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THE TPP AND TTIP TRADE AGREEMENTS: THE INTERNATIONAL NEGOTIATION PROCESS

Ioana GUTU*

Abstract: *Free trade is one of the ultimate purposes of the free trade agreements currently negotiated over the world. Two of these trials are represented by the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). The common feature of these two trade deals is represented by the United States, a global actor that is making sure that it will be able to trade in best conditions on both of its geographical shores: on the Pacific and on The Atlantic. The negotiations are still ongoing, but results are expected on both sides. An important issue for the third parties, but not only, is represented by the secrecy of the negotiations undertaken and the lack of transparency shown by the negotiating Governments. If the agreements are concluded, a major global impact on trade and investments is expected, with significant positive implications for the TPP and TTIP negotiating states.*

Keywords: TTIP; TPP; EU; US; international negotiations

JEL Classification: F010

Introduction

Trade agreements are a subject that can determine all the economic sectors to be susceptible to major changes, involving a numerous number of national governments, creating a domino positive effect in a globalized trade world. In support of this idea, nations across the Globe are trying to boost their own economies by taking part in two of the largest negotiation processes that have ever occurred with regard to economic development and investment protection.

Transatlantic Trade and Investment Partnership (TTIP) and Trans-Pacific Partnership (TPP) are two major trade pacts that are aimed at liberalizing trade, on one side between EU and US by covering the Atlantic geostrategic area, and on the other side among US and 11 other countries, by covering the Asia-Pacific area. The TTIP's negotiation process started in 2013, while talks with regards to the TPP started in 2010, both agreements aiming at increasing trade and investment, through lowering tariffs and other trade barriers among the participating states.

In general, the purpose of trade deals is to lower tariffs. But as history records, as trade expanded, it shifted from already low tariffs to non-tariff barriers, increasing the role of rules and regulations. These aspects may take a complete or incomplete form by helping or being an obstacle

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in the economies' development, but the general reason for their existence is to protect workers, consumers, the economy and the environment.

One of the characteristics of the negotiations of the two above-mentioned free trade agreements is the secrecy of the process. Both negotiation teams representing TTIP and TPP kept the process and the results away from the public while the process was on-going ; but, according to current events, the European Commission has started an intensive campaign of informing the public with regard to the latest topics related to the negotiation status of the TTIP, and the United States is due to the end the negotiations with regard to the TPP, alongside 11 other involved international entities and keeps the interested parties informed about the ratification process and the newly negotiated TPP textual basis, that according to the United States Trade Representative public releases, may take up to two years.

1. The evolution of the Trans-Pacific Partnership

Trans Pacific Partnership (TPP) is a regional regulatory and investment agreement that was negotiated by 12 countries throughout Asia Pacific region, namely Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. The proposed agreement had its baseline under the name of Trans-Pacific strategic Economic Partnership Agreement (TPSEP or P4) starting with the year of 2005 for four countries – New Zealand, Singapore, Brunei and Chile, as founding members. The original TPSEP agreement contained an accession clause, allowing the members to affirm their “commitment to encourage the accession to this Agreement by other economies” (New Zealand Ministry of Foreign Affairs & Trade, 2005).

In March 2008, the US joined the negotiations by expressing its intention to include the areas of financial services and investment in the negotiations, areas not mentioned by the initial TPSEP agreement. This international decision was closely followed by Australia, Peru and Vietnam, that joined the process the newly proposed agreement covered a larger geostrategic area, and was presented to the public under the name of Trans Pacific Partnership (TPP). The effective negotiations started in March 2010 and took into consideration the joining of a new member – Malaysia that joined the negotiations during the same year; as for Canada and Mexico, they were formally invited to join the TPP negotiations in 2012. Japan was the latest TPP participant to take part in the negotiations and brought the membership to twelve, and fully starting negotiations in July 2013. In early 2014, South Korea began to consult with the other TPP negotiating partners on the possibility of joining, but it

has never made a formal request. It was important that all the members of the TPP negotiators were also members of the Asia-Pacific Economic Cooperation (APEC), making the fusion process more difficult for the non-member countries.

