ZVEI:
Die Elektroindustrie

Position Paper

TTIP – Transatlantic Trade and Investment Partnership

The German Electrical Industry: Key Subjects, Demands, Bottom Lines and Possible Solutions

ZVEI - German Electrical and Electronic Manufacturers' Association

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TTIP „short"

A. The importance of a transatlantic trade and investment partnership

The German economy is more dependent on world trade than the economies of many other industrial countries. Around one seventh of all German exports are electrical goods.

On average between 60 and 85% of the turnover of ZVEI member companies results from business with other countries.

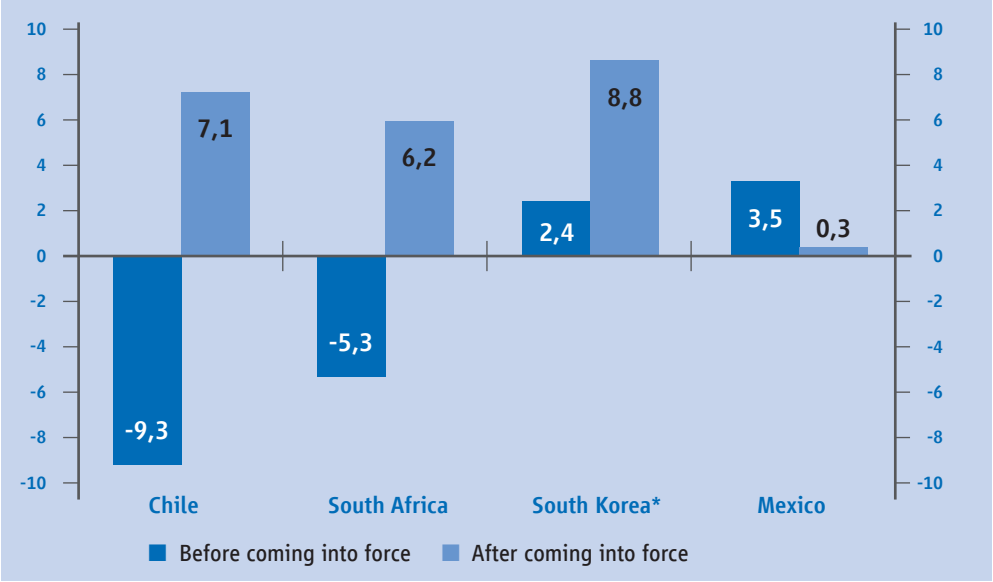
Bilateral trade agreements have a positive economic impact on the German electrical industry, as confirmed by a recently published joint analysis by ZVEI and Helaba (state bank of Hesse). The study shows that the free trade and association agreements negotiated to date by the European Union have given an appreciable boost to German electrical exports. In the years after such agreements came into force the exports to the target countries developed overall more dynamically than in the years before.

B. Significance of the transatlantic partnership

For the German electrical industry the USA is, after China, the second largest foreign market for electrical and electronic products. Business between Germany and the USA is not confined to trade in goods: there is also a great deal of mutual direct investment. Recent statistics show a volume of direct investment in the USA by the German electrical industry amounting to 12.9bn euros. No other country in the world accounts for as much financial involvement by the German electrical sector.

Free market access continues to be crucial for the next major step in industrial development: the digital and networked *Industrie 4.0.* TTIP can make an important contribution here and help to ensure that Europe and North America stay in the lead in this move into the industrial future.

Positive or negative growth rates for German electrical exports to four countries as percentages of total German electrical exports in the 5-year period before and after the relevant free trade agreement came into force



Source: Destatis and ZVEI's own calculations

* Two years after coming into force. Source: Destatis and ZVEI's own calculations.

C. Key demands

Abolition of existing customs duties

The German electrical industry is strongly in favor of an extensive opening of the transatlantic markets through the elimination of existing tariff and non-tariff trade barriers.

- **ZVEI demand:** immediate removal of all remaining customs duties for the electrical industry.

Harmonization of technical standards and product requirements

As regards non-tariff trade barriers, particularly in the field of technical regulation, the abolition of technical trade barriers and market admission procedures, which are based on divergent conformity assessment systems and technical regulation structures, is undoubtedly the most important key demand of the German electrical industry.

The possible solutions that are necessary for this purpose are both difficult to find and inherently complex, but they are achievable by way of mutual negotiation.

- **ZVEI demand:**
  - First step: The de facto monopoly of the Underwriters Laboratory (UL) must be ended.
  - Second step: The harmonization of technical standards and product requirements should be achieved on the basis of the work of the international standardization organizations ISO, IEC and ITU.
  - Third step: The mutual recognition of admission procedures on both sides of the Atlantic is to be established with the aim of „One standard, one test, accepted everywhere".

- **The bottom line here is:** There must be no question of any prior and premature mutual recognition of standards.

Free access to the public procurement markets

Mutually open access to the public procurement markets is particularly important to establish a level playing field. An EU public procurement market open to all domestic and foreign suppliers is confronted by an US market which is effectively closed to foreign providers. Measures such as local content, Buy American Act and many other regulations and restrictions work to the disadvantage of foreign market players.

Possible solutions are necessary here, too, but the entrenchment of these „market regulations" in the administrations of the individual states of the USA makes them inherently complex, and because the federal government has no legal competence it is difficult to achieve legal certainty in negotiating them. The necessary first steps must be taken, even if in two or three stages, leading to an opening of the public procurement market.

- **ZVEI demand:** Complete opening of the US public procurement market for European suppliers; where individual states deviate on grounds of their sovereignty, grants for such projects should be canceled by the federal government.

Investment protection and dispute settlement

There has been a steady increase in the importance of investment for international trade at the global level. Because protection under the laws of the host country as a safeguard against investment risks is often inadequate, investors' risks can be covered by so-called bilateral investment treaties (BITs). The aim of these treaties is to provide investors with legal certainty by inter alia protecting them against direct or indirect expropriation and providing for compensation in the event of expropriation.

- **ZVEI demand:** In principle the EU should not exclude any countries from negotiations on investment protection.

Investor-state dispute settlement (ISDS) proceedings are important but in need of reform. The TTIP negotiations, which claim to define globally effective criteria for specific areas, offer an opportunity to develop the BIT system further.

