

Negotiating the Transatlantic Trade and Investment Partnership: Comparing U.S. and EU Motivations, Oppositions and Public Opinion

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Negotiating the Transatlantic Trade and Investment Partnership: Comparing U.S. and EU Motivations, Oppositions and Public Opinion.

Vicki L. Birchfield

Abstract: The Transatlantic Trade and Investment Partnership (TTIP) currently being negotiated by the United States and the European Union is widely touted as the largest and most ambitious regional free trade agreement in the history of international trade. Further setting it apart from other free trade deals is the attempt to establish common regulatory standards for the transatlantic marketplace, bringing societal values and preferences about such issues as ensuring food safety, protecting the environment, and governing data privacy to the forefront of media attention and public debate. This paper offers an analysis of the core motivations and interests of the United States compared to those of its EU partner and then contrasts these official positions with the views of the public and civil society stakeholders on both sides of the Atlantic. Tentative conclusions are drawn suggesting that the success of TTIP hinges much more on smoothing internal divisions on both sides of the Atlantic than on unifying oppositions across it.

This is a natural moment to take stock of where we are, how far we've come, to step back and honestly assess the challenges that lie ahead. Next month, will be the 25th anniversary of the fall of the Berlin Wall. Then, we worked hand-in-hand to unify a city, a country and a continent – and bring the Cold War to a close. The question is whether that same historic spirit, that same commitment to a joint project of strategic importance endures today¹. – U.S. Trade Representative, Ambassador Froman

Introduction

Although increasingly framed in strategic and even geopolitical terms, the free trade agreement currently being negotiated by the United States and the European Union—the Transatlantic Trade and Investment Partnership (TTIP)—had its origins firmly in the conventional logic of economic competitiveness and job creation for an already highly integrated pair of economies still recovering from the 2008 financial meltdown and ensuing economic crises. In fact, at the November 2011 EU-US Summit, leaders specifically charged the Transatlantic Economic Council to form a High-Level Working Group (HLWG) on “Jobs and Growth” to be led by then US Trade Representative Ron Kirk and EU Trade Commissioner Karel De Gucht². The Working Group was tasked with identifying policies and measures to increase EU-US trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness.

¹ Remarks by Ambassador Michael Froman: “Dialogue on the Transatlantic Trade and Investment Partnership” on October 14, 2014 in Rome, Italy. <http://www.ustr.gov/about-us/press-office/speeches/2014/October/Remarks-by-Ambassador-Michael-Froman-Dialogue-on-the-TTIP>

² Now succeeded by U.S. Trade Representative M. Froman and EU Trade Commissioner C. Malmström respectively.

Since the HLWG submission of its report 15 months later in February 2013 and the official launch of the negotiations the following July, there have been ten rounds of negotiations in Brussels and Washington and multiple stakeholder meetings and consultations with civil society representatives. Although the “jobs and growth” narrative is still prevalent, it is fast becoming overshadowed by the more urgent, strategic oriented discourses like the one expressed above by the USTR in a recent speech in Europe. A careful examination and comparison of the motivations, core interests and oppositions on both sides of the Atlantic may help to explain this shift as well as shed light on the prospects for—and likely impediments to—a successful conclusion of the agreement.

The paper is divided into three broad sections. This first part puts the current trade deal in historical context and presents an overview of what the Transatlantic Trade and Investment Partnership entails, drawing from the contents of the High Level Working Group report that led to the launch of the negotiations and the substance of the subsequent ten rounds of talks between the two economic partners. The second section analyzes the core U.S. motivations and interests in the trade deal as well as what some of the concerns and potential roadblocks are in the American political and institutional landscape. The third section places the U.S. views and positions in comparative perspective by examining the corollary goals and oppositions of the European Union and then briefly considers the role of civil society and public opinion on both sides of the Atlantic and draws some tentative conclusions. Ultimately, the article contends that this trade agreement is very different from previous transatlantic negotiations and other international trade deals in that the already extremely high level of economic and financial interpenetration in the two economies produces strong alliances across the Atlantic among corporate interests whereas the major oppositions among many consumer, labor and environmental groups on both sides of the Atlantic also find common cause in lobbying for protection of societal norms and safeguarding (or raising in the U.S case) standards. Alasdair Young (2015, 9) has called these novel patterns of alignment and contestation “the distinctive politics of TTIP.” Building on this observation, this article argues that, rather than seeing the support for or obstacles to the deal in terms of European versus American interests, as has been common in the past, we must begin to understand the complex reality of transatlantic social relations as a natural outgrowth of this economic interdependence. It develops this argument by analyzing the official positions and dominant discourse employed to garner popular support for the deal and compares public opinion and civil society reactions to supply supporting evidence to show why the driving narrative has shifted from « Jobs and Growth » to « the Regulatory Pact » to the now prevalent geostrategic one that emphasizes the need to safeguard our common norms and values against the ‘rest’.

Historical Context: Why Now and What’s New with TTIP?

While the rise of China, Brazil, India and other developing economies is a significant development in the changing international system, transatlantic trade and investment remains the fulcrum of the global economy. The following commonly cited figures readily substantiate this claim. First of all, the European Union and the United

States account for nearly half of world GDP and 30 percent of world trade. In terms of the transatlantic economy alone, goods and services worth \$2.7 billion/€2.0 billion are traded bilaterally supporting an estimated 14 million jobs in both economies. In addition, the United States and the EU have directly invested more than \$3.7 trillion/€2.8 trillion on both sides of the Atlantic with the United States consistently directing about half of its total foreign direct investment (FDI) each year toward the European Union, and the EU's FDI in the U.S. accounting for almost two-thirds of total incoming investment. In 2012, U.S. investment in the EU was more than three times the total U.S. FDI in the entire Asia-Pacific region. During the same period, EU FDI in the U.S. was almost four times larger than the combined investment by the Asia-Pacific region in the U.S. Globally speaking, either the EU or the U.S. is the largest trade and investment partner for almost all other countries in the world³. These numbers help to put the weight of the EU-US economic relationship in proper perspective as we consider the rationale behind the proposed Transatlantic Trade and Investment Partnership.

