Volume 15 Number 2 2014/p.187-198 www.usask.ca/esteyjournal

The Estey Centre Journal of
International Law
and Trade Policy

A Transatlantic Free Trade Deal: Implications for Food and Agricultural Policy

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In July 2013 the EU and the United States announced negotiations for a Trans-Atlantic Trade and Investment Partnership (T-TIP). The economic incentives for both the EU and the United States to seek such an agreement at this time are outlined. The T-TIP's relationship with the Doha Round of multilateral negotiations is explained. The major areas of liberalization interest are explored. The focus of the negotiations in the agriculture and food sectors is discussed. Four likely difficult issues in the agriculture negotiations are identified: the use of hormones in beef production, pathogen reduction techniques, the use of genetic modification and geographical indications. The article concludes with some observations on the likely course and timespan of the negotiations.

Keywords: agriculture, EU, liberalization, regulatory barriers, T-TIP, United States

Introduction

In July 2013, leaders of the United States and the European Union initiated talks on a Transatlantic Trade and Investment Partnership (T-TIP). The partnership would include a free trade agreement covering (in principle) all goods, substantial liberalization of service trade and a reduction of barriers to investment. Much of the emphasis in the negotiations will be on regulatory trade impediments, and the hope is that in addition the T-TIP will lead to enhanced coordination of actions between the EU and the United States in the multilateral trade arena.

This article is intended to provide some background to the T-TIP initiative and to outline the issues that will face the negotiators in the thorny area of agricultural and food trade.[2] The article first addresses the question of why the issue of transatlantic free trade has risen to the top of the political agenda at this time in the light of the ineffectual attempts to achieve progress in previous decades. The significance of the agreement for global trade governance is discussed in a second section. The article continues by suggesting how agriculture fits in with this broad agenda and how the key parts of the agenda concerning agricultural and food items could be addressed. A final section discusses the question of timing: when and whether such an agreement might emerge.

Why Is a Free Trade Agreement on the Agenda Now?

For the past few years the United States has been seeking a way to achieve growth in an era of constrained government finance and subdued consumer spending. An expanding overseas market for U.S. goods has been seen as a major part of the plan for the recovery from the "great recession" of 2007-08. The Obama administration has therefore been eager to find a trade strategy that will be acceptable to business and yet not scare labour and environmental groups. An ambitious trade agreement with the EU fits that objective well. Despite the highly intertwined nature of the Atlantic business environment (or perhaps because of it) U.S. companies are still concerned about costly regulatory hurdles that are seen to inhibit competition and competitiveness. Labour and environmental groups look at Europe as a place where public standards are even more developed than in the United States, leading to the possibility of enhancing rather that weakening such standards in the United States.

Across the Atlantic similar economic arguments prevail. The EU is trying to regain a measure of economic growth after stagnation for five years. The cohesion of the EU itself is at risk if growth continues to be elusive. There are some similarities with the "single market" initiative in the late 1980s, where completion of the original plan for free internal trade in goods, services, capital and labour was seen as the best way forward for a sluggish European economy. That the single market was largely achieved and broadly accepted as a positive development gives hope to those who would like to extend many of its provisions across the Atlantic. Indeed, on political grounds, a transatlantic trade and investment pact could act as a boost to cohesion for the EU, diverting attention away from the troubles of the eurocrisis and the dissatisfaction of the United Kingdom with the way in which the EU is developing.

Reaching trade agreements comes at a political cost, largely from the threat of disruption to less competitive industries. These political costs and economic threats to specific industries are particularly noticeable when negotiating with large emerging countries and those that are seen to have low labour costs. In the case of a US-EU trade agreement these threats are arguably smaller than they are in the negotiation of free trade agreements (FTAs) with low-cost countries: few areas of U.S. business are "afraid" of competition with Europe, and American labour costs are seen in Europe as being quite high. As a result of the relatively low political costs, congressional objections to the idea of a free trade area with Europe have been muted, and the European Parliament is at present broadly supportive of an agreement with the United States, though both bodies may yet delay or decline to endorse an agreement.

The T-TIP and the Multilateral Trade System

The United States and the EU between them account for 54 percent of global gross domestic product (GDP) and 30 percent of world trade. Transatlantic trade in goods and services was worth $636 billion in 2011. The current value of transatlantic investments has been estimated at $3.7 trillion. Annual outflows from the EU and the United States account for about 75 percent of global foreign direct investment (FDI) (GMF and ECIPE, 2012; Chase, 2011). In terms of the global economy the transatlantic partnership remains a dominant component.

