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Ripping into TTIP? Debates Surrounding the Upcoming EU–U.S. Negotiations

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The outcome of negotiations for a transatlantic trade deal depends largely on the stance of politicians and stakeholders in the EU and the U.S. An overview of the debate on either side of the Atlantic reveals both sides' respective interests and suggests which areas will prove particularly difficult to negotiate. These include public procurement provisions, data privacy, agricultural issues, and the financial services sector.

Ever since President Barack Obama announced that the U.S. and EU would undertake negotiating the Transatlantic Trade and Investment Partnership (TTIP) in his State of the Union address in February, a debate on the agreement has raged on both sides of the Atlantic. Politicians, stakeholders, and civil society organisations have weighed in on both the pros and cons and the content of the FTA (Free Trade Agreement) that would cover the world's biggest trading bloc and bring economic gains of €119 billion a year for the EU and €95 billion for the U.S.¹ When the first round of TTIP negotiations starts on 8 July, they will be coloured by these internal discussions, which are likely to heat up as talks progress—and ultimately affect the final shape of the agreement.

Debating TTIP in the EU

The European Commission (EC) will negotiate TTIP on behalf of the EU and its Member States on the basis of a mandate adopted by the Council on 14 June. According to the mandate, the Commission must keep the EU Trade Policy Committee and the European Parliament (EP) regularly informed about the progress of the talks. Once negotiations are completed, the EP must give its consent before the final agreement can be concluded by the Member States and the Council, and signed by an EU representative (traditionally the Commissioner for Trade) designated by the Council presidency. As a result, not only the stance of the Commission but also that of Members of European Parliament (MEPs) and Member State governments, will affect the outcome of the talks.

In the EU, the TTIP debate is coloured by institutional and state interests. As an institution, the EC has a lot riding on the transatlantic trade deal. The agreement would allow it to demonstrate that the European Union still has something to offer beyond recession and austerity. Moreover, the success of the project would provide a boost to those currently in office during the EU elections next year if it is concluded

¹ J. Francois et al., *Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment*, Centre for Economic Policy Research, March 2013, www.trade.ec.europa.eu.

within the ambitious timeframe that has been set by the Commission. But so far, EU-level talks surrounding the agreement suggest that taking the interests of individual Member States into account during the talks may be easier said than done.

Member State Interests

The issue that has ruffled most feathers is France's insistence on maintaining the *exception culturelle*—or cultural exception, i.e., the exclusion of the cultural sector from trade agreements—in the TTIP. As a result of this stance, Member States struggled to agree on a negotiating mandate for the Commission when the Council of Trade Ministers met on 14 June. Although 13 other Member States supported the cultural exception in May, by the time the Council was held, most argued that going into negotiations with carve-outs would encourage American negotiators to also adopt a defensive stance.

As a result, the final text of the mandate is ambiguous on the subject of culture. The final document asserts that audio-visual services will not be covered, but the Commission is also authorised to suggest additional negotiating directives to the Council. Moreover, the controversy over audio-visual services has created tensions among EU leaders. France's perceived stubbornness has caused much frustration in the Commission, as well as in Berlin and London. A war of words has erupted between Commission President José Manuel Barroso and the French government. The dispute could make it more difficult to garner the political support necessary for an ambitious deal, and is likely to complicate the negotiation process for the EC.

So far, France's call for a cultural exception is the only carve-out officially proposed in the EU. The other Member States that have been vocal on the subject of TTIP—Germany and the UK—are arguing for as ambitious an agreement as possible, for economic as well as internal political reasons. For Germany, widely-perceived as the bank-roller of the EU's crisis-struck economies, any measures that are likely to boost EU growth and reduce the risk of further bailouts are in its interest. For the UK, given its already-high level of integration with the U.S. economy, it has the most to gain from a comprehensive agreement,² and its government needs the TTIP to stem the tide of euroscepticism in the country.

Potential Member State Concerns

Although other Member States are not currently voicing any TTIP-related demands, this is not to say that they will not do so once negotiations start. When more information about what is actually being discussed emerges (as it inevitably will, given that the supposedly EU-restricted mandate was leaked almost immediately), Member States, under pressure from domestic stakeholder associations, may begin to raise objections. Indeed, the fact that France's demands were recognised by the final mandate—however vaguely and begrudgingly—is likely to spur others to push for acknowledgement of their own concerns.

Agriculture is one area where concerns are likely to be raised by some Member States once negotiations begin. Member States with important agricultural sectors may act in defence of their national subsidy and support systems. The fact that the Commission's mandate envisages the possibility of negotiating a bilateral safeguard clause to protect domestic industries threatened by a rise in imports suggests that some Member States have already broached the subject. A related issue is the broad opposition to the use of genetically-modified organisms (GMOs) in Europe. Once again, the EC's mandate suggests this issue has been raised by Member States: the text states that TTIP should recognise the parties' right to decide their own level of protection in terms of sanitary and phytosanitary (SPS) measures.