It is important to recall that historically, the strategic partnership between Europe and the United States, though undeniably rich and complex diplomatically, culturally and politically speaking, has always had a predominant economic dimension admittedly interlinked with the security element during the Cold War, and in the post-war era generally, has become one of increasing interdependence and interpenetration. So what explains why there has never before been a free trade agreement between these economic giants and close allies? The answer lies mostly in the very construction of the European project based on Jean Monnet's insight about the necessity of European integration via economic cooperation and the need to unify smaller economies for scale and competitive viability coupled with U.S. support for the initiative not only through the Marshall Plan but also the simultaneous establishment of the open trading system through the General Agreement on Tariffs and Trade. As Desmond Dinan recounts, the United States had to fiercely counter the British (outside the European community at that time) effort to weaken the European project through its counter proposal to the common market, the European free trade area. Instead, the United States considered the European common market would have the potential for greater trade among EC members as well as between them and the United States. In large part, history proved this to be the case as the economic statistics mentioned above strongly attest. "EU trade creation, the Americans thought, would far outweigh trade diversion" (Dinan 2004, 91). This historical U.S. perspective adds nuance to some arguments circulating today claiming that TTIP would in fact have the impact of decreasing intra-EU trade, thereby weakening European integration on the whole (see Choblet 2014 and Siebert 2013).

Well over a century later, much has transpired as the U.S. faces a more equal international partner in a deeply integrated and much larger EU, though one arguably still weathering one of the most severe crises it has ever faced on the heels of the 2008 US generated financial crisis and "Great Recession" and then the sovereign debt crisis in some of the weaker EU eurozone economies. The relatively stagnant European economy with

³ These figures are taken from the website of the European Union Delegation to United States, which can be accessed at: <http://www.euintheus.org/what-we-do/trade-and-investment/>.

high unemployment and lower business confidence begs the question of what incentivizes the United States to only now pursue a free trade agreement? First it must be noted that the initiative was driven by European motivations back in the 1990s when, as some would argue⁴, the EU was taking a more decidedly neoliberal turn and pushing trade liberalization more broadly, not to mention the negotiations for the Maastricht Treaty and foundations of the European Monetary Union. More specifically, in 1990 relations between the United States and the European Community were formalized by the adoption of the Transatlantic Declaration and The New Transatlantic Agenda (NTA) later officially launched at the Madrid summit in 1995, containing four broad objectives for U.S.-EU 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-U.S. Action Plan was drawn up committing the EU and the U.S. to a large number of measures within the overall areas of cooperation.

As an extension of the NTA efforts, agreement was reached at the 1998 London summit to intensify cooperation in the area of trade, which resulted in the Transatlantic Economic Partnership (TEP). The TEP covers both bilateral and multilateral trade. Bilaterally, TEP addresses various types of obstacles to trade and strives to establish agreements on mutual recognition in the areas of goods and services. Furthermore, there was an effort at cooperation in the areas of public procurement and intellectual property law and a number of other policy initiatives that never fully got off the ground that we in fact see resurfacing with the TTIP proposals⁵. Multilaterally, during this same period the Americans and Europeans had also been engaged in the Uruguay Round negotiations which after seven years of intense bargaining concluded in 1993 establishing the World Trade Organization (WTO) in 1995 to administer the already existing GATT as well as the newly forged General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPs). Some would argue then that the EU and U.S. did not need a separate bilateral agreement since both parties were already each other's most significant trading partner and both were committed to pursuing further trade liberalization more broadly through the multilateral process. However, as WTO membership greatly expanded and the successor negotiations, the Doha Development Round, became more fractious and less and less likely to succeed, the idea of an U.S.-EU deal was brought up again first by EU Commissioner for Trade, at the time Peter Mandelson, and then reinvigorated by German Chancellor Angela Merkel when Germany took over the EU presidency in 2007. One of the biggest accomplishments of the German Presidency of the EU was setting up the Transatlantic Economic Council (TEC), which further institutionalized the EU-US economic relationship and arguably foreshadowed TTIP. The framework agreement signed by Chancellor Merkel, former U.S. President G.W. Bush and former Commission President Barroso states the TEC is "a political body to oversee and accelerate government-to-government cooperation with the aim of advancing economic integration between the European Union and the United States of America"... bring[ing] together those Members of the European Commission and US Cabinet Members who carry the political responsibility for the policy areas covered by the

⁴ For example see *Europe at Bay: In the Shadow of US Hegemony* (2007) by Carfruny and Ryner.

⁵ For a succinct discussion of these developments, see McGuire and Smith (2008, 32-33)

Framework. The specified areas of cooperation are: regulatory cooperation, intellectual property rights, secure trade, financial markets, innovation and technology and investment.⁶ These target policy areas map onto the TTIP agenda almost perfectly and thus the “why now” question is actually that this has been in the works for quite some time. The stasis within the WTO and the virtual death of the Doha Development Round in conjunction with the financial crisis and slow economic recovery and anemic growth simply gave further impetus for pursuing a long held goal.

It is no surprise then that the TEC was assigned the task by EU and US leaders of doing the preliminary work for the joint High Level Working Group (HLWG) that ultimately laid the foundations for the current negotiations. What is readily apparent is that the “free trade” part is fairly insignificant as tariffs are already at very low levels, averaging around 3 %. An excerpt directly from the report makes clear what is “new” with TTIP compared to ordinary FTAs.

An agreement between the United States and the EU, which already have substantially open economies, would need to break ground to create additional bilateral market openings and establish new trade rules that are globally relevant. Such an agreement should be designed to evolve over time – i.e., substantially eliminate existing barriers to trade and investment, while establishing mechanisms that enable a further deepening of economic integration, particularly with respect to the promotion of more compatible approaches to current and future regulation and standard-setting and other means of reducing non-tariff barriers to trade.....Based on our work over the past year, the HLWG considers that negotiations on a comprehensive trade and investment agreement should aim to achieve ambitious outcomes in three broad areas: a) **market access**; b) **regulatory issues and non-tariff barriers**; and c) **rules, principles, and new modes of cooperation to address shared global trade challenges and opportunities** (European Commission 2013b, 5; US Department of State, 2013).