One reason why talk of a transatlantic FTA has particular saliency at present has to do with the parlous state of the multilateral trade system, particularly as it involves developing the rule system negotiated in the Uruguay Round and further cutting trade barriers.[3] In the past the view has been widespread that a US-EU trade deal would undermine the World Trade Organization, indicating that bilateralism had been found to be more attractive than multilateralism in shaping trade rules. But the multilateral process has not delivered any significant agreement in 15 years. The WTO Doha Round has stalled, and though trade ministers were able to harvest a few small pieces of the agenda at the Ministerial in Bali in December 2013, other parts of the Doha Development Agenda may eventually be dropped.

The willingness of countries to "bypass" the WTO and negotiate FTAs among themselves can be seen as a way to continue the process of trade liberalization in goods and services without the need for 160 countries to agree. Both the EU and the United States have searched for willing partners prepared to grant market access on a reciprocal basis through bilateral free trade agreements. On the other hand a US-EU trade agreement is seen by some as a way of re-energizing the multilateral trade system (MTS). The ability to tackle items that have not been on the WTO agenda is seen as a potential contribution to the MTS. In particular, the T-TIP talks could deal effectively with "new" trade issues: competition, supply chain integrity, and investment. WTO members working together in plurilateral groups ("coalitions of the willing") to negotiate trade rules is sometimes seen as an alternative to full negotiating rounds: other countries could sign up later, or the plurilateral agreements could be directly translated to the multilateral level. An EU-US agreement on a particular trade issue may well set a strong precedent for later multilateral rules.

At another level, this rejuvenation of the MTS could also help to "rescue" the US-EU influence over the WTO agenda, though that influence in the case of agriculture has not always been benign. The growing influence of the large emerging countries, particularly India and China with their ambivalence toward western capitalism, is changing the traditional presumptions about governments and trade. The transatlantic partners have generally shared the long-term vision of a more liberal market based on the restraint of government interference with trade for other than carefully specified reasons. Whether all of the emerging countries share (or will continue to share) this view can be questioned. A strong EU-US position on fundamental aspects of the trade system could be a useful insurance against a shift in the focus away from the "embedded liberalism" of the MTS.

Regional and bilateral trade agreements have their own dynamic. If one country gains preferred access into another market the tendency is for competitors to follow so as not to be left at a disadvantage. Thus the EU has signed agreements with Mexico, Chile and Korea to match the access granted by these countries to the United States by trade agreements. An EU-Canada FTA has been agreed and will soon be implemented: the United States does not want Canada to have better access to EU markets than it does itself. If the EU were able to complete its (stalled) talks with MERCOSUR then the United States would be left at a disadvantage in some major South American markets (notably Brazil and Argentina).

Adding to the interaction between the multilateral and the regional/bilateral trade systems is the activity of both the United States and the EU in negotiating trade agreements with Asian countries. The United States has been active in negotiating the Trans-Pacific Partnership (TPP) talks among 11 countries (Australia, New Zealand, Chile, Brunei, Mexico, Canada, Peru, Singapore, Malaysia, Vietnam and the United States). Japan has now joined the talks, significantly raising the economic importance of the TPP, if complicating its timetable. The TPP has been advertised as a "high quality" trade agreement that would lead quickly to a broad free trade zone covering much of the Pacific Rim.

In these terms, an EU-US link can be seen as one missing piece in this new "super-regional" trade architecture.[4] The EU certainly does not want to be an outsider in the Asian marketplace, and has already taken steps to negotiate trade agreements with several ASEAN countries as well as with India. Though a direct place in the TPP for the EU seems unlikely, the same effect could be had by individual agreements with each of the TPP signatories.

Transatlantic Trade Barriers

Traditional trade barriers impeding transatlantic trade are relatively low. Average tariffs on imports into the United States stand at 4.7 percent; the corresponding average tariff for the EU is 6.4 percent. However, these averages hide significant tariff peaks in sensitive products (agriculture, textiles, beverages, etc.). Tariff levels for agriculture and foodstuffs (HS 1-24) average 7.8 percent in the United States and 10.1 percent in the EU. Tariff peaks for the United States include tobacco, sugar, peanuts, dairy products, beef, cotton and horticultural goods, though there are tariff rate quotas to give some access to these products. High tariffs in the EU include those for dairy products, live animals, tobacco, sugar and grain, but again with TRQs to grant some access. As a consequence one can expect somewhat conventional trade negotiations for these sectors, with exporters seeking to gain access into protected markets and sheltered sectors summoning all their political weight to counter the thrust. The dilemma will be whether to exclude sensitive sectors so as to avoid the talks getting bogged down or to hope that lofty ambitions will carry enough weight to overcome sector resistance.