- **ZVEI demand:** Creation of an international court composed of professional judges. Such a court could first centralize and standardize the hitherto fragmented case law in relation to investment protection, and later on (target date 2030) also rule on international trade disputes (in the relationship B to B and B to C). There should also be an appeal mechanism to ensure that judgments can be reviewed and the law interpreted in more uniform manner.

D. Bottom lines for the negotiations

No mutual recognition of technical standards without prior harmonization

Negotiations in the field of technical barriers to market access also involve risks for the European electrical industry. These can materialize when the results of the TTIP negotiations undermine the functioning of technical regulation at the European level.

- For this reason ZVEI rejects the mutual recognition of technical standards without prior harmonization (see above steps 1 to 3).

Intellectual property rights

There have been repeated attempts to use TTIP as a means of including questions of intellectual property rights in bilateral negotiations.

- ZVEI rejects a harmonization of European and US intellectual property rights by way of decisions at TTIP level. Such harmonization can only be achieved at international level under the auspices of the World Intellectual Property Organization (WIPO).

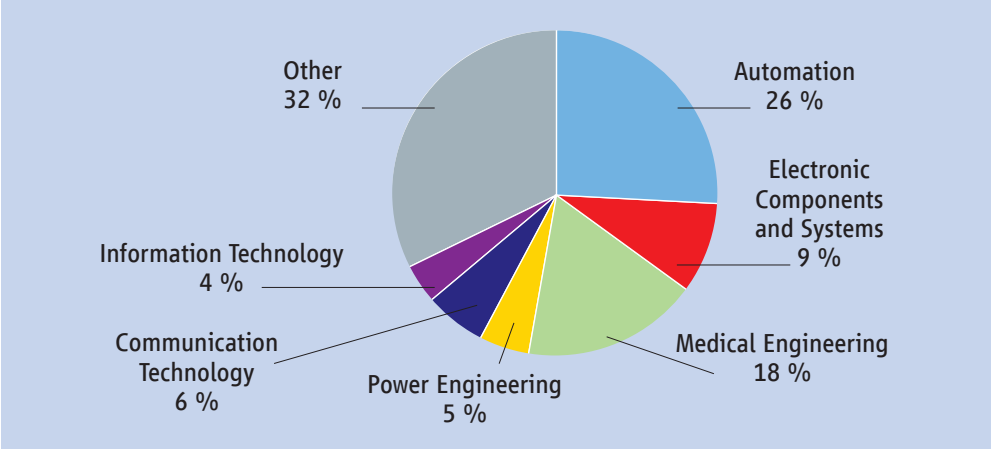
The US – an important trade partner for all industry divisions of ZVEI

German electrical and electronics exports (2000=100)

Source: Destatis and ZVEI's own calculations

German electrical and electronics exports for selected industry divisions

(2014 – 13,6 billion Euros)



Source: Destatis and ZVEI's own calculations

Table of contents

TTIP "long"

I. The importance of a transatlantic trade and investment partnership

The German economy is more dependent on world trade than the economies of many other industrial countries. The share of exports in total German economic performance is just under 50 percent. To put it differently: nearly half of what is produced in Germany is sold abroad. In some sectors the share is even higher.

This is particularly true of the German electrical industry. On average between 60 and 85% of the turnover of ZVEI member companies results from business with foreign countries.

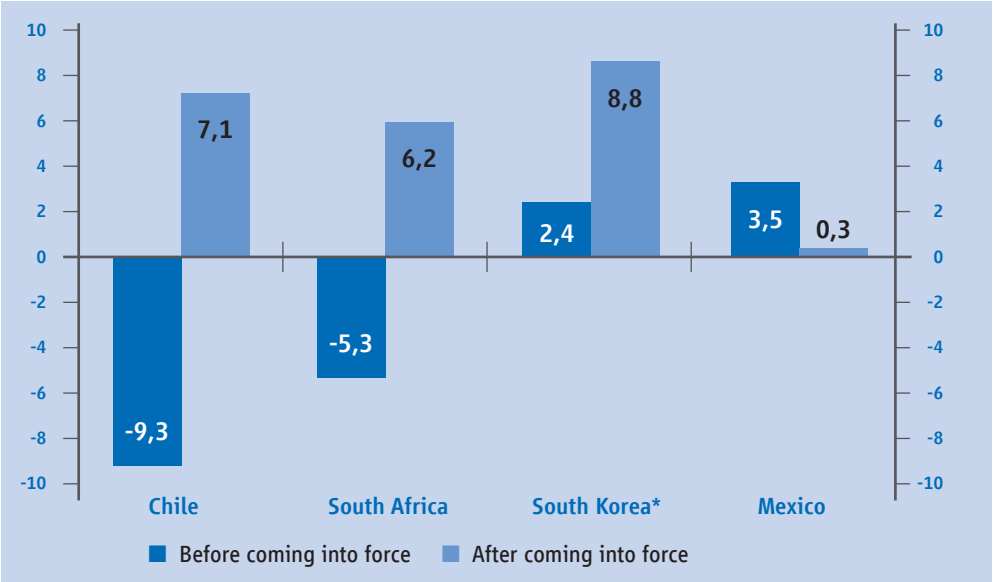
Around one seventh of all German exports are electrical goods. The sector is Germany's second biggest industrial employer, with a total workforce of about 840,000, and its export volume, at 165.5bn euros in 2014, makes it one of the world's four largest suppliers of electrical and electronic products and systems. The competitiveness of the German electrical industry is crucially dependent on its integration in international production and supply chains. The sector's economic success is fundamentally conditional on open markets and a trading regime that is as far as possible barrier free.

Furthermore, many of the advantages of globalization – such as increasing international division of labor and specialization – can only reach their full potential if cross-border trade is free and fair. At the same time, companies and consumers in Germany are accustomed to being able to obtain international goods promptly and inexpensively. The importation of goods and services which can be produced more efficiently abroad releases resources here for the production of goods where Germany has a competitive edge. One of the major effects of the success of German firms in other countries is that production, value creation and ultimately jobs in Germany are resting on a secure foundation.

Commitment to free trade and open markets has always been a central principle of the business policy of ZVEI – the German Electrical and Electronic Manufacturers' Association. Liberalizing world trade at multilateral level within the framework of the World Trade Organization (WTO) continues to be ZVEI's overriding priority. Given that negotiations have come to a halt in various areas in recent years and due to the difficulty of reaching a multilateral consensus among WTO member states, bilateral negotiations have become more and more important. The German electrical industry supports the comprehensive free trade agreements of the „new generation" which the European Commission has concluded with countries like South Korea and Singapore.