The reference to “deeper economic integration” is significant and given the already low tariffs, increased trade must come from “beyond the border” areas—removing non-tariff barriers and other technical impediments to trade and investment such as differing product and safety standards but also making government procurement more open and competitive, harmonizing intellectual property rules and setting standards for “everything from car safety, fuel economy, and emissions to accounting and insurance regulation, sanitary and phytosanitary standards, and patent and copyright law” (Dadush 2013, 1). The European Commission even referred to TTIP as a “regulatory pact” aptly capturing the essence of what is new in these negotiations. From the opening talks in July 2013 through ten subsequent rounds of negotiations, the latest of which concluded in February 2015, it has become clear that the “one tank of gas” prediction asserted by the U.S. trade negotiator as the time it would take to conclude the agreements was wildly off

⁶ See http://ec.europa.eu/enterprise/policies/international/cooperating-governments/usa/transatlantic-economic-council/index_en.htm for more details.

base. Although the EU Commission mandate has now been made public and there have been other leaks as well as large scale press conferences and consultations with civil society stakeholders, each of the ten talks have yielded very little information beyond the predictable sticking points and highly contentious issues such as the contested “Buy America” initiatives, continued bickering over GMOs, the exclusion of audiovisuals and culture industries, and somewhat more surprisingly the Investor-State Dispute Settlement. The eavesdropping PRISM program and NSA spying scandals broke during the early rounds of talks and again this summer which put the U.S. on a slightly weaker footing but the slowing European economies combined with the growing security tensions with Russia over the Ukraine conflict have not strengthened the EU position either, though the latter did lend urgency to the EU’s push for an energy chapter in TTIP.⁷ The growing tensions with Russia now of course contribute to the geopolitical discourse surrounding TTIP, but it is worth pointing out that the alleged comment by then Secretary of State, Hillary Clinton about TTIP representing a possible “economic NATO” long preceded the Russian annexation of Crimea and escalation of the conflict in Eastern Ukraine. We will return to this increasing security dimension and the now dominant geopolitical narrative in the conclusion once we have analyzed what the core interests as well as detractors are for both negotiating parties.

What’s in it for the United States?

Projections are that a deal will take at least another year and the risk of dragging on even longer is highly likely despite the constantly invoked projections that a deal holds the potential of accelerating economic recovery and boosting jobs. As the Center for European Policy Research (CEPR) shows, cutting non-tariff barriers by even 25 % could boost growth by .8 percent through a less cumbersome regulatory environment and a more streamlined process for customs, licensing and inspection. In fact 80 % of the expected benefits would come from regulatory convergence. The CEPR report claims—and the U.S. and EU leaders are quick to reference—that an ambitious and comprehensive agreement could boost the EU economy by nearly €120 billion euro (more than \$156 billion) and the U.S. economy by around €90 billion (\$117 billion), translating into millions of new jobs for workers on both sides of the Atlantic and providing an extra €45 (\$725) per year for a family of four in the EU, and an additional €55 (\$871) per American family annually⁸. From the U.S. side one of the most important and widely referenced reports, published in September 2013 and updated with industry and sector specific data in March 2014, is “TTIP and the Fifty States” underwritten by the Bertelsmann Foundation, the Atlantic Council, and the British Embassy. This study more than anything else is getting a lot of traction because it forms a basis for the core information being used by the Trans-Atlantic Business Council’s “roadshow” across a number of States to promote TTIP and mobilize

⁷ Most recently asserted in the high-level context of the EU-US Energy Council meeting where EU Foreign Policy Chief Mogherini pressed the issue to US Secretary of State Kerry. <http://www.euractiv.com/sections/trade-society/mogherini-pushes-kerry-energy-chapter-ttip-310585>

⁸ http://www.euintheus.org/wp-content/uploads/2013/02/TTIP_BROCHURE.pdf

support at the local level⁹. Using the same methodology as the CEPR study, mentioned above, it extends the model by considering the local impact and estimating the employment effects of a comprehensive agreement. Assuming a 100 % reduction in tariffs, 50-percent reduction in procurement barriers, and a 25% reduction in non-tariff barriers, the study estimates that TTIP would support more than 740,000 new US jobs.¹⁰

Whether or not such estimates are reasonable is a source of academic debate¹¹ but such are the purported benefits claimed by officials and the business community as they try to get the word “outside the beltway” about the TTIP negotiations. Table 1 summarizes the US Trade Representative’s factsheet detailing what the official U.S. goals and objectives are that would supposedly deliver on such promises if a deal is reached.

TABLE 1: Highlights from USTR Factsheet

<p><u>TRADE IN GOODS</u> Objective: to eliminate all tariffs and other duties and charges on trade in agricultural, industrial and consumer products</p> <p>Rationale: The United States ships more than \$730 million in goods to the EU annually and exported more than \$253 billion worth of industrial products to the EU in 2012.</p> <p><u>TRADE IN SERVICES</u> Objective: to obtain improved market access in the EU on a comprehensive basis, and address the operation of any designated monopolies and state-owned enterprises.</p> <p>Rationale: The United States is the largest services exporter in the world, and services industries account for 4 out of 5 U.S. jobs.</p> <p><u>ELECTRONIC COMMERCE AND INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) SERVICES</u> Objective: to develop appropriate provisions to facilitate the use of electronic commerce to support goods and services trade, including through commitments not to impose customs duties on digital products or unjustifiably discriminate among products delivered electronically and to include provisions that facilitate the movement of cross-border data flows.</p> <p>Rationale: The Internet provides U.S. retailers and service providers with an increasingly powerful platform for selling their goods and services to purchasers in some of the world’s wealthiest economies. U.S. filmmakers, musicians, and software developers should be able to sell their movies, music, video</p>

⁹ <http://www.bfna.org/article/bertelsmann-foundation-receives-eu-grant-for-ttip-roadshow>

¹⁰ These figures are cited on page 10 of the document, *TTIP and the Fifty States: Jobs and Growth from Coast to Coast*, which can be accessed as a PDF via: <http://www.bfna.org/publication/ttip-and-the-fifty-states-jobs-and-growth-from-coast-to-coast>

¹¹ For instance, see Dean Baker, “The US-EU trade deal: don’t buy the hype,” *The Guardian.com*, July 15, 2013. (<http://www.theguardian.com/commentisfree/2013/jul/15/us-trade-deal-with-europe-hype>). For a more academic assessment and critique of the conventional growth projections see the study by Tufts University Global Development and Environment Institute accessible at http://ase.tufts.edu/gdae/policy_research/TTIP_simulations.html. Here the authors find that TTIP will result in greater financial instability and a loss of labor’s global share of GDP.

games, and other digital products to Europe's more than 500 million consumers without having to worry about customs duties and fees.