One might query why such competitive trade policies are relevant in an era when tariffs on manufacturing products are already low. In low-margin goods a small change in tariffs can have an important influence on trade flows. But perhaps more important is that "first movers" into a market can set up trade arrangements that may give persisting benefits even when the degree of preference is eroded.

More important as a driving force behind the T-TIP are significant non-tariff barriers that persist in several sectors. Many of these have to do with different regulatory environments, adding costs to trade across the Atlantic. The hope is that any convergence between U.S. and EU regulatory approaches will be reflected in regulations adopted by other countries. Thus the transatlantic partners will *de facto* be negotiating on global regulatory approaches. And, in keeping with the growing importance of service trade and the complex links between trade and investment, the T-TIP will hope to break new ground by including agreements that go beyond the limited scope of the current multilateral rules in these areas.

What Is on the Agenda?

The T-TIP is intended to be "a comprehensive agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and contributes to the development of global rules." This would include "substantially eliminating existing barriers to trade and investment." It would achieve "ambitious" outcomes in market access; regulatory costs and non-tariff barriers; and rules, principles, and new modes of cooperation to address shared global trade challenges and opportunities.

The agenda mirrors recent trade agreements that tend to include more than just trade in goods and services, extending to investment, intellectual property protection, and sometimes to government procurement. The T-TIP would be an example of such a broad agreement. These are now easier for the EU to negotiate, since under the Lisbon treaty, trade in services and FDI have also become among the exclusive competencies of the EU (in addition to trade in goods).[5]

With respect to the regulatory issues, the objective is to find "new and innovative ways" to reduce non-tariff barriers to trade and investment.[6] This phrase may conceal a lack of agreement on which approach to take. One approach would be to tackle differences in regulatory philosophy, particularly in such areas as the role of science in regulations where public opinion is not fully convinced by research conclusions. The use of the "precautionary principle" in EU legislation has generally been regarded in the United States as a sign of weakness, allowing public opinion to intrude on matters that can be addressed by scientific enquiry. But any direct assault on these differences in the context of the T-TIP is likely to be counterproductive, hardening opinions on both sides of the Atlantic and reducing the chances of success. So the task force modestly calls for the reduction of "unnecessary costs and administrative delays" arising from regulations. No one could be against that, nor could they argue against the consequent aim of improving the competitiveness of U.S. and EU companies in third markets. And the key questions of harmonization of standards and the mutual recognition of each other's standards are addressed with caution: greater compatibility in standards is to be "promoted" "where appropriate".

Where Does Agriculture Fit In?

Clearly there will be some sectors that are more directly affected than others. The agricultural and food sectors will present the most difficult problems, but also some of the biggest relative gains. Tariffs on agricultural and food products are still high in the EU and in the United States, and almost prohibitive for some products. Free bilateral trade will therefore cause some disruption. There will be a request for long transition periods and safeguards for sensitive products (Trachtenberg, 2012). The political economy of trade negotiations will be on display as interest groups, from sugar and dairy to fruits and vegetables, will play their cards.

Not all agricultural interests will be defensive. Agricultural businesses in the United States want a number of long-standing regulatory issues with the EU resolved. These include the use of growth additives in livestock; methods of pathogen reduction in slaughterhouses; and approval of genetically modified varieties of corn and soybeans (Grueff, 2013). And not all the offensive interests are on one side of the Atlantic. Agricultural and food producers in the EU would like better access to the U.S. market, specifically for dairy products and meats. As EU milk quotas are abolished, the need to find overseas markets for cheeses and other high-value dairy products will increase. But the EU would like more protection for geographical indications (GIs) in the United States, for cheese, specialty meats and wines, and that issue has led to stalemate in the context of the TRIPS negotiations. Both sides will need some "victories" in the regulatory area to demonstrate the value of the outcome, and to give EU foods greater IP protection in the United States could provide one such gain.

One problem with agricultural issues in the T-TIP negotiations is going to be to manage the interface with the Doha Round. Typically it has been accepted that bilateral trade agreements are not the best place for the discussion of subsidy issues: such subsidies cannot easily be removed on intra-FTA trade alone. But the United States and the EU have been the major providers of subsidies to farmers and aid to the export of farm products. Export subsidies and restrictions could be included in the agenda, perhaps as a bilateral agreement to end these practices (including commodity-based food aid and export credit guarantees); internal budget pressures will almost certainly remove them in any case. Negotiations on domestic support programs are more problematic: there is still the assumption that these are valuable "bargaining chips" in the Doha Round that can be traded for access to emerging-country markets. So the opportunity for a substantial lock-in of current (relatively low) levels of market price support could well be missed.