1.1. Current negotiation status

The agreement was negotiated within seven years, while 19 rounds of talks and numerous ministerial ad-hoc meetings were held between 2008 and 2015; according to a study of the Congressional Research Service, the most recent ministerial meeting occurred in Hawaii during March 24-31, 2015 (Ferguson *et al.*, 2015) where progress was made, resulting in the conclusion of the agreement six months later, in September 2015, by the chief negotiators of the 12 states, during the meeting in Atlanta, USA.

The Free Trade Agreement (FTA) had 30 chapters under negotiation, TPP partners envisioning the agreement to be “comprehensive and high-standard” (Kovshenin, 2015), by eliminating tariffs and non-tariff barriers to trade in goods, services and agriculture. Another issue of great importance for the trans-pacific negotiations agenda was to establish and to expand the existing rules in regard with intellectual property rights, foreign direct investment and other trade related issues. TPP negotiating partners strived to create a “21st century agreement” (Kovshenin, 2015) addressing important issues for all the economies in the context of a globalized economy.

1.2. How the negotiations worked

The 12 countries representatives were ministers and negotiators representing each government participating in the TPP negotiations. During the official meetings, leaders attended, and ensured a transparent process of engaging stakeholders in the relevant countries, by valuing their input on many issues.

The discussions occurred both bilaterally and multilaterally, in order to address specific issues and provide guidance to the negotiators. There was a number of formal rounds of talks, that took place in different locations within the territories of the countries actively involved, and also a number of inter-sessional – ministerial and chief negotiators meetings, where proposals were exchanged, creative and pragmatic solutions to outstanding issues were identified and gaps closed.

The scope of this intense activity was to seek an agreement that balanced the members' range of expressed interests and achieve a comprehensive and transformative agreement with shared benefits (USTR, 2013).

The TPP is defined by five features, which can set standards for the future agreements. These chapters include areas like comprehensive market access, regional agreement, cross cutting trade issues, new trade issues (covering new issues that have emerged in the global trade) and a living agreement that includes an accord on the structure, institutions and processes that would enrich the future joint work in areas of common interest of future trade deals.

At the end of the negotiated period, in 2015, the representatives of the actively implicated Governments signed the text of the Agreement and the procedure was followed by making the result of seven years of negotiations available to the public. Each of the parties has to ratify the text, and this process estimated to take no longer than two years; this implies that in line with the internal legislation of each state involved, the legal text of the agreement will be examined by the members of the Parliament, the Governments and in some cases, voted by the public. If the text will be ratified by all the 12 states in the next two years, as stated by the official representatives at the end of negotiations, the legal Trans-Pacific Partnership text will come into force, the maximum effect of the results are not estimated to occur earlier than before the next 15 years (Horowitz, 2015).

1.3. Contents of the TPP

The Trans-Pacific Partnership is designed to comprise 40 percent of the global economy and one third of global trade. The United States Trade Representative Office outlined 30 TPP chapters that include trade and trade-related issues, starting with trade in goods and continuing with customs and trade facilitation; sanitary and phytosanitary measures; technical barriers to trade; trade remedies; investment; services; electronic commerce; government procurement; intellectual property; labour; environment; "horizontal" chapters that will fully ensure the development of the TPP, competitiveness and inclusiveness; it continues with provisions in regard with dispute settlement, exceptions and institutional provisions (USTR, 2015).

The key features of the TPP seek to set new standards for global trade and incorporate issues that would increase the TPP countries' competitiveness in the global economy (USTR, 2015). These include competitive market access; its design seeks to eliminate tariffs and barriers to trade and investment, in order to create new opportunities in both areas – jobs and businesses- and immediate benefits for the consumers. Another key issue is represented by a fully regional agreement designed

to facilitate production and supply chains among TPP parties. Cross-cutting trade issues comply with regulatory coherence by promoting trade process and making it seamless and efficient; another cross cutting issue touches the sphere of competitiveness and business facilitation by promoting regional economic integration through the development of supply chains and regional production. Small and Medium Sized Enterprises would be encouraged to trade internationally; development is supported by a robust and comprehensive market liberalization, by strengthening TPP countries' institutions and effectively implement the agreement and fully realize its benefits.

