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The Transatlantic Trade and Investment Partnership: exaggerated hopes from the liberalising agenda?

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Policy recommendations

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The economic benefits of the Transatlantic Trade and Investment Partnership (TTIP) will be extremely small. The EU should therefore concentrate on wider policies to restore growth and investment. The EU should also support an alternative globalisation agenda which should enshrine higher labour and environmental standards in global trade negotiations. It should oppose the inclusion of the Investor-State Dispute Settlement (ISDS) as it will only strengthen the hand of multinational businesses.

Introduction

The Transatlantic Trade and Investment Partnership (TTIP) has been under negotiation between the EU and the USA since July 2013 with promises of great benefits should an agreement be reached. The evidence summarised here suggests these will be very small. TTIP is also presented as a means to break a deadlock that has developed in negotiations within the framework of the World Trade Organisation (WTO). It will, it is hoped, produce a new set of standards that can then be followed by others. This appears very unlikely, not least because TTIP will not deal at all with the key issues that have brought the WTO talks to a standstill. Even then, TTIP negotiations could make only limited headway. They could also, and alternatively, merge with a more general agenda for removing existing regulations. However, negotiations may also provide an opportunity to argue for a different conception of globalisation with more emphasis on defending and improving labour and environmental standards.

The WTO's globalisation agenda

Almost all schools of economic thought agree that trade, integration and specialisation between countries brings benefits. This was the thinking behind the GATT agreements, negotiating lower tariff levels between countries in the years from 1948 to 1994, and behind the WTO, formed in 1994. However, tariffs had been reduced to an average of 3.8% when the WTO was formed.[1] There was little more to be done in this direction and multilateral negotiations within the WTO framework, the last one the so-called Doha round that started in 2001, have reached no general agreement.

The deadlock reflects in part the fact that easy agreements had already been reached. It also reflects a changing balance of power in the world. The WTO allows every member country an equal voice and aims for complete consensus on all points before an agreement is reached. There is now a substantial group of richer developing countries that can press their demands. Deadlock also reflects difficulties over specific areas of current negotiation of which agriculture is the most contentious and the major one preventing agreement in the Doha round.

WTO rules do allow scope for other considerations apart from liberalisation. They 'permit' members to take measures to protect

1 http://www.wto.org/english/tratop_e/markacc_e/nama_negotiations_e.htm

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the environment, public health, animal health and plant health, as long as the same standards apply to national and foreign businesses. However, WTO rules on environmental standards have not been used as a means to modify free trade. Nor have differences in labour and employment standards appeared in WTO disputes over trade fairness. Those are left as the responsibility of another body, the ILO, which has no power to apply sanctions.

In fact, the WTO disputes procedure is used less to further environmental and public health issues than to oppose them. Thus France faces accusations over recently-introduced packaging standards that are part of its recycling programme. Australia, and now also the UK, faces accusations from a number of tobacco exporters over a policy of plain packaging for cigarettes.[2] It is always easier to press for the removal of regulations that exist than to press for their introduction and that has been the experience of the impact of the WTO approach to globalisation.

Exaggerated benefits of TTIP

TTIP negotiations have been conducted in secret, but considerable information on the themes to be discussed has come into the public domain. Tariffs as such are already very low and their further reduction promises little. The main hopes are placed in making regulations compatible as these are seen as major non-tariff barriers. That reflects opinions and lobbying from big businesses on both sides of the Atlantic. Their concerns have been the starting point for the process and their voice was the most persistent input that negotiators could hear.

Evidence for this came in a response to a formal access to documents request when the European Commission revealed that, up to April 2013, over 93% of consultation meetings on TTIP had been with business representatives. Thus, in addition to publicised meetings with civil society groups, there was 'a parallel world of a very large number of intimate meetings with big business lobbyists behind closed doors - and these are not disclosed online'.[3] Faced with this embarrassing publicity, the European Commission created machinery for hearing more voices, but the driving force necessarily remains the perceived barriers to trade that have been pinpointed by business. There are assurances that cherished protections will not be threatened and a number of potentially important themes have been excluded, notably agriculture which must reduce the relevance of any outcome for overcoming the current WTO impasse.

