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Keys to Negotiating the Transatlantic Trade and Investment Partnership*

On July 8, 2013, the United States and the European Union launched negotiations on a Transatlantic Trade and Investment Partnership (TTIP). The negotiators aim to deepen what is already the world's largest commercial relationship, thereby "promoting greater growth and supporting more jobs," and to look beyond this particular accord "to contribute to the development of global rules that can strengthen the multilateral trading system."[1]

The US and the EU are heavily invested in each other's market, with nearly \$3.7 trillion in two-way foreign direct investment at year-end 2011. Meanwhile, US-EU trade in goods and services totals about \$1 trillion annually.[2] However, trade growth has been sluggish in recent years because of the effects of the financial crisis of 2008-09 and competing subsidy and regulatory policies that impede commercial activity. A new trade accord would remove impediments to bilateral trade and investment. While it would not be a magic potion for prosperity, such reforms would improve the climate for investment and job creation and provide a modest boost to economic growth, since removing even relatively low barriers across a large volume of bilateral trade can have a significant impact.

Moreover, transatlantic reforms could set a powerful precedent for initiatives like the TTIP in other regions and in the World Trade Organization (WTO). Contrary to concerns that another broad-based bilateral accord would further dampen prospects for an international trade agreement, we believe that a TTIP, properly constructed, could help break the deadlock in the WTO's Doha Round negotiations. In particular, TTIP provisions could become a template for the stalled global trade talks in several difficult areas, from agriculture to cross-border rules on services, investment and regulations.

To be sure, disagreements over these issues have confounded transatlantic officials for almost two decades. One of the reasons for past failures has been that negotiators tried to break down barriers in a piecemeal fashion. Attempts to achieve limited "mutual recognition" deals on specific products or sectors foundered because of strong resistance from independent regulatory agencies pressing their own agendas in response to political pressures. Trying to reach a more comprehensive deal offers the opportunity to garner sufficient political support to offset those political obstacles. Indeed, Max Baucus, chairman of the Senate Finance Committee, emphasized this point in a recent Financial Times op-ed, noting that "any bilateral trade and investment agreement must be comprehensive and address the full range of barriers to US goods and services if it is to receive broad, bipartisan congressional support."[3] One way to avoid past mistakes and indeed to overcome the understandable skepticism of many would be for the two sides to learn from the success of several recent comprehensive bilateral free trade agreements (FTAs) – most notably the accords that the European Union and the United States each have with South Korea.

US and EU officials are committed to negotiating a TTIP that covers all major components of the commercial relationship. That means "red-hot" issues like financial services and cross-border data flows, which raise concerns about access to data and related privacy issues, will be discussed. To be sure, EU negotiators insisted on excluding audiovisual services, but other-

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1 Office of the United States Trade Representative: US, EU Announce Decision to Launch Negotiations on a Transatlantic Trade and Investment Partnership, accessed on February 13, 2013, www.ustr.gov.

2 US Bureau of Economic Analysis.

3 Financial Times: Transatlantic trade deal is US priority, accessed on March 4, 2013.

wise everything is on the table at the start of the talks. That said, it is entirely possible that other services or products may not make the final cut or may only be subject to partial reforms, but the negotiators certainly start with high ambitions.

Both sides want to proceed expeditiously and recognize that substantial progress can be made by drawing on common or similar provisions in their respective FTAs with South Korea. Those two agreements successfully liberalized trade and investment in goods and services in a manner that could be replicated in the TTIP. Some of those provisions may require alteration or will need to be resized or redesigned to fit the requirements of transatlantic trade, but the important point is that the negotiators are not starting from scratch.

There are a number of key differences between the two pacts that must be bridged through compromise or the development of a hybrid approach if the TTIP is to succeed. To briefly summarize, we recommend that the pacts with South Korea be supplemented or adjusted in the following three areas:

- *Intellectual property rights*: Aim to establish a common IPR regime that includes provisions on geographical indications (GIs). Room for compromise exists in a three-tiered approach: register a list of compound terms for GI protection; negotiate an exceptions list for specific generic terms; and create a third list of GIs subject to future negotiations.

- *Sanitary and phytosanitary measures*: Establish a consultative mechanism to ensure increased transparency and timely notifications of SPS regulatory proceedings and determinations. Priority should be given to improving the process for implementing “sound science” rulings rather than to harmonizing or agreeing to mutual recognition of SPS requirements.

- *Environment and labor provisions*: Obligations in these areas should be subject to the pact’s dispute settlement mechanism, and provisions should cover trade-related aspects of climate change policies, including the ongoing dispute over airplane emissions.

The task of building the TTIP requires more minor restructuring in several other areas, where precedents from the FTAs with South Korea should be easier to bridge:

- *Services*: Harmonize the approach to scheduling services commitments, drawing on the “hybrid framework” discussed in the International Services Agreement negotiations. Negotiators must seek to expand new market access opportunities and harmonize regulatory policies across sectors like finance, insurance and telecommunications.

- *Investment*: Build on the South Korea-US FTA as an initial framework for the “highest levels of liberalization and protection,” while drawing from the EU-wide investment positions as set in the investment chapters of recent FTAs.

- *Government procurement*: Agree on WTO-plus commitments on federal and sub-federal procurement, as in the South Korea FTAs. TTIP reform also should liberalize US “Buy American” preferences as part of that broader procurement deal.

- *Competition policy*: Break new ground on WTO-plus disciplines that help level the playing field between private firms and state-owned enterprises and establish common ground on privacy issues and cross-border data transfers.

A comprehensive TTIP has important implications for both bilateral trade and the world trading system. If successful, it could strengthen transatlantic economic relations while also spurring trade reforms that both sides could jointly put forward to reinvigorate flagging multilateral trade negotiations.