# TTIP and Norway: Impact and trade policy options

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A study by NUPI in cooperation with Ifo-Munich, NIBIO, Menon and lawyers at the Center for European Law, University of Oslo.

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This report is also available in Norwegian, with the title *TTIP og Norge: Virkninger og handlingsvalg.*

### Note: The complete English version of the report will be published before 20 November 2016. This version includes the abstract and summary.

# TTIP project: Other publications

### In addition to this report, the following papers are available:

Alvik, I., T. Bekkedal & C. Hillion: Norges plass i partnerskapet mellom EU og USA – institusjonelle og regulatoriske aspekter. Includes (I) Norsk deltakelse i handels-partnerskapet mellom EU og USA; and (II) II: Investeringsbeskyttelse og investor-stat tvisteløsning i TTIP – implikasjoner for Norge.

Felbermayr, G., R. Aichele, I. Heiland, M. Steininger: TTIP: Potential Effects on Norway. ifo Working Paper 228.\*)

Grünfeld L. & M. G. Theie, 2016, Hvordan vil TTIP påvirke handel og investeringer i tjenestesektoren? Menon-rapport nr. 57/2016.

Melchior, A.: TTIP and Third Countries: The Role of Trade Policy Spillovers.

Mittenzwei, K.: TTIP, jordbruk og matindustri: Modellbasert konsekvensanalyse av norske veivalg. NIBIO Rapport 2/111.\*)

NUPI: TTIP and Norway – technical material and supplementary data.

Veggeland, F.: TTIP – regulatory cooperation on food and health.

Note: Publications marked \*) will be available on 2 November 2016 and the other ones follow before 15 November.

# Preface

This report is written as part of a project funded by the Norwegian Ministry of Trade, Industry and Fisheries during 2016. The project has been undertaken by a consortium with the following partners:

|  |  |  |
| --- | --- | --- |
| Partner | Themes | Participants |
| NUPI | Project management, and economic, institutional and legal issues | Christophe Hillion, Hege Medin, *Arne Melchior*, Ulf Sverdrup |
| IFO, Munchen | Economic model analysis | *Gabriel Felbermayr* , Rahel Aichele, Inga Heiland, Marina Steininger |
| NIBIO | Analysis of agriculture and the food industry and re3gulatory cooperation | *Klaus Mittenzwei*, Ivar Pettersen, Frode Veggeland |
| Menon | Services trade | *Leo A. Grünfeld* and Marcus Gjems Theie |
| Lawyers at the Universitety of Oslo | Legal aspects | Ivar Alvik,Tarjei Bekkedal |

Arne Melchior ([am@nupi.no](mailto:am@nupi.no)) has been project manager and is main contact person for the project. Contact persons at the other institutions are written in italics in the table.

For the project, there has been an inter-ministerial reference group with representatives from several ministries. The consortium had a start-up meeting with the reference group 4 April 2016. Another meeting was held 20 September 2016 for the project mid-term review. We thank the reference group for useful feedback and information.

In the course of the project, a number of persons have contributed with valuable information for the project. A number of persons have been involved via e-mail, meetings, telephone or Skype conversations, or interviews. We thank all these for their time and valuable inputs. Appendix A presents a list of persons.

We thank the Ministry for the financial support to the project and also for excellent cooperation along the way, with communication, feedback and facilitation of information but without compromising the independence of the project. As usual, the responsibility for the text, including all views expressed as well as any remaining errors, stays with the authors.

Oslo, 31 October 2016.

Arne Melchior

Project Manager

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# Abstract

This study analyzes the TTIP agreement, its implications for Norway and Norway’s trade policy choices. TTIP will hardly be concluded under Obama's presidency, but the agreement could become a reality within a few years. TTIP aims at comprehensive cooperation in the regulatory area. In the short term there will be limited harmonization of standards but regulatory cooperation between different systems. In the long term, the goal is stronger cooperation in the regulatory area. TTIP will from what we know does not lead to a lowering of European health regulations or a "race to the bottom".

If TTIP is realized and Norway remains outside, the EEA Agreement will be little affected and the overall economic impact is moderate. If Norway joins TTIP, will be a significant real income gain, with estimates ranging from 2236 to 6772 NOK per capita in the various scenarios. There is considerable variation across sectors. Outside TTIP there will be a moderate negative impact for a majority of the sectors, especially some industrial industries that face tougher competition in the EU and USA export markets. The oil industry will gain from increased demand and higher price. If Norway joins TTIP, a clear majority of industries will benefit; especially business services and a number of other service industries. The public sector gains from TTIP due to cheaper inputs.

