The Allianz-CER European Forum

The biggest prize? Prospects for a Transatlantic Trade and Investment Partnership

November 26th 2013, Brussels

1) Summary

This Allianz-CER European Forum once again brought together senior policy-makers, European Parliamentarians, experts and business leaders. As in previous Forums, the debate was enlivened through the voices of various non-Europeans who added new perspectives to long-standing Brussels policy debates. The discussion was held under Chatham House rules.

Several participants at the Forum were intimately involved with the ongoing negotiations on a Trans-Atlantic Trade and Investment Partnership (TTIP). Others had been trade negotiators in various positions over many years. This Allianz-CER Forum therefore offered a unique insight into how trade deals come about and what can hold them back.

Many participants highlighted the almost unprecedented scope and scale of TTIP. This agreement would not only bring together the world's two biggest economic players but would also take them into areas of liberalisation that go much beyond traditional free trade deals. Most experts agreed that TTIP could only be called a success if it made significant progress on regulatory convergence. Policy-makers at the Forum focused on mutual agreement of existing rules and the establishment of a process to prevent future regulatory divergence. But business people warned that they wanted to see tangible progress on aligning existing rules that are currently holding back transatlantic trade and investment. Insiders listed the topics on which the two sides were still far apart, including agriculture and public procurement. With regard to financial services, data protection, culture and investment dispute arbitration, the US and the EU had not even agreed whether and in how far they should be included in the talks.

Trade negotiators warned that if and when an agreement had been reached (probably in early 2015), there might still be political obstacles to ratification. President Obama might not be able to secure Trade Promotion Authority in time. Without such Authority, Congress would be allowed to pick holes into the finished trade deal. And the newly elected European Parliament might use its rather new right to vote on international trade agreement to make its voice heard in the EU.

Because of its size and scope, many of the EU's and US's other trade partners were concerned about TTIP. Third countries were less worried about their exports being priced out of the new transatlantic marketplace than the regulatory implications of TTIP. The mandate for TTIP explicitly includes the setting of 21st century rules on issues such as state-owned enterprises and energy subsidies, which are of great importance for countries such as China and India. While a small number of participants thought such concerns grave enough to abandon TTIP, most others preferred to look for ways how to make TTIP less harmful for

third countries and more compatible with the multilateral trading system administered by the World Trade Organisation.

2) Participants

Among the participants were Karel De Gucht (European Commissioner for Trade), Susan Schwab (former US Trade Representative), Pascal Lamy (former Director-General of the World Trade Organisation), Elizabeth Corley (CEO of Allianz Global Investors), Andre Sapir (Professor at Université Libre de Bruxelles), Michael Heise (Chief Economist of Allianz SE), Xiaotong Zhang (Executive Director, Wuhan University Centre for Economic Diplomacy), Philippe Legrain (Head of Analysis at the European Commission's Bureau of Economic Policy Advisors), Joseph Quinlan (Chief Market Strategist at US Trust Bank of American Private Wealth Management), Liam Benham (Vice President of Government Affairs, IBM), Marina Niforos (Managing Director of the American Chamber of Commerce in France), Peter Witt (Head of Siemen's EU Liaison Office) and many more.

3) Discussion

Will TTIP happen? What will it look like?

Most experts at the Forum were sanguine that the negotiations for a Transatlantic Trade and Investment Partnership (TTIP) would be **concluded successfully**. There were, however, differing definitions of success. Some of the industrialists present thought that an agreement on **tariffs** alone would already be a significant step forward. One industry representative explained that the chemicals industry paid €1.5 billion in tariffs every year for their transatlantic dealings. Since a lot of these transactions took place within the same company or group of companies, industry was losing on both sides. A Commission official agreed that, at its heart, TTIP was a free trade agreement (FTA) although "we could not call it that since many people in Europe and America have become suspicious of free trade. Partnership sounds much better."

Others insisted that TTIP could only be called a success if it had a strong **regulatory** component. Since tariffs were already low in transatlantic trade, it was mainly differences and duplication in licensing and standards that were holding back business, trade experts explained. In some sectors, the regulatory gulf between the EU and the US had widened in the last 20 years. Some participants thought that mutual recognition of existing regulations would be sufficient and that there was no need for a laborious convergence or harmonisation of processes and standards. But business people cautioned that mutual recognition could only work if standards on both sides of the Atlantic were similarly effective. Even without harmonisation and mutual recognition, the EU and the US could achieve a lot simply by limiting regulatory divergence.