NON-TARIFF BARRIERS AND REGULATORY ISSUES

Objective: to eliminate or reduce non-tariff barriers that decrease opportunities for U.S. exports, provide a competitive advantage to products of the EU, or otherwise distort trade, such as unwarranted sanitary and phytosanitary (SPS) restrictions that are not based on science, unjustified technical barriers to trade (TBT), and other "behind-the-border" barriers, including the restrictive administration of tariff-rate quotas and permit and licensing barriers, which impose unnecessary costs and limit competitive opportunities for U.S. exports.

Rationale: Non-tariff barriers (NTBs) can decrease market opportunities for U.S. exports and provide unfair competitive advantages to EU products. These barriers take the form of restrictive licensing, permitting, and other requirements applied *at* the border, but also barriers *behind* the border, such as unwarranted technical barriers to trade and sanitary and phytosanitary measures. **Embracing sound regulatory objectives in TTIP will not only draw our economies closer together, but will serve as a positive example for third-country markets around the world.**

INVESTMENT

Objective: to secure for U.S. investors in the EU important rights comparable to those that would be available under U.S. legal principles and practice, while ensuring that EU investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States; to ensure that U.S. investors receive treatment as favorable as that accorded to EU investors or other foreign investors in the EU, and seek to reduce or eliminate artificial or trade-distorting barriers to the establishment and operation of U.S. investment in the EU; to provide and maintain meaningful procedures for resolving disputes between U.S. investors and the EU and its Member States that are in keeping with the goals of expeditious, fair and transparent dispute resolution and the objective of ensuring that governments maintain the discretion to regulate in the public interest.

Rationale: The United States and the EU have the world's largest investment relationship. Transatlantic investments total \$4 trillion, directly supporting seven million American and European jobs, with millions more in indirect jobs. These investments help our manufacturing sector, generating 18 percent of U.S. exports to the world.

GOVERNMENT PROCUREMENT

Objective: to expand market access opportunities for U.S. goods, services, and suppliers of goods and services to the government procurement markets of the EU and its Member States.

Rationale: Both U.S. and European governments buy a broad range of goods and services from private sector businesses, which leads to job-supporting opportunities for industries that provide information technology goods, consulting services, infrastructure, and other products. Achieving our TTIP objectives will ensure U.S. companies get a fair shot at eligible government procurement opportunities **in areas including construction, engineering, and medical devices.**

LABOR

Objective: to obtain appropriate commitments by the EU with respect to internationally recognized labor rights and effective enforcement of labor laws concerning those rights, consistent with U.S. priorities and objectives, and establish procedures for consultations and cooperation to promote respect for internationally recognized labor rights.

Rationale: Our trade agreements are designed to prevent a race to the bottom on labor protections. We include strong labor commitments to help ensure that increased levels of trade and investment with our partners are not being driven by a weakening of worker rights.

ENVIRONMENT

Objective: to obtain, consistent with U.S. priorities and objectives, appropriate commitments by the EU to protect the environment, including conserving natural resources, and to effectively enforce environmental laws, and seek opportunities to address environmental issues of mutual interest.

Rationale: The United States is a leader in seeking high levels of environmental protection and the effective enforcement of environmental laws in trade agreements. Through our agreements, the United States has joined with trading partners in eliminating barriers to trade in cutting-edge environmental technologies like clean energy, promoting the protection of wildlife and endangered species, and addressing key issues like harmful fisheries subsidies and illegal logging.

INTELLECTUAL PROPERTY RIGHTS

Objective: to obtain, consistent with U.S. priorities and objectives, appropriate commitments that reflect the shared U.S.-EU objective of high-level IPR protection and enforcement, and to sustain and enhance joint leadership on IPR issues;

Rationale: The United States and the EU have the world's most successful creative industries, and intellectual property protection and enforcement are essential for encouraging innovation in new technologies, stimulating investment in research and development, and supporting exports of U.S. products and the creation of American jobs. Nearly 40 million American jobs are directly or indirectly attributable to "IP intensive" industries. These jobs pay higher wages to their workers, and these industries drive approximately 60 percent of U.S. merchandise exports and a large share of services exports.

SOURCE: The information contained within the table has been selectively culled from the USTR's factsheet, which can be accessed at: <http://www.ustr.gov/about-us/press-office/press-releases/2014/March/US-Objectives-US-Benefits-In-the-TTIP-a-Detailed-View>. *Note that some significant items such as "rules of origin" and "state-owned enterprises" and a few others were not included here due to space constraints.

As the highlighted sections of the formal goals and objectives of the United States reveal, much of what is sought goes to the very heart of long-standing transatlantic disputes over societal values about such fundamental issues as food safety, agricultural traditions, protecting workers and the environment and whether or not governments or markets should be the guarantor of such values and preferences. Most of the roadblocks in fact have already surfaced over these issues. From the European redline over GMOs to the U.S. refusal to accept all Geographic Indications, not to mention the ways in which the food safety standards are contested on both sides with the U.S. resorting to accusations about the lack of "sound science" guiding the EU process. As one expert pointed out, agriculture may very well prove the "undoing of the agreement", as the nature of the regulatory regimes are quite different and neither wants to see its system of rules replaced by the other. (Young 2013) In fact, U. S. Congress members made it clear at the outset of the negotiations that they view the EU's agricultural policies as protectionist and insist that this issue be pressed hard. The quote from Chariman Nunnes of the House Ways and Means Subcommittee on Trade illustrates this and also echoes the USTR's views on three issues: that EU policies are protectionist, that "sound science" should be the norm, and that regulatory convergence would help address these barriers in third countries.

