The Transatlantic Trade and Investment Partnership (TTIP)

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Author: Gavin Thompson
Section Economic Policy and Statistics

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1 Background

At the November 2011 EU-US summit, leaders directed the Transatlantic Economic Council (TEC) to establish a High-Level Working Group on Jobs and Growth, led by EU Trade Commissioner Karel De Gucht and US Trade Representative Ron Kirk. The Group was tasked to "identify policies and measures to increase EU-US trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness."

The Group published a final report on 11 February 2013, concluding that:[1]

> ...a comprehensive agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and which contributes to the development of global rules, would provide the most significant mutual benefit.

Following this recommendation, the European Commission and US Government announced that they had agreed to initiate the internal procedures necessary to launch negotiations on a free trade agreement called the *Transatlantic Trade and Investment Partnership (TTIP)*.[2]

The main aims of the partnership are to increase trade and investment between the US and EU by reducing tariffs (particularly on agricultural products), aligning regulations and standards, improving protection for overseas

EU-US trade and investment - key statistics
all figures in €bn and refer to 2012 unless stated

EU GDP	12,928
% of world total [a]	19.4%
US GDP	12,208
% of world total [a]	18.9%
EU exports to US (goods and services)	451
% of total EU exports [b]	19.2%
EU imports from US (goods and services)	353
% of total EU imports [b]	15.3%
EU FDI stock in US (2010)	1,263
% of total EU FDI [c]	30.0%
US FDI stock in EU (2010)	1,221
% of total US FDI	29.1%
Estimated annual benefit of TTIP to EU[d]	119
% GDP	0.9%
Estimated annual benefit of TTIP to US[d]	96
% GDP	0.8%
Trade weighted average tariff on EU-US trade	2.8%
Highest non-tobacco EU tariff	*32%* [e]
Highest non-tobacco US tariff	*164%* [f]

[a] based on purchasing-power-parity valuation of country GDP
[b] excluding exports/imports within the EU-27 countries
[c] excluding FDI stocks within the EU-27 countries
[d] based on CEPR analysis (see footnote 5)
[e] wine of fresh grapes
[f] ground nuts in shell

Sources: Eurostat database; IMF World Economic Outlook database; WTO tariff download facility

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1 EU DG Trade website 13 Feb 2013
2 EC, *Statement from United States President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso*, MEMO/13/94, 13 February 2013

investors, and increasing access to services and government procurement markets by foreign providers.[3]

The decision to start trade talks at this juncture is likely to have been motivated by a number of shared perspectives, including concern over economic stagnation; conviction that increased trade can boost growth; [4] and frustration at the lack of progress in the Doha round of multilateral trade negotiations. A number of studies find there to be mutual economic benefits from trade liberalisation; the most widely quoted, commissioned by the EU authorities, finds that an 'ambitious and comprehensive' trade and investment agreement could bring aggregate economic gains of €119bn per year to the EU (0.9% GDP) and €95bn (0.8% GDP) to the US.[5] Other studies have estimated the gains to be higher: the Bertelsmann Foundation estimated that a comprehensive deal would raise per capita incomes in the EU by 5% and the US by 13%.[6]

2 Process and timings of negotiations

Likely timings

At the meeting of the EU Foreign Affairs Council on 14 June, Member States approved the Commission's negotiating mandate, allowing it to formally commence talks with the US.[7] The negotiations were 'launched' at the G8 summit at Lough Erne on 17 June. The first talks were held on 8 July, although the US side is not yet allowed negotiate on market access until the US International Trade Committee publishes its impact investigation on 26 September 2013.

Both sides hope the negotiations will be concluded within an 'ambitious timescale' of 18-24 months, well before the pressures of the US 2016 Presidential race begin to bear down. The specific provisions of trade agreements are generally phased in over time; based on previous EU agreements, it could well be 10-15 years after the conclusion of negotiations before these fully take effect.

Process

The European Commission, led by Trade Commissioner Karel De Gucht, will take the lead in trade talks. It consults the UK and other EU governments during the negotiations through the Trade Policy Committee, made up of senior officials from each Member State. EU Members are also consulted and informed via the Foreign Affairs Council. During their negotiations, the Commission will be required to adhere to the negotiating mandate approved on by the Foreign Affairs Council on 14 June 2013.[8]

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3 Office of the United States Trade Representative, *Fact Sheet: United States to Negotiate Transatlantic Trade and Investment Partnership with the European Union*, 13 February 2013

4 In a speech to the to the Los Angeles World Affairs Council on 26 June, the Foreign Secretary stated that "these economic times, there is only one sure source of growth, and that is trade"

5 CEPR (2013) *Reducing Transatlantic barriers to trade and investment*. Using a similar approach, CEPR, commissioned by BIS, found that the gains to the UK specifically were £4-10bn annually (0.3%-0.7% current GDP). The difference in the magnitude of the impact between UK and the EU is partly due to an initially higher level of openness between the UK and the US.