The fourth key feature involves new trade challenges that promote a competitive business environment across the TPP region. One of the last attributes of the TPP is represented by its characteristic of being updated appropriately to the trade issues that may emerge in the future, as a result of its expansion to include new countries and the novelty of the trade issues that might occur.

The scope of the agreement is to undertake within a single body text all key trade and trade-related areas, by updating traditional approaches to issues covered by previous trade agreements (FTAs) the TPP includes, but also emerging trade issues and cross cutting issues. For this purpose, negotiating groups were formed, where representatives of the Ministries and specialists from different domains were involved. The legal text that emerged out of negotiation rounds covers all aspects of commercial relations among the TPP countries, with country-specific exceptions in annexes. An important issue that the TPP addresses is its coexistence with the existing international agreements among the countries involved (where WTO Agreement, bilateral and regional agreements are included) status which is being recognized within the Initial Provisions and General Definitions Chapter.

Leaders of the twelve TPP countries will continue alongside the negotiation teams to schedule the next steps that are complementary to the negotiated text of the agreement, by ratifying and implementing it within all the 12 states, and setting global standards to be achieved by the so called "third" parties to whom they keep commercial and investment connections with.

The TPP activity is ongoing through meetings among the Chief Negotiators, trade ministers and national structures responsible with the ratification of an international agreement. Both TPP leaders and ministers will meet on the sidelines of the negotiated text, making the conclusion of the agreements' ratification "a top priority" (Ferguson *et al.*, 2015).

2. Transatlantic Trade and Investment Partnership

The comprehensive Transatlantic Trade and Investment Partnership (TTIP) is a free trade agreement currently being negotiated involving two of the largest economies worldwide, namely the European Union (EU) and the United States of America (USA). Its aim is to reduce the already low trade barriers to zero and protect and encourage investments on both sides of the Atlantic, by encouraging trade facilitation and job creation.

2.1. Evolution of TTIP

Launched in 2013, its design involves increasing trade and investment between the two members, by reducing and where possible, eliminating trade barriers to transatlantic trade and investment flow. This aim is shared among the EU Member States and the US federal states, given the fact that after the end of the negotiations, the legal provisions will be implemented and used by all sides.

Early in 1990, The European Community (EC) composed of 12 countries and the US initiated a transatlantic dialogue by signing a *Transatlantic Declaration*. The initiative continued by creating in 1995 a pressure group of business people, namely the Transatlantic Business Dialogue (TABD) on both sides of the Atlantic, under the coordination of public authorities. Communication continued between Europe and North America by creating at first the Transatlantic Economic Partnership, and subsequently the Transatlantic Economic Council. The importance of these structures was given by the activity involved, where firms from both sides of the Atlantic organized advisory meetings for both the EU Commission and the US Government. The conclusions of this communication tandem resulted in 2011 in the creation of a high level group of experts whose recommendations in 2013 led to the launch of the negotiations for a comprehensive free trade agreement - TTIP.

2.2. Current negotiation status

The TTIP negotiations are held in a format of week-long cycles, housed in locations on both sides of the Atlantic, mainly in Brussels and in Washington. Currently, eleven rounds of negotiations took place, the last one being held in October 2015, supposedly the twelfth round will be organized after January 2016. The design of the future trade agreement contains 24 chapters (EC - DG Trade,

2015) grouped into three parts, namely market access, regulatory cooperation and rules, suggesting principles and modes of cooperation that would be mutually respected by both parties.

2.3. How TTIP negotiations work

TTIP is an agreement currently negotiated by the representatives of both EU and US. The European Commission is the European structure in charge of negotiating on behalf of the 28 Member States. The activities are led by the Directorate General (DG) Trade, the leadership belonging to a Chief Negotiator, supported by a team of experts and other parts of the Commission. On the behalf of European Commission, these actions are being completed with the support of nine other Directorates General (EC – DG Trade, 2013) together with the Secretariat General. These include: DG Internal Market, DG Agriculture and Rural Development, DG Enterprise and Industry, DG Taxation and Customs Union, DG Environment, DG Climate, DG Energy, DG Communications Networks, Content and Technology, and DG Competition (EC - DG Trade, 2015) covering a variety of negotiating areas.