REGULATORY ISSUES IN AGRICULTURE

Four issues mentioned above are likely to dominate the negotiation over regulations in food and agricultural trade.[7] The issues can be briefly summarized as follows:

Hormones: The disputes over the use of hormones in the raising of livestock date back over 25 years. After a series of events related to the use of hormones in Europe that shook the confidence of European consumers in the safety of their meat supply, the European Union enacted a ban on the use of hormones in the fattening of livestock. The ban was extended to imported meats in 1986 and the United States objected to the GATT that the measure was protectionist. Eventually, in 1997, with the help of clearer rules (the SPS Agreement) and more effective dispute settlement procedures, the WTO ruled that the EU policy was indeed unjustified. The case was finally resolved by the admission of more hormone-free beef into the EU from the United States (and Canada), but the EU hormone ban stayed in place. From the viewpoint of the U.S. beef industry, the EU has not brought itself into compliance with the WTO. This will form one of the demands of the U.S. agricultural sector in the T-TIP talks, but it is unlikely that the EU will be able to modify its ban on hormone use. The United States might have to settle for better access for hormone-free beef.

If the beef hormone dispute has lost much of its steam, the broader question of the use of hormones has been kept alive by the dispute over ractopamine, a growth enhancer used in the United States in the fattening of both hogs and beef. Many countries, including the United States, Japan, Mexico, Taiwan and Korea, have approved its use; others, such as the EU, Russia and China have not done so. A joint FAO/WHO expert committee has declared ractopamine safe, and a CODEX standard has been established for residual levels in food. However, the vote in the CODEX was close, encouraging the EU to claim that it did not constitute “scientific consensus” on the matter. Though it is possible that the T-TIP talks could make some headway on this (as it has not had the public visibility of the beef hormone issue), the problem may still hamper trade until a wider agreement with other countries is reached.

Pathogen Reduction Techniques: One apparently minor regulatory issue has been the cause of much controversy between the United States and the EU since 1997, and has so far eluded resolution. The issue is that of the regimes used in slaughterhouses for the cleansing of carcasses. The United States uses pathogen reduction techniques (PRTs) that include chlorine washes, lactic acid and other antimicrobials to remove bacteria. The EU does not favour such PRTs and insists that they act to cover up unsatisfactory practices at an earlier stage of the process. The EU allows only water to rinse pathogens in slaughter facilities. The U.S. industry sees this as a protectionist measure and would like to see the EU rule changed.[8] The United States lodged a complaint in the WTO in 2009, but is not currently pursuing the case. As the EU has recently allowed the use of lactic acid as a wash in beef slaughter (as a good-faith measure at the start of the T-TIP discussions), there is a good chance for agreement over this issue in the negotiations.

Genetically Modified Organisms: The difference of opinion over the use of biotechnology to modify the gene structure of plants is perhaps the most fundamental disagreement that the negotiators will face in the food and agricultural aspect of the talks. Opposition to the growing of genetically-modified (GM) crops in Europe has been remarkably persistent, and the slow pace of approval of imported biotech corn and soybeans has reflected the power of a handful of member states who would like to keep their grocery shelves GM-free. The EU lost a WTO case in 2003 brought by the United States challenging the speed of the approval process. The United States claims that the EU has not fully complied with the ruling, but an arbitration process on the EU's actions was halted in 2008 while the parties tried to resolve the matter bilaterally.

The T-TIP talks are unlikely to focus on the EU's ban on the domestic adoption of transgenic crops. It is up to the EU farm and biotech interests to lobby for an expansion from the very limited production at the moment. The EU food industry may not be keen on a change either: retailers have invested heavily in promoting their produce as GM free and may not find it easy to backtrack. Similarly the current EU legislation on labeling GM goods that are sold on the internal market is unlikely to be challenged (even though that legislation is still a source of confusion and controversy). But the approval process will certainly come under scrutiny, and it is difficult to conceive of any agreement on the T-TIP emerging without some action in this regard. The EU cannot appear to be weakening its control over access to GM crops, but the current approval process is clearly dysfunctional. The question is, how far can it go in this direction without being accused of sacrificing food safety for transatlantic trade?

Geographical Indications: Another venerable dispute has focused on the use of geographical labels on foods, known as geographical indications (GIs). The issue has become somewhat clearer since the WTO TRIPS agreement mandated that each WTO member had to protect GIs, though it did not favour any particular type of protection. The EU, and some other European countries, have used "sui generis" protection instruments, often based on national precedents. The United States has chosen a method that extends trademark protection to producers in particular regions through collective and certification marks. The EU has requested stronger protection for GIs, including the establishment of a registry of GIs for wines and spirits as well as an extension of the same level of protection that is given to wines and spirits to other foods such as cheese and meats. Neither of these proposals has been agreed in the TRIPS Council, and the EU has found other ways to promote its agenda.