TTIP will contribute to the dismantling of import protection for Norwegian agriculture and without compensating measures, production and employment will be reduced. TTIP will still allow some import protection and this margin of maneuver is important for the outcome. This depends on future negotiations. With a greater margin of maneuver and unchanged budget support most Norwegian agriculture can be maintained. With less margin of maneuver it will be more demanding.

Norwegian accession to TTIP may occur by means of a standard trade agreement in which Norway or EFTA are formally equal to the EU and the United States. Alternatively Norway may participate in a European pillar in the same way as in today's "Open Skies" agreement on air traffic. If TTIP succeeds in establishing comprehensive regulatory cooperation, the latter solution is most likely. Such a solution implies that Norway will become more closely integrated with the European Union also in trade policy towards third countries.

Norwegian entry into TTIP implies that we have to accept the established rules and negotiate bilaterally with the EU and the USA on market access. The negotiations with the USA will apply to all aspects of market access, while the negotiations with the EU will apply only to areas in which the EEA agreement is not already deeper. The negotiations with the EU for entry into TTIP will thus include, among other issues, tariffs for seafood and agriculture.

Alternatively to the membership in TTIP, Norway or EFTA may initiate a trade agreement with the United States only. Such an agreement would probably be less extensive in the regulatory area. Such an agreement will also provide an economic gain for Norway, but less than accession to TTIP. For Norway as a whole, accession to TTIP creates an increase in real income between 12.5 and 35 billion NOK according to various scenarios, while a free trade agreement with the United States results in a gain of about 7.4 billion NOK.

 In TTIP there are also negotiations on so-called Investor-State Dispute Settlement (ISDS), whereby foreign owned companies can sue a State if they are unfairly or inappropriately treated. Such rights also exist in national law but international tribunals have to some extent extended the interpretation of what is considered unfair. The European Union has proposed a solution in TTIP with a permanent court as well as the rules that discipline the interpretation of the principles, and thus avoids that ISDS unduly interferes into the states’ "right to regulate". This and many other issues are analysed in this report and the seven background papers from the project.

# Summary and implications

At the time of writing (late October 2016), TTIP negotiations proceed with determination and gradual progress in spite of some rumours to the opposite. Some politicians in the EU and the USA have voiced opposition to TTIP but they are yet in a minority. But TTIP has not been concluded and this is unlikely to happen under Obama. A favourable scenario for TTIP is that (i) TPP is ratified in the USA and CETA in Europe; (ii) a new U.S. president is elected that supports TTIP; (iii) there is a natural pause while a new administration takes over in the USA and important elections are carried out in Europe i 20; (iv) TTIP negotiations proceed, negotiations are successfully concluded in 2018 and the agreement is implemented after 18 months of ratification. There are hurdles on this path but it is possible.

TTIP raises a number of broader issues about international economic integration in general, and about Norway’s trade policy in particular. These issues are relevant and important no matter how long it takes with TTIP and this study provides new facts, analysis and insight in a number of these areas.

Some of the issues studied are politically controversial, such as agricultural liberalization, food and health regulation, investor-state dispute settlement, Norway’s relationship with the EU and so on. By focusing on methods and facts, we address the issues without going into politics. Our aim is that the study will be useful across the political landscape. Our study is research and not a committee report, and we have commented but not voted on the drafts.

For international trade policy, TTIP is a signal that the major actors of the world economy have ”gone bilateral”. A few years ago that would be impossible since they would fear that the WTO would be undermined. The WTO remains important but major reforms are more difficult with 164 members so many of these may have to be promoted outside the WTO. Will TTIP take the lead and create global standards that are followed by others? Can global trade reforms be developed within a ”spaghetti bowl” of bilaterals or should this be done in ”plurilateral” agreements with more participants? TTIP is also a test case for regulatory cooperation across continents with different regulatory systems. Will they succeed in bridging the gap or are differences between their approaches too large?

### Norway: Trade policy challenges

In post-war trade politics, Norway was in the rich man’s club and in the past always near the ”top of the table” at the GATT/WTO and in Europe, but with TTIP we are on the waiting list. Beyond the EEA, Norway has obtained many free trade agreements via EFTA, but we are missing agreements with many of the largest countries outside the EEA. There are various reasons underlying this fact.