The agreement is also an opportunity for the United States to resolve long-standing regulatory barriers, and, in particular, regulatory barriers not based on sound science that block our agriculture exports. Furthermore, an

ambitious agreement can help to set the rules of global trade and strengthen US-EU cooperation in addressing barriers in third countries.¹²

By February 2014, there had been at least four Congressional oversight hearings in the House and Senate expressing similar concerns but for the most part there does not seem to be much substantive opposition and there have even been expressions that TTIP is important to reassure European partners and counterbalance President Obama's "pivot to Asia."¹³ The other political issue that raises some concerns is financial services. Many Democrats will likely oppose further financial liberalization, which they see as undermining the regulations of Wall Street put in place by the Dodd-Frank Act. Liberal Democrats were the big losers in the most recent midterm congressional elections however. Ironically, this should work in TTIP's favor as generally Republicans are stronger supporters of free trade and notably it was the Democratic leadership that had not moved on the President's trade agenda, nor granted the fast-track authority. The role of contrarian Tea Party members and the general animosity towards the Obama administration could however even impede more rational dialogue and bipartisan support necessary to get the deal through. Institutionally speaking the TTIP negotiators will inevitably face the conventional tug of war between Congressional and Presidential authority over international trade matters and this is why the President's request for Trade Promotion Authority (TPA) is being strongly pushed by the business community and other TTIP proponents. TPA or the fast-track approach would prevent the Congress from amending or attempting or filibuster any talks on the deal and would bring it to a strictly up or down vote in both chambers. Although President Obama has reinvigorated the call for Trade Promotion Authority,¹⁴ it remains to be seen whether the Republican leadership will push anything through that would be perceived as an achievement for the President. Fast-track authority is always favored by negotiating partners and enhances the chances that better offers are made and deals struck because they know that the pact could not be reopened and picked apart by Congress.

Another institutional stumbling block will be the role of the U.S. State legislatures as many have "buy American" clauses effectively excluding foreign competition from public contracts even though procurement will be an issue the Europeans push strongly. Although environmental non-government organizations (NGOs) consumer organizations and labor unions have registered skepticism and concerns, these groups are weak in the face of powerful industry and business interests and would be unlikely to mount enough opposition to impact the negotiations negatively. We will return to these groups and what their concerns are in the concluding section after providing a snapshot of how EU positions compare to those in the U.S. political landscape.

¹²<http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=333263>

¹³ For more details on these hearings see the following report: <http://fas.org/sgp/crs/row/R43387.pdf>

¹⁴ "Obama says will make strong push for fast-track trade authority" December 3, 2014
<http://www.reuters.com/article/2014/12/03/us-usa-trade-obama-idUSKCN0JH24220141203>

How the U. S. Compares: European Positions and the Role of Civil Society

If one examines the European corollary to the USTR factsheet and official statements of US negotiators, TTIP would appear to be a relatively uncontroversial deal with both parties ostensibly seeing it in largely “win-win” terms, though statements by negotiators and diplomats over the past year belie this interpretation acknowledging that there will be some very tough negotiations ahead. In a recent speech the newly designated EU Trade Commissioner, Cecilia Malmström, underscored that this deal is about much more than trade and “mostly about regulation” and then put things quite bluntly: “When it comes to regulation it means three things. First, there can be no trade-off between our economic goals and our people's health and safety, the environment or financial stability. In practice that means that where Europe and the United States have very different rules we will not be able to come to agreement. That goes for our laws on genetically modified organisms and hormones in beef. Those laws are democratic decisions. That is the end of the conversation.¹⁵” On the EU Commission (DG Trade) website, the chief goals listed look virtually identical to those of the U.S. with two important exceptions. The EU explicitly states that “sustainable development will be an overarching objective” and even mentions climate change, which does not appear in any of the US statements and incidentally with the new leadership in Congress, the head of the Senate environmental committee is a climate change denier.¹⁶ This relates to the second difference, which is that the EU emphasizes that it will not encourage trade or investment by lowering any European standards¹⁷. Former EU Trade Commissioner Karel De Gucht was even quoted as saying “no standard in Europe will be lowered because of this trade deal-not on food, not on the environment, not on social protection, not on data protection. I will make sure that TTIP does not become a dumping agreement¹⁸.” As one might deduce from the overview of American objectives, Europe insists that the U.S. recognize its Geographic Indications for some of its agricultural products and it wants access to the U.S. government procurement market. Both of these objectives will likely be a continued source of difficult negotiations for the reasons highlighted above. Also requiring dramatic overhaul of U.S. legislation are two items in the transport sector: the EU demand that the 1920 “Jones Act” preventing non-American ships from transporting goods and passengers between U.S. ports be repealed; and the EU push for a loosening on airline ownership and the operation of intra-American flight connections.

Beyond these hoped for economic gains, there is a broader goal that is frequently invoked paralleling the U.S. rhetoric. As De Gucht and others characterize it, TTIP will be an important way to shape regulations and norms, “including on investment, and ultimately values that govern economic exchange worldwide, thus, [about] laying out a framework

¹⁵ http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152942.pdf

¹⁶ “Sen. Inhofe, denier of human role in climate change, likely to lead environment committee” accessed at: http://www.washingtonpost.com/politics/inhofe-an-epa-foe-likely-to-lead-senate-environment-committee/2014/11/05/d0b4221e-64f4-11e4-836c-83bc4f26eb67_story.html

