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The Transatlantic Trade and Investment Partnership: A Roadmap for Success

by Daniel Ikenson

Introduction

The potential upside of a comprehensive Transatlantic Trade and Investment Partnership agreement to liberalize trade, investment, and regulatory barriers between the United States and the European Union is substantial. The economic benefits are estimated to be in the range of a $125 billion annual boost to GDP on each side of the Atlantic. Realistically, the benefits will depend on whether the enthusiastic rhetorical commitments to achieving a comprehensive agreement are matched by actual accomplishments on the ground. A comprehensive, ambitious agreement will require the resolution of differences in dozens of areas. On some issues, bridging the divides should be fairly straightforward, though not necessarily easy. On others, success will require copious amounts of determination, ingenuity, and political will.

Stakeholders will have to keep politicians and negotiators accountable to their goals and timetables. But too daunting an enterprise will render success elusive and cause negotiators to lose focus, interest, and, ultimately, the opportunity to achieve meaningful reforms. The TTIP negotiations must not be permitted to devolve into a decade-long, transatlantic cocktail party for negotiators, advisers, and lobbyists.

In the interest of avoiding that fate, this paper suggests a procedural roadmap for managing the negotiations in an orderly, constructive, politically digestible manner. It recommends that

1. Negotiators identify and announce a discrete set of specific, achievable goals with realistic deadlines;
2. The negotiations over regulatory processes and regulatory standards be better defined and made more manageable by employing a "negative list" approach, where issues deemed "off limits" to negotiation are specified at the outset so that they do not obscure what is achievable;
3. The negotiators abandon the single undertaking principle and, instead, aim to produce three successive biennial agreements by harvesting the lowest hanging fruit once every two years.

Managing with forethought and determination a process that could otherwise descend into an intractable quagmire is essential to ensuring that negotiators deliver most of what they promise.

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Toward Greater Economic Integration

The idea of a transatlantic trade agreement has been floating around for many years, dating back to the Marshall Plan. Certainly there are compelling rationales for such an agreement, including shared cultural ties, a common history of multilateral institution building, and similar commitments to democratic governance.

Moreover, the U.S. and EU economies are already significantly integrated. Bilateral trade amounts to about $1 trillion per year and cross-border direct investment stocks total $3.7 trillion. Bilateral direct investment between the United States and European Union constitutes the most intertwined, cross-border investment relationship in the world. The combined economies account for $34 trillion in GDP (nearly half of the world's output) and more than one-third of all global trade flows involve U.S. or EU entities. Reducing barriers that raise the cost of transatlantic commerce would generate greater efficiencies and more scope for specialization and economies of scale, spawning economic growth and higher living standards.

But these aren't new revelations. So, why, after all of these years of relationship-building, was TTIP formally launched in 2013? Why, after many years of knocking this idea around and concluding that the obstacles were too daunting, did policymakers decide those impediments surmountable?

Transatlantic Agreement: Why Now?

As great as the benefits may be, the TTIP was not borne of any genuine enthusiasm for the enterprise. In Europe, it was seen as a last resort. Frustrated by the failures of monetary policy and restricted by the imperative of fiscal austerity, policymakers were looking for something—anything—to embrace as a potential economic tonic. Whether they actually thought TTIP likely to bear fruit is an entirely different matter. They wanted something to behold as evidence that Greece did not represent Europe's fate. Potential voter wrath, political backlash, and stalemate–historically effective deterrents to initiating transatlantic trade talks–took a back seat to the affirmative optics of embracing some plausible initiative that might steer Europe from the abyss.

For U.S. policymakers, the main motivation for launching TTIP was to assuage EU concerns that the United States had written her off in its "pivot" to Asia.

Other rationales for pursuing TTIP include the argument that the world needs the United States and European Union to reassert global economic leadership at a time when no other country or group of countries is willing or able to do so. Another is that there is a race to establish global production standards and TTIP, representing half the world's output, presents an opportunity to establish them here and now. A third ex-post rationale is that by establishing disciplines on issues where other trade agreements are silent—issues like currency manipulation, the operations of state-owned enterprises, local content rules, and others—the United States and EU could establish rules that China and others would eventually have to heed.

It is within this context that TTIP emerged. But none of those rationales–pursuing TTIP as a last resort, assuaging hurt feelings, establishing standards, disciplining China and others–seem likely to provide the motivation for negotiators and governments to dig deep and remain committed enough to make difficult choices that may carry political consequences. As the talks drag, will governments remain committed to the goals? Will governments motivated by the "last resort" rationale continue to invest seriously in the negotiations if their economies experience growth and the political costs of TTIP no longer look so necessary to incur? Already there have been signs of retreat from the ambitious goals articulated at the outset.

