SNAPSHOT

TRADE

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EU – US FREE TRADE AGREEMENT: A SECTORAL OVERVIEW

The negotiations for the Transatlantic Trade and Investment Partnership (TTIP) are likely to start in July. The latest draft of the EU negotiating mandate gives clear indications what the focus from an EU point of view will be. However, many interest groups are leveraging their influence and as the negotiations draw nearer the number of potential stumbling blocks increases.

HIGH HOPES

Across the political spectrum, on both sides of the Atlantic hopes are high that a comprehensive Transatlantic Trade and Investment Agreement (TTIP) can give an important stimulus for economic growth. Estimates range from 0.5%-1.5%, and the total economic gains could be as much as $200 billion and a potential creation of 400.000 jobs[1]. The EU-US High Level Working Group on Jobs and Growth (HLWG) therefore scoped out a very ambitious report in February 2013, recommending to include not only tariff reduction but also regulatory cooperation, non-tariff barriers, investment, public procurement and intellectual property in the negotiations. This was confirmed by the latest draft of the negotiating mandate dated 21 May that is currently being discussed between the Member States and the European Commission. Many key sectors such as automotive, chemical, pharmaceutical and financial services would benefit from the trade and investment agreement. However, differences in food safety, GMOs, the precautionary principle, data protection, public procurement and geographic indications (an EU tool that identifies a product's place of origin) will be hard to overcome.

TIGHT TIMELINE AND HIGH AMBITIONS

Because of major institutional changes in the EU that will take place at the end of the current Commission's term in 2014, the two sides are pressing ahead to launch negotiations before August 2013. The European Commission is working on the draft negotiating mandate with the Member States and aims to have it approved by the Foreign Affairs Council on 14 June 2013, which is a precondition to start negotiations as planned on the 8th July. In the US, President Obama notified Congress on 20 March of his intention to start negotiations with the EU. In addition, the US administration is working on the trade promotion authority commonly called "fast-track" in the U.S, that allows for faster negotiations and that is strongly supported by the business sector.[2] Finally, Obama has nominated Michael Froman to be the next US trade representative, a known free trade advocate, and the confirmation hearing will take place on 6 June in the Senate's Finance Committee. This would constitute a turning point as there would finally be a counterpart at the highest level in the US administration for EU Trade Commissioner Karel De Gucht.

The latest draft mandate as it was produced by the Irish Presidency 21 May confirms that "*the Agreement shall be ambitious, comprehensive, balanced and fully consistent with WTO rules and obligations*".

The HLWG and the draft mandate recommend focusing the negotiations on the following areas:

Market Access: An agreement should lead to the elimination of all tariffs, liberalisation of trade in services, a high level of liberalisation and protection in the investment sector and opening of each other's procurement markets. While the average level of tariffs is low (currently around 4%), there are tariff peaks on some product categories that illustrate that certain sectors still survive on tariff barriers, and will

[1] European Commission, Directorate-General for Trade, "Non-Tariff Measures in EU-U.S. Trade and Investment – An Economic Analysis", 11 December 2009

[2] 'Business Leaders Launch New Push for Trade Promotion Authority', Press release 20 May by the Trade Benefits America Coalition

be reluctant to give in to full elimination. These include the dairy sector, with a 19.1% tariff in the US and a 55.2% tariff in the EU. In its draft mandate the EU Commission proposes that for the most sensitive products, options are being considered in the course of the negotiations.

As regards to **trade in services** the aim of the negotiations will be to bind existing autonomous level of liberalisation of both parties at the highest level captured in current FTAs covering all sectors and all modes of supply, while achieving new market access by tackling remaining long-standing market access barriers. However in the latest draft mandate, the EU excludes services supplied in the exercise of governmental authority. The EU had already excluded these kinds of services from their GATS commitments and has already caused a lot of tension as the services that are supplied by Governments in Europe could be supplied on a commercial level in the US. Examples include health and education.
According to the draft negotiating mandate, the EU has an objective an agreement that enhances mutual access to public procurement markets at all levels, including in public utilities, and that also tackles local content or local production requirements, in particular Buy American provisions. However, in contrast to earlier versions of the mandate defense procurement is now removed from the scope.

Regulatory Issues and Non-Tariff Barriers: Ideally the agreement should reduce unnecessary costs and delays caused by administrative procedure, while ensuring the same level of protection on both sides. In general the draft mandate proposes mechanisms such as mutual recognition, harmonisation and enhanced cooperation between regulators.
As regards Technical Barriers to Trade (TBT) the HLWG proposes to go beyond WTO standards and increases openness, transparency, and convergence in regulatory approaches and requirements and related standards-development processes, as well as aims to reduce redundant and burdensome testing and certification requirements. In addition, the agreement should include cross-cutting disciplines for regulatory coherence and transparency to make more cost effective regulations for goods and services. According to the EU's draft mandate the agreement will include provisions containing special commitments aimed at regulatory compatibility through harmonisation, equivalence or mutual recognition in specific goods and services sectors. These would include the automotive, chemical, pharmaceutical, ICT and financial services sectors.