¹⁷ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=918>

¹⁸ “De Gucht wants to step up a gear on TTIP” Agence Europe 19/2/14

for a new, modernised vision of the world trading system.¹⁹ Though the U.S. also clearly sees this as way to influence the global trading system, what remains unclear is whether or not the EU and the US can reach some compromises on these very tough issues that have long bedeviled the transatlantic relationship and forge meaningful compromises that will indeed shape broader multilateral rules in the future. To answer that question, one would also need to carefully examine the contents of the two other massive trade deals under negotiation: CETA, the recently concluded (but not ratified) agreement between Canada and the EU, and TPP, the 12-country deal the U.S. is pursuing with Asia-Pacific countries.²⁰ Such a discussion is beyond the scope of this paper though as we reconsider the discursive strategies underlying the negotiations, it is important to keep these other big agreements in mind. As stated at the outset of this paper, TTIP is increasingly cast in strategic and geopolitical terms with statements conveying that this is a “once in a generation chance” to reaffirm and redirect the EU-US relationship and to ensure the international system reflects and guarantees the shared values of openness, the rule of law, and free and fair competition. Whereas, the EU speaks in terms of safeguarding values and shaping international rules in their image, the U.S. tends to paint it as directly linked to security concerns as well. For instance, USTR Froman asserts: “the growth generated by trade and investment underwrites our joint efforts to provide security – both for ourselves and wherever it is threatened around the world²¹. Perhaps this is unsurprising given that Ambassador Froman, prior to becoming USTR, served at the White House as Assistant to the President and Deputy National Security Advisor for International Economic Affairs, nonetheless it highlights a fundamental difference between the EU and US foreign economic policy cultures.

Since the launch of the talks, the geopolitical situation has intensified with Russia and the escalation of the conflict in Ukraine has further galvanized the EU to press for an energy chapter in the TTIP agreement²² yet there is still no real “securitization” of the trade discourses coming from Europe. In part this is due to the very different nature of the EU as a complex multi-nation trade negotiator that has clear supranational authority on trade issues but that power is not matched politically and diplomatically when it comes to defense and security matters even as issues become increasingly complex and interconnected. This has not prevented the transatlantic policy and think tank community from running with the geopolitical theme however. For example, the influential Center for Transatlantic Relations has already published a report titled “The Geopolitics of TTIP: Repositioning the Transatlantic Relationship for a Changing World²³” and a host of other

¹⁹ As quoted in Simon Lester’s “One year into the TTIP negotiations: Is the momentum gone?” 1 December 2014. Accessed via: <http://www.ictsd.org/bridges-news/bridges-africa/news/one-year-into-the-ttip-negotiations-is-the-momentum-gone>

²⁰ For background, see Patricia Goff’s (2014) “Transatlantic Economic Agreements: Parsing CETA and TTIP, accessible via https://www.cigionline.org/sites/default/files/cigi_paper_35_0.pdf and on TTP, see <http://www.ustr.gov/tpp>.

²¹ <http://www.ustr.gov/about-us/press-office/speeches/2014/October/Remarks-by-Ambassador-Michael-Froman-Dialogue-on-the-TTIP>

²² See for instance: <http://www.euractiv.com/sections/trade-society/mogherini-pushes-kerry-energy-chapter-ttip-310585>

²³ This document is fully accessible on the CTR website at <http://transatlantic.sais-jhu.edu/publications/books/The%20Geopolitics%20of%20TTIP/The%20Geopolitics%20of%20TTIP>

organizations such as Carnegie Europe and the Clingendael Institute have published similar commentaries.²⁴ The latter tend to situate the geopolitical implications more in the context of a rising Asia and the need to advance a liberal world order in the face of a growing risk that an authoritarian, strong economic player like China will push for a different set of rules incompatible with Western values. The backdrop of this is also the 2011 Obama “pivot to Asia” (Kupchan 2013 and the growing reassurance to Europeans that they are still a ‘first choice’ partner to the United States (See Joe Biden’s quote as cited in Kupchan 2013). The creeping dissonance however lies also in other narratives prevalent in Europe about how TTIP might undermine continued European integration and erode the European social model. A paper published by Notre Europe - The Delors Institute, referred to the European model as being “under fire” and concerns about data privacy and climate change were characterized as elements of a European model “not in tune with the priorities associated with American negotiators.”²⁵ What is quite telling is that these types of analyses are coming from an institute led by former EU Trade Commissioner and head of the WTO, Pascal Lamy, whom one would hardly call an “anti-trade” figure. Thus, it is easy to fall back into the familiar tropes of clashing models of society that periodically plague the transatlantic relationship since the founding of America in the 18th century but more recently with the caustic Uruguay Round disputes over culture and the audiovisual industries and most damagingly over the U.S. invasion of Iraq that degenerated into the “Mars versus Venus” caricatures (Kagan 2003; Lindberg 2004). A closer look at civil society on both sides of the Atlantic may shed light on why this time may be different and instead of a contest largely between competing interests in Europe and the U.S., it may very well be the respective internal oppositions that pose the biggest threats to the deal.

The first observation about the differences in public opinion and the role of civil society on both sides of the Atlantic is that the European public is much more mobilized against the agreement. In addition to frequent protests and social movement campaigns agitating against what it seen largely as a neoliberal sell out to the Americans, the most recent expression came in the form of a transnational movement that garnered one million signatures in time for EU Commission President Juncker’s 60th birthday on December 9 with crowd of an estimated 100 “Stop TTIP” activists meeting in Brussels in front of the Commission building to present a giant 60th birthday card signed by one million TTIP opponents from across EU member states.²⁶ Although the Commission had rejected a proposal to run an official European Citizens Initiative²⁷ (ECI) in September, a month later campaigners began a self-organized version of their own with 320 civil society

²⁴ For a spectrum of commentators responding to the claims about the geopolitical and strategic implications of TTIP, see the following: “TTIP - Is TTIP Really a Strategic Issue?” Carnegie Europe, <http://www.carnegieeurope.eu/strategieurope/?fa=56869>.

²⁵ Bertrand de l’Argentey. (2014) “Challenges and Prospects of a trans-Atlantic Free Trade Area,” Delors Institute No. 99, page 28.