Data privacy is another potential sticking point. The failure of previous attempts to negotiate a bank data-transfer agreement (the so called SWIFT II agreement, which involved sharing information collected by the Society for Worldwide Interbank Financial Telecommunication, was voted down by the EP in November 2010 due to concerns over insufficient data protection) highlights the difficulty of negotiating private data-related agreements. Following the revelations about U.S. internet surveillance, MEPs of various political persuasions have said that the revelations would strengthen EU determination to maintain its tougher data-

² G. Felbermayr et al., *Transatlantic Trade and Investment Partnership (TTIP): Who Benefits from a Free Trade Deal?*, Bertelsmann Stiftung, 2013, www.bertelsmann-stiftung.de.

protection standards.³ On 26 June, the chief EU TTIP negotiator reported at a European Parliament “Friends of TTIP” meeting that data privacy would not be negotiated in the agreement. This stance is likely to be bolstered by claims that the U.S. National Security Agency has been spying on EU offices in Washington and the UN. The allegations have raised tensions ahead of the start of the TTIP negotiations on 8 July,⁴ and could complicate the inclusion of data protection into the agreement.⁵

EU Stakeholder Views

Several EU business group alliances (e.g., BusinessEurope and the European Services Forum) advocate a comprehensive agreement that includes both tariff reduction and regulatory coherence (i.e., progress towards common regulatory standards for goods and services produced in the EU and the U.S.). Important EU industries such as the chemical sector have been vocal in their support for an ambitious agreement. In particular, many European companies see TTIP as an opportunity to gain access to the U.S. public procurement market, which has various limits to entry for non-American firms. EU financial services industry actors also want to see a broad TTIP that includes their sector.

On the other hand, civil society groups, such as the European Trade Union Confederation, the European Environmental Bureau, and the Corporate Europe Observatory, reject TTIP on the grounds that its aim of regulatory harmonisation is in fact deregulation. They want Europe to keep its precautionary principle, which states that the burden of proof that a product is not harmful to health or the environment rests on the producer, in order to protect consumers. They also oppose the agreement’s planned investor–state dispute settlement clause, which would allow investors to initiate dispute settlement proceedings against national governments. Others, such as Food & Water Watch and Friends of the Earth, want to see the EU’s precautionary principle maintained in SPS matters.

These groups also demand that talks not be held in secret. This is a sensitive issue in Europe since ACTA—the Anti-Counterfeiting Trade Agreement designed to set worldwide copyright standards—was scrapped after the EP refused to ratify the treaty following mass protests against the secrecy of the negotiations and the allegedly draconian IPR enforcement elements of the agreement. European digital rights groups, such as EDRI, ACCESS and the Foundation for a Free Information Infrastructure, have already challenged the Commission over the lack of transparency with regard to TTIP, and the EC has been at pains to make clear that TTIP is not a new ACTA.

Debating TTIP in the U.S.

In the U.S., the office of the Trade Representative (USTR) will negotiate TTIP on behalf of the administration. The final draft of the text will be presented to Congress for approval, so broad political support for the agreement is necessary. From the start, there were positive signs of bipartisan accord regarding the benefits of an FTA with the EU, with both Republican and Democratic representatives declaring their support for the agreement.⁶ In fact, TTIP has been hailed as one of the few issues able to unite politicians across party lines in recent years.

This unanimity is due to the general consensus that surrounds the economic boost that TTIP would bring to the U.S. Support from many representatives and senators is further guaranteed by the benefits that their home states (their home electorates) are likely to gain from the agreement. California, New York, Texas and Minnesota in particular are greatly dependent on EU trade and investment for employment and exports, and so would stand to greatly profit from TTIP.

³ J. Fontanella-Khan, J. Politi, “Data Scandal Clouds Trade Talks,” *Financial Times*, 10 June 2013, www.ft.com.

⁴ Martin Schulz, the president of the European Parliament, warned of a “severe impact” on transatlantic relations should the allegations be proven true. Cf. C. Bryant, J. Chaffin, S. Daneshkhu, “Europeans Fume Over U.S. Spying Allegations,” *Financial Times*, 1 July 2013, www.ft.com.

⁵ EU Justice Commissioner Viviane Reding has warned that the U.S. response to her questions regarding the surveillance claims is likely to shape the outcome of trade talks. Cf. “EU Official Pushes U.S. to Explain Its Surveillance,” *New York Times*, 11 June 2013, www.nytimes.com.