The members of these European structures are negotiating on behalf of European Union, more precisely, representing all the 28 Member States governments. On behalf of the United States, the actions related to the TTIP negotiations are supported by The Office of the United States Trade Representative (USTR), in collaboration with stakeholders and representatives of the US Congress, as well as homologous of the negotiators and specialists that take part in the negotiation meetings.

In the cases when an agreement is reached, the 28 governments of the EU will have to approve or reject the agreement negotiated in the EU Council of Ministers; by this point, the European Parliament will be asked for its recommendation. The 28 EU Member States are governed by different judicial systems that impose a certain way of approving or ratifying the document. The United States will put forward the TTIP for ratification by both houses of the United States Congress: the Senate and the House of Representatives, which share a total number of 535 of voting members.

2.4. Contents of TTIP

TTIP is designed to have 24 chapters, grouped into three parts (EC - DG Trade, 2015). The Market Access part includes Trade in Goods and Customs Duties, Services, Public Procurement and Rules of Origin. The second part, the regulatory Co-operation touches the areas of Regulatory Coherence, Technical Barriers to Trade (TBTs), Food Safety and Animal and Plant Health (SPS),

Information and Communication Technology (ICT), Pharmaceuticals. The third and last part of the desired TTIP agreement covers areas such as Sustainable Development, Customs and Trade Facilitation (CTF), Small and Medium Sized Enterprises, Investment Protection and Investor-State Dispute Settlement, Competition, enumerated non-exhaustively.

In 2015, the European Commission takes part in a transparency initiative, by making public the contents of the negotiations via proposals tabled on the second and third parts of the TTIP and the EU Position Papers. TTIP implies meetings with representatives of the civil society, and DG Trade's Civil Society Dialogue involves such meetings where trade policy issues are discussed. The topics discussed are of current interest, such as improving transparency and accountability of the TTIP negotiating process.

3. TPP and TTIP negotiating process

TPP is designed to have 30 chapters, and similarly to any FTA, each of the chapters consists of provisions covering different fields of interest. This is the reason for which the negotiating teams formed by representatives of all the 12 TPP member states worked as joint working groups, each team being formed of specialists covering a specific negotiation field.

The Ministries which were responsible for the development of the negotiations of the TPP according to each participating country are displayed as follows:

Table 1 - TPP Negotiating Governments (by member state)

Australia	Australian Government Department of Foreign Affairs and Trade
Brunei Darussalam	Ministry of Foreign Affairs and Trade Brunei Darussalam
Canada	Foreign Affairs, Trade and Development Canada
Chile	Ministry of Foreign Affairs of Chile
Japan	Ministry of Economy, Trade and Industry
Malaysia	Ministry of International Trade and Industry
Mexico	Secretariat of Foreign Affairs
New Zealand	New Zealand Ministry of Foreign Affairs and Trade
Peru	Ministry of Foreign Commerce and Tourism

Singapore	Ministry of Trade and Industry
United States	Office of the United States Trade Representative
Vietnam	Ministry of Industry and Trade

Source: own processing

Due to the fact that the TPP is designed as a multilateral agreement, its specificity consisted in the fact that, taking into consideration the need to speed up the negotiation process, countries also formed bilateral negotiation groups, where contradictory opinions were solved and proposals discussed. The conclusions of these bilateral actions were presented within the formal negotiation rounds, where the Leaders and other representatives took act of them and proceeded to the next issues on the working agenda.

The TTIP has 24 chapters, in the framework of which each field of interest is being analysed; the working groups are organized in the framework of this structure; this is why there are 24 joint EU-US working groups. Each working group deals a separate aspect of the agreement and organizes a week-long meeting, periodically, in varying locations ranging from Brussels to Washington and New York. The responsible structures negotiating on behalf of EC and USTR are displayed in Table no. 2.