6 Bertelsmann Foundation (2013) *TTIP – who benefits from a free trade deal? Part 1*. These figures are very much at the higher end of the range found in the literature. In contrast to the CEPR paper, this study estimates that the gains to the UK, at 9.7% per capita, are higher than the EU average.

7 The approval by the Council followed a vote on 25 April 2013 of the International Trade Committee of the European Parliament, which voted to begin formal talks on the TTIP by 23 votes to 5. The formal resolution was debated and put to vote of the European Parliament on 23 May.

8 A leaked copy of the mandate is available here.

Once negotiations are completed, the deal is presented to the Council and the European Parliament, both of which must agree the outcome. This paves the way for the signature and formal ratification of the deal. Because it is likely to contain elements that fall outside of EU competence, the agreement may also have to be separately ratified by the national parliaments of each of the EU Member States before it formally enters force.[9] In the UK, this means a draft order in the form of a Statutory Instrument being laid in Parliament, which will have to be approved by both the Commons and Lords, and then by the Privy Council. If Member States agree to it, however, parts of the agreement can enter force before it is fully ratified under 'provisional application' procedures.[10]

Any changes to EU laws, rules or regulations resulting from the Agreement would have to be separately approved by the EU's Member States in the Council, and by the European Parliament.

In the US, the agreement must be approved by Congress. The White House has indicated it intends to request so-called 'Trade Promotion Authority' under which Congress agrees to a simplified procedure for approving the negotiated trade deal, meaning that no amendments can be made and it has a limited amount of time to approve or reject the agreement.

3 Areas to be negotiated

Averaging around 3%, tariffs between the EU and US are already low, and both sides foresee their eventual elimination under the Agreement. Most negotiating energy, however, is likely to be devoted to reducing non-tariff barriers to trade, with the aim of harmonising product regulation and standards (e.g. labelling, product specifications, sanitary requirements) in areas where these are deemed necessary, and eliminating them in areas where they are not. Other areas being contemplated include protection for foreign investors and a procedure to resolve investment disputes between the US and EU; co-operation to achieve greater participation by SMEs in EU-US trade; and provisions on intellectual property to protect the interests of US businesses in the EU and vice versa.

Sensitive sectors

The US-EU High Level Working Group that conducted preparatory work on the agreement noted the existence of 'sensitive' sectors, describing ambitions for services trade liberalisation thus:[11]

> The HLWG recommends that in the services area the goal should be to bind the highest level of liberalization that each side has achieved in trade agreements to date, while seeking to achieve new market access by addressing remaining long-standing market access barriers, recognizing the sensitive nature of certain sectors.

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[9] The scope of the EU's competence in trade policy was greatly expanded by the Treaty of Lisbon, which brought agreements covering services trade, trade-related aspects of intellectual property and foreign direct investment within the EU's exclusive competence. Nonetheless, elements of the TTIP, particularly investment protection and dispute settlement, are likely to be matters of mixed competence, hence requiring national parliamentary approval in each Member State. In the past, this has often been described as a 'rubber stamping' exercise.

[10] Article 25 of the Vienna Convention on the Law of treaties allow negotiating parties to apply some or all of the provisions of the treaty provisionally prior to its entry into force. In the EU, the Council, voting by qualified majority, is expressly authorised to provisionally apply a treaty before its entry into force, subject to the consent of the European Parliament.

[11] Final report of High-level Working Group on Jobs and Growth, 11 Feb 2013

Following initial pressure from France,[12] the European Parliament passed a resolution during on 23 May to formally request that the audiovisual sector be excluded from trade negotiations;[13] this was reflected in the final negotiating mandate approved by the Foreign Affairs Council on 14 June, which states that 'audiovisual services will not be covered. This would allow France and other EU Member States to continue to subsidise their audiovisual sectors on the grounds of cultural protection. However, the EU Trade Commissioner has said that the Commission may 'come back' to the issue further on in the negotiations to ask for a new mandate in this area.[14]

The consequences of the exclusion of audiovisual services, and the tit-for-tat nature of trade negotiations, was made explicit by the US ambassador to the EU in an interview with the FT:[15]

> If a mandate is released that constrains negotiators – whatever you want to call it, a carve-out, a red line, an exception – if it's not a clean mandate, it will increase the pressure on our side to do the same... That's only natural. There is a quid pro quo here, and there will be a price to pay

Some areas likely to present particular difficulties during the negotiations are discussed below.

