



# Skeptical ruminations on the Transatlantic Trade and Investment Partnership (TTIP)

Pierre Sauvé

World Trade Institute, University of Bern

[pierre.sauve@wti.org](mailto:pierre.sauve@wti.org)

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# Dispensing early with my punch line

- Characterizing the proposed TTIP:
  - (i) a dream?
  - (ii) a nightmare?
  - (iii) not worth the effort?
  - (iv) all of the above?
- Most likely (iv)
- Please allow me to reverse engineer that dismal scientist – «on the one hand, on the other» - conjecture for you!

# The TTIP is real

- It is happening, and could even be concluded:

*“I want to stress again that I see the speedy agreement of TTIP as important. This is especially pressing now after the new economic uncertainty in Asia and since the Trans-Pacific Partnership, the world's biggest trade agreement for many years, will soon be [has now been] concluded.”*

- Donald Tusk, President of the EU Council, on 3 September 2015

*“The Transatlantic Trade and Investment Partnership or TTIP negotiations are essential. Almost five million jobs in the European Union depend on our exports to the United States. The EU is ready to finish this agreement under the Obama Administration. We have the political and human resources to do that. However, the US must also be prepared to commit if we are to get a result.»*

- Cecilia Malmström, European Commissioner for Trade, on 5 January 2016

# The TTIP is real

- Significant capital and resources are being spent on TTIP in governmental and business circles, on both sides of the Atlantic
- There have been 13 formal negotiating rounds to date, with the last one held last week in NYC
- Its «realness» has galvanized (EU) civil society opposition: witness repeated mass demonstrations in Berlin, with anti-globalism rhyming strongly with anti-americanism

# Far from trivial: TTIP's economic stakes

- The transatlantic partners account for a combined 45% of global output, more than a third of global trade (over US\$1tn a year) and over two fifths of aggregate foreign direct investment activity (with two-way FDI stocks of close to US\$4tn)
- They are, without doubt, still top-ranked contenders in the economic heavyweight category!
- Even as border impediments are low, the elimination of even smallish tariffs on a huge volume of bilateral trade can generate significant savings for producers and consumers and expand two way trade (by an estimated \$51bn a year).

# TTIP's economic stakes

- More importantly, the TTIP aims to reduce the cost of doing business through the highest degree of regulatory convergence ever attempted in a trade policy setting, rooted in far reaching standards harmonization, regulatory approximation and mutual recognition in 9 key goods-related sectors (but not services)
- The TTIP is thus a highly ambitious undertaking, rooted in the political belief that the shared values that have for decades underpinned deep roots in security and defense circles can today be extended to the commercial realm. Can they?

# TTIP is anchored in a new trend in trade diplomacy: mega-regionalism

- TTIP is but one of many initiatives aimed at rescuing trade liberalization from a perennially stalemated World Trade Organization
- The world is riddled with an increasingly complex alphabet soup of bilateral and regional initiatives of rising magnitude pursued outside the WTO: TPPA, RCEP, CETA, Pacific Alliance, Tripartite, etc...
- Mega-regional deals can secure significant economies of scale in rule-making and market opening, and have at times been precursors to subsequent multilateral outcomes. But they leave many by the way side.
- A novel (and ominous?) development: PTAs used to be the province of South-South or North-South trade diplomacy. They are today being increasingly concluded *between* developed countries.
- What are we to make of this latest trend? Have the chief architects of the post-war GATT-WTO trade order lost faith in multilateralism?

# Why such a trend?

- Jagdish Bhagwati's «Diminished Giant Syndrome» offers a strong underlying narrative for TTIP
- The political economy of relative (US) and absolute (EU) decline and the concomitant rise of emerging economies – the shift in global governance from a G-7 to a G-20 - makes yesterday's hegemony a tad uncomfortable
- On the US side, an ascendant China, in both economic and geo-strategic terms, is an additional policy motivator, with TTIP an Atlanticist complement to the recently concluded Trans-Pacific Partnership Agreement
  - «We must write tomorrow's rules of economic governance and agree on shared standards before they are painted red»
    - US President Barack Obama in his 2014 State of the Union address
- For the EU, the quest for TTIP is less geo-strategic in character but rooted in the immediacy of the continent's deep economic malaise and loss of confidence. Bereft of global strategic influence or capacity, official Europe regards TTIP as a core element of economic stimulus and renewal.



# That was then, this is now

- The prosecution of TTIP has revealed greater transatlantic differences of view than political leaders likely assumed in launching the joint initiative.
- Such differences are rooted in a number of factors that warrant closer analytical scrutiny.

