

Hungarian National Council for Sustainable Development (NFFT)

RESOLUTION

on negotiations of the Transatlantic Trade and Investment Partnership (TTIP)

Subject

1. THE subject of the present resolution is the free trade agreement between the European Union (EU) and the United States of America (US), the Transatlantic Trade and Investment Partnership agreement (*Transatlantic Trade and Investment Partnership*) – hereinafter TTIP – and the negotiation rounds in view of Hungary's long term sustainability goals.
2. The unavailability of the draft TTIP agreement at the current stage of the negotiations significantly restricts the elaboration of a detailed and final opinion in this resolution as only the publicly available negotiating documents and the statements of the parties provide guidance on the proposed content. However, the majority of key concerns about Hungary's regulatory sovereignty may be already clearly defined helping the identification of potential risks and threats.

Legal status of TTIP

3. TTIP must be defined as a mixed agreement in the European Union's international legal nomenclature allowing both the EU and the Member States to be parties to the agreement. Accordingly, the mandate given to the European Commission to negotiate the agreement has been unanimously adopted by the Council including representatives from all member states and may only be amended by unanimous consent. Adoption of the final text of the TTIP agreement will also require the Council's unanimous approval. The agreement also needs the European Parliament's consent, to be followed by ratification of each national parliament. Consequently, Hungary's Government will have right to veto TTIP as a whole at the conclusion of the negotiation process while the Hungarian Parliament will have the same right in the ratification process.

Current trade conditions between the European Union, Hungary and the United States

4. The European Union and the United States combined currently represent nearly 50% of the world's GDP, 30% of world trade in goods and 40% in world trade of services. The value of trade in goods and services is EUR 2.7 billion per day. The total worth of investments is nearly EUR 3 trillion. The negotiations will likely lead to the world's largest bilateral trade agreement.
5. The volume of trade between Hungary and the United States is relatively small at macro level for both countries. In 2014, exports to the US accounted for 3.5% of Hungary's total exports while imports from the US represented only 1.9% of Hungary's total imports. Meanwhile, the share of the American market has substantially grown in Hungarian exports in the last 6 years (it was only 2.3% in 2008) and the US relation accounts for over 25% of Hungary's total trade surplus.
6. Hungarian exports to the US typically consist of two types of goods ((1) processed products; (2) machinery and transport equipment) representing 95.3% of Hungarian exports. In summary, the assessment of the product structure shows that in trade between Hungary and the US both Hungarian exports and imports largely include intermediate products requiring further processing that are not sensitive to the reduction or elimination of customs tariffs nor to the removal of non-tariff barriers. These products are organically incorporated into the global production chain created by multinational companies and as such trade policy actions have little impact on them. Consumer goods that are considered to be demand and/or price sensitive products rarely feature in Hungarian-American trade.
7. Companies engaged in exports to the US are almost exclusively multinational companies with Hungarian operations and it is estimated that minimum 50% or rather 60% of Hungarian exports to the US (power generation equipment, turbines, office equipment, computers and computer parts, electronic, optical products, road vehicle parts, automobile electrical components) are manufactured and transported to the US by American companies operating in Hungary. Hungarian companies are mostly involved (indirectly) as suppliers in trade activities.
8. It is important to stress that customs duties are already very low in trade between Hungary and the United States. In May 2015, the average rate of effective customs duties levied on Hungarian exports in the US was 1.54% (weighted with 2014 year-end volumes). Although the rate of effective customs duties levied on American products in Hungary is slightly higher (2.64%), this difference is insignificant. The low significance of customs duties is reflected in the fact the Forint/Dollar exchange rate, another dominant factor in sales generated from trade, may fluctuate within a single day beyond the bounds of existing custom duties.