⁶ For example, members of Congress Erik Paulsen (Republican, Minnesota) and Richard Neal (Democrat, Massachusetts), wrote an article arguing TTIP will provide a boost to American firms. Cf. R. Neal, E. Paulsen, “Trade Pact Right for U.S. and EU,” *Politico*, 5 May 2013, www.politico.com.

Beyond the economic benefits, geostrategic considerations are also spurring U.S. politicians to support TTIP. Indeed, some see a need to reassure their European partners, given the perceived U.S. “pivot to Asia.” At a House Ways and Means Committee hearing on the subject, Ambassador Stuart Eizenstat, former U.S. envoy to the EU, testified that the agreement would provide an important signal of America’s continued dedication to Europe, with which it shares core values.⁷

TPA Aversion on the Left

However, regardless of the broad political support in principle for TTIP, the practicalities the agreement entails are not so unambiguously popular. Most pressing, there is the issue of the Trade Promotion Authority (TPA), a special authority that can be granted to the president by Congress and which allows the administration to submit FTAs to Congress for approval without the possibility of amendments. Supporters of TTIP see TPA as essential for the success of the agreement: they worry that negotiations will suffer without it, as the EU will fear it will have to renegotiate the agreement with Congress.

Mike Froman, the U.S. Trade Representative since 19 June, has vowed to work with Congress to renew TPA, which expired in 2007, and leading senators seem willing to support it.⁸ But opposition is appearing among left-leaning Democrats, who are worried by what they call the “extreme secrecy” surrounding the ongoing Trans-Pacific Partnership negotiations, another FTA that is currently being negotiated between the U.S. and 11 American and Asian states. In order for Congress to ensure American trade agreements benefit the American people, they argue it must maintain its authority.⁹

This reluctance to support TPA is spilling over into full opposition to TTIP among these politicians. A letter to the House Ways and Means Committee ostensibly about TPA, signed by 36 members of Congress dubbed the “Young Democrats”, raised objections to TTIP. The members of Congress broached issues such as the possibility of offshoring jobs, threats to the “Buy American” procurement provision, and difficulties surrounding dispute settlement.¹⁰

Stakeholders for an Ambitious Agreement

Ultimately, the stance of many U.S. politicians will largely depend on the position taken by lobbyists from the most powerful stakeholders in their home states. And a majority of stakeholders support a comprehensive, “21st century” agreement.¹¹ These include groups representing a wide range of producers and sectors—from airlines, through makers of distilled spirits, to fisheries. Groups such as the U.S. Chamber of Commerce and the Intellectual Property Alliance also back an ambitious agreement. In fact, the former is working to inform legislators on the benefit of Trade Promotion Authority together with the Business Roundtable, an association representing the biggest U.S. blue chip companies.

A majority of stakeholders have, to use a trade negotiations term, offensive interests in TTIP. Many groups want the agreement to alter the EU’s SPS rules, which rely on the precautionary principle, to American-style regulations that are “science-based.” This view is expressed by associations representing manufacturers of a wide range of products, including personal-care products, meat, seeds, and wine. Another important offensive interest is geographical indicators (GIs), which lobbyists for organisations representing such groups as grocery manufacturers and dairy producers want to see settled in their favour during the negotiations. In the case of financial services, stakeholders such as the Coalition of Services Industries and the Business Coalition for Transatlantic Trade are more inclusionary than the federal negotiators. The U.S. Treasury argues for financial services to be excluded from TTIP, fearing their

⁷ S. Eizenstat, “Testimony before the United State House Ways and Means Subcommittee on Trade,” 16 May 2013, www.waysandmeans.house.gov.

⁸ E.g., Committee chairman Sen. Max Baucus (Democrat, Montana) and ranking member Sen. Orin Hatch (Republican, Utah). Cf. S. Eizenstat, *op. cit.*

⁹ M. Pocan *et al.*, “Letter to the Honorable Sander M. Levin, Ranking Member, Ways and Means Committee,” 7 June 2013, www.citizen.org.

¹⁰ *Ibidem.*

¹¹ A notable exception is the American Sugar Alliance (ASA), which wants to see the sugar industry excluded from TTIP, a position that is supported by EU sugar producers. According to ASA, “both the U.S. and the EU are net sugar importers with no legitimate commercial reason for exporting to each other’s markets.” Cf. “Submission of the American Sugar Alliance,” *Office of the United States Trade Representative Notice: Meeting: Proposed Transatlantic Trade and Investment Agreement*, www.regulations.gov.

inclusion will weaken EU financial sector reforms, but large parts of the U.S. financial services industry are keen to see the sector fully brought within TTIP in order to improve market access and to cut regulatory costs.