Taking Small, Digestible Bites Is Key to TTIP Success

From the outset, negotiators erred by setting a 2014 completion date for the negotiations. There is absolutely no plausibility to that deadline and, frankly, failure to amend the timetable with realistic deadlines will only undermine the credibility of the undertaking with a public already skeptical of trade negotiations.

There are dozens of issues on the table of varying complexity that will likely take several years to resolve. Rather than have a single deadline for a single undertaking, the negotiators should announce that their intention is to achieve a multi-tiered agreement that yields multiple harvests at established time intervals. Some analysts have referred to the TTIP as a "living agreement," although a common understanding of that concept is not evident nor, to my knowledge, have the governments or their negotiators used this characterization in any official context. They should. And it should work something like this.

Negotiators would take stock of the issues on the table and rank them in order of importance to a successful TTIP conclusion. They would then rank those same issues in terms of order of difficulty to resolve. Based on averaging and some agreed upon weighting of those two sets of rankings, negotiators would identify what they and their counterparts see as the most important and least important issues, as well as the most difficult and least difficult issues to resolve. That exercise would produce a road map for how to proceed.

In April the Atlantic Council and the Bertelsmann Foundation co-published an excellent paper that was based primarily on a survey of trade experts in the United States and Europe, who were asked to identify the likely TTIP issues and rank them from most important for a successful conclusion to least important.[1] (See Figure 1.)

They were then asked to rank those same issues from most to least difficult to resolve. The results were then plotted in a matrix with the level of importance tracked along the horizontal axis and the level of difficulty tracked along the vertical axis.

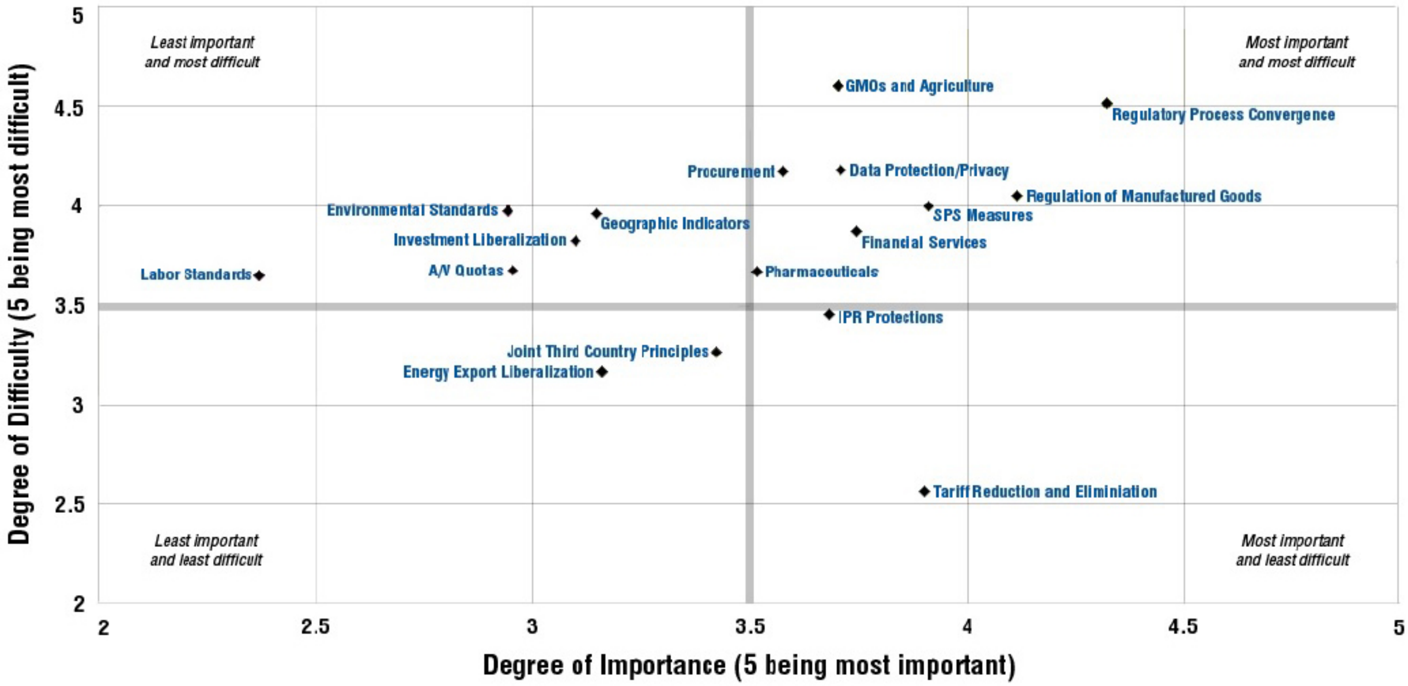
The most populated area of the matrix is the upper right quadrant, which is where the issues that are most important and most difficult to achieve reside. The fact that 8 of the 17 issues identified fall into that quadrant reinforces the conclusion that a 2014 deadline for a comprehensive agreement is woefully unrealistic.