# Bullies don't (need to) negotiate

- Hegemonic powers are simply not used to the art of diplomatic compromise
  - *American exceptionalism is non-negotiable!*
- Both the US and the EU typically negotiate PTAs with predetermined , «please sign here» templates. This clearly won't work in TTIP.
- Your standards or mine? Of course mine!

# Ignore political economy at your peril

- There are deeply entrenched public-private supply chains (and attendant economic rents) in standards-setting that the adoption of common rules would upset.
- Witness the desultory tale of talks on the harmonization of automobile safety standards and the inability to consider US and EU crash testing standards or seat belt designs functionally equivalent.
- Bad timing: the VW scandal has hardly helped to enhance trust among regulators.

# Culture matters

- The TTIP negotiations have revealed significant transatlantic cultural divides in approaches to regulation, risk and uncertainty.
- The US model tends to rely on a greater *ex-ante* belief in experimentation and innovation with strong *ex-post* litigation if and when problems arise.
- The EU approach is imbued with much greater *ex-ante* codification of probable risks and thus greater regulatory precaution and lesser reliance on jurisprudential rule-making.
- Culture also matters greatly in regard to big ticket negotiating items such as data protection and privacy, cross-border data flows, geographical indications, or the protection of cultural industries.

# Political dynamics matter as well

- There is a perception that the EU is the weaker party in the talks, that it needs TTIP more than the US does
- The US has to date invested more political capital in completing its China-containing «Asian Pivot» via the TPP. How much energy it now puts in TTIP will in part be influenced by how the TPP plays out in domestic political circles. It has been a bumpy ride so far.
- The Obama administration knows that a ratified TPP is its only feasible trade legacy. TTIP will of essence need to be completed by the next US administration. *Après moi le déluge?*
- The recent Congressional approval of the Trade Promotion Authority and early reactions to the TPP reveal a decidedly tepid political appetite for trade liberalization on both sides of the aisle, and prospects of a Trump or Clinton presidency do not necessarily bode well for a pro-trade agenda.

# Is it all then just a waste of time?

- Possibly
- Why should the formal negotiation of legally binding and enforceable rules in controversial and highly technically complex areas be expected to achieve more than what a quarter century of continuous Transatlantic Business Dialogues devoted to mutual recognition has?
- Does trade diplomacy offer the most appropriate setting (both in substance and pace) in which to pursue deep regulatory convergence (backed by dispute settlement and sanctions)?

# A waste of time?

- TTIP comes at a time when the very geography of trade is changing significantly, where value chains and trade in intermediate goods and services dominate trade links, where trade and investment are indissociable sides of the same market access coin, and where the bulk of impediments to doing business are rooted in regulatory practices, often non-discriminatory ones. These new challenges clearly call for novel trade rules.
- Banging heads seriously on these issues is sure to produce useful policy ideas which can be pursued in various fora, including in the WTO, and through various means, and not solely treaty-based ones.
- Even a [probable] negotiating failure would leave behind a trail of fresh policy proposals.

# Venturing a prediction

- TTIP will not deliver on its overly ambitious promise of Transatlantic regulatory approximation
- Trade diplomacy is ill suited to pursuing such a technically complex agenda: trade rules are not about the *WHY* or *WHAT* of domestic regulation but about the *HOW*, with calls for temperance, proportionality, least trade restrictive responses to identifiable instances of market failure



# Venturing a prediction

- TTIP could yet produce an agreement on various issues:
  - a zero for zero outcome on industrial tariffs would hardly be revolutionnary but still useful (yet still seems difficult)
  - going further than TISA in services will be hard, but why not try (sub-nationals, Mode 4, maritime and air transport, finance, audio-visuals?)
  - a new deal in investment rule-making? Evolutionary TPP or revolutionary EU Investment Court System?
  - *above all, an agreement on HOW* to regulate in support of trade cost reducing convergence objectives, directing, with stronger political monitoring and tighter deadlines, industry associations and regulatory bodies to get on with the hard work: a Transatlantic Business Dialogue+ of sorts, so long as the politics remain broadly supportive on both sides of the pond! Back to the future?

## Two final systemic questions to ponder

- How would a concluded TTIP affect the WTO? Would it reinvigorate multilateralism and expedite needed constitutional reforms, particularly variable geometry-type ones, or rather affirm its terminal decline in matters of trade governance?
- How legitimate is it for the US and the EU to set regulatory standards for the rest of the world in a non-inclusive manner?



# Thank you!

Pierre Sauvé

[pierre.sauve@wti.org](mailto:pierre.sauve@wti.org)

[www.wti.org](http://www.wti.org);

[www.nccr-trade.org](http://www.nccr-trade.org)