Claims have been made of enormous benefits to come from an agreement. These are justified with reference to two sets of studies, one commissioned by the European Commission and undertaken by the Centre for Economic Policy Research (CEPR) (Francois et al., 2013) and the other based on a study commissioned by the German Ministry of Economics and Technology and undertaken by the IFO institute of Munich. This produced both a detailed report (Felbermayr, G., M. Larch, L. Flach, E. Yalcin and S. Benz, 2013) and more popular versions with less detail and explanation (Felbermayr, G., B. Heid and S. Lehwald, 2013). Unfortunately, claims that have been made on the basis of these studies of great benefits from TTIP lack plausibility. There are four areas of exaggeration;

1. Policy makers, and sometimes researchers, overstate the results of studies that they have commissioned or undertaken. The European Council stated on 14 June 2013 that there would be an increase of European GDP of 0.5% 'every year' for ten years.[4] In fact, the study commissioned by the European Commission showed an increase of 0.48% in total by 2027 under an 'ambitious' scenario, or 0.27% under a 'less ambitious' scenario (Francois et al, 2013, p.46). Even more remarkably, the German study led to a well-publicised prediction that more than 2 million additional jobs could be created by TTIP, as appeared in the popular version of the study (Felbermayr, Heid and Lehwald 2013, Table 11). The estimate from the detailed study for the scenario considered plausible was an increase in employment of slightly over 124,000 in the EU and slightly under 69,000 in the USA (Felbermayr, Larch, Flach, Yalcin & Benz, 2013, Table III.13).

2. Estimating effects of removing non-tariff barriers, ie of making regulations compatible, are questionable. This is an extremely difficult calculation to make. Tariffs are a simple and measurable addition to costs. Differing regulations do not appear in such simple, measurable form and any conversion into an equivalent increase in trade requires estimates and guess work. The CEPR study built from responses to questionnaires to firms and other expert opinions to give a hierarchy of how important barriers were considered to be. That does not directly show their cost or benefits from their removal.

The point can be illustrated with reference to the motor-vehicle industry, one which figures very prominently in this study as a major area for potential gains from trade. Barriers identified by businesses include different tastes in cars, taxes on high-consumption vehicles and differences in crash tests. The first of these is hardly a barrier that can be reduced by negotiation. The second relates to environmental policies and its removal could be regarded as a cost rather than a benefit. The third is an additional cost, as tests will have to be done on both continents to satisfy different sets of rules. Harmonisation could well make sense, but this is unlikely to represent a significant cost when shared over the total production of a particular vehicle.

Putting a precise money value on these kinds of barriers is not possible in any precise way. Moreover, estimating the impact on trade is open to exaggeration when multinational companies already manufacture on both sides of the Atlantic and do not need to resort to trade to supply markets. If they were to do so, it would presumably lead to lower production in the other continent and the net gain could be very small indeed.

3. It is difficult to estimate the extent to which barriers can realistically be seen as reducible. That depends on making

2 http://www.wto.org/english/news_e/news14_e/tbt_18mar14_e.htm

3 http://corporateeurope.org/trade/2013/09/european-commission-preparing-eu-us-trade-talks-119-meetings-industry-lobbyists

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

regulatory systems compatible and there are barriers both in the practical difficulties of negotiating compatible frameworks and in more deep-rooted differences in how the regulatory systems work. Thus the EU has enshrined the 'precautionary principle', meaning that where there are reasonable grounds for believing that a process or substance may be dangerous, it is for those taking the action to prove that it is safe. This is embodied in the system for ensuring the safety of chemicals which has been specifically mentioned from the side of US business as one of their target concerns. Indeed, there is little practical chance of negotiations leading to US acceptance of the European system. The CEPR study addresses this by an assumption that only half, or in their 'less ambitious' estimate a quarter, of the cost of barriers would actually be removed. At least the first of these, the basis for the 0.48% GDP increase, looks optimistic.

4. Benefits are exaggerated by omitting any possible costs from removing regulations. The aim, we have been repeatedly reassured, is not to remove important protections for employees, consumers and the environment. However, making rules compatible is very unlikely to proceed by tightening regulatory regimes. Harmony is much more likely to come, if at all, from their loosening. Indeed, there are a number of cases where businesses on both sides of the Atlantic have pointed to the same regulation on the other side as a barrier. They would be happy with less regulation overall.

However, there is ample evidence of benefits of regulatory systems. Indeed, it has been a requirement in the USA for the Office of Information and Regulatory Affairs (OMB) to evaluate the relationship between costs and benefits of specific regulations and the net benefits appear to be more than five times the costs of their implementation in 2012 (OMB, 2013). Thus, should TTIP negotiations move to become an agenda for large-scale deregulation, then the costs to society could be enormous.

