Towards an EU-US trade and investment deal

The European Union (EU) and United States (US) are currently negotiating a trade and investment deal, which would create the world's largest free trade area. But the many challenges faced and increasing public opposition put successful conclusion of an agreement in doubt.

Background

In February 2013, EU and US leaders announced the start of procedures for negotiating an ambitious and comprehensive Transatlantic Trade and Investment Partnership (TTIP), following the final report of the EU-US High-level Working Group (HLWG). After a positive impact assessment by the European Commission (EC), the Council approved the EC's proposed mandate for negotiations in June 2013. Talks, led by the EC and the US Trade Representative (USTR), started in July 2013; a sixth round takes place from 14 to 18 July 2014 in Brussels. Observers are increasingly sceptical about the 18 to 24 month timeframe to reach a deal. Legally, the Council would conclude a deal with the consent of the European Parliament, with ratification by all EU Member States (MS) also required ("mixed agreement"). In the US, Congress is responsible for international commerce; a bill to grant the President Trade Promotion Authority (i.e. right to negotiate and sign trade agreements which Congress then approves or rejects, but cannot change) is not certain to be approved.

TTIP's potential benefits

The stated **aim** of TTIP is to expand trade and investment across the Atlantic, increase employment and competitiveness, as well as enable a common approach to rules for global trade, which third countries could also adopt. Another goal is to strengthen overall EU-US relations. The EU-US trade and investment relationship is considered the largest and most important in the world. The two economies accounted for nearly half of global gross domestic product (GDP) and 30% of world trade in 2012; with US-EU trade flows in goods totalling €497 billion, and in services €315 billion. Foreign direct investment (FDI) is even greater, with total FDI stocks of €3.2 trillion in each other's' economies. The transatlantic economy sustains about 15 million jobs.

Nevertheless, TTIP's proponents claim there is untapped **potential** in the relationship. The EC argues that significant gains would arise from further liberalising transatlantic trade. An EC-commissioned study (a new analysis is foreseen for end-2014) asserts a comprehensive and ambitious TTIP would bring overall annual GDP gains of 0.5% for the EU (€119 billion) and 0.4% (€95 billion) for the US, once fully implemented (2027). That is, an extra €545/EU household/year. Reducing non-tariff barriers (NTBs) and further liberalising services and public procurement would constitute around 80% of the benefits. TTIP would positively affect global GDP (€100 billion) and labour markets. Other studies also point to major benefits for income and jobs in the EU and US, but also to those countries which stand to lose from TTIP. TTIP would also create opportunities for small and medium-sized enterprises (e.g. through trade facilitation).

Scope of negotiations and controversial points

Negotiations cover: 1) **market access**, comprising elimination of tariffs for goods and new access to services and public procurement; 2) **regulatory convergence and NTBs**; and 3) **rules for global trade**. March 2014 talks reportedly saw progress on all three. Yet obstacles to a deal are visible in the US and EU position papers.

Tariffs are considered the easiest issue to tackle, as they are low (3-4%), although higher in some sensitive sectors (dairy products, sugar, meat, tobacco, textiles). TTIP's aim is to substantially eliminate tariffs upon entry into force and phase out the most sensitive ones in a short time frame. Both parties are said to benefit from a zero-tariff agreement, given the size of EU-US trade and the added costs to intra-firm trade (representing 1/3 of transatlantic trade). Tariff offers have been exchanged, although the EC criticised the US offer as inferior. Services and procurement offers are in preparation. Both parties seek new market access to

