 1**, the Jean Monnet Network **LAWTTIP – Legal Ambiguities withstanding TTIP** intends to promote a large-scale legal reflection of both the existing EU Free Trade Agreements of new generation and the ongoing negotiations on the Transatlantic Trade Investment Partnership (TTIP).

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