* To some extent it is because we are a small country and an open market in most areas so the economic interest or need of other parties may be limited. So when Japan was afraid of free trade in fishery products some years ago, it was sufficient to conclude that they were not interested in an FTA with Norway.
* Some countries have an interest in agricultural exports and unless Norway or EFTA are willing to open their markets, these trade partners would not be interested in agreements. This is likely to be the case for the USA, it applies to Mercosur – in particular Brazil, and in the past Australia and New Zealand have declined invitations to negotiate agreements with EFTA for such reasons.
* TTIP also raises issues about how Norway and EFTA should engage in regulatory cooperation with countries beyond the EEA. We hardly have the power to set the rules. Should we ”piggyback” on the EU or is there a solution with plurilateral agreements where everyone is equal?

In the project, we examine all these issues with an inter-disciplinary team covering economics, political science and law. We examine the economic effects, the institutions and the political economy, and the legal dimensions. This report is partly based on the seven background studies published in parallel (see cover page 2), and partly contains new material on issues that are not covered by these background studies. Several paragraphs and chapters are based on inputs from authors other than the editor of this report, and their names are indicated in the table of contents, and in footnotes for sub-paragraphs.

### TTIP: Norway’s options

The ambition of TTIP is a comprehensive trade and investment partnership that does not only include traditional market access issues but where regulatory cooperation across the Atlantic is a main component. We do not yet know to what extent the parties will succeed in this endeavour, but we use other recent trade agreements such as TPP and CETA as yardsticks and combined with available information on TTIP we see the contours of TTIP. According to this, there will be limited harmonization of standards and regulations in TTIP in the short run, but less demanding forms of cooperation such as exchange of information and mutual recognition agreements (MRAs) on product testing and approval methods. This will be combined with institutions to promote regulatory convergence in the future, including more harmonization of standards.

The EU has suggested that it will be an open agreement where third countries may accede, provided that they live up to the standards. The modalities of accession are however not known but we examine this in the light of other agreements and relevant information (Chapter 3). If TTIP succeeds, Norway or EFTA faces the options shown in Table S.1.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table S.1: Norway’s options if TTIP has been established** | | | | |
|  | TTIP with Norway outside | TTIP accession – the TPP model | TTIP accession – the Open Skies model | EFTA agreement with the USA |
| Negotiations with the EU | No | Yes, on aspects where TTIP supersedes the EEA | Yes, on aspects where TTIP supersedes the EEA | No |
| Negotiations with the USA | No | Yes, all aspects | Yes, all aspects | Yes |
| Impact on the EEA | Conformity assessment, some standards | Especially food sectors | Food sectors and new trade policy approach | Domino effect in agriculture |
| Depth of agreement | Norway not in | Deep | Deeper | Intermediate |
| Constitutional issues | Limited | Limited | Ceding more authority to the EU | Limited |

If Norway chooses to remain outside TTIP, there will be a limited impact on instoitutions. Some TTIP standards may enter the EEA as new legislation, but with limited harmonization this will be limited. If there is more regulatory convergence in TTIP over time, this will be a more important issue. Due to provisions in the EEA agreement, Norway/EFTA will also be affected by US-EU agreements on conformity assessment (on product testing and the like, see chapters 3 and 7).

Accession to TTIP may happen in two ways; either as a standard inter-governmental trade agreement such as EFTA’s recent agreements. TPP is also an intergovernmental agreement where all participants have an equal seat at the table.[[1]](#footnote-1) Alternatively, TTIP accession could be made according to the ”Open Skies” model where the EU and the USA entered into an agreement first, and then Norway and Iceland joined later and are to be treated “as though they were Member States” of the EU. The EU should according to the agreement “take adequate measures to ensure full participation of Iceland and Norway in any coordination, consultation or decision shaping meetings with the Member States”. Hence the Open Skies model is a two-pillar construction were Norway is part of the European pillar, and cede to the EU the authority to make trade arrangements with third countries. With the intergovernmental set-up, EFTA would have an equal seat at the table along with the EU and the USA. This model is more likely for a trade agreement with limited ambition on regulatory cooperation. For a deeper and more dynamic agreement, it is less likely that the TTIPs would accept EFTA or Norway as an equal among three. Based on past experience, Switzerland would go for the inter-governmental set-up and hardly accept the Open Skies solution (unless they change practices). In terms of institutions and legal aspects, the intergovernmental agreement approach raises no difficult issues but the Open Skies approach could add another element to the well-known dilemma of autonomy and influence in the EEA. With the Open Skies solution, Norway would be more integrated with the EU also in relations to third countries.

