Energising TTIP:
Diversification through trade?

by Iana Dreyer

The Transatlantic Trade and Investment Partnership (TTIP) negotiations launched in 2013 are an unprecedented attempt to create an integrated transatlantic market. Washington, Brussels and EU member states see it as a means to boost the transatlantic alliance, help regain economic competitiveness, and set new and ambitious rules for international trade and investment.

Moreover, energy trade proper has become an important topic of discussion around TTIP: the crisis in Ukraine, Europe's own energy challenges and the US shale revolution have given the issue particular salience. But although TTIP can contribute to improving the EU's energy balance, it cannot reduce EU reliance on Russian gas imports, at least not in the short term. Moreover, all parties involved will need to brace themselves for a protracted period of difficult and lengthy negotiations.

Background and context

With potential rifts in the Western alliance having started to appear following the end of the Cold War, trade has often been touted as an area where Washington and European capitals – with a little help from Brussels – could create common ground. The risk of growing apart was already recognised in the early 1990s, when the idea of a transatlantic free trade agreement (TAFTA) was floated as a means to bind the partners in an ever-globalising world. But the success of the General Agreement on Tariffs and Trade (GATT) Uruguay round in 1994 and the subsequent creation of the World Trade Organization (WTO) placed the idea of a broad bilateral trade deal on the back burner.

In 2006, the transatlantic free trade concept was relaunched by German Chancellor Angela Merkel in a bid to re-boot a relationship battered by divisions over the Iraq war. The trade talks floundered quickly, stumbling on a commercially marginal issue: whether or not to allow US exports of chicken washed with chlorine to Europe. The fact that these talks were derailed over such a trivial issue is clear indication that they lacked the necessary political support.

Today's TTIP initiative is unfolding in a similar context, born as it was as a reaction (or complement) to US ambitions to 'pivot' to Asia. This time, however, the transatlantic deal is genuinely focusing minds in Washington, Brussels, and EU capitals. Talks were kick-started in the summer of 2013 under more favourable conditions than previous initiatives, with an EU-US High Level Working Group on Jobs and Growth (HLWG) preparing the ground: it undertook consultations, garnered stakeholder support, and made concrete policy recommendations in a report published in 2012.

Commercial integration across the Atlantic is already deep: US-European mutual investment amounts to trillions of dollars and represents 57% of the inward stock of global foreign direct investment (FDI). Together, the US and the EU account for almost half of world output, a quarter of global merchandise trade, and two-fifths of world services exports.

Yet the 'geo-strategic' standing of the EU and the US has been significantly weakened by the financial crisis of recent years, and both have started to feel the consequences of their relative decline – they were, for example, unable to advance their key interests in the WTO Doha Round of trade liberalisation launched in 2001. The economic downturn in the West has accelerated the rise of emerging markets (the 'rest'), which are gaining an ever greater share of global output. The rising geopolitical assertiveness of China or Russia is also occurring at the very moment when European and American governments, saddled with unsustainable levels of government debt, are slashing military budgets.

The arguments in favour of TTIP – as made by its supporters on both sides of the Atlantic – are multifaceted: by boosting trade and investment, TTIP would contribute to a return to solid economic growth and to greater competitiveness *vis-à-vis* the new global players; and, by signing a deal that reflects *their* commercial priorities and regulatory preferences, Washington and Brussels would be in a good position to shape the agenda for the global trading system.

The hope is to create a sort of 'domino effect' that would press China, India, Brazil and other emerging markets to come to the negotiating table of global economic governance for fear of being excluded from the commercial benefits of TTIP. Indeed, be it within the WTO or otherwise, Western powers have found it impossible to convince these partners to sign up to more rules governing free trade, open and safe investment, competitive markets, intellectual property protection – let alone higher technical, social and environmental standards.

In the US, TTIP aims to reassure Europe that the US is still engaged in and with the continent, compensating Europe for Washington's desire to de-prioritise its NATO-related engagements in the old continent – even if this aspiration is being challenged by the events in Ukraine. The initiative is also part of President Obama's pledge to double US exports during his tenure and is seen as complementary to the other big project launched by his administration, namely the Trans-Pacific Partnership (TPP). In Brussels, there are also hopes that the US backing can be won for various European regulatory agendas. But perhaps TTIP is fuelling hopes that other aims may be fulfilled, such as reducing Europe's energy dependency on Russia.