²⁶ For more details see the following: <http://www.euractiv.com/sections/ttip-and-arbitration-clause/ttip-and-arbitration-junckers-birthday-headache-310634> and <https://stop-ttip.org/juncker-receives-birthday-surprise-one-million-signatures-opposing-ttip-ceta/>

²⁷ The European Citizens’ Initiative is an innovation in the Treaty of Lisbon that was designed to address the democratic deficit and provide a mechanism whereby ordinary European citizens could coordinate a campaign to get the EU to consider legislation or other proposals. For more specific background, see <http://ec.europa.eu/citizens-initiative/public/welcome>.

organizations apparently fulfilling both criteria for an ECI to be successful: One million signatures overall and a minimum amount of signatures in at least seven EU member states, which in this case came from Germany, UK, France, Austria, Slovenia, Luxembourg and Finland.²⁸ There is no corresponding social movement on such a scale in the United States and remarkably the European citizenry manages to mobilize across borders and languages to engage, even if it is in a direction the Commission, U.S. negotiators and many Atlanticists call “scaremongering.” However, one little known element appreciated in the debates is the degree to which well organized groups such as the AFL-CIO and other U.S. labor interests as well as environmental groups like the Sierra Club are highly engaged and in fact reflect many of the same sentiments expressed by the “Stop TTIP” movement across Europe. For example, the AFI-CIO gave testimony to the House of Lords in which the spokesperson asserted that in principle TTIP could have positive impacts on jobs and growth that would benefit workers in both societies but at the current juncture they find it highly unlikely given the “neoliberal approach” that both Europe and the U.S. seem to be following.

...that is, in the direction of weaker social protections (including fewer workplace rights), reduced investment in infrastructure, education, and training, and increased reliance on the market to solve its own problems. We believe this is the wrong direction, and we are concerned that if more European enterprises do business in the U.S. as a result of the TTIP, they will drag the nations of the EU further and further in that direction by demanding the same privileges they receive in America—privileges they can enjoy without corresponding and commensurate duties to their employees and communities.²⁹

Further solidifying this message, evidence was cited using graphs from the St. Louis Federal Reserve Bank displaying official U.S. government statistics showing that U.S. workers’ share of national income is at its lowest level since the 1940s yet the share of corporate profits has reached its highest level since 1952. This position is much larger than one simply defending U.S. labor interests and interestingly aligns perfectly well with the message from the Stop TTIP movement discussed above. Similarly The Sierra Club has been an active stakeholder participant and produced a document that could have easily passed for a European perspective in that it defends European high food safety standards and environmental protections and cautions that TTIP not undermine or weaken them. It refers specifically to the EU’s ban on GMOs, hormone-treated beef and chlorine-washed poultry and argues that TTIP must not seek to de-regulate or undermine these food safety

²⁸ <https://stop-ttip.org/juncker-receives-birthday-surprise-one-million-signatures-opposing-ttip-ceta/>

²⁹ House of Lords EUROPEAN UNION SUB-COMMITTEE ON EXTERNAL AFFAIRS Transatlantic Trade and Investment Partnership Written evidence volume, page 5. Accessible at: www.publications.parliament.uk/pa/ld201314/ldselect/ldecom/179/17902.html

standards that protect European consumers. The report even mentions the EU's Emissions Trading Scheme and its ambitious decision to add aviation emissions, which it suspended in the face of fierce opposition from the US and China in order for it to be addressed within the International Civil Aviation Organization. The Sierra Club appears to take the EU position and expressed concerns that should the decision not be resolved favorably within the ICAO, then TTIP should not contain any provisions that might compromise this or other efforts to combat climate change. Another issue where some civil society groups in the United States appear more in sync with European societal preferences are issues related to Intellectual Property. As observed by Geoffrey Harris of the EU Parliament's Liaison Office to the U.S. Congress:

American civil society organisations welcomed the rejection in 2012 by the European Parliament of the Anti-Counterfeiting Trade Agreement (ACTA) which they feared could be used to limit freedom of expression and generic competition. Their argument is that the EU and the US have conflicting policies in many areas of IP (e.g. patents, infringement liability, pharmaceutical monopolies) and the TTIP could lead to a worsening of consumer protection in both the EU and US. This is an example of a more general concern that the nature of the negotiations favours powerful lobbies which aim to maximise IP standards in a way which fails to account for the public interest (2014, 9).

Yet the AFL-CIO and environmental groups like The Sierra Club or others who share many of the same values as a wide spectrum of European civil society do not mobilize U.S. masses, and this is a big difference in terms of the kind of public that negotiators and ultimately legislators must face. The internal opposition or main hurdle on the U.S. side may instead be a dysfunctional Congress that simply will not wish to grant the Obama presidency any victories at all. Another factor that could spell doom for TTIP on the American side is the relative lack of interest by the media and the general disinterest or even skepticism of the public. One empirical study examining U.S. print and broadcast coverage of TTIP over an eight month period found strikingly little attention paid even at moments when talks were being held in Washington as opposed to Brussels (Knüpfer 2014). The Pew Research Center's Global Attitudes survey revealed that Americans are among the least likely to say trade creates jobs (20%) or improves wages (17%), exhibiting considerably less faith in the benefits of trade than others in advanced economies (see Table 2). But as the comparison with European public engagement illustrates: attitudes are one thing, action is another. The American public will not be the obstacle even if there are many voices expressing legitimate concerns and oppositions, but the Republican dominated Congress as well as many conservative US States might very well be.