The only significant defensive stance concerns public procurement laws. The “Buy American” act (or Berry Amendment), which requires state organs announcing public tenders to prefer U.S.-made goods and services. This is a topic raised by associations representing sectors that benefit from the provision, including apparel and footwear manufacturers, industrial fabric producers, and iron manufacturers, which want the provision to remain unaffected by TTIP.

Civil Society Objections

Civil society associations are less enthusiastic about TTIP. Organisations such as the Transatlantic Consumer Dialogue and U.S. PIRG (Public Interest Research Group) oppose the agreement due to concerns that regulatory convergence will undermine public protections. They fear the investor-state dispute settlement element of TTIP will create a legal loophole allowing multinationals to bypass court systems. Unlike the U.S. Chamber of Commerce, they argue that American consumers in fact want the same protections that Europeans are afforded by the precautionary principle.

However, these civil society actors have much less influence on Congress and the negotiation process than the business groups that support a comprehensive TTIP. Moreover, none of the concerns raised by stakeholder lobbyists are presented as *sine qua non* for an agreement, given its economic potential. Even those who are not optimistic about the outcomes of TTIP are so because they are doubtful of the negotiators’ ability to achieve a comprehensive agreement that will benefit them, not because they see the agreement as potentially harmful to their members.¹²

Conclusions

A review of the debates taking place in the EU and the U.S. reveals the areas that will prove most delicate for negotiators. Public procurement is an important defensive interest for U.S. stakeholders, but is also an important offensive interest for the EU (it is mentioned in the Commission’s negotiating mandate, which indicates it is a priority area for Member States). This suggests it will be a particularly difficult area to negotiate. Data protection is likely to be another sticking point, given the difference in standards between the U.S. and the EU, and particularly so in light of the U.S. surveillance scandal. Agricultural issues such as geographical indicators and sanitary and phytosanitary measures are both offensive interests of the U.S. that are also defensive interests of the EU, suggesting these topics will also be difficult to negotiate. Finally, although the UK and U.S. stakeholders are in agreement over the inclusion of financial services in TTIP, the defensive stance of the U.S. Treasury suggests negotiations will not be easy.

Although there are dissenting voices on both sides of the Atlantic, it seems that support for TTIP is broader in the U.S. than in the EU, in contrast to how the situation may have seemed previously. At first, the European Union was making concessions in an attempt to coax the American leadership into negotiating an agreement (e.g., the EU recently reversed its decision to ban imports of live pigs and some treated beef from the U.S.). Now, however, there are more concerns being raised in the EU than in the U.S.

This situation is likely to continue. In the U.S., there are reasons for the broad political consensus surrounding the agreement to grow, as the balanced nature of U.S.–EU trade and the EU’s high labour and environmental standards can quell some of the traditional opposition to FTAs in Washington. In the EU, meanwhile, it seems that much opposition may emerge only once the talks begin. Some EU Member States are likely to come forward with objections as sensitive issues are put on the table. Moreover, the European

¹² The U.S. poultry producers’ association, the National Chicken Council, is one such association. In a letter to USTR, it states that “until there is a clear indication of how this agreement will result in real and meaningful market access with the elimination of all non-tariff trade barriers to our products, we do not see how TTIP is in the interests of our industry, our member companies, our workers, or the tens of thousands of family farmers who grow chicken.” Cf. M. Brown, J. Summer, J. Brandenberger, “Letter to Mr. Douglas Bell, Chair, Trade Policy Staff Committee, Office of the U.S. Trade Representative,” 10 May 2013, www.nationalchickencouncil.org.

public has yet to express itself on TTIP, and spurred on by groups such as EDRI it may well choose to oppose the agreement because of the secrecy surrounding the negotiations. Finally, several EU politicians have suggested that trade talks may suffer if claims the U.S. spied on European diplomatic missions turn out to be true.

The talks may yet succeed, though, if both sides display goodwill. In the U.S. this is already happening to some extent. For example, the Motion Picture Association of America's submission to USTR is conciliatory in tone and accepts EU support for domestic audio-visual industries.¹³ European Member States and stakeholders that wish to see an ambitious TTIP should take a similar attitude and avoid adopting a defensive negotiating strategy. Governments should highlight the bigger picture of the economic benefits that a comprehensive agreement can bring, and avoid giving in to sectoral objections of particular industries.

¹³ "Comments of the Motion Picture Association of America Concerning the Proposed Transatlantic Trade and Investment Partnership," *Office of the United States Trade Representative Notice: Meeting: Proposed Transatlantic Trade and Investment Agreement*, www.regulations.gov.