The impact of TTIP on trade between Hungary and the United States

9. The reduction or elimination of customs duties by TTIP is expected to have the most important impact on direct Hungarian and American trade relations including an estimated 17% export growth in chemical products and processed goods calculated against the baseline scenario by economic models. Export in machinery and transport equipment is expected to grow by 0.5% while export in other processed goods is likely to be increased by 6%. In total, direct trade between Hungary and the US may expand by 3.2% against the baseline scenario. Economic models show a simultaneous rise of 0.3% in imports. In indirect relations (arising from intensified foreign trade relations between Hungary and the US), modelling projects an additional rise of 0.5% in exports and 0.7% in imports.
10. The reduction of non-tariff barriers is expected to lead to larger increases than the cutting or scrapping of customs duties. Forecasts suggest that removal of only 25% of the non-tariff barriers in bilateral trade could contribute to an increase of 5.6% in exports and 0.6% in imports between Hungary and the USA. The elimination of these non-tariff barriers could primarily serve the interests of pharmaceutical companies where companies with a Hungarian ownership could also greatly benefit from the agreement.
11. TTIP is projected to have an insignificant macroeconomic impact on the Hungarian economy. Trade between Hungary and the US has substantially expanded in recent years without TTIP. The agreement is not expected to trigger major changes in the volume and structure of these trade relations. Nevertheless, certain sectors, including some innovative Hungarian companies and pharmaceutical, machinery and road vehicle manufacturing companies in particular, could benefit from the agreement.
12. It is important to note that while benefits from the expected intensification of trade between Hungary and the US will be asymmetrically divided among the various sectors, economic models do not project the TTIP to have severely negative impacts on any of the industries affected. However, in areas including the agricultural sector where agricultural interest groups have raised concerns about the intensification of trade, further and more detailed analyses and a more precise forecast on impacts on public good is required.

The assumed impact of TTIP on European and Hungarian public policy achievements

13. The breadth and the mechanisms of health, environmental, consumer and labour protection regulations of the European Union and the US are largely comparable despite the broad European public perception that EU rules are much more rigorous than those of the US. Empirical studies show that with a few exceptions (GMO, growth hormones, weapon possession) American regulations provide at least the same level of public protection in than the achievements of the European Union and in many instances they represent an

even higher level. Consequently, there is no general unilateral deregulation pressure. Moreover, the regulations of the two regions for high level protection have robust historical and political backgrounds that reflect particular paths of societal development and are frequently the crucial imprints of social shocks and conflicts leading to the adoption of specific legal norms. Consequently, the large scale reduction of these regulations or even their mutual recognition as equal would pose very serious political challenges.

14. These political challenges are clearly reflected by the EU's available negotiation documents and the experience gained from the negotiations until today. Negotiating documents and practice suggest a low level of commitment towards the breakdown of non-tariff barriers. The starting point of these negotiations have been the commitment to the EU's and the US's respective regulatory autonomy. The parties are seemingly more focused on protecting their own regulatory approach and existing rules (in other words areas where they are NOT going to allow convergence) than on the issues where they seek real convergence. Based on the current negotiating position, the EU refuses to lift the effective EU ban on various products (GMOs, chemicals, hormone-treated beef etc.) that are produced in compliance with American (e.g. food security, animal and plant health) regulations strongly criticised in Europe. I.e., the EU will not reduce protection levels reflected in EU regulations. The stability of protection regimes and TTIP's weak import boosting effect are expected to prevent a significant increase of environmentally harmful or hazardous products in Hungary as a result of the agreement.

It is essential for the Hungarian Government to monitor the progress of the negotiations and to express its insistence on the maintenance of this negotiating position.

15. A large scale regulation convergence action faces considerable constitutional procedure and institutional barriers. Both regions have very complex legislative mechanisms in place whereby the amendment of laws and regulations to be reviewed under the TTIP would be done in a complicated division of competences between federal/supranational level and the federal states/member states and would require complex cooperation procedures. In the European Union, these competences and procedures are regulated by the treaties establishing the EU whose amendment is not permitted by the TTIP under the EU's constitutional system.
16. TTIP's future provisions on market access are not and may not be applicable to public services. TTIP will not require their privatisation either. Therefore, governments' powers to uphold existing and to introduce new state monopolies in areas of healthcare, social and other, typically not-for-profit business services benefiting the general public. TTIP will not require to provide US companies with national treatment and market access (granted to EU companies). Finally, the control of these services will remain unchanged as at present (Hungary and all the other member states will continue to have the same rights to regulate the authorisation procedures for public services and the requirements for service providers regarding human and other resources, etc.).

17. Unless the negotiations take an unexpected turn, TTIP will not undermine the EU's important health, environment, consumer and labour protection achievements including the precautionary principle, the risk assessment and registration of chemical substances, the restrictions on genetically modified organisms and the import ban on beef from growth hormone treated cattle and chicken disinfected with chlorine dioxide. These issues are either not included in ongoing negotiations or the EU's negotiating position *expressis verbis* specifies the preservation of the existing regulation approach and the present protection levels.