Achieving regulatory process convergence was considered the most important and the second most difficult issue to resolve, just behind "Genetically Modified Organisms and Agriculture" in terms of difficulty. Tariff reduction and elimination was considered among the most important issues, but the easiest issue to resolve. Labor standards convergence was considered the least important issue likely to be on the table.

But the greatest utility of this presentation of the issues is that it identifies the low-hanging fruit, and prioritizes those issues by importance. Everything below 3.5 on the vertical axis can be considered the low-hanging fruit. The "relatively" low-hanging fruit would be the 8 or 9 lowest issues on the vertical axis.

Certainly, these issues are not exhaustive, nor are their positions on the matrix constant. Over time, and as events unfold, some of these issues will become more (or less) important and more (or less) difficult. For example, since the survey results reflected in this matrix were published, the NSA spying scandal came to light, rendering the "data protection/privacy" issue much more difficult to resolve than it would have been otherwise. Europeans are now far more skeptical that U.S. companies can guarantee the privacy of their information. That issue probably belongs much higher in the matrix now and, in fact, may be off the chart.

Figure 1
Potential Sticking Points



Likewise, the issue of audio visual (A/V) quotas has been carved out from the negotiations at the behest of France. It may very likely be off the chart now or, at least, at a much higher vertical point than it was a few months ago. Other issues, such as transatlantic competition in the commercial aviation and shipping transportation industries did not even make the list, despite the enormous upside to reform in those heavily protected industries.

Customizing the Matrix for the TTIP Negotiations

The Atlantic Council/Bertelsmann Foundation matrix provides a useful analytical starting point for constructing a TTIP roadmap. The negotiators should begin by identifying the most important issues and ranking them according to difficulty. If the timetable for ultimate completion of the negotiations is to include three biennial harvests–one every two years–then the goal for each two-year tranche would be to reach agreement on 33 percent of the current issues by focusing on the easiest matters each time (harvesting the lowest hanging fruit). After reaching accord on the first tranche of issues and implementing the first phase of the agreement, negotiators would re-rank the remaining issues and identify the easiest 50 percent as the low-hanging fruit. After concluding the second tranche, they would implement and move to resolving the remaining issues (the most difficult by definition) in the final two-year negotiating tranche.

The point of this approach is to improve chances for success. By breaking up the TTIP into more easily digestible pieces, negotiators are less likely to choke, and governments and stakeholders are more likely to stay engaged. What is needed for success is enthusiasm. What breeds enthusiasm are tastes of success. And tastes of success can come from setting and reaching goals in shorter increments, starting with agreement on the lowest hanging fruit first.

Negative List Approach to Regulatory Issues

To facilitate the process of identifying what matters to tackle in what order, the issues should be identified as specifically as possible. If they are too broadly specified, then the potential to identify low-hanging fruit will be obscured. That is precisely the problem afflicting the issues of regulatory standard convergence and regulatory process convergence, which are widely considered the source of TTIP's greatest potential gains, as it is enormously costly whenever businesses have to meet different standards to participate in different markets.

There seem to be vague and perhaps disparate understandings of what regulatory reform entails. Commentators have tended to refer to these issues monolithically. It would be conducive to break these issues up and separate what is on the table from what is not. This can be achieved through adoption of what negotiators call a "negative list" approach. A negative list includes all issues that negotiators identify as off limits to negotiation. Everything not on the list is on the table. Creating a negative list for regulatory issues will help negotiators, and the public, obtain a better sense of the contours of this otherwise amorphous blob of issues, revealing a more useful diagnosis of the regulatory incoherence problem.