Energy: a new TTIP-ing point?

The launch of TTIP coincides with a growing divergence in the energy outlook of the EU and the US. Since the 1970s, fear of strategic dependence on oil imports – in particular from the Middle East and other unstable regions – has acted as a sort of strategic 'glue' for the West. The concrete manifestation of this common interest can be found in the form of the Paris-based International Energy Agency (IEA), created in 1973 after the OPEC oil embargo.

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In the last decade, the US has undergone a shale gas revolution and oil production has rapidly expanded. The country now benefits from greater economic and industrial competitiveness, enjoys cheaper gas prices, and has gained greater political room for manoeuvre in the Middle East as it becomes more self-sufficient in meeting its hydrocarbon needs.

By contrast, the EU is facing rising energy prices, thus offering a less favourable environment for energy-intensive industries. It is also increasingly dependent on imports of oil and especially gas. The prospects for shale gas development on EU territory are also poor for geological, legal, and political reasons. Russia's territorial assertiveness in Europe and its leveraging of its export monopoly as a means to exert political pressure on individual European states have also weakened the Union.

Some Europeans hope that, thanks to TTIP, the US will agree to lift its own restrictions on gas and oil exports. The Commission also hopes that the US will join it in its so-called 'raw materials strategy', as articulated in a Communication from 2011. Raw materials include primary agricultural commodities, various minerals, and energy resources such as coal, gas and crude oil. The EU's strategy is aimed at countries like Russia or China: over the past years, these states have introduced bans, quotas or taxes on exports of commodities such as 'rare earths' or cereals. Russia practices a 'dual pricing' policy for its gas exports, selling gas at subsidised prices to domestic consumers and exporting it at high prices abroad. This policy puts investment into production and, by extension, future exports to Europe at risk.

With regard to raw materials, the US has much the same interests as Europe. For example, Brussels and Washington jointly complained against China's quotas on exports of rare earths, introduced in 2010 in the WTO's dispute settlement body, and won the case in a March 2014 ruling.

This common interest does not mean that energy-related talks in TTIP will be without contention. It cannot be taken for granted, for example, that the US is prepared to lift its export restrictions on oil and gas introduced in the 1970s. A command-and-control mindset regarding energy issues in political circles, vested interests in cheap shale gas in the US, environmentalist fears, and weak political support for President Obama's trade agenda among his own Democratic rank and file, all make this task particularly difficult.

Even if the US were to lift its restrictions, it is not guaranteed that the EU would benefit from liberalised gas exports. As gas prices are much higher on East Asian spot markets than their equivalents in Europe, US gas exporters would clearly seek to first sell liquefied natural gas (LNG) in Asia. As the cost of LNG transport is also high, sending gas to Europe might not necessarily be attractive to US exporters or EU importing firms.

What is more, the EU's gas market remains fragmented along national lines, especially in the countries which compose its eastern flank, from the Baltics to the Balkans. Although these countries are among the keenest to reduce their overwhelming dependence on Russian gas imports, a persistent lack of (or insufficient) interconnections prevents non-Russian gas from being delivered.

Yet TTIP is not only about oil and gas and the security of supplies. Both Washington and Brussels want to boost trade in 'green goods', or non-fossil-fuel, non-CO2-emitting energies. Both are promoters of the new 'green goods initiative' in the WTO, launched in February, and have introduced policies supporting the development of renewable energy sources.

Their renewables industries have faced protectionism abroad: 'local content' requirements for investments in renewable energy infrastructure (e.g. in Canada, which fell into line after a WTO ruling) and discriminatory subsidy policies on solar panels (e.g. in India). But the US and the EU have also introduced their own trade restrictive measures – such as antidumping duties – thus fuelling frictions with China over solar power or with Argentina and Brazil over biofuels.

The EU's position on energy in TTIP was articulated in the early stages of the negotiations in an initial position paper titled 'Energy and Raw Materials'. It promotes the setting of rules on 'raw materials used in the manufacture of industrial products – excluding e.g. (processed) fishery products or agricultural products – and energy products, i.e. crude oil, natural gas, electrical energy and renewable energy.' The text says rules should be implemented to ensure the transparency of policy decisions; better market access for trade and investment in the energy sector; the reduction or elimination of export restrictions; discipline on the actions of state-owned enterprises; more trade in renewable energy; and cooperation on energy security, for example on mechanisms to manage supply disruptions.