This is another area where it is essential for the Hungarian Government to monitor the progress of the negotiations and to express its insistence on the maintenance of this negotiating position.

18. Despite the above, certain institutional solutions may emerge in the course of the TTIP negotiations that raise serious concerns. Such solutions may eventually limit the ability of the member states to monitor the preparation of joint decisions the EU and the US and thus may give the US a privileged consultative role in the development of EU laws, a means of undue influence. These are the following:

- *TTIP's annexes and the related amendment procedure*: it is important for TTIP's critical provisions on sustainability to be incorporated into the body of the agreement itself, rather than the annexes that can be amended through a simplified mechanism.
- *Member state engagement in the regulatory cooperation body*: under TTIP a Regulatory Cooperation Council to be established between the EU and the US mandated to promote – in an advisory function – regulatory convergence. The current EU proposal fails to clearly ensure the right for the representatives of all member states to be involved in the work of the planned regulatory cooperation body. TTIP's final text must expressly include this.
- *The relation between regulatory cooperation and the dispute settlement mechanism*: it is important that legislative cooperation that is predominantly of political nature should not be included in the dispute settlement mechanisms (i.e. should not be legally enforceable) and that this is to be expressly set forth in TTIP's final text.
- *Regulatory cooperation regarding proposed legislation of member states*: the EU proposal would allow the EU to hold consultations over certain planned legislation of American federal states. It would provide the same opportunity to the American administration in relation to planned legislation of EU member states. It must be ascertained in the negotiations that national government engagement in the consultations is voluntary and not legally enforceable (the current text includes indications in that regard). It should also be made clear that the European Commission will only act as an interlocutor in the consultation process and will have no

right to negotiate on behalf of the government proposing any specific legislation.

- *Timing of consultation with the US:* based on the EU proposal, the Commission would consult with the American party before the formal adoption of the draft legislation (i.e. before it is submitted to the Council and the European Parliament). Substantial consultations with the US by the Commission while the draft legislation is being drawn up may give the US administration precedence over EU member states and other stakeholders.

The Hungarian National Council for Sustainable Development (NFFT) calls upon the Hungarian Government to promote and insure the adoption of the above described proposals adjusting the starting positions originally determined during the negotiations.

Investor State Dispute Settlement (ISDS)

19. The dispute settlement between investors and states is one of the most contentious points of TTIP. A satisfactory resolution of this issue may be the key to the adoption of the entire agreement. In the present phase of TTIP negotiations no written proposals on investment protection provisions and on investor state dispute settlements are available and this chapter is currently not on the agenda. Parties are expected to decide upon the conclusion of the negotiation process whether TTIP should regulate investment protection including ISDS. TTIP could be adopted without this chapter.
20. ISDS has generated a number of decisions causing solid dissatisfaction that are predominantly the results of severe systemic deficiencies of arbitration. The following points of criticism against ISDS are believed to be duly justified:
 - *Lack of rationale for ISDS:* it is unnecessary to provide for a mechanism to refer investment related legal disputes to arbitration between parties with highly developed and robust legal systems. The ordinary justice system of the parties to the agreement provides the appropriate forum for the resolution of such disputes.
 - *Possibility to exert pressure on the legislator:* foreign investors threatening to sue for damages may attempt to prevent the state from adopting regulations to benefit the public, e.g. in the area of environmental protection, healthcare and food security. Although the court of arbitration is only authorised to require the payment of damages and has no right to make the contested provision null and void, the threatened action for damages and claims of significant amounts of damages may have a chilling effect on governments.
 - *Unilateral benefits for foreign investors:* ISDS provides extra privileges to foreign investors domestic companies do not enjoy. In turn, ISDS does not impose any obligations on foreign investors. Due to the high costs of legal

proceedings, almost only the largest multinational companies have access to ISDS and it is unrealistic to expect any benefits for the SME sector from extra legal protection.