These bilateral trade agreements have a positive economic impact on the German electrical industry, as confirmed by a recently published joint analysis by ZVEI and Helaba (state bank of Hesse). The study shows that the free trade and association agreements negotiated to date by the European Union have given an appreciable boost to German electrical exports. In the years after such agreements came into force there was, in most cases, a more dynamic development of the sector's exports to the target country than in the years before.

Positive or negative growth rates for German electrical exports to four countries as percentages of total German electrical exports in the 5-year period before and after the relevant free trade agreement came into force



Source: Destatis and ZVEI's own calculations

* Two years after coming into force. Source: Destatis and ZVEI's own calculations.

Significance of the transatlantic partnership

For the German electrical industry the USA is, after China, the second largest foreign market for electrical and electronic products. Since the year 2000, German electrical exports to the USA have risen by more than half, reaching 13.6bn euros in 2014. Imports are also of great importance. At 9.0bn euros the USA continues to be the second largest supplier to the German electrical market. Business between Germany and the USA is not confined to trade in goods: there is also a great deal of mutual direct investment. Recent statistics show a volume of direct investment in the USA by the German electrical industry amounting to 12.9bn euros.

No other country in the world accounts for as much financial involvement by the German electrical sector.

Free market access continues to be crucial for the next major step in industrial development: digital and networked ***Industrie 4.0.*** TTIP can make an important contribution here and help to ensure that Europe and North America stay in the lead in this move into the industrial future.

II. Key demands and bottom lines for the negotiations

ZVEI welcomes the negotiations on a transatlantic trade and investment partnership (TTIP). At the start of negotiations ZVEI published a paper setting out its basic position. The purpose of the position paper was to provide depth and concrete detail on its assessments and demands in relation to a future agreement.

The German electrical industry is in favor of a far-reaching opening of the transatlantic market through the abolition of existing tariff and non-tariff trade barriers. The removal of customs duties (so-called tariff barriers) is strongly supported by ZVEI. According to ZVEI, the elimination of customs duties for the electrical industry should be reached swiftly, without any transition phase.

The non-tariff trade barriers, on the other hand, especially in the area of technical regulation, present a far more complex picture, particularly for the industrial sectors of electrical and mechanical engineering. In these sectors more than in others, the structures established for technical regulation and conformity assessment systems are fundamentally different on both sides of the Atlantic.

Two key demands of the German electrical industry are the abolition of customs duties and improved access to public sector procurement systems. Another is the removal of technical trade barriers which result from differences in conformity assessment systems and technical regulation structures.

Negotiations in this area, however, entail certain risks for the German electrical industry. One is that the results of the TTIP negotiations could undermine the functioning of technical regulation at the European level. This is why ZVEI is against simple mutual recognition of technical standards unless the standards have been harmonized first. Mutual recognition must in every case be preceded by the harmonization of the technical regulations that are applied, and the harmonization must be based on the work of the international standardization organizations, namely ISO, IEC and ITU.

ZVEI also rejects the harmonization of European and US intellectual property rights by means of provisions in TTIP. Such harmonization can only be achieved at international level under the auspices of the bodies created by the World Intellectual Property Organization (WIPO).

III. Market access for goods: abolish customs duties and simplify rules of origin

Elimination of existing duties on goods produced by the electrical industry

ZVEI supports the complete elimination of customs duties in trade between the EU and the US. The duties applicable to the manufacturing industry on both sides of the Atlantic are admittedly low[1], but – due to the volume of trade – they still cause heavy costs for both European and American companies. Particularly due to the extreme interlocking of the EU and the US economies in the context of global supply chains and the intensive trade between the two economic areas, the abolition of customs duties could result in direct savings of hundreds of millions of euros. For the German electrical industry, with its strong international orientation, the financial burden represents a superfluous barrier to trade. For this reason ZVEI is in favor of the abolition of existing customs duties on all goods of the electrical industry. The abolition should take place immediately after the agreement comes into force, if possible without any transition phases.

Strengthened cooperation in the area of trade facilitation

Additional costs in transatlantic trade result from divergent customs procedures and differences in customs clearance. In this area TTIP could provide impulses for greater cooperation between the customs authorities, in order to ease the exchange of goods.

Since 2012 there has been formal cooperation between the European Union and the USA on safety certifications as part of customs clearance procedures. The cooperation took the form of an agreement on mutual recognition of the European safety certifications via AEO (Authorized Economic Operator) and the US system C-TPAT (Customs-Trade Partnership against Terrorism).

It is possible to achieve further simplifications in the conducting of customs procedures and controls. Cooperation in the area of electronic customs clearance, for example, could be intensified, and greater harmonization of „Pre-Shipment Notifications" is an aim that could also be pursued.

Rules of origin

Rules of origin are used to determine the „economic nationality" of a product. They respond to the question of whether and on what conditions a product can be recognized as having its origin in a specific country. Rules

[1] The average rate of customs duties charged by US Customs to the manufacturing industry is 2 – 4.5%. On the EU side the average rate charged on electrical goods from the US is 0 – 5%. For a limited group of goods a customs charge of 9 – 14% is applied.

HS-Position	If necessary, description of the product	Uniform value added rule	Sector-specific change in tariff heading/subheading	Sector-/product specific processing rules
123456		EU ≤ 50 % Max. non-originating material US ≥ 40 % net manufacturing cost	For certain industries	Sector specific

of origin are laid down under the provisions of the laws governing preferential treatment between negotiating partners to a FTA, so as to ensure that no free riders can profit from the agreement.

Entitlement to preferential tariffs (e.g. within the framework of TTIP) thus becomes conditional on compliance with the rules of origin. However, the past several years have seen a trend to ever more complex rules of origin and differences from one agreement to another. This complicates the process of claiming entitlement to preferential tariffs under FTAs, and the result in many cases is that companies decide not to use the preferential tariffs because the administrative effort required has become excessive. Small and medium-sized enterprises are particularly affected. It is above all in transatlantic trade that the dilemma becomes most apparent: both the US and the EU apply low external tariffs for industrial goods, and the marginal gain from preferential tariffs would thus be quickly absorbed by the high administrative costs involved.