The most difficult elements will concern **sanitary and phytosanitary (SPS)** issues. This is very much confirmed by the draft mandate, in which the Member States insist on the precautionary principle by stating that the right to manage risk at the level the parties deem appropriate is to be recognised, *"in particular when relevant scientific evidence is insufficient*".

While the report proposes to establish an on-going mechanism for improved dialogue and cooperation for addressing bilateral SPS issues, it has already become clear that the expectations on both sides of the Atlantic differ widely as to whether the negotiations should directly deal with these issues.

In contrast to the report by the HLWG, the draft mandate now includes very detailed provisions on **investment protection**. Among others these cover an investor-state dispute settlement mechanism (ISDS) that aims to guard against "frivolous" legal claims. This is similar to provisions the US has included in past Free Trade Agreements.[3]

THE CHALLENGES AHEAD

The closer to the planned starting date of the negotiations, the more critical issues appear to be and the more clear it is that negotiations will have to overcome deeply embedded differences. The strong focus on technical and regulatory obstacles makes it particularly difficult as regulators on both sides, who normally have other priorities than free trade, must get involved. Civil society and trade unions are increasingly voicing their concerns over the lowering of labour, environmental and food safeties and standards that are disappearing through the back door. At the same time, the latter are pushing for negotiations on some issues that might not be in the interest of businesses such as IP. Big differences pertain in the areas of SPS, GMO, audio visual services, agriculture and investment and many have raised calls to either exclude these sectors from the scope or, on the contrary, push for hard negotiations there. For example the EU will remain adamant not to change the precautionary principle as such and might only negotiate on questions of implementation; the powerful US agriculture sector demands that SPS measures - including GMO approval, sustainability requirements, Geographical Indications - are specifically addressed in the core agreement.

The European Parliament adopted a resolution on TTIP on 22 May, emphasising many of the critical issues. It called for the exclusion of audio visual services from the negotiations, and the protection of Geographical Indications, whilst also highlighted the need to take protection of personal data into account and insisted on the precautionary principle. Since the European Parliament will have to approve the final agreement it can be assumed that the Commission will take this resolution seriously, even more so as the European Parliament has shown in the case of ACTA that it is prepared to bring down an international agreement.

[3] Inside U.S. Trade form 23 May: 'Revised EU Mandate Seeks To Prevent 'Frivolous' Investor-State Claims'

THE SECTOR PERSPECTIVE

The overall benefits of a Comprehensive Trade and Investment Agreement are largely undisputed. It is obvious that the cutting of tariffs and more coherent regulation and standards will be to the advantage of the two economies. However, the benefits and expectations of the different sectors vary widely. So far, the partners have made the message clear that every sector should be on the table and nothing should be specified before negotiations start. The following indicates what the sector organisations are proposing.

Chemicals: The chemical sector is highly regulated, with different procedures on both sides. Therefore industry on both sides has high expectations for regulatory cooperation, starting with information exchange and consultation, leading eventually to mutual recognition[4]. Moreover, the chemical industry is proposing principles for the review and prioritisation of chemicals and for hazard and risk assessment, in effect using a science and risk based approach. The benefits of tariff elimination alone are estimated to be in the area of $1.5 billion. The benefits from regulatory cooperation are hard to quantify. In a study carried out by DG Trade in 2009 these were estimated in the range of €7.1 billion per year for the EU.

Automotive industry: The automotive industry on both sides supports a comprehensive trade and investment agreement, suggesting mutual recognition or functional equivalence of existing standards and regulations. The benefits for European car manufacturers would be huge if an ambitious agreement is achieved. Benefits were estimated at around €12 billion.

Pharmaceutical industry: Similar to the chemical industry, the pharmaceutical sector is very highly regulated and therefore welcomes a push for regulatory cooperation. The industry stressed the importance of mutual recognition of certain inspections, including those that both European and U.S. inspectors conduct in third markets. In addition, a transatlantic agreement should address not only regulatory matters, but also intellectual property provisions, market access, and customs issues.

ICT sector: The European ICT sector has high hopes that the TTIP can contribute to an improved and more coherent regulatory environment through an approximation or mutual recognition of regulations in the areas of standardisation, e-accessibility, e-health, conformity assessment, e-labeling, intellectual property (IP) and environment. In particular for US business the cross border flow of data is crucial and business groups are pushing the USTR to prioritise this issue. In this context, the subject of data protection could evolve as a major stumbling block during the negotiations. US business therefore wants the focus to be on interoperability to enable US companies to transfer data out of Europe. It is hoped that a solution on these issues in the TTIP could become a global standard. Finally, US business is also calling for the inclusion of cyber-security into TTIP.