With TTIP accession, Norway/EFTA would have to accept some established rules, but there would be bilateral negotiations about market access and perhaps also some rules where national differentiation is possible. Negotiations would cover the whole range of market access issues with the USA, but with the EU negotiations would cover only aspects where the EEA is not deeper than TTIP. Hence the negotiations with the EU would surely include tariffs for agriculture and seafood.

Contrary to TTIP accession, an FTA between EFTA and the USA would not include negotiations with the EU but only with the USA. Another difference is that there would be no established set of rules that has to be accepted so negotiations start more ”from scratch”. Such an agreement would be purely intergovernmental and like a standard modern FTA, so there would be no institutional problem for EFTA including Switzerland to accede. If TTIP succeed in depth and regulatory convergence, it would be difficult under this option to maintain ”parallelism” with TTIP.

### TTIP and Norway: Results from a world economy model

In Chapter 4, we examine the economic impact for Norway of the different options, based on Felbermayr et. al. (2016). This is to our knowledge the first study that has been undertaken with a world economy model and focusing specifically on the trade policies of Norway. With 140 countries and 57 sectors, the model is suited to examine the impact for Norway and EFTA in a global landscape. The model is based on a modern approach where some estimates (named ”top-down”) are based on empirical assessment of the impact of deep and shallow trade agreements in the past. In addition, we run ”bottom-up” scenarios where we make realistic assumptions about the reductions in tariffs and non-tariff barriers in TTIP and related agreements, building on available information.

Using a global trade model of this kind, we may capture a range of economic effects:

* We address the standard ”trade creation” and ”trade diversion” effects when trade barriers are reduced, relative prices are altered and this affects trade flows and production. For example, if Norway remains outside TTIP our export industries face tougher competition from the USA in Europe, and from the EU in the USA (trade diversion).
* Second, the model simulations capture overall demand effects from TTIP, that turn out to be very important. If TTIP stimulates growth in the EU and the USA, it has a positive effect even on Norway’s oil sector.
* Third, the model captures the role of global value chains; e.g. if TTIP increases trade in cars between the EU and the USA, it may affect Norway directly if the cars are carried by Norwegian ships. Such effects turn out to very important for the results – even the public sector gains from cheaper inputs. The analysis of value chains also implies that we measure the impact of trade policy on value added, and not only on gross trade and production. This is important because in many industries, inputs represent a high share of the gross value of production.

In some former studies of TTIP, the results for third countries were strongly affected by assumptions about so-called trade policy spillovers; i.e. that trade cost reductions within TTIP also applied in some way or other to third countries. This tended to make the outcome for third countries more positive. In the project, we include but tone down the role of such spillovers since their empirical foundation is mixed (see Melchior 2016 for a discussion). On the other hand, we include ”domino” effects whereby neighbour countries such as Turkey and Mexico upgrade their trade agreements with the EU and the USA as a result of TTIP.

IFOs results show that if Norway remains outside TTIP, there is a slight positive impact on GDP. The positive income effect suggests that the positive demand effect from TTIP, and possibly value chain effects, dominate over trade diversion effects. In this scenario, gross trade is in fact reduced (Norway becomes less open), but ”trade in value added” increases. Manufacturing sectors lose significantly from trade diversion, whereas the oil and gas sector gains considerably from higher demand and prices. Effects are small for agriculture, and there is a modest loss for seafood.

If Norway joins TTIP, there is a significant income gain per capita of 279  USD or 2253 NOK with 2015 exchange rates. Hence for each one of us, there is on average a significant economic gain, equivalent to 0.37% of income. Trade grows by 1.1%. If, instead of joining TTIP, we only enter into an agreement with the USA, trade growth is 0.4% and the per capita income gain smaller – 175 USD or 1413 NOK. The more ”realistic” bottom-up estimates show considerably larger income gains from trade integration for Norway (0.65-1.09% of income, depending on scenarios), with a maximum of 6771 NOK per capita in one of the scenarios.