That benefits from TTIP should be small and uncertain is not surprising in view of the low level of formal barriers to trade between the two blocs, the close integration through mutual investment and the lack of evidence that coping with the existing differences in regulatory systems imposes major costs. Claims of great benefits have been built partly to create the impression that something is being done to restore economic growth and partly in the hope that an EU-US agreement will have some impact on global trade negotiations.

An alternative globalisation agenda?

An alternative vision would set TTIP negotiations as part of a new agenda for globalisation that could bring greater benefits to the world. The issue would be to work for an agreement that enshrined higher labour and environmental standards from the start. It would not be all about reducing barriers but would include use of sanctions, such as import restrictions, where a producer ignores some agreed standards. Such an approach has been proposed and is embodied in some nonbinding systems, such as the Fair Trade label which is given when basic standards are met. However, that functions by influencing consumer choice and is noticeably most effective with goods that pass fairly directly to the consumer. It has minimal impact where the final product is difficult to label.

In fact, the USA and the EU have been very active in inserting labour standards clauses into trade agreements, reflecting concerns over employment losses in the face of lower-wage competition. However, these remain general, usually referring to basic ILO conventions. Unlike clearly protectionist or export-promoting measures, they lack means for specific enforcement. Adding such a general chapter to TTIP would be only a first step. There are differences between EU and US employment conditions, and differences within each bloc. There are also differences in environmental standards and policies, which also are not the same across the blocs. These would logically need to be addressed.

Transforming TTIP negotiations into a platform for harmonisation of standards at a higher level, including the incorporation of labour and environmental standards as essential elements, could encourage changes across the globalisation agenda. Whether it could be achieved remains an open question.

Investor-State Dispute Settlement

A further element of TTIP that would bias power further in favour of private business is the proposal for an Investor-State Dispute Settlement (ISDS) agreement. These have been in existence between countries for some time, usually between richer countries and poorer or developing countries, but also between a number of current EU members. Such a procedure was also included in the North American Free Trade Agreement (NAFTA), taking effect between the USA, Canada and Mexico in 1994 and provoking controversy when used by firms against governments within that trading bloc. Because companies may have subsidiaries in many countries in the world, their firms are often able to use the procedure even when there is not agreement between the two states.

The essential point is that an investing multi-national company can take action against a government if its property is expropriated or if its business interests are somehow unfairly damaged. It does not need to use the established court procedures but can seek redress by the establishment of an arbitration tribunal made up usually of three legal experts chosen from a panel set up by a World Bank organisation. They deliberate in secret and there is no right of appeal, but they do usually publish detailed justifications for their decisions.[5]

ISDS gives a clear advantage to foreign over domestic companies. That is not by chance. The aim in many agreements is clearly stated as encouraging inward investment by giving security to investing companies. The implication in judgements is that the onus of proof for fairness is with the government of the host country.

5 https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ListCases

A body of case law has established that the issue is not whether a government has transgressed its own laws. That is 'neither necessary nor sufficient' (ICSID, 2006, p.91). The question is whether it is judged to have acted fairly towards an inward investor when set against how domestic firms have been treated. Thus, it is not permissible to act within the terms of domestic law in a way that appears unfair to an inward investor, but evidently permissible to act unfairly towards a domestic firm by treating an inward investor more favourably.

Deciding what fair treatment is depends on the judgement of the legal experts. They are selected to be of unimpeachable integrity, but have to make complex judgements with limited knowledge and frequently start from assumptions, for example that a domestic firm should not receive state help if the inward investor does not. Establishing comparability, or non-comparability, between cases is difficult, leaving room for bias in favour of the foreign firm.

Cases of multinational companies using ISDS against richer countries include the use by the US tobacco firm Philip Morris of its Singapore subsidiary to challenge the Australian government's policy of tobacco advertising restrictions. Success in opposing a change in government policy aimed at protecting health would not be in line with past precedents. However, tribunal judgements cannot be predicted and the existence of ISDS can act to discourage governments from introducing such policies. The Australian Government (2011, p.16) announced that it would not seek the inclusion of ISDS in future trade agreements.

That was a sensible decision that should be followed by others. ISDS belongs within a concept of globalisation which is built from the perspective of business, and in particular from that of multinational business in advanced countries. As with TTIP as a whole, in its current form, it promises very little beyond benefits to particular business groups. It could only achieve more if based on a different concept aiming for the more general improvement of standards for all.

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