One expert thought that TTIP's measure of success would be if it managed to constrain governments in using trade-distorting measures when they passed new regulation. Other participants warned that the regulatory nature of TTIP made it hugely more complex and less predictable than traditional FTAs. Officials and business people agreed that regulatory agencies needed to be an integral part of the negotiation process. But "**regulators** will only come to the table if politicians tell them to", predicted one EU representative. It was not clear whether talks between regulators could follow the traditional logic of trade negotiations, where compromises in one sector were often traded for concessions in another. "If it's about regulation, we need to move sector by sector, with the transport regulators here, and the financial regulators there", said one expert, "and it does not make sense at all to do this in the framework of a trade deal."

The list of **sectors** and issues that should be included in TTIP has still not been finalised, insiders explained. Cultural issues were initially excluded at the behest of the French government. But now it was financial services and data protection that were the contested areas. Some argued that highly complex regulatory issues, such as **financial services**, should not be part of a trade agreement. They feared that a package deal could force concessions in regulatory standards at the expense of financial stability. Many in the US, especially in Congress, feared that TTIP could lead to a rolling back of financial regulation agreed under the Dodd-Frank Act, explained an American expert. Outside the US, there were concerns that TTIP talks about financial services could undo the laborious work undertaken by the G20 in this respect.

Others explained that financial services were an important part of international trade and that TTIP could not avoid the issue. Traditionally, banks had promoted international trade by serving their clients in different locations and helping them to invest abroad. Today, financial fragmentation was holding back both trade and investment while deleveraging would reduce trade with a time lag. Trade finance was down sharply, reported one participant, partly because new regulation gave the same risk weighting to trade finance as to derivatives. TTIP could be an important opportunity to narrow the transatlantic regulatory gap that has become ever wider since the start of the financial crisis.

Similarly, some argued that **data** issues, in particular questions related to data security, should not be addressed in the broad framework of trade negotiations. The NSA scandal had eroded trust but this should not be allowed to endanger TTIP. Instead, the EU could, for example, renegotiate the 'safe harbour' agreement (under which US companies are allowed to transfer European customer data without EU supervision). Others, however, thought that the inclusion of data protection issues was a political necessity after the NSA scandal. And they explained that so many industries now relied on the transfer of big data – not only e-commerce but also finance, express shipping and many others – that no modern trade agreement could avoid the issue. In fact, EU and US economies had much to gain from global data sharing.

Agriculture was shaping up to be another contentious area, explained participants. In particular, the Europeans were not prepared to open their markets for American exports of genetically modified products or hormone-treated beef. In the past, such disagreements could be overcome, for example when the EU increased its quote for tariff-free American (untreated) beef exports while keeping in place its ban hormone treated beef. Many US farmers then set up separate production line for untreated beef for export to Europe.

The role of **investment** rules in TTIP was also an open question, participants thought. The US-EU economic relationship was as much about mutual investment than about traditional cross-border trade and hence investment needed to be an integral part of the agreement. On the other hand, the two sides had already adopted principles for investor protection in the framework of the Transatlantic Economic Council (TEC), reported one expert. It was questionable whether TTIP should contain new clauses on investment protection, in particular an investor-state arbitration. "There is sufficient protection for investors already in both the US and the EU", said one Commission insider. And an expert warned that the investor-state arbitration (which often granted foreign investors better rights of recourse than domestic investors) was incompatible with the TEC principle of national treatment, which meant that foreign and domestic investors should be treated equally. Finally, an expert noted that the once ubiquitous investor-state mechanism had lost legitimacy in many emerging markets, so by reviving it, the EU and the US would be "behind the curve" in international dispute settlement.

Insiders to the negotiations remained vague on what they thought the **timing** of TTIP could be. There was agreement that a deal would not be struck before the elections to the European Parliament in May 2014 but a Commission representative said that the end of 2014 was a “realistic” prospect. He explained that the TTIP talks were much better prepared than other trade negotiations since the EU and the US had been talking about many of the issues included in TTIP for years (efforts to create a transatlantic market go back to the mid-1990s).

Officials at the Forum agreed that the talks should not be allowed to drag on for too long. First, given that many issues on the table have been explored before, the talks needed “political steer”, in the words of a Commission representative. “Political steer does not last very long in a democracy”, he added.

Second, negotiators explained that in every trade negotiation there came a point at which both sides started taking risks because the end was in sight. Without a deal in sight, negotiators would continue to hold back and progress would remain lacklustre. Some participants thought that there was a **window of opportunity** in early 2015, after the new European Commission had settled into Brussels and the US Senate elections of November 2014 were out of the way but before the US presidential election campaign started in earnest. Such a political deadline could motivate negotiators to wrap up what had been agreed by then.