Simplification of the rules of origin for preferential tariffs is therefore urgently necessary. TTIP can give a clear and important signal and serve as a model for other free trade agreements, including existing ones. In this respect ZVEI supports the proposal submitted by BDI (Federation of German Industries) for a uniform, cross-industry value added rule which would make mutual recognition possible and allow companies to choose between the US and the EU tariff calculation method. The central value added rule provides for a maximum of 50% of non-originating materials according to the EU calculation, which is based on the ex works price of a product. Parallel to this, the option of the US calculation method would apply, which is based on net manufacturing costs.

Next to the basic value added rule, the alternative rules of change of tariff heading or subheading as well as product-specific processing rules (such as the diffusion rule for semiconductors) would be equally applicable. The result would be a model which can be employed on a cross-sector basis. Together with the central, uniform value added rule – while at the same time maintaining flexibility by the option of using the other rules of origin – this would represent a major simplification of the rules applied to date.

To ensure that the application of rules of origin can be simplified for companies overall, it is important to apply this calculation model in other free trade agreements as well, so as to move the process of harmonizing rules of origin forward. This would be expedient not only for new agreements but also for adjustments to existing ones.

Apart from the simplification and harmonization of rules of origin, there is also room for the simplification of origin certification. In this respect it should be possible to retain both the preferential invoice declaration (up to a certain value ceiling) and proof of origin via the customs form EUR.1. Approval as an „Authorized Exporter" should also continue to enable exporters to issue an invoice declaration irrespective of any value limit. There should, however, be no de facto obligation to have such approval (as is regrettably the case in the EU-Korea FTA and the EU-Singapore FTA). Consequently the customs form EUR.1 should continue to be recognized as preference certification – regardless of the status as an Authorized Exporter.

IV. Public procurement: Improved market access and greater transparency

The liberalization of public procurement and the improvement of market access are of special importance in the context of the TTIP negotiations, as is apparent from the very size of the market.

Public procurement of goods and services accounts for an estimated 16% of gross domestic product (GDP) in the US and the EU. The US procurement market, with 11% of GDP, is the second largest in the world after the European procurement market.

Theoretically this creates significant market opportunities for companies on both sides of the Atlantic. European companies, however, are faced with barriers, which make access to this market difficult or indeed impede it. The barriers take the form, for example, of so-called local content requirements, which lay down that goods or services intended for public sector procurement have to be manufactured or performed in the domestic economy.

Another factor that complicates access especially for SMEs without a branch in the USA, are the differences between the regulations that govern the fragmented US procurement market. In the US there are no uniform, i.e. nationwide, assessment criteria and selection processes for public procurement. The regulations differ not only between the federal level as compared to state and local authority rules, but also between the various states of the union. Procurement criteria and processes in Texas are different from those in Ohio.

In comparison to the decentralized and fragmented US public procurement market, which has not yet been harmonized by comprehensive legislation, such harmonization of public procurement has already taken place in the European Union. EU Directives 2004/17 and 2004/18 enabled European lawmakers to create a uniform framework of law for public procurement, which has resulted in extensive simplification of procurement in the EU.

It is a major challenge for the TTIP negotiations to find a way of reducing the asymmetry of market access in regard to public procurement and enabling European companies to attain better access to the US procurement market.

An additional difficulty for the negotiations is that public procurement in the USA is to a large extent subject to the authority of the state governments, and the federal government can in many cases not exact any direct concessions for the levels below the federal level.

Key demands

A core demand for the negotiations on a transatlantic trade and investment partnership is the opening up of public sector procurement. Such opening up should go beyond the accords contained in the Government Procurement Agreement (GPA) and the arrangements which the US has already accepted by way of existing FTAs with other trading partners. Of particular importance in this regard is the opening up of the procurement markets of those US states which are not bound by the principles of the GPA. European companies also have a very strong interest in the opening up of the procurement markets of the major US cities, such as New York, Chicago, Washington, Boston or Los Angeles.

Another point of central importance for the German electrical industry is the abolition of local content rules, such as the provisions of „Buy American" legislation and other „Buy American" provisions. Against the background of an alarming worldwide trend towards greater foreclosure of public procurement markets, it is critically important for the EU and the US to take a joint stand against protectionist arrangements. The TTIP negotiations provide an appropriate platform for setting standards for the future.

Furthermore, the fragmentation of the US procurement market means that foreign companies need more transparency and a central source that provides all the information that is relevant to invitations to tender at the various levels.

What exactly are the problems?

Special Performance and local content requirements substantially complicate market access for European companies.

These exist at US federal level and at the level of the states and local government authorities. They can include e.g. the obligation, in the case of federal contracts, to give preference in tender proceedings to American companies which are small and, by US definition, „disadvantaged".

Certain sectors – at both federal and state level – are particularly affected by such requirements. For example, federal authorities such as the Federal Aviation Administration, Highway Administration, Federal Railroad Administration or the Federal Transit Administration insist on up to 100% local content for steel products.

The railway sector is also extremely difficult for foreign companies to access. The majority of US railroad projects financed by the states require 100% of the equipment used to be of American origin. The market for regional and long-distance traffic projects and road building is de facto closed to European companies, as this sector was not opened under the Government Procurement Agreement (GPA).

At the local government level the local content requirements are augmented by Buy American rules. Programs for the promotion of minorities („minority clauses" or „minority set-aside") also make market access more difficult for foreign companies.

The far-reaching Buy American rules set forth in the American Recovery and Reinvestment Act (ARRA), which was adopted in 2009, represent a particularly severe obstacle to market access by European companies. These refer not only to specific sectors but cover a large number of public sector projects.

Possible solutions

Extensive opening at all US decision-making levels

The fragmentation of the US procurement market and the absence of harmonized rules which apply to the whole US procurement market make it clear how important it is for the market to be opened at all levels.

Concessions by the federal government would not be sufficient. Action must be taken to ensure that the states open their markets, too.

The EU's free trade agreement with Canada (CETA) could be taken as a positive example.

The agreement provides for the provinces to make far-reaching concessions in the matter of access to the public procurement market at sub-federal level. Even if, as seems likely, direct participation by the states in the USA will not be attainable – as in the case of the Canadian provinces in the CETA negotiations – the aim should still be to achieve a comparable degree of market opening at sub-federal level in the TTIP negotiations.

It is also of particular importance that those US states which are not members of the GPA agree to a liberalization of their procurement markets.

The federal government should contribute to this market opening process by providing positive incentives to cooperate or by canceling benefits and privileges for non-cooperating states.