TABLE 2: Transatlantic Attitudes to Trade

	Trade is Good %	Trade Increases Wages %	Trade Creates Jobs %	Trade Lowers Prices %	Foreign Companies Buying Companies is Good %	Foreign Companies Building Factories is Good %
Spain	91	28	56	22	43	85
Germany	90	28	43	26	19	66
UK	88	34	50	24	39	82
Greece	79	21	44	35	31	67
Poland	78	38	51	26	40	75
France	73	14	24	28	32	75
U.S.	68	17	20	35	28	75
Italy	59	7	13	22	23	61

Source: Pew Research Center Spring 2014 Global Attitudes Survey. Available at <http://www.pewglobal.org/2014/09/16/faith-and-skepticism-about-trade-foreign-investment/>

While it is difficult to assess the definitive impact of civil society actors on the negotiations, the unified positions of the transatlantic consumer groups as well as labor unions that oppose including an investor-state-dispute-settlement (ISDS) clause in the agreement may be instructive. The chief concern among those wary of including ISDS in the TTIP agreement is that it would provide a mechanism for corporations to contest certain national regulations that they disfavor (TACD et al 2013: 1; AFL-CIO/ETUC 2014: 4). Young's analysis (2015) elucidates how the ISDS debates cut to the core concerns that regulatory convergence might spell further liberalization and privatization of public services impacting price and quality of services from everything to healthcare to water to other service provisions. Whereas the Europeans are more vigilant in opposing TTIP on these grounds, the joint statements and collaboration with U.S. groups is reinforcing the perception that this deal risks giving corporations more power at the expense of public interests and society on both sides of the Atlantic.

In the European context this widespread opposition in fact caused the Commission to take ISDS off the table while it conducted a public consultation, and although this did not lead to a complete retraction or removal of the issue from subsequent negotiations, it clearly shows the potential weight of public opinion as well as the significant role of the European Parliament (see Commission 2015). Responding to this pressure Trade Commissioner Malström presented a concept paper in May with clarifications and suggested reforms and the issue did not advance during the tenth negotiating round held in Brussels July 13-17. In fact immediately preceding the round and following the European Parliament's vote on July 8 approving the recommendations of the Committee on International Trade (as detailed in the Lange Report), the Commissioner issued the following statement. "What today's vote also signals is that the old system of investor-state dispute settlement should not and cannot be reproduced in TTIP – Parliament's call today for a "new system" must be heard, and it will be."³⁰

³⁰ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1350> Accessed on 4 September 2015.

Conclusion

Any attempt at predicting the outcome of the TTIP negotiations would certainly be a fool's errand, but it hasn't stopped the "chattering classes" from making a valiant effort and this article has only captured a fraction of those debates. What seems to be missing from the amplitude of expert opinion and commentary, however, is attention to how much consensus there appears to be among large swaths of civil society on both sides of the Atlantic expressing a vision not entirely sympathetic to that of the negotiators, government officials and business interests on both sides of the Atlantic. This paper has attempted to fill that gap at least in some measure. As closer attention to U.S. labor and environmental groups elucidated, it would be misleading to construe this opposition as just another simplistic Europe versus America conflict or to see obstacles as mainly emerging from the predictable European anti-free trade, anti-globalization groups who have been active on these same issues since at least the failure of the Multilateral Accord on Investment negotiations back in 1999. Regulatory convergence is difficult for a reason. Many decisions and proposed changes to the status quo go directly to the core of what it means to live in a democratic system where the laws and processes governing the most basic decisions of daily life are at stake—from the quality and provenance of our food to the norms shaping the balance between privacy and freedom on one hand and national security on the other, and from the safety of consumer products to the rules about rights, privileges and duties of foreign corporations and investors whose activities shape livelihoods and impact local communities. In short, a deal like TTIP is about "les choix de société" and given the high level of trade and investment integration already, the real discord is ultimately about what is perceived as a neoliberal driven agenda that would contribute to and accelerate the present direction of growing inequality and rising corporate profits in the face of wage stagnation in the U.S. and chronic unemployment in Europe and fewer and fewer choices about the kind of society we want to live in. This is precisely why the role of public opinion and engagement is so crucial (Alemanno 2014; Boyer 2014). As expressed by one commentator:

Another reason for caution against excessive ambition concerns public opinion. As Hilary Clinton and Frank-Walter Steinmeier have pointed out, the Americans and the Europeans of the second decade of the 21st Century do not take Atlantic cooperation for granted in a way that seemed natural at least until the end of the Cold War. The EU and the US leaders will not only have to convince each other in the negotiation process, but they will have to convince the public well beyond the powerful business lobbies on both sides of the Atlantic (Harris 2014, 14).

These perspectives may also go a long way toward explaining why growing public skepticism is being countered with strategic and geopolitical discourses like that of USTR Froman tapping into the deeper roots of the historic alliance and essentially asking whether or not the political will exists to strengthen the partnership at this critical juncture in world politics, not only because of political instability from Eastern Europe to the Middle East but also because of the rapid economic rise of the rest. But this kind of discourse may come off as an ideological mirage or one far removed from the realities of ordinary lives and working families who already feel like the losers in the globalization game (Rodrik

2012). However, as further evidence that TTIP is unlikely to degenerate into another EU-US dispute like so many others that have come before, here is what the Transatlantic Consumer Dialogue jointly wrote to President Obama and the EU leaders at the time, President Barroso and President Van Rompuy:

We are concerned that the process leading to the launch of TAFTA negotiations has been dominated by transatlantic business interests, which appear intent on undermining the strongest public interest safeguards on either side of the Atlantic with which their products and operations must now conform. Their agenda is to use these negotiations as a means to pursue deregulation efforts that have been unsuccessful to date. Industry representatives, organized since 1995 as the Transatlantic Business Dialogue, recently renamed the Transatlantic Business Council, have pushed for “harmonization” of divergent standards, free passage of goods and authority to operate services under “mutual recognition” terms and elimination of what they call **“trade irritants” and we consider some of our most important consumer and environmental safeguards.**³¹

Such a strong message crafted by over 60 organizations on both sides of the Atlantic that could otherwise very easily portray the losers and winners of TTIP in national or parochial terms, combined with the stakeholder consultations associated with the negotiations and genuine gestures of both the Commission and the USTR offices at greater transparency may in fact foster the birth of a new kind of transatlantic agora, a public sphere of sorts that is more inclusive and representative than the well-resourced business interests and government elites driving TTIP thus far. Ironically, this development may also mean the negotiations fail or that negotiations will take much longer than assumed, but if it succeeds, the trade-off will be a more legitimate and democratically endorsed agreement, which should be the very foundation of a renewed transatlantic relationship and solid partnership for better global governance in the first place.

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³¹ <http://corporateeurope.org/trade/2013/07/no-corporate-driven-agreement>

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