By placing issues off limits to the negotiations, it becomes clear what is on the table. And that will help negotiators identify the lower hanging fruit of regulatory reform. For all regulatory issues on the table, negotiators should default to a standard of mutual recognition. If that approach is for some reason untenable, then convergence toward a single standard should be the approach with the standard selected being the least intrusive or least costly approach and, if disagreement remains still, by attempting to divide the chosen standards equally between both sides.

Recognizing that the U.S. standard of three-foot electrical cords on household appliances is equivalent to the EU standard of one meter (3'3") long cords in terms of ensuring consumer safety might be a sensible reform that reduces appliance production costs and lowers consumer prices. Mutually recognizing the equivalence of each other's drug approval processes would eliminate logistical redundancies, saving industry excessive delays and billions of dollars, while reducing mortality and morbidity rates. There are hundreds, perhaps thousands, of similar regulatory processes and standards that could be bridged through such mutual recognition or convergence.

Other Crucial Issues to TTIP Success

Establishing a formula to continuously drive the negotiations forward is a necessary, but by no means sufficient, condition of TTIP success. Obstacles abound.

First, abandoning the "single undertaking" approach to trade negotiations will require convincing traditionalists wed to the idea that liberalization of barriers requires cross-sector trading of concessions. Each negotiating tranche might require some customization to ensure that there are adequate trade-offs, where the U.S. and EU negotiators have a relatively equal number of offensive and defensive interests.

Second, opponents will try to define the TTIP in a negative light. Some will cast harmonization of standards and mutual recognition of regulations as an effort by industry to pad its bottom line at the expense of public health and safety. Regulatory agencies will encourage these ad campaigns, as their power to make or break will be reduced by smart reform. Supporters will have to demonstrate how superfluous regulations do not make the public safer, but instead add unnecessary costs to production that are passed on to consumers and diminish the resources available to invest in economic activity and job creation. Compliance with regulations costs U.S. industry $1.75 trillion per year, which exceeds the annual value added of the entire U.S. manufacturing sector.[2]

Third, what about Canada and Mexico, and even Turkey? The North American market is highly integrated in many industries with cross-border production and supply chains that send goods and services back and forth across the border on a daily basis. A TTIP that does not include clear and reasonable accession provisions for Canada, Mexico, and Turkey (which is highly integrated with the EU) would be trade diverting and would represent an enormous opportunity cost.

Fourth, comprehensive agreement will require green lights from both sides on numerous issues, but on issues concerning regulatory reform and government procurement, to name some, U.S. state-level and EU country-level officials also will have to be sufficiently satisfied with the deal for it to proceed. Issues pertaining to federalism and European state sovereignty make these sub-federal entities potentially obstructive players in the negotiations.

Fifth, to complicate matters further, there is widespread concern that a comprehensive TTIP agreement would be the death knell for the World Trade Organization. If new rules are established by the world's largest economies outside of the multilateral system, the WTO could descend into irrelevance. But some multilateral realists, who acknowledge that negotiating complex agreements with 160 member governments at disparate levels of economic development is no longer a viable option for liberalization, have argued that TTIP can "save" the WTO. By achieving concurrence on some very complicated 21st century issues, TTIP could blaze the path for the WTO by presenting some best practices, which could ultimately be multilateralized and adopted by the WTO. Such an objective should be kept in mind as the TTIP negotiations proceed so that its terms can be more easily multilateralized in the future.

Conclusion

Whether or not the TTIP produces an ambitious, comprehensive agreement will depend on numerous factors. Keeping negotiators focused on the task and governments continuously supportive of their efforts may be the most important requirement. Setting and achieving discrete goals with discrete deadlines—three smaller, successive agreements reached and implemented every two years by harvesting the lowest-hanging fruit first—offers a promising start.

The process will require rejecting the single undertaking approach to negotiations, where nothing is agreed until everything is agreed. To improve chances for success, it will also need to employ a negative list approach for regulatory issues so as to distill and identify what is and is not achievable.

Notes

1. Tyson Barker and Garrett Workman, "The Transatlantic Trade and Investment Partnership: Ambitious but Achievable: A Stakeholder Survey and Three Scenarios," Atlantic Council and Bertelsmann Foundation, April 2013.
2. Nicole V. Crain and W. Mark Crane, "The Impact of Regulatory Costs on Small Firms," Small Business Administration Office of Advocacy, contract no. SBAHQ-08-M-0466, September 2010.