Abolition of Buy American and local content rules

The local content requirements that are applied, such as the Buy American legislation, represent a special challenge. This type of non-tariff trade barrier presents European firms with a considerable problem, and often stops them gaining access to the US procurement market.

The preferred option is the complete abolition of such rules. If this is not possible all at once, then at least interim steps could be agreed – but with binding effect.

For example, European firms should be treated as if they were American firms regarding the application of the Buy American rules, and in particular the provisions of the ARRA. The cancelation of these requirements in regard to European companies and a moratorium clause on the introduction of further Buy American rules should be the top priority for the European TTIP negotiating team.

The process should be moved forward by exerting certain types of pressure on the states and offering them positive incentives, particularly when state projects are supported by federal funding. A possible first step here would be to agree that no further Buy American rules will be introduced for projects which are co-financed by the federal government.

This transitional period should end 2 years after TTIP has entered into force.

After expiration of this transitional period, states which on grounds of their sovereign powers do not refrain from discriminatory rules and requirements should, for example, have all federal funding for the projects in question canceled.

Creation of greater transparency

In addition to the fragmentation of the US procurement market and the obstacles to market access created by Buy American rules, the lack of transparency regarding the great variety of tender terms and conditions also makes it difficult for European firms to gain access to the US market.

For example, in the USA invitations to tender are not published on a central website. The creation of a central electronic website, where all invitations to tender are published, would therefore be a sensible way of enhancing tender procedure transparency (not only for European but also for American companies).

At the very least an „electronic procurement website" should be created, like the one established by the CETA agreement.

Even if it did not go so far as to operate like a central electronic tender processing office, it could at least enable companies to obtain information from a central source on the market requirements for the award of public contracts and the special requirements set by any particular invitation to tender

V. Technical barriers to market access: no mutual recognition without prior harmonization

To be able to market their products, the manufacturers of electronic and electrical products have to fulfill specific technical regulatory requirements on both the European and the US market. These requirements are necessary and they fulfill important functions, such as employee and consumer protection and compliance with safety regulations.

However, the relevant legal foundations and the corresponding sets of non-statutory rules are structured in fundamentally different ways in Europe and the US, which means that the

products of one region cannot necessarily be marketed and sold in the other. Manufacturers are therefore confronted with significant export barriers in different areas:

- Technical product requirements
- Conformity assessment procedures
- Special conditions imposed in the certification market

Technical product requirements

Non-tariff trade barriers result primarily from the development of divergent technical standards. There exist different regulatory systems – for historical reasons – on both sides of the Atlantic.

Despite the fact that the objectives are basically similar, the standards set in the USA and Europe for one and the same product differ widely from each other. Only a small proportion of these trade-restrictive divergences are due to the differences between the electricity supply systems.

Electrical engineering in Europe is based on a set of uniform standards, 80% of which were harmonized via the adoption of the international standards of ISO and IEC. In the US, on the other hand, standards have been developed, to a large extent independently of these international organizations, by a number of standard-setting organizations competing with each other on a private enterprise basis.

In spite of collaboration with ISO and IEC, very few of the latter's results have been adopted by the American organizations for their product standards. As a result, the concrete requirements for the manufacture of products and the pertinent test methods are set forth almost exclusively in standards developed on a private enterprise basis.

The special features of the US regulatory system also complicate market access for EU manufacturers. In contrast to the EU, there is no „harmonized internal market" in the USA. Instead, concrete product requirements can be set at state level or even at local authority level. This makes trading activity very difficult for European manufacturers, because it is hard to get to know the details of special local requirements as a foreigner. Furthermore, the requirement to fulfill divergent standards (and their certification) is based in many cases on the individual requirements of private customers.

For manufacturers this means substantial additional costs for development and production due to regionally specific product variants or more expensive design engineering in the effort to satisfy the requirements of both markets at the same time. As a result, products of European manufacturers become more expensive on the US market.

Possible solutions

Harmonization

The key to the opening of markets lies in the harmonization of technical standards on both sides of the Atlantic. Wherever the technical requirements imposed on products have been harmonized, cross-border market access becomes relatively simple, and the mutual recognition of product admission procedures then becomes possible as the second step.

The harmonization of technical product requirements is therefore the fundamental precondition for the abolition of the existing technical trade barriers on both sides of the Atlantic. The rule here should be: „One standard, one test, accepted everywhere".

Only after successful harmonization can any consideration be given to mutual recognition. Harmonization in this context cannot be only on a bilateral basis. It must be done at the level of the international standardization organizations (ISO, IEC), as otherwise the harmonization already achieved with other world regions would be placed at risk.

More transparency regarding the devising of standards on both sides of the Atlantic is also important. When working out new regulations the negotiating partners should consult each other and must be kept informed at an early stage, so as to ensure that no new trade barriers arise. In this context it is important that increased cooperation at bilateral level does not undermine already existing international processes but reinforces them.

In the TTIP negotiation documents published in January 2015 (proposed text from the European Commission for a chapter on technical barriers to trade and the Commission position paper on a possible chapter on the engineering industries), the Commission makes certain proposals which are well worth supporting. One of them is the creation of a public register on the applicable technical regulations and the referenced standards in the form of a „Single Window". This measure would make a significant contribution to the creation of greater transparency.

The position paper for the engineering industries contains proposed steps for enhanced cooperation not only between the regulatory authorities (regulator to regulator) but also for cooperation between standard setting organizations. We believe that these steps are essential supporting measures.

Increased transparency and enhanced cooperation between regulators and between standard setting organizations can usefully support the primary objective, which is the creation of joint and uniform technical regulations and standards.

Conformity assessment procedures

The finding that a product satisfies statutory requirements and may therefore be placed on the market and used is regulated in the EU for the electrical engineering industry almost exclusively by European harmonization rules in accordance with the so-called „New Approach" and the „New Legislative Framework". In most cases this means that the assessment is done on the sole responsibility of the manufacturer and the CE label on the product is affixed by the manufacturer himself. Only in a few special areas (e.g. protection against explosions, medical equipment, mechanical engineering) it is also necessary - in certain cases - to make use of a „notified body" as a neutral certification agency. In this system the application of specific technical standards allows the presumption of conformity with the law.

In the US the regulation of product access to the market is fundamentally different and has no uniform structure. There are few regulations to decide on admission to the market for products intended for commercial use („Everything may be sold"). Instead product regulation focuses to a large extent on health and safety regulations and operator regulations („But not everything may be used").