Considering the sector impact of TTIP accession; there would now be a significant loss for some manufacturing sectors and a range of agriculture sectors. But a clear majority of industries will gain from TTIP accession; contrary to staying outside where a clear majority of industries will lose. Seafood, other manufacturing sectors and some services sectors would gain from TTIP accession, with “other business services” as the sector with the largest gain. “Other business services” are important for Norway and if TTIP reduces the barriers they face, production and trade will increase. Sector effects are created in a complex interaction between all the three types of effects mentioned, and the reader is referred to the background paper for more detail. Due to the value chain effects, there is a considerable gain for public sector services in several scenarios.

The IFO estimates shed new light on Norway’s trade policy and as said, they are to our knowledge the first of its kind, using an advanced model for the world economy capturing value chains on top of standard trade effects. But the IFO model does not address all issues, and in other chapters, some aspects not covered by the IFO study are addressed.

### TTIP and investment

The IFO model is trade-driven in the sense that parameters are estimated from cross-border trade flows and the results driven by changes in barriers to cross-border trade in goods and services. But TTIP is a trade and investment partnership so investment plays a major role. Chapter 5 therefore examines investment issues. In the Transatlantic economy including Norway it is generally the case that sales from affiliates are much larger than trade across borders. Trade and investment also interact in various ways, so changes in barriers to cross-border trade could have unexpected effects. Furthermore, barriers to investment itself become an important part of trade policy.

In Chapter 5, we present new evidence based on firm-level data for Norway, drawing on Gaasland, Straume & Vårdal (2016). It is shown that 37% of the value of Norway’s exports is conducted by foreign-owned firms, and 46% of imports. In trade with the USA, 46% of exports and 9% of imports are undertaken by U.S.-owned firms. For mineral products including oil and gas, 76% of exports are undertaken by U.S.-owned firms.

Assuming that U.S.-owned firms may be more familiar with U.S. procedures and regulations, the high share of foreign-owned firms for export could in a sense reduce trade barriers. On the other hand, foreign-owned traders are larger, so in the large mass of smaller exporters or importers there are more Norwegian-owned firms. This suggests that there is a double motivation for focusing on small and medium-sized enterprises (SMEs) in trade policy. This is actually also an objective in TTIP; with trade facilitation and SMEs as part of the agenda under the “rules” pillar of TTIP (see European Commission 2016b).

In Chapter 5, we show that foreign investment has become increasingly important also for Norway, and also in its relation to the EU and the USA (although FDI from the USA to Norway has declined). In 2014, Norwegian-owned firms had 164 thousand employees in the EU, and 22 thousand in the USA. Figures in the other direction were larger, with 237’ EU-owned jobs in Norway and 56’ owned by U.S. companies. Using the same methodologies as in CEPR (2013), we estimate that if investment barriers between Norway and the USA are reduced to the level applying within the EU, there would be an increase of 15’ in the number of USA-owned jobs in Norway, and 9 thousand more jobs in the USA owned by Norwegian companies.

### TTIP and agriculture

In the IFO simulations, domestic policies such as subsidies are not fully accounted for, and this is particularly important in some areas. A notable case is agriculture and the food industry, where TTIP accession according to IFO will lead to a significant contraction for many product areas. I prosjektet har NIBIO (Mittenzwei 2016 and Chapter 8.1 here) has analysed agriculture using the JORDMOD model that is more detailed with regard to product coverage, technology choice, and agricultural policies.

In the analysis, the model is calibrated to reflect actual production in a base year and with a predicted baseline change until 2030. Trade barriers and other parameters are then changed to take TTIP into account, and the result is compared to the baseline outcome. The model considers only net trade with homogenous products on the world market; so we do not take into account that TTIP only applies to some countries and not all. Hence, there is no bilateral trade and products are identical with respect to origin and quality. The impact of TTIP is reflected in various assumptions about tariffs, import quotas and world market prices. The results are equally relevant to all trade policy changes that affect tariffs or world market prices; not only TTIP. We do not take into account non-tariff barriers (e.g. on GMO or hormone-treated meat) that limit trade.

The scenarios have two main dimensions:

* First, an assumption is made on the number of Norway’s tariff lines for trade in goods that may be exempted from tariff elimination, so-called “sensitive products”. This is set at either 1 or 3%. In TTIP, 3% is already on the table, but negotiations are not yet concluded so the share could get lower .
* Second, assumptions are made about tariff cuts and the introduction of import quotas for sensitive products Here we do not know the outcome of TTIP negotiations but we know from other agreements that such arrangements are likely. We have therefore assumed different alternatives for tariff reduction (no reduction, 33 per cent cut, and 66 per cent cut) and assumed an import quota of 5 per cent of domestic consumption.
* Third, assumptions are made on which products are considered as sensitive by Norway in the the negotiations. In the simulations, we have assumed that dairy and meat will be given priority.