Financial services: The EU-US annual crossborder portfolio flow totals nearly $32 billion.[5] The securities and investment sectors on both sides submitted a joint position paper calling for full market access, regulatory coherence and appropriate investment protection. The Global Financial Markets Association, as well as the UK financial industry, strongly argue in favour of a comprehensive agreement, and have made some very concrete suggestions on how TTIP could contribute to their sector.[6] The European Commission proposes that negotiations should also aim at common frameworks for prudential cooperation and a compatibility of post-crisis regulation. The European Parliament is also calling for the inclusion of financial services regulation into negotiations. The US Treasury, however, made clear that it is only willing to include market access in financial services. As to financial services regulation several senior officials of the US Treasury confirmed that they seek to exclude the topic altogether from the negotiations.

THE INTERNATIONAL CONTEXT

The US is currently engaged in intensive negotiations with Eastern Asian countries to conclude the Trans-Pacific Partnership (TPP). The conclusion was initially foreseen for the end of 2013, but late 2014 now seems more realistic, as Japan will join the negotiations this summer. The progress of the TPP negotiations will have a strong influence on TTIP as it progresses, and the US could use it as a benchmark for TTIP. Moreover, global issues such as currency manipulation could be tackled in parallel in both agreements. So far US Congress and the Senate mainly push for the inclusion in TTP[7].

The EU is also engaged in several ambitious bilateral trade talks, including Japan, India, the Mercosur Countries, Canada, Singapore, Indonesia and Malaysia. Also, the EU and the US are the driving forces behind the Plurilateral Trade in Services Agreement (TiSA) negotiations which are potentially overlapping with TTIP.

On the one hand the resources of the European Commission and the USTP will be stretched if they want to pursue all negotiations effectively. On the other, the different trade talks will influence each other, and might create momentum that leads to more far-reaching agreements.

Since Turkey is part of the Customs Union with the EU, TTIP will have direct consequences for Turkey, including the access to other trading partners such as

[4] ACC-CEFIC joint statement
http://trade.ec.europa.eu/doclib/docs/2012/july/tradoc_149703.pdf

[5] Joint Position Paper by Afme and Sifma
[6] Position Paper by City UK
http://trade.ec.europa.eu/doclib/docs/2012/july/tradoc_149695.pdf

Canada and Mexico. Both the EU and the US are considering how Turkey can be involved in the talks. US Vice President John Kerry and the EU Council President Herman Van Rompuy both supported the idea that negotiations with Turkey should be held in parallel. Kerry described the possibilities of these kind of talks were describes as “very real”.

NEXT STEPS

If everything goes according to plan the EU Member States and the US Congress will approve their negotiation mandates by June. In Washington DC an important public hearing will take place after Memorial Day where stakeholders can express their views on TTIP.

The first round of negotiations is tentatively foreseen to take place on 8 July in Brussels. The second round is planned in Washington DC in September and a third round in December. Since the timeframe is tight, negotiation rounds will be scheduled in quick succession, in the aim to conclude the core agreement by the end of 2014.

OUTLOOK AND STRATEGY

Considering the scope and ambition of the agreement the timeline mentioned above is very challenging. Indeed, it is likely that the negotiations will be carried over to the next Commission, leading to a delay of around 6 months. Most sectors that will be impacted by an agreement are already engaged in the negotiations, and will likely become more vocal as the process moves forward. Civil society organisations are now focusing on TTIP and will aim to influence the negotiations in many sectors such as environment, food safety and data protection. In particular Intellectual Property will be a field in which NGOs will aim to drive the agenda in order to at least prevent more far reaching IP protection. ACTA is a strong warning of how trade negotiations can fail.

For any stakeholder it will be critical to closely follow the negotiations and analyse how the agreement could impact their sector in order to decide whether to directly engage with the Commission or the USTR. Moreover, business stakeholders should already at an early stage of the negotiations, reach out to civil society and communicate their objectives over the TTIP. Currently, most NGOs are still favorable towards a transatlantic trade agreement but this will change very quickly as soon as the feeling prevails that business is trying to push for regulatory changes, bypassing regular democratic processes. FTI Consulting, with its economic consulting and strategic communication capabilities in the EU and the US, is very well placed to analyse the potential impact of a trade agreement and advise you how to engage with the relevant stakeholders to ensure that your needs are being considered in the negotiations.

Pablo Lopez-Alvarez
Senior Director

FTI Consulting
Avenue Marnix 23
1000 Brussels
+32 (0)2 289 0938
Pablo.Lopez.Alvarez@fticonsulting.com

Arne Koeppel
Senior Consultant

FTI Consulting
Avenue Marnix 23
1000 Brussels
+32 (0)2 289 0939
Arne.Koeppel@fticonsulting.com

Tom Crawford
Senior Managing Director

FTI Consulting
325 7th Street Northwest
Suite 400
Washington DC 20004
+1 (0)202-567-2901
Tom.Crawford@fticonsulting.com