Products in commercial use must display a test mark from a NRTL (Nationally Recognized Testing Laboratory) as a condition to be used in the company. Similar rules apply to electrical products intended for installation in the home. The NRTLs test and certify exclusively in accordance with American national standards (usually UL or ANSI). In this regard, the applicable standards are often determined by the NRTLs or required by statutory law, particularly by the National Electric Code (NEC) for installation work.

In most cases the relevant electrical products are only components supplied for installation in a machine or plant which requires admission approval. The components themselves, however, do not fall under the statutory provisions, and in purely legal terms they may be marketed freely in the US. In fact, however, there is a requirement of specific standards and certifications also of the electrical components as a result of the free enterprise conditions set by customers and their certifiers.

For classical consumer products there are - in the USA - in certain cases concrete technical product requirements which have the binding effect of statutory law. Predominantly there are nevertheless wide-ranging certification requirements purely under private law, the main reason being the strict American laws on liability. Even if there is no statutory obligation it can be assumed that products without this kind of certification are in practice unmarketable. Here, too, the certification is based on American standards, mainly from UL, which are for the most part applied by the same testing institutes as those which operate as NRTLs in the commercial sector.

The result is that the electrical industry, in seeking access to the US market, finds itself confronted with a system in which it is in practice mandatory to certify compliance with nationally or regionally standardized product requirements. Test results received from European testing institutes are as a rule not recognized by the American institutes. The internationally established and functioning CB (certification bodies) procedure of the IEC, which brings about the mutual recognition of test results by various certification agencies worldwide, is also only applicable in exceptional cases to exports to the US.

Ultimately the divergences described above with regard to the technical regulation of product requirements and the differing systems of conformity assessment result in a „twofold barrier to market access". The abolition of this twofold barrier can only be achieved on the basis of harmonization of technical standards.

The bottom line

From the point of view of ZVEI, the TTIP agreement must in no circumstances lead to a weakening of the flexible European market access model (the so-called „new approach" with CE marking), whose decisive criterion is the manufacturer's own responsibility and which to a large extent dispenses with product approval by third-party agencies.

In this context it is particularly important to ensure that concessions in the area of mutual recognition do not result in US companies enjoying easy market access in the EU while European companies continue to be confronted with heterogeneous and complicated US product requirements.

Special conditions applied in the US certification market

In principle, both the voluntary and the legally compulsory certification in the USA similar to the European approach - are carried out by third parties as a service on the basis of free competition. Currently there are 14 certification agencies accredited as so-called NRTLs. In spite of the intention of free competition, monopolistic structures have developed over wide areas of the US certification system.

The main reason is that the American certification agencies are under no obligation to recognize each other's certifications and test results, even though they are all, as NRTLs, subject to the same governmental controls by OSHA (Occupational Safety and Health Administration). Certification agencies with a large market share exploit the said absence of obligation to ensure that a certification by the same (their own) certification agency is required for all important supplied components and materials.

The consequence for the manufacturers of electrical components for machines, appliances and plants is that they are in practice compelled to work with only one specific certification agency, as the certificates of other agencies are not accepted and the products are thus practically unmarketable.

In effect, this leads to a monopolistic situation, and the result for manufacturers is that

they have to work in adverse market conditions which take the form of unilaterally dictated pricing, detrimental contract terms and protracted order execution times. Also included are prohibitive framework conditions for the application of the CB procedure[2], such as high recognition fees and demands for additional testing.

The result is a special form of „trade barrier". While it is not caused directly by statutory provisions, it is still favored to the extent that, because the regulatory system tolerates it, it can in practice only be abolished by the introduction of an obligation to recognize other certifications.

Our conclusion:

The non-tariff trade barriers include not only statutory market-restrictive measures but also structures firmly established in the economy, such as the NRTL system, which are tolerated by the authorities and result in restrictions on market activity

Possible solutions

The following interim steps could be taken en route to a fundamental restructuring of the US certification system.

First, the twofold testing (re-testing) of components during the process of certification of end products should be stopped by the regulatory authorities. This would necessitate the mutual recognition of test reports by the various US conformity assessment agencies (the so-called NRTLs).

Overall, the mutual recognition of the US conformity assessment agencies amongst themselves should be actively promoted. For this purpose ZVEI proposes the introduction of a uniform NRTL marking (single NRTL marking). Such marking would make it clear that the certification agency in question complies with the corresponding NRTL requirements, and – in the best-case scenario – it would bring about more acceptance and mutual recognition among the NRTLs.

VI. Protection of intellectual property rights: no special TTIP provisions

Effective protection of intellectual property rights is essential for an innovation-based economic system in the EU and the US. Using the instruments for the protection of intellectual property rights (patents, utility patents, design patents, trademarks) supplemented by copyright, it is possible to provide legal safeguards for the results of research & development and defend them in case of an infringement – even if this generally necessitates significant investments. Intellectual property rights guarantee a „return on investment" which enables innovators to invest further in research & development, i.e. ultimately in the prosperity of our economies.

ZVEI is therefore committed to maintaining a high level of protection for intellectual property rights of companies, universities and individual inventors and developers. The legal systems in the US and the EU, including the individual EU member states, already provide for a high level of detail in relation to the protection of intellectual property rights.

In the EU the different member states' systems for the protection of the said rights were brought closely into line with each other some years ago by means of harmonization directives. Furthermore, there also exists European legislation, inter alia for trademarks and utility patents, and soon for patents as well. There are thus high, standardized and detailed sets of standards for the protection of these rights on the markets of two of the world's major economic regions.

[2] The CB procedure is an internationally recognized testing program which facilitates access to the major markets for manufacturers of electrical and electronic products. The program is founded on a test based on an international standard and the issue of the so-called CB report as a basis for national certification.

ZVEI categorically rejects a harmonization or alignment of intellectual property rights by means of TTIP provisions. Bilateral harmonization via TTIP would not give due consideration to the fact that the EU and the US operate in a global environment, and that there are established fora at international level in which, with the participation of the EU and the US, multilateral harmonization of the protection of intellectual property rights is being advanced. In the area of the protection of intellectual property rights it would be counter-productive to complicate the pursuit of multilateral solutions by prior decisions in bilateral agreements such as TTIP.