Given the available information on TTIP, the scenarios are ment to span out a possible landing zone, but as often in trade negotiations, “the devil is in the details”. A conclusive impact analysis cannot be undertaken before the negotiations are concluded.

If such liberalization is undertaken, there is a considerable reduction in production and the value of agricultural support is also reduced. We therefore assume that there will be a policy response, in the form of two different scenarios: The first is called ”baseline budget” and assumes that subsidies are maintained as baseline levels. The rationale of this scenario is to illustrate how much agriculture that can be maintained within baseline budget levels The second is called ”baseline production” and assumes that the aim is to maintain the level of production. This scenario aims to measure the costs of switching from import barriers to domestic support, if production is to be upheld at baseline levels.

The results are as follows:

* With baseline subsidies and 1% sensitive products, there is a reduction of about 30% in production.
* With baseline subsidies and 3% sensitive products, there is a reduction of between 10 and 30% in production, depending on the extent of tariff cuts for sensitive products.
* In the baseline production scenario, subsidies increase by about 80% with 1% sensitive products, and by about 10-40% in the scenario with 3% tariff line exemptions.

Welfare effects are ambiguous. Higher domestic production frequently implies a larger provision of public goods, higher farm income, but also lower consumer welfare and higher taxpayer expenses. More detail is available in Mittenzwei (2016).

These results show that TTIP accession will be a considerable challenge for Norwegian agriculture, but there will still be a margin of manoeuvre and the details of a future agreement will be important for the outcome. If Norway obtains a slack of 3% in tariff protection in future negotiations, allowing protection for important products like dairy and meat, a considerable share of agriculture may be maintained even with unchanged budget support. On the other hand, if the slack is reduced to 1%, the challenge will be serious. The outcome remains to be seen, and we emphasize that simulations are hypothetical and illustrative and should not be taken too literally. They are intended to shed light on the impact and options for future agricultural policies in Norway, facing a trend where Norway may not be able to maintain the same level of trade protection.

### TTIP and food standards

In Europe, there has been a fear in some quarters that TTIP may erode European standards for food and health, or even lead to a ”race to the bottom”. In Chapter 7 of this report and the background papers Veggeland (2016), Melchior (2016) and Alvik et al. (2016) we examine regulatory cooperation in TTIP, based on the literature and interviews with some actors in the field. For IFO’s ”bottom-up” simulation scenarios, we have also – based on available literature and own assessments, made estimates on how regulatory cooperation may affect trade costs.

As noted in the introduction, available evidence strongly suggests that in the short and medium run, there will not be so much harmonisation of standards in TTIP but some ”soft” measures such as information exchange and mutual recognition agreements (MRAs). TTIP also sets up institutions for future regulatory cooperation with the aim of greater convergence in the future. In the study, we examine the prospects from different angles. TTIP builds on 25 years of Trans-Atlantic cooperation in the field, and Veggeland (2016) examines the past track record. The conclusion is that former cooperation created some results but MRAs were no panacea and for some products, MRAs agreed were never implemented. Hence extending former agreements such as the Veterinary agreement from 1998 and the MRA from 1999 as parts of TTIP will be significant but not really a revolution. A suspicion is that the lack of harmonization creates a barriers to efficient ”soft” cooperation ass well and this is not really solved in TTIP even if we should not discard the significant achievements due to MRAs for food, cars, drugs and chemicals. Lowering testing cost for drugs and cars could create significant gains.

The jury is therefore out when it comes to the potential dynamism and future regulatory convergence in TTIP. This also spills over to the legal field; with soft cooperation it can all be done as inter-governmental agreements and there are no deeper questions about regulatory sovereignty. The two giants are both on guard with respect to letting the other one into its legislative process, although stakeholder consultation and hearings will be allowed. These dimensions are also important in the context of Norway accession; with a dynamic TTIP we may have some of the issues raised formerly by the EEA, about being potentially bound by new rules and not being fully part of the decision-making. This is particularly relevant for the ”Open Skies” form of accession to TTIP. In the EEA, a particular institutional set-up was created to take into account the constitutional requirements, similar aspects could become relevant in a deep and dynamic TTIP where Norway accedes by means of the Open Skies method. The challenge could appear in a milder form also if Norway stays outside TTIP, if TTIP produces new rules that are incorporated into the EEA.