In September 2013, the Commission submitted a text containing initial suggestions on these issues, which was subsequently leaked to, and published by, the Huffington Post in May 2014. Although the text contained no surprises for those familiar with the EU's raw material strategy, anti-TTIP and anti-shale gas campaigners in Europe and the US vocally denounced the text as a 'secretive' attempt by Europe to promote shale gas imports to Europe.

A long and winding road

The furore surrounding the leaked document highlights how difficult it will be for negotiators and political leaders to bring the public on board with regard to TTIP and the liberalisation of energy trade. The arrest of 250 anti-TTIP demonstrators in Brussels in May 2014, a few days before the fifth round of negotiation talks in Washington, further galvanised the anti-TTIP camp in Europe. The recent European Parliament elections have revealed the extent of the current anti-establishment mood across Europe and could lead to greater efforts to obstruct trade liberalisation. Rising populism within member states could also make it more difficult for the Council to back (or simply pursue) TTIP.

By nature and design, TTIP negotiations are bound to take a long time. What remains to be done is to eliminate residual tariffs on goods and reduce unnecessary barriers to trade linked to regulatory differences. While most bilateral trade deals the EU has been involved in over the past decade have taken three years or more to negotiate, the complexity and ambition of TTIP mean that it may well take even longer. TTIP is not conceived as a classic free trade agreement: beyond liberalising trade in goods and services and opening up public procurement markets, its goal is no less than to establish a framework to make EU and US regulations mutually compatible.

The process will be very difficult, too. It touches upon the very core of respective regulatory systems and philosophies (e.g. the EU's 'precautionary principle') and, in some cases, involves facing up to powerful internal vested interests. The fact that the European Commission – under pressure from public opinion and some member states – took the decision in 2014 to temporarily exclude investor-to-state dispute settlement from the discussions is just one indicator of the scale of the challenge. Another is US resistance to EU proposals to include cooperation on financial services regulation.

The first year of bilateral talks is now drawing to an end, having mostly focused on methodology. Negotiations on substance and actual draft texts for the deal started only in May 2014 and substantial bargaining on trade liberalisation has yet to begin. The fifth round of talks addressed regulatory compatibility on medical devices, pharmaceuticals, cosmetics, information and communication technologies, automobiles, pesticides and chemicals, and sought common language on chapters covering technical barriers to trade, competition, state-to-state dispute settlement and small businesses.

Discussions on energy are only at a very early stage, and the EU and the US continue to disagree on the importance of the energy issue within TTIP. While the EU wants a dedicated chapter on energy, US negotiators would prefer to dilute energy matters across the different chapters which cover trade in goods, services, and regulations, arguing that it might otherwise be stalled by Congress. What is more, the sheer fact of finalising TTIP would facilitate US gas exports to the EU, as licences for exporting gas are automatically issued for partners with which the country has signed a free trade agreement.

TTIP talks are set to slow down for the remainder of 2014. Brussels will be occupied with changes at the top, and Washington is bracing itself for mid-term Congressional elections in November. Obama will prioritise the concluding of much more advanced negotiations on another flagship deal with eleven partners in the Asia Pacific, the Trans-Pacific Partnership Agreement (TPP). But the US president is yet to obtain what is called 'fast-track authority' from Congress, seen as a necessary condition to be able to pass the TPP – such authority forces those in the Capitol to either pass or reject the text wholesale, thereby avoiding amendments.

Those Europeans eager to import US shale gas to reduce (at least partly) reliance on Russia will have to be patient. TTIP is a strategic project with longer-term benefits: it is not meant to be a quick fix for the export competitiveness woes of some EU economies, nor is it a silver bullet for import dependency on Russian gas.

The need to create a genuinely unified, competitive, adequately interconnected EU energy market to reduce strategic dependence on imports from Russia is a task that still lies ahead for member states in the Baltics and south-eastern Europe – with a little help from Brussels. This is the precondition to see, one day, North American gas heat homes or fire power plants in Europe's eastern flanks.

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