ZVEI demands that use be made of the fora established under the auspices of the World Intellectual Property Organization (WIPO) for a harmonization of the protection of intellectual property rights. This applies in particular to a harmonization of substantive patent rights, which are currently under multilateral discussion by the so-called B+ Group. In this context we reject the introduction of a grace period (or period preclusive of prejudice to novelty) demanded by the USA during the B+ Group negotiations. It would result in massive legal uncertainty on the part of companies, which could be confronted with the publication of patents only after they had started business activities in a specific technical area. A grace period would at best be acceptable in return for the introduction of a genuine first to file principle and a comprehensive right based on prior use.

VII. Small and medium-sized enterprises (SMEs): ease mutual market access for SMEs

In the context of the TTIP negotiations it has also been agreed to create a special chapter which deals with the requirements of small and medium-sized enterprises (SMEs). The large number of small companies is characteristic of the German electrical industry, and the majority of ZVEI member firms are SMEs. These companies are disproportionately affected by trade barriers and can therefore also benefit disproportionately from a transatlantic trade and investment partnership which diminishes such barriers.

The abolition of technical trade barriers – particularly in light of the special requirements of SMEs – is therefore a key demand of ZVEI. What would be the benefits of a special SME chapter?

The access of SMEs to foreign markets is restricted not only by the fact that these companies are disproportionately affected by existing trade barriers but also, in some cases, by a lack of information about the exact requirements for achieving market access. Smaller companies could profit from a simplified access to information about the various technical, regulatory and administrative conditions to be fulfilled for market access.

- A TTIP chapter on SMEs could provide for the setting up of an information website which would provide details of all the important requirements to be met in the USA at federal and at state level, and also details of the various technical, regulatory and administrative conditions to be fulfilled for market access.
- The introduction of an SME helpdesk, which would advise companies seeking market access, could also be of additional value to SMEs.

VIII. Protection of investments

Establishment of fair and transparent rules

Foreign direct investment is a significant motor of economic growth in industrial countries and even more so in emerging and developing countries. It is particularly in these markets, however, that investments can entail substantial long-term political risks. Such risks can take the form of a direct expropriation of invested funds or can comprise more subtle and indirect measures which have an effect like expropriation (also referred to as indirect expropriation), such as discriminatory treatment by the regulators in the host country.

The importance of investment for international trade has seen steady growth at the global level. According to UNCTAD (United Nations Conference on Trade and Development) worldwide volume of foreign direct investment has tripled since 2000, totaling 23.6bn US dollars in 2012.

The US and the EU are decisive contributors to this positive development. Around 65 percent of worldwide foreign direct investment is accounted for by these two economic regions. Accordingly, the EU and the US have a common interest in the protection of existing foreign investment and in the maintenance of an open investment climate.

Particularly for the electrical industry, which has a very strong international presence, it is increasingly important to have a guarantee of legal certainty through investment protection agreements covering existing investments.

Because legal protection under the rules of the host country is in many cases insufficient to cover against the risks, protection and cover can be achieved by means of so-called bilateral investment treaties (BITs). The aim of a BIT is to create legal certainty for investors by for example protecting them from expropriation and providing for compensation in the event of expropriation. This is important as investors enter into a long-term relationship with the host country via their investments, and they cannot simply, without further ado, switch to other markets when difficulties arise.

Worldwide, more than 1400 such investment promotion and protection treaties have been established. In recent months, however, these treaties have become the subject of increasing public criticism, in particular because the treaties often contain a clause that allows investors to sue for their rights against the host country before an international court of arbitration (the ISDS clause: Investor-State Dispute Settlement).

Why should TTIP include a chapter on investment protection?

In principle the EU should not exclude any countries from negotiations on investment protection. Even though the US and the EU are two economic areas which are distinguished by their sophisticated and reliable legal systems, this is no reason to dispense with a chapter on investment protection.

On the one hand agreements between states with developed legal systems can secure the safety of the investments of existing and future investors, as investors can in individual cases also be exposed to political risks in such countries. Germany has agreed BITs with ISDS clauses by no means only with developing and emerging countries. On the other hand a decision not to include BITs with a selected group of countries would set the wrong signal internationally and would indirectly cast doubt on the importance of investment protection.

Investor-state dispute settlement (ISDS): important but in need of reform

The TTIP negotiations, in order to live up to their claim of defining globally valid standards, could seize the opportunity to develop the BIT system further, taking into account the constructive criticism that has been expressed.

Investor-state arbitration proceedings are important as a means of giving foreign investment appropriate protection. Instead of rejecting such proceedings categorically, the aim should be to improve the existing system. Some of the areas where improvements are essential are:

- Enhancement of the functioning and transparency of the ISDS mechanism: TTIP could establish better standards for the arbitrator selection procedure and for access to hearings and proceedings documents.
- Lack of appeal mechanism: Up to now the judgments of arbitrators have been final and binding. In view of the extreme fragmentation of the system and the associated possibility of contradictory judgments, this is a pronounced weakness of the system.
- Necessity of maintaining regulatory autonomy: The TTIP agreement offers the opportunity to take a closer look at the balance between the protection of foreign investors and the principle of regulatory autonomy. To ensure that the state has the necessary room for maneuver – for example in the area of protection of the environment, health and consumers – European investment treaties could refer to the exceptions valid under international trade law as laid down in GATT Article XX and transfer these rules to the sphere of investor protection.
- Precise definition of central principles: BITs refer to a number of principles which are not precisely defined. For example, terms like „indirect expropriation" and „fair and equitable treatment" allow a wide range of interpretation. The result of such inexact definitions is that courts of arbitration interpret the same terms in different ways, and the consequence is legal uncertainty both for the state and for investors.

The creation of an international court of justice

The large number of bilateral investment treaties and the variety of institutions for the settlement of disputes make the system severely fragmented and difficult to fully understand.

The approach to the above-stated problem areas in current bilateral investment treaties focuses on interim improvements which can be implemented at short notice. However, a long-term strategy should also be developed, and it could be agreed in the framework of TTIP, e.g. with a target date of 2020: The creation of an international court of justice composed of professional judges.

A court like this could start by centralizing and standardizing the hitherto fragmented case law in the field of investment protection law and then later (target date 2030) also hear and decide on international trade disputes (in the relationship B to B and B to C). The establishment of an appeals mechanism would also ensure that judgments could be reviewed and the law interpreted in a more uniform manner. TTIP could take the first step in this direction by setting up a permanent bilateral tribunal for the settlement of disputes with the possibility of appeal.