Table 2 - TTIP Negotiation Structures

European Commission	Office of the United States Trade Representative
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Source: own processing

In the case of the TPP, official negotiation rounds vary, covering locations from all the 12 members of the treaty. Formal negotiation meetings, both in the cases of the TPP and the TTIP develop through a number of phases that are to be followed. At first, there is an exchange of position papers and at this point each party presents its aims and ambitions with regard to each aspect to be discussed. These are backed up by proposals of texts from each side, and where the case asks for, initial offers are made by the relevant sides. Negotiations continue, and new proposals are granted with acceptance or rejection, or partial agreements or partial denials; in the cases in which both sides are ready, a consolidated text is prepared. Provisionally, the text is considered to be agreed upon, the only remaining subjects of negotiation resting in the differences expressed in the text between brackets. The next step in reaching an agreement is provisionally closing each topic the agreement,

until a working consensus is reached. The importance of this process is given by the fact that unless each text containing a specified topic is not finalized, the agreement is not considered as being negotiated as a whole.

In October 2015, negotiations with regard to the TPP came to an end. The TPP is considered to be the most promising platform for ASIA-Pacific regional trade integration, designed to enhance trade and investment among the 12 TPP partner countries by promoting innovation, economic growth and development, and supporting the creation and retention of jobs. The TTIP is an ambitious, comprehensive and high-standard trade and investment agreement currently negotiated between the European Union and the United States, a companion of the TPP, a process where the EU negotiates on behalf of all the 28 Member States, designed to result in multilateral economic growth (EC - DG Trade, 2014).

Final remarks

The teams negotiating for the TTIP are close to finalizing the landmark agreements, while the seven years of ongoing negotiations in the framework of the TPP have successfully come to an end. The ministers and negotiators have made significant progress in the last meetings; the teams have engaged actively bilaterally, addressing specific issues and provided guidance for the negotiators.

Concerning the TTIP, negotiating teams met for eleven formal rounds of talks, starting in 2013, as well as in numerous inter-sessional meetings, when proposals were exchanged and new solutions to outstanding issues were proposed. In the last seven years, the TPP negotiators met for more than 19 formal rounds of talks, starting in 2005. As countries adhered to the TPP negotiations, the number of representatives increased exponentially and the need for bilateral and multilateral negotiations became more prominent.

The two trade deals involve some of the most powerful economies of the world. Lowering trade barriers, and creating no-tariff geographical areas will conduct to an increase in international trade. If every TPP and TTIP country agrees with the provisions regarding international trade and their minimal regulations, the danger of misinterpreting the rules by corporations and third parties will increase. This is the reason why the secrecy surrounding the negotiations of the two trade deals is not considered as being a healthy behavior by the non-negotiating parties. Another high risk is that companies would have the opportunity to funnel their money through different countries, taking into consideration the strength of their legal position in relation to the government.

Closing these trade agreements will change the prospects and potential of trade across the Globe. The fact of negotiating the two agreements in parallel, covering together more than two thirds of the global economy and the most important part of the trade in goods and services, comes like a reciprocal backup for the involved economies. International trade rules and high standards are created, all complying with the international norms established by the WTO; these aspects encourage interpretation from the non-positive thinkers of the current economy, argument that is being supported by the US National Intelligence Council with the argument of Multi Component Global Power Index that maintains the idea that by 2030, no matter what the power index indicates, the present developing powers will overtake the developed states (Van Ham, 2013). This line of thinking has not been denied by the literature so far, thus encouraging the idea of the need for complementarity to sustain the survival of the two agreements – the TPP and the TTIP.

Not taking into consideration China represents a strong issue for both international agreements, as the potential of this growing economy is a concerning factor for the success of the implementation of the TTIP and the TPP. Given these facts, it can be concluded that politics should once more go beyond what is possible, and focus on the reality of what is possible, in our terms, getting a good outcome from the two agreements and saving the course of the actual global economy.

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