Food standards. GM crops are strictly regulated in the EU, while a number of EU directives prohibit the importation and sale of meat treated with certain growth hormones and chicken washed with chlorine. The US has disputed these rules at the WTO; the EU has argued that the restrictions are necessary for the protection of human health,[16] while the US has called the bans 'unscientific', and part of a protectionist strategy to shut US farms out of EU markets.

Whatever the merits of each case, the food issue reflects different sensitivities and preferences among consumers on each side of the Atlantic. The Commission has offered assurances that EU regulations on GM and hormones are not up for negotiation (changes to these would have to separately be approved by Council and the European Parliament), while the negotiating mandate states that any agreement must recognise 'the right for the Parties to appraise and manage risk in accordance with the level of protection that each side deems appropriate'. On the US side, in his notification to Congress on the commencement of negotiations, President Obama noted that one of the major objectives for the US was the elimination of food standards 'not based on science'.[17]

Public procurement. The Commission's negotiating mandate anticipates that the TTIP will contain provisions to increase mutual access to government procurement markets 'at all administrative levels... in the fields of public utilities... and ensuring treatment no less favourable than that accorded to locally established suppliers'. It is expected that a WTO-level agreement on government procurement, currently being revised, will provide the starting point for discussions over market access.

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[12] Euractiv, *France draws red lines in EU-US free trade negotiations*, 20 Mar 2013
[13] EDN, *European Parliament votes in favour of cultural exception*, 24 May 2013
[14] Intellectual Property Watch, *Controversial debate on TTIP mandate in EU Council*, 14 Jun 2013
[15] FT, *US warns EU against exempting film industry from trade talks*, 11 Jun 2013
[16] Article 191 TFEU requires EU environmental policy, including the protection of human health, to be based on the 'precautionary principle'. The EU can invoke the principle if a scientific "evaluation does not allow the risk to be determined with sufficient certainty", and puts the burden of proof on the manufacturer of the product to show there is no danger.
[17] Letter from the Acting US Trade Representative to the Speaker of the House of Representatives, 20 Mar 2013

The European Commission considers the EU's public procurement markets to be more open than those of many of its trade partners,[18] and based on its negotiating mandate, it appears more enthusiastic about this element of the Agreement than the US (the President's notification to Congress did not mention procurement). The Commission is particularly keen to eliminate 'Buy America(n)' provisions and local provider requirements in US procurement markets that deny EU businesses fair access to the tendering process. However, the US may face particular difficulties in meeting the EU's demands because the Federal Government there cannot make decisions that bind the public procurement markets of individual states.

In the EU, there are concerns that liberalising public procurement markets, combined with measures to protect foreign investors from government action, could constrain the power of national governments to decide how public services are provided.[19] Concerns about the status and future of the NHS have been raised in the UK; in particular, some commentators have claimed that measures to open up the NHS to competition would be made irreversible under the TTIP if its investor protection regime required US companies to be compensated in the event of a change of policy.[20]

Intellectual property. In July 2012, the European Parliament rejected a multilateral agreement to harmonise and step-up international enforcement of anti-counterfeiting and anti-piracy law, the Anti-Counterfeiting Trade Agreement (ACTA). The vote, which followed widespread protest and criticism that the agreement would lead to censorship and loss of privacy online, prevented it from becoming law in the EU.

Some groups have expressed concern that the TTIP will lead to ACTA being implemented 'through the back door' against the European Parliament's expressed wishes; though it has not yet formally ratified it, the US, alongside Japan, were the first developers of ACTA. The European Commission has made it clear it does not want to harmonise intellectual property law through the TTIP, and that existing EU law in this area is not up for negotiation. The negotiating mandate states that 'the Agreement shall not include provisions on criminal sanctions', while European Trade Commissioner De Gucht has made the following statements in the International Trade Committee on TTIP and ACTA:[21]

> ACTA, one of the nails in my coffin. I'm not going to reopen that discussion. Really, I mean, I am not a masochist. I'm not planning to do that… If the Commission advances new basic legislation, which I think she should, we will revisit the question, but I'm not going to do this by the back door

The strength of language on intellectual property is similar in both the EU negotiating mandate and the President's notification to Congress. In practice, the Agreement is likely to contain provisions on co-operation to protect intellectual property in certain areas of mutual interest; the EU's 'geographic indicators' that identify the origin of products (e.g. Scotch whiskey' and 'Parma ham') is the only area specifically mentioned in this context so far.

