The Risks of the Transatlantic Trade and Investment Partnership

The promoters of the Transatlantic Trade and Investment Partnership (TTIP) have tried to sell the agreement to the public on both sides of the Atlantic as a way to boost growth and create jobs. At a time when both the US and European economies are still suffering from the effects of the recession, anything that boosts growth sounds appealing. However, a closer look at the projections indicates that the promised growth is not likely to amount to much. Furthermore, there will likely be negative aspects to any deal that could far outweigh any gains.

First, it is important to understand the nature of the projected gains. The Centre for Economic Policy Research in the United Kingdom uses a standard economic model to project the fully realized impact of the TTIP in 2027.[1] In what it considers the most likely scenario for a final deal, its model projects that the TTIP would increase the GDPs of the EU and the US by 0.5 and 0.4 percentage points respectively.

While more growth is generally better than less growth, the projected gains for the EU come to less than 0.04 percentage points annually. For the United States, the projected gains are 0.03 percentage points a year. Thus, the growth increases will be far too small to notice in the annual GDP data.

Moreover, this growth does not imply additional job growth, as the Centre made clear in its summary. The TTIP is assumed to increase the efficiency with which a particular supply of labor is used; it does not increase the demand for labor. In fact, the summary explicitly notes the agreement could lead to job losses in the short run, as lower cost imports displace some workers.

Furthermore, the projections only consider ways in which the agreement may speed growth by reducing barriers. There are also likely to be provisions that slow growth by increasing barriers, most notably in the area of patent protection, especially for prescription drugs.

If the deal strengthens patent or related protections for drugs, then it will lead to higher drug prices. This will drain money out of the economy and lead to more inefficiency in the same way that higher tariffs on imports lead to higher prices and inefficiency. The difference is that tariffs are rarely more than twenty or thirty percent in advanced economies, whereas patent protection can raise the price of drugs by several thousand percent above their free market price.

There are other elements of the TTIP that should raise concerns on both sides of the Atlantic. Since formal trade barriers between the EU and US are already low, the negotiations are mostly focused on non-trade issues. This will involve areas of regulation that are currently under the control of national or sub-national governments.

For example, the TTIP could include provisions on how genetically modified foods are regulated. TTIP provisions could make restrictions on the sale or planting of GMO crops an unfair trade practice. They could also limit the ability of governments to impose labeling requirements.

The TTIP could also include provisions on fracking, the process of drilling for deep pools of natural gas or oil. Federal legislation in the United States has exempted companies engaged

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1 http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151787.pdf.

in fracking from complying with decades-old environmental restrictions that were designed to ensure the safety of drinking water. As a result, there have been numerous complaints that fracking operations have resulted in the contamination of drinking water near fracking sites. However, these allegations are difficult to assess, because the oil and gas companies are not required to disclose the chemicals they use in the fracking process.

There are many other areas where regulations that would not be approved by national or sub-national governments may effectively be imposed through the TTIP. This is in fact one of the main motivations of the TTIP: it provides a channel around the democratic process in both the EU and the US. Regulatory changes that may not be possible due to domestic political considerations may be imposed through a trade agreement which will be presented to elected legislatures on both sides of the Atlantic as an all or nothing proposition.

This is perhaps clearest in the case of investor-state dispute settlement (ISDS). This is a process that the United States has established as part of numerous trade deals over the last three decades. It involves the creation of special panels, outside the control of the government in question, to decide issues related to disputes with foreign investors. For example, if a US company felt that a regulation imposed by the Mexican government was unfairly imposing costs on it, the company could take its complaint to a special panel established for this purpose rather than going through Mexico's legal system.

This might make sense in certain situations and may even be mutually beneficial in countries that lack a well-functioning legal system. Foreign companies may be reluctant to invest in a developing country if they are concerned that they would not be able to get adequate redress through that country's legal system. By setting up an alternative mechanism, potential foreign investors can be more confident that laws will be fairly applied. Independent panels that are beyond the government's control give investors more protection than a promise from the government. Even if the government is sincere in such a promise, a new government may not feel bound by a prior government's commitment.

Thus, ISDS may in fact make sense for developing countries as a way to promote foreign investment. However, it is much more difficult to see the merits of this argument for the TTIP, in which all of the countries involved have long-established legal traditions and many decades of experience with independent judiciaries. It is difficult to believe that courts in Denmark, Germany or the United States could not be trusted to treat foreign investors fairly.

On the other hand, it is reasonable for citizens of the EU and the US to question whether the new legal system being set up under the TTIP can be counted on to respect the rights and interests of anyone other than foreign investors. This does not mean that the ISDS will necessarily have a pro-investor bias, but if there is no obvious anti-investor bias in the current legal system, then why is it necessary to establish a new dispute settlement mechanism?

In short, the TTIP is much more than a free trade agreement designed to reduce tariffs and quotas. It would create a structure of regulation and a new legal system that would remove authority in a wide variety of areas from democratically elected bodies and the existing legal structure.

Since the projected economic gains from this deal are relatively modest, there is no reason that anyone should feel an irrepressible need to grab at whatever final deal comes out of the negotiations. It would be best if any moves towards superseding the established systems be done with careful consideration and not the rushed, all-or-nothing approach envisioned by the governments negotiating the TTIP. If the TTIP timeline does not allow for thorough debate, we can always come back to the issue of reducing trade barriers later.