All in all, there is little evidence suggesting that TTIP will generally lower food standards or change the basic legislation in this area in the EU or the USA. The parties will still have their separate legislations on chemicals, and different approaches to GMO, hormones and chloride chickens. TTIP will simply not lead to a “race to the bottom” for food standards.

### Investor-State Dispute Settlement (ISDS)

Another contested issue in TTIP is ISDS, where the critics fear that ISDS will unduly interfere in the ”right to regulate” and contribute to a ”race to the bottom” by this channel as well. In Chapter 6 of the report and Alvik et al. (2016) we examine the issues.

There are about 3000 bilateral investment treaties (BITs) around the world and many of them have an ISDS clause whereby foreign firms may sue states if they are unduly treated or discriminated against. Similar provisions also exist in most national laws so the issue is whether foreign firms only should have this special procedure, and whether the interpretation of law differs from national practices. In Chapter 6 we show that with respect to individual countries, U.S.-owned firms are the most frequent users of ISDS. However if the EU countries are added together, they are clearly the largest claimant home country. 1/3 of the cases are towards countries in North and South America, and 1/3 against countries in Central and Eastern Europe and the Balkans. ISDS has largely had the purpose of improved legal rights for investors in poor or emerging countries with weak institutions, and the use of ISDS among developed countries raises the issue of whether this is actually necessary if their legal systems are good enough. In the EU, many Eastern new members have many BITS and they would like to replace these with more modern agreements negotiated by the EU.

There is an emerging consensus among lawyers and experts that the former ISDS practice had its clear weaknesses. This said, ISDS has existed for decades and few catastrophes have been reported. In the CETA (EU-Canada) agreement and in TTIP, a revised approach to ISDS is suggested in order to address some of the shortcomings of the old approach. In order to promote consistent law application and the integrity of the judges, ad hoc tribunals would be replaced by permanent courts or tribunals. In addition, language has been added in order to safeguard the states’ ”right to regulate” as well as to avoid frivolous interpretation of the principles.

In the debate on ISDS, it is important to acknowledge that investors should legitimately have legal protection. The main principles are included in legislation worldwide, but interpretation might differ. Some main principles are:

* The right to compensation in the case of expropriation.
* The right to fair and equitable treatment.
* The right to national treatment; i.e. not inferior to the treatment of domestic investors.

In the different areas, an issue is to what extent the ISDS clause includes language that limits the possibility of extensions of the interpretation by international tribunals, and how this works out in practice. Permanent tribunals will promote more consistent interpretation of the law, but may also give the ISDS institution more weight or authority.

The legal assessment (Chapter 6 and Alvik et. al. 2016) suggests that international tribunals sometimes extend interpretation of the principles beyond established practice. The content and wording of an ISDS clause in TTIP is therefore important, and in CETA as well as TTIP, the EU has added language that limits the scope for unwanted extensions of interpretation and that safeguards the ”right to regulate”. A reformed ISDS clause that limits undue extensions of interpretation may be close to standard practice under Norwegian law. In Norway, there has also been a debate on the constitutional aspects of ISDS; this is also reviewed in the background paper.

An ISDS clause in TTIP is likely to apply between the USA and individual EU countries and not internally between EU countries. The assessment of Alvik et al. (2016) is that Norwegian companies do not need ISDS in the USA very strongly but it could be more useful with respect to some EU countries.

Along with food and health standards, ISDS has been an area where fears of “regulatory chill” have been expressed. Here it is useful to recall that there is a need for international and not only national regulation, and it may be a problem if there is a “chill” for international regulation of investment and multinationals. On a global scale, an issue is whether there is a need for an investment regime where the rights as well as the obligations of multinationals are addressed.

### No free trade for fish?

In the trade policy debate in Norway, the seafood sector has been a key actor promoting FTAs and market access for its exports to the whole world. IFOs analysis shows that the sector will lose some from TTIP without Norway, and gain some from TTIP accession. In Chapter 9, we show that the seafood sector saves about 2 billion NOK in tariffs due to Norway’s current FTAs, but still pay more than 2 billion NOK in tariffs. Out of this, 0,9 billion NOK are tariffs in the EU market. In some markets such as Russia and China, non-tariff barriers have also been significant. Non-tariff issues are mainly solved in the EEA due to Norway’s membership in the EU veterinary agreement. Formerly, there were two decades of conflicts with the EU as well as the USA related to dumping. These cases were solved in 2008 and 2012, respectively. For exports to the USA, there are currently no major non-tariff barriers but two pieces of new legislation (environmentally motivated, and about traceability, unregulated fishing and fish stock management) will be implemented in 2017. These may create additional costs for trade, and Norway has participated in hearings to influence the details of the new legislation.