At the heart of the issue is the question of generics. If a term is generic then it cannot be protected as a GI. But one country's GI can easily be another's generic term. So the register is intended to "claw back" names that have been treated as generic in overseas markets. To some extent the EU has been successful in its bilateral pacts with other countries (including the United States). But some stumbling blocks remain. The T-TIP negotiations could no doubt help to resolve this issue.

Signs of Progress?

Though regulatory differences can persist for years and become major trade irritants, most can be resolved when political attention is sufficiently focused. Four cases of agreements in this area of food and agricultural regulations illustrate this possibility and provide a basis of cooperation for the T-TIP to build upon. In 1996 the United States and the EU signed a Veterinary Equivalence Agreement (VEA) that aimed to facilitate the establishment of equivalence in SPS measures. Though this agreement has had limited scope so far, it represents a useful starting point for a broader agreement covering equivalence of testing and regulating in matters related to health and safety of animals.

In the area of food safety, the EU Food Hygiene Package of 2004 moved some way to dealing with transatlantic differences over sanitary standards by applying risk-based approval for U.S. slaughterhouses. The EU has also negotiated a US-EU Wine Agreement (2006) that resolved several of the ongoing issues with respect to wine-making practices as well as some naming issues. This again created a useful basis for further resolution of the GI issue. And in 2012 the United States and the EU reached agreement on an agreement on organics that in effect made the two different organic certification systems in use mutually compatible. A product deemed organic by U.S. officials can now bear the EU certification mark. Though each of these agreements may have had its own dynamic they do give some hope that solutions can be found when the necessity arises.

What Are the Chances for a Successful Outcome?

Negotiations started on July 8, 2013 and the intention was to complete them by the end of 2014. Trade ministers have indicated that they want to complete the talks “on one tank of gas”. This is somewhat optimistic: it is easier to start negotiations than to finish them. Too much haste could, however, be a problem in itself. An agreement in the first year, for example, would probably not go far enough (just the lowest-hanging fruit) to be worthwhile. But politically the second year of talks may be more difficult in terms of the political calendar. European Parliament elections were held in May 2014 and new Commissioners, including a new President of the Commission, will begin their terms of office later this year. In the United States there will be midterm elections in the U.S. Congress in November 2014. It could be well into 2015 before the talks reach the stage at which key decisions can be made.

And then there is the question of approval by the respective legislatures. The Commission negotiates on behalf of the EU based on a mandate given to it by the member states in the Council. The Commission stays in close contact with the Council during negotiations, through the Trade Policy Committee, and the EP. The EP plays a more important role now than it did in the past, as a result of the Lisbon Treaty. The EP could prove less accommodating than the Commission or Council in trade talks, particularly where civil society is actively engaged in such areas as food safety.

In the United States the administration will seek trade promotion authority (TPA) in order to negotiate credibly with the EU and others. Under TPA the president can negotiate trade agreements and submit them to Congress for up-or-down votes with no possibility of amendment or filibuster. There seems to be limited congressional support to grant the president TPA, and the progress of the T-TIP through the negotiation and the approval process could clearly be derailed by other events. Current enthusiasm by business leaders and politicians could wane as compromises become necessary. Public opinion could turn sour if the emerging agreement was seen to result in a weakening of cherished regulations. So at this time the chances of success are by no means assured for the conclusion of an extensive agreement, even one that would benefit business on both sides of the Atlantic and add to growth prospects in the EU and the United States.

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Endnotes

[1] The author acknowledges the helpful comments of two reviewers.

[2] The background to the T-TIP is discussed more extensively in Josling and Crombez (2012).

[3] The other aspects of the multilateral trade system, the resolution of conflicts and the improvement of transparency, have so far been unaffected by the paralysis of the negotiations in the Doha Round.

[4] See Zahniser and Herrera Moreno (this issue) for further discussion of "super-regionalisation".

[5] See Articles 3 and 207 of the Treaty on the Functioning of the European Union.

[6] The value of removing non-tariff barriers to trade is notoriously hard to quantify. One such study (ECORYS, 2009) finds considerable economic benefits from the harmonization of such barriers in the transatlantic marketplace.

[7] Other potentially contentious issues that will face T-TIP negotiators include the importation of biofuels into the EU from the United States: the disagreement revolves around the definition of sustainable fuel. For a summary of some of the disputes see Skoba (2013).

[8] The European Commission has itself suggested in 2008 that PRTs be made legal for poultry processing in the EU, but this was rejected by the Council of Ministers.