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services, by addressing long-standing barriers, while recognising the sensitive nature of some sectors. The EU intends to secure (mutual market) access to **US maritime shipping and air services**, which might prove contentious in the US. The Council has already excluded **audiovisual services** from the EU negotiating mandate. Disagreement on **financial services** is visible: the EU aims to include financial regulatory cooperation in TTIP, besides market access, but the US is concerned this might affect restrictions in the Dodd-Frank law and prefers separate discussions. The EU side has since indicated some flexibility. TTIP talks are also expected to address digital trade, including regulatory issues on **e-commerce**, and cross-border data flows. Nevertheless, this might be another difficult point, given the connection with privacy protection issues (which the EU wants to keep out of TTIP). Moreover, European concerns about US laws and practice related to data protection have increased with revelations of National Security Agency (NSA) spying. The European Parliament, which recently voted on a new EU data protection regulation and a resolution on NSA spying activities makes its consent to TTIP conditional on respect of the right to privacy. Further liberalisation of **public procurement** markets, accounting for about 15% (US) and 20% (EU) of GDP, is another challenging objective. The EU aims at countering US domestic preference rules (e.g. Berry Amendment, Buy American Act) and obtaining access at sub-federal level in the US, as federal commitments on government procurement in foreign trade deals are optional for sub-federal entities. Conversely, the US seeks "fair, transparent and predictable" rules and non-discriminatory treatment in the EU and its MS.

Regulatory NTBs to trade (e.g. divergent standards, sanitary requirements) are seen as the core of the deal, yielding most benefits, but among the most difficult issues to address. Most EU-US regulatory differences stem from different public preferences and values, as well as different risk management approaches (e.g. the EU's precautionary principle considers not only scientific facts but also socio-economic and environmental effects of future laws). The negotiators are discussing how to ensure compatibility of existing and future regulations, so as to reduce unnecessary costs and red-tape, while "achieving the levels of health, safety, and environmental protection each side deems appropriate." In particular, five aspects are highlighted: **sanitary and phytosanitary** (SPS) issues (food safety, animal and health regulations); **technical barriers to trade** (technical regulations, conformity assessment and standards); **specific sectors** of goods and services (e.g. pharmaceutical, medical devices, automobile, chemical); **cross-cutting disciplines and transparency**; and a framework for **future regulatory cooperation**. However, observers already conclude there is deadlock on regulatory issues. The US stresses the horizontal and transparency issues, while the EU prioritises the sector-specific pillar. Moreover, a US proposal to allow business more input earlier in EU rule-making, implying significant unreciprocated changes to the EU regulatory system, is opposed by the EC and European business alike. Another difficult topic is **agriculture**: the US denounces EU policies and measures on genetically modified organisms (GMOs), hormone-treated beef, pork fed with ractopamine and chlorine-washed poultry as unjustified scientifically and a barrier to US exports. Therefore, the US seeks to eliminate EU SPS barriers to US meat exports. EU Trade Commissioner Karel De Gucht has pledged EU law on GMOs or hormone-treated beef will not change with TTIP. Moreover, the chief EU negotiator has ruled out mutual recognition on chemicals.

Finally, TTIP is intended to set **rules** on investment protection, trade facilitation, intellectual property rights (IPR), labour and environment, energy and raw materials etc. which may eventually set global standards. Of these, inclusion of **Investor-State Dispute Settlement** (ISDS) provisions seems the most contentious. Facing growing opposition, the EC adapted its position and announced the suspension of ISDS talks, pending a public consultation set to close on 13 July 2014. On IPR, **EU geographical indications** (GIs) – e.g. parmesan or feta cheese – are a potential stumbling block, as many in the US reject protection for EU GIs in TTIP.

General criticism

The main criticisms of trade unions, consumer groups, NGOs and citizens on both sides of the Atlantic, refer to the fear of lower standards to the benefit of large businesses and lack of transparency in the talks (including some EU MS). TTIP was an important issue in the recent European elections. The EC is seeking to respond to these concerns by setting up an expert advisory group to provide stakeholder input to the talks.

The European Parliament adopted a Resolution on EU trade and investment with the US, endorsing the launch of negotiations (May 2013). The EP asked for an ambitious agreement binding on all levels of government, and called for the exclusion of cultural and audiovisual services from the talks; strong protection of personal data; inclusion of rules on financial services; strong protection of IPR, GIs and of the EU's precautionary principle; full access to public procurement markets and lifting of US restrictions in maritime and air transport services.