- *Lack of fundamental procedural guarantees:* certain fundamental procedural guarantees are not applied in arbitration. The proceedings are confidential, there is no possibility for appeal, uniform interpretation of the agreement and the impartiality of arbitrators is not ensured. Unjustified lawsuits may be encouraged by the current system whereby only the state may be required to pay damages as a result of the proceedings, the foreign investor can only lose the costs of the lawsuit (i.e. speculative lawsuits cannot be sanctioned).
 - *Theoretical possibility of dual compensation:* with regard to the independence of arbitration from national legal systems, unless otherwise specified by investment protection agreements, it is possible that an investor sues for damages in the same dispute in the national court and the court of arbitration as well.
21. In its present form, ISDS presents substantive legal and financial risk for Hungary, opening an avenue to exert undue political influence on legislators and could lead to the erosion of our social and economic national capital in terms of sustainability. Although the European Commission links its support for ISDS's introduction to a significant reform of this scheme, such reform has not yet been clearly defined and it is currently unknown which reform proposals the US could agree to under TTIP. Therefore, NFFT calls upon the Government to insist on the exclusion of ISDS and to consistently communicate its position to EU negotiators.

Environmental, global impacts

22. While trade is typically known to contribute to the increase of social welfare, transport necessary for trade activities leads to a reduction in social welfare due to its significant external economic impacts and environmental pollution effects. Economies desiring to benefit from trade may also suffer from excessive specialisation possibly leading to unilateral dependence on a harmful scale on a specific industry (e.g. vehicle industry) or to the reduction of ecological or cultural diversity, variety as a result of an excessive expansion of a specific production method (e.g. establishment and maintenance of large monocultures in agriculture).
- Consequently, adequate domestic economic policy control and the introduction of regulatory means to incorporate external economic impacts is required. It would also be indispensable to introduce regulations simultaneously with TTIP for the whole of the EU and the US in order to facilitate the reduction of global environmental impacts, e.g. greenhouse gases generated by transport, to an efficient level.
23. The impacts of the planned bilateral agreement on third countries, in particular on the implementation of the UN Sustainable Development Goals,

also need to be assessed. Special attention must be paid to Goal 10 aiming to reduce inequality among countries and targets 17.10–17.12 regarding trade.

24. In general, actions to boost economic activity only serve the public benefit if the method of the economic activity adapts simultaneously and trade also promotes the transition toward a society that is resource efficient, lives within its own ecological means, has institutions supporting the prevention of sustained inequalities causing exclusion and pursues sustainable patterns of production and consumption.

Summary, final recommendations

25. Hungary has a natural interest in further expanding the presently low volume of Hungarian exports to the US as it significantly supports our positive trade balance, in particular if TTIP promotes the increase of export opportunities for SMEs, innovative Hungarian businesses, predominantly in the chemical and pharmaceutical industries. Based on the current status of the negotiations, TTIP is not expected to cause a substantial rise in American imports to Hungary or to generate significant losses in any of Hungary's economic sectors.
26. The Hungarian National Council for Sustainable Development (NFFT) acknowledges the European Union's commitment to concluding TTIP but upholds the position that the adoption of the agreement is unacceptable and is harmful for the public good until
 - a. it is made clear that it will be classified as a mixed agreement in the EU's international legal acts;
 - b. it is ensured that further cuts and scrapping of customs duties is not accompanied by the removal of non-tariff barriers that could substantially reduce or damage the EU and Hungary's established and proven protection level serving the public good (the quality of regulations regarding the quality of products and services, healthcare, labour protection, consumer protection, environmental protection etc.) and do not have an impact on the regulation of public services;
 - c. the institutional solutions raising concerns described in point 18 in the present resolution are resolved in the future phases of the negotiations;
 - d. the application of ISDS is excluded, i.e. the agreement to be signed does not include special dispute settlement procedural rules, any form of such rules is disregarded by the parties;
 - e. broad publicity of the negotiations is ensured and opportunities for information and participation are granted to the society;
 - f. efficient control of the adverse impacts of trade growth, in particular environmental pollution caused by transportation, is ensured simultaneously with the TTIP negotiations;
 - g. harmony between TTIP and the UN's Sustainable Development Goals is ensured.

27. The Council declares that the proposals described in the present resolution regarding the requirements for negotiations between the EU and the USA are applicable and should be applied to all agreements soon to be adopted (e.g. the CETA agreement between the EU and Canada) or to be initiated at any later date with other partners.
28. NFFT calls upon the Hungarian Government to constantly monitor the inclusion of conditions serving the public good and long term aspects in the negotiation process and to inform the general public on the status of the negotiations on a regular basis.

Budapest, 3 December 2015