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[18] This view has been challenged by some commentators, who point out that while EU procurement markets are 'legally' open, in practice, there remain many barriers to entry for businesses outside the EU. See, for instance, European Parliament Briefing Note *Detailed appraisal of the impact assessment on rules concerning third countries' reciprocal access to public procurement*, Jun 2013

[19] 'A motion for a resolution of the European Parliament (not eventually passed) called for the Commission to explicitly exclude from the negotiating mandate market access to public services (BV-0195/2013)

[20] See, for instance, Davies, P. (2013) *Trade secrets: will an EU-US treaty enable big business to gain a foothold?*, BMJ 2013;346:f3574. A 2010 paper by David Hall for the Public Services International Research Unit notes a number of cases from eastern Europe where changes to government policy on health services have resulted in successful compensation claims under investment treaties.

[21] From the blog of Marietje Schaake MEP *TTIP FAQ: the negotiation phase*, 21 Jun 2013

Air and maritime transport. The US applies stringent access and ownership limits to foreign participants in its air and maritime transport sectors. In particular, EU airlines are unable to hold more than 25% of a US carrier, while the Jones Act (formally the US Merchant Marine Act 1920) requires all waterborne shipping between US ports to be carried out by vessels built in the US that are owned, registered and operated by Americans. The EU, which has a more open air and maritime sector, is keen to gain access to US markets. However, some commentators have noted that the US may respond to the exclusion of audiovisual services from the EU negotiation mandate by taking the Jones Act 'off the table' during negotiations.[22]

4 A short history of US-EU economic diplomacy

Early history

Diplomatic relations between the US and the then European Community were initiated in 1953 when US observers were sent to the European Coal and Steel Community (ECSC). The US Mission to the ECSC formally opened in Luxembourg in 1956. The Delegation of the European Commission to the United States in Washington, D.C. was established in 1954, and the United States Mission to the European Communities, now the United States Mission to the European Union, was established in 1961 in Brussels.[23]

In 1990, the relations of the U.S. with the European Community were formalised by the adoption of the Transatlantic Declaration. A regular political dialogue between the U.S. and the EC was initiated at various levels, including regular summit meetings, focussing on the economy, education, science and culture.

A New Transatlantic Agenda (NTA), launched at the Madrid summit in 1995, contained four broad objectives for enhanced collaboration:

- promoting peace and stability, democracy and development around the world;
- responding to global challenges;
- contributing to the expansion of world trade and closer economic relations; and
- building bridges Across the Atlantic.

In connection with the adoption of the New Transatlantic Agenda a Joint EU-US Action Plan was drawn up committing the EU and the US to a large number of co-operation measures.

Transatlantic Economic Partnership

As an extension of the NTA efforts, The Transatlantic Economic Partnership (TEP) was launched at the May 1998 London Summit. The principle aim of the TEP was to increase trade and investment by tackling regulatory barriers through co-operation, mutual recognition, and alignment of standards, and consu to give impetus to co-operation in the fields of trade and investment.[24]

[22] See, for instance, interview with Peter Chase, Vice President Europe of US Chambers of Commerce in Euractiv, 13 Jun 2013
[23] United States Mission to the European Union website
[24] EU (DG Trade), *Transatlantic Economic Partnership: Overview and Assessment*, October 2000

Transatlantic Economic Council

The Transatlantic Economic Council (TEC) was set up in 2007 to guide work on transatlantic economic convergence. The TEC brings together the Members of the European Commission and US Cabinet Members that have the political responsibility for increasing economic ties.

The TEC brings together a range of economic cooperation activities in issues of “mutual interest” to give political guidance and direction to this work. The TEC also provides for a political forum for discussing wider strategic global economic questions. Three "advisory" groups help guide the work of the TEC:-

- The Transatlantic Consumer Dialogue is a forum of US and EU consumer organisations which develops and agrees on joint consumer policy recommendations to the US and EU to promote the consumer interest in policy making.

- The TransAtlantic Business Dialogue (TABD) is the principal business interlocutor with the US and EU on the transatlantic economic relationship. The organisation was convened in 1995 by the U.S. Department of Commerce and the European Commission to serve as the official dialogue between American and European business leaders, US cabinet secretaries and EU commissioners. Membership is comprised of chief executive officers or chairmen of American and European companies operating in the United States, Europe and globally.

- Established in 1999, the Transatlantic Legislators' Dialogue aims to enhance the level of political discourse between European and American federal Legislators, the European Parliament and the American Congress.