For the EU market, a paradox is that other countries such as Chile and Canada now obtain zero tariffs for seafood in the EU market whereas Norway, being a loyal member of European integration for decades, still face significant tariffs and a patchwork of about 50 tariff rate quotas accumulated over decades, partly as compensation for EU enlargements. TTIP may actually create an opportunity to do something about this, if TTIP is established and Norway accedes. In this case, tariffs for fish and agriculture will have to be renegotiated, without necessarily involving catch quotas and other issues where the interests of aquaculture and other parts of the fishing industry may differ.

### Services –gains in some sectors but no ”cabotage” for sea transport in the USA

The IFO results indicate that services industries will obtain important gains from TTIP accession, with business services on top, and public sector services will gain from lower input prices due to the value chain effects. Several service sectors will gain from TTIP but not all. Sea transports would lose significantly from staying outside TTIP but this loss would be largely eliminated with TTIP accession.

Chapter 9.3 examines further services liberalisation in TTIP, painting a somewhat bleak picture about the prospects for market opening in some major sectors. For example, domestic sea transports between U.S. ports are reserved for domestic carriers under the Jones Act of the USA. Such ”cabotage” is not likely to be opened to foreigners in TTIP, although some shipping-related other services and goods may be affected.

We refer to Chapter 9.3 for more detail on services.

### Summing up: Some implications

The review shows the breadth of our study, comprising analysis of economics, institutions, trade policy and law. The results speak for themselves but let us end by reverting to the trade policy challenges mentioned at the start.

On global trade policy, TTIP suggests that regulatory cooperation across continents is a complicated task, even between rich countries with a strong commitment. The objective of promoting global trade rules is important, and TTIP will be an important contribution if it succeeds.

The background studies also show that in many areas, plurilateral agreements are important in regulatory cooperation so even TTIP is part of a broader setting where other countries participate. “Pragmatic multilateralism” is a slogan also in U.S. trade policy, emphasizing plurilateral agreements where agreement on reforms through the WTO is difficult to obtain.

For Norway’s economy, the study has a number of important implications:

* While TTIP without Norway will have marginal effects on the Norwegian economy as a whole, a majority of industries – in particular some manufacturing sectors – will lose from staying outside TTIP.
* For a small country like Norway, it is of key importance whether TTIP stimulates growth in the EU and the USA. For this reason, TTIP is important even for the oil and gas sector.
* Accession to TTIP will create large economic gains for Norway, and positive effects for a majority of sectors – with some services industries on top.
* For agriculture, there will be policy space left also with TTIP, so TTIP accession means considerable challenges for agriculture but not closure. The results depend on the specific outcome of future negotiations and the policy responses.

The Norwegian trade policy debate has sometimes been dominated by the seafood and agriculture sectors, but the study shows that a number of other sectors have reasons to become more concerned about trade policy.

For Norway, TTIP also raises some important institutional issues. If TTIP succeeds in creating a dynamic agreement with extensive regulatory cooperation, the standard inter-governmental approach to trade agreements may no longer be appropriate and the “Open Skies” approach where Norway becomes part of a European pillar is more likely. In this case, we cede the authority to make agreements with third countries to the EU in the relevant fields. This creates a whole new range of issues for trade policy. A positive side would be that we could benefit from the weight and force of the EU to defend our interests, be it in Open Skies or veterinary conflicts with Russia. On the other hand, we might have new discussions about regulatory sovereignty and legal issues, of the type that have applied to EEA in the past.

It should finally be recalled that TTIP is also about “rules” (the third pillar in TTIP) issues such as sustainability and human rights. This is another field where Norway or EFTA are too small to set the global standards. When these fields become more important in trade policy, it adds to the argument for an even stronger cooperation with the EU in trade policy relations with third countries.

1. An exception is the threshold for entry into force if some countries do not ratify the agreement, which gives large countries a blocking minority but not the smaller countries. [↑](#footnote-ref-1)