IX. Conclusions

TTIP offers many opportunities for companies in the European electrical industry. The abolition of tariff and non-tariff trade barriers, e.g. in relation to the harmonization of divergent technical product requirements, will improve market access for European companies in the US and vice versa.

A balanced and ambitious agreement can save companies on both sides of the Atlantic unnecessary costs caused by customs duties or by retesting requirements for components on the US certification market. It can also guarantee access on equal terms to the public sector procurement market of the partner country.

Edition September 2015

ZVEI: Die Elektroindustrie

ZVEI Business Cycle Report

► **New orders enter into the second half-year with a plus**

The German Electrical and Electronic Industry has entered into the second half-year with an increase in new orders. They picked up by 6.5% (year over year) in July. Therefore, the ordering activity remains on an upward trend.

While domestic bookings decreased by 2.8% in July, new orders from abroad rose markedly by 14.9%. Euro zone clients raised their orders by 15.8%, and customers from third countries booked 14.4% more than a year earlier.

In the full period from January through July of this year overall new orders exceeded their pre-year level by 6.8%. Again, the rise in bookings from abroad (+12.2%) was considerably stronger than the increase in domestic orders (+0.7%). With a plus of 14.8% new orders from non-euro zone countries grew more dynamically than bookings from the (other) members of the common currency area, which picked up by 7.9%.

New Orders

Index 2010 = 100, 3-month moving average

Euro zone

Domestic

Non-euro zone

160 140 120 100 80 60

Jan 07 Jan 09 Jan 11 Jan 13 Jan 15

Source: Destatis and ZVEI's own calculations

► **Slight decrease in production in July**

Production and Production Plans

Production, 2010 = 100, price, seasonally and working day adjusted

Production plans, balance

130 120 110 100 90

30 20 10 0 -10

Jan-13 Jul-13 Jan-14 Jul-14 Jan-15 Jul-15

Source: Destatis and ZVEI's own calculations

Production – adjusted for price – of the German E&E Industry has failed its pre-year level by 1.7% in July 2015. From January through July of this year the sector's output only rose by 0.4% (again year-on-year rate). Already for some time past production cannot keep up with the performance of turnover. The latter also includes services, which, according to this, have been doing comparatively better at last.

On balance the firms have lowered their production plans in August of this year. 15% of the companies intend to raise their output level in the next three months to come. At the same time, 79 and 6% plan to maintain or curb it, respectively.

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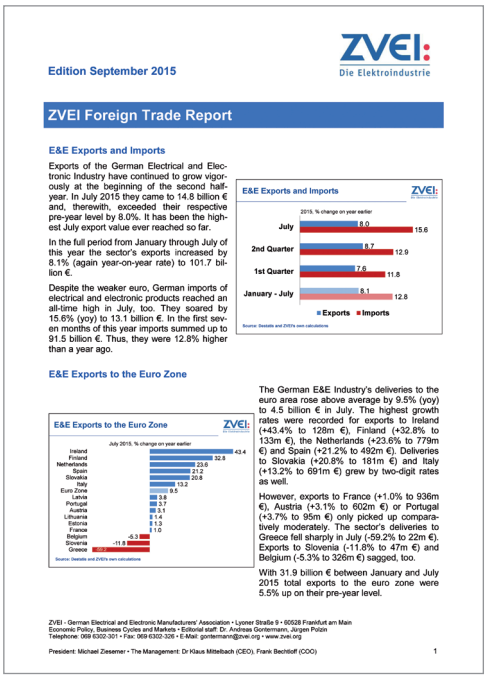
ZVEI Business Cycle Report

Every month ZVEI informs about both the current economic situation and the economic expectations in the German Electrical and Electronic Industry.

The ZVEI Business Cycle Report is concerned with the latest developments in new orders, sales, production, business climate and much more.



Edition September 2015

ZVEI: Die Elektroindustrie

ZVEI Foreign Trade Report

E&E Exports and Imports

Exports of the German Electrical and Electronic Industry have continued to grow vigorously at the beginning of the second half-year. In July 2015 they came to 14.8 billion € and, therewith, exceeded their respective pre-year level by 8.0%. It has been the highest July export value ever reached so far.

In the full period from January through July of this year the sector's exports increased by 8.1% (again year-on-year rate) to 101.7 billion €.

Despite the weaker euro, German imports of electrical and electronic products reached an all-time high in July, too. They soared by 15.6% (yoy) to 13.1 billion €. In the first seven months of this year imports summed up to 91.5 billion €. Thus, they were 12.8% higher than a year ago.

E&E Exports and Imports

2015, % change on year earlier

July 8.0 15.6

2nd Quarter 8.7 12.9

1st Quarter 7.6 11.8

January - July 8.1 12.8

Exports Imports

Source: Destatis and ZVEI's own calculations

E&E Exports to the Euro Zone

E&E Exports to the Euro Zone

July 2015, % change on year earlier

Ireland 43.4
Finland 32.8
Netherlands 23.6
Spain 21.2
Slovakia 20.8
Italy 13.2
Euro Zone 9.5
Latvia 3.6
Portugal 3.7
Austria 3.1
Lithuania 1.4
Estonia 1.3
France 1.0
Belgium -5.3
Slovenia -11.8
Greece -59.2

Source: Destatis and ZVEI's own calculations

The German E&E Industry's deliveries to the euro area rose above average by 9.5% (yoy) to 4.5 billion € in July. The highest growth rates were recorded for exports to Ireland (+43.4% to 128m €), Finland (+32.8% to 133m €), the Netherlands (+23.6% to 779m €) and Spain (+21.2% to 492m €). Deliveries to Slovakia (+20.8% to 181m €) and Italy (+13.2% to 691m €) grew by two-digit rates as well.

However, exports to France (+1.0% to 936m €), Austria (+3.1% to 602m €) or Portugal (+3.7% to 95m €) only picked up comparatively moderately. The sector's deliveries to Greece fell sharply in July (-59.2% to 22m €). Exports to Slovenia (-11.8% to 47m €) and Belgium (-5.3% to 326m €) sagged, too.

With 31.9 billion € between January and July 2015 total exports to the euro zone were 5.5% up on their pre-year level.

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ZVEI Foreign Trade Report

Every month ZVEI informs about the latest developments in the German Electrical and Electronic Industry's foreign trade.

The ZVEI Foreign Trade Report presents the performance of the sector's exports and imports and much more.

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Die Elektroindustrie

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