Several participants highlighted the ongoing character of the transatlantic agreement. Issues such as data protection or agricultural protectionism preceded the start of TTIP talks. No one expected that TTIP would remove all, or even most, regulatory obstacles to transatlantic business. But TTIP could establish a **process** for regulatory co-operation which would include more transparency, early mutual consultation and an ongoing dialogue about regulations. “We need to have a commitment to talk [about regulations]”, said one representative of a trade body, “but not a commitment to resolve [all regulatory disagreements].

What could derail an agreement?

Several participants foresaw **political obstacles** to a successful conclusion of the talks. One American official predicted that the seeming closeness of the US and the EU would lead to much mutual frustration: “We think we know each other really well. This will lead to mistakes and setbacks.”

Public support for the deal was weak on both sides, argued participants. “No one outside Washington cares about TTIP”, reported one US participant, “most Americans think TTIP is a company that makes things.” An EU participant, likewise, questioned whether the European Commission’s promise that TTIP would set “global standards” would help to convince French farmers or parliamentarians incensed about NSA practices.

Each side questioned the commitment of the other. One Commission insider reported that the Trans Pacific Partnership (TPP) agreement was the US’s clear priority, ahead of TTIP, partly because TPP was designed to contain China and partly because the US did vastly more trade with the countries included in TPP than with the EU. And unlike the EU, the Pacific rim countries offered fast-growing markets. Participants also that the EU might need TTIP more than the US to boost its economic growth. An EU industry representative reported that US regulators were “not interested” in working with their European counterparts.

Meanwhile, an American participant reported how the US administration struggled to discern whether EU foot-dragging was due to “disorder or positioning”, and whether EU positions [for example, on GMOs and data issues] reflected “protectionism or principles”.

It also transpired that the EU and the US harboured suspicions about whether the other side could deliver a deal politically. One EU official said the success of the negotiations hinged on the blocking power of vested interest groups. He contended that such constituencies "were much better organised in the US than at the EU level" and in any free-trade deal there would be sectoral winners and losers. But a European participant pointed out that European enthusiasm for further trade liberalisation was waning, because the eurozone crisis was perceived to have abated.

Several European participants warned that President Obama might not get **Trade Promotion Authority** (TPA, also known as fast-track authority) in time. Under TPA, Congress could only accept or reject a trade deal negotiated by the executive. Without TPA, Congress could introduce individual amendments or block the deal through filibusters. Since 1974, all big trade deal in the US bar one had been passed under TPA. Both US and EU participants agreed that TTIP without TPA was "unimaginable" and a "non-starter".

But the Americans around the table appeared more optimistic that President Obama would receive this authority in the near future. One US insider said that trade issues were often exempt from the usual partisan wrangling in Washington since the Republicans were generally in favour of trade liberalisation. Indeed, President Obama had already passed five trade deals in Congress with the help of the Republicans.

The Europeans were more worried about TPA. Although a TPA bill had been introduced in Congress, it was being opposed by lawmakers from both parties. This opposition had more to do with the impending conclusion of the Trans Pacific Partnership, a trade deal with 11 nations around the Pacific rim, many of which were much poorer than the US. This had raised fears of low-cost competition in a way that TTIP did not. Without TPA, America's trading partners would be reluctant to make concessions since they could not be sure whether Congress might undo the agreement later on. "The longer Obama has to wait for TTP", warned one insider, "the more Congress will insert its demands into the process."

Conversely, the Europeans appeared more sanguine about their ability to pass TTIP than the Americans. "We in Europe have permanent fast-track", one EU official boasted. But one American participant called the **European Parliament** a "wildcard" in the TTIP talks. Since the Lisbon treaty, the EP has the right to vote on the international trade agreements negotiated by the European Commission. One EU official recounted that the EP had already accepted an FTA between the EU and Canada and a major overhaul of the EU's trade rules for developing countries. It did, however, reject the ACTA anti-piracy treaty, in a move that came as a "complete surprise" (in one US official's words) to the Americans. One participant argued that the EP simply did not have a long enough track record on trade to predict its actions on TTIP.

Moreover, many observers predicted that the 2014 elections would add a sizeable group of populist MEPs to the Brussels legislature – people who are often not only sceptical of Europe but also opposed to globalisation and free trade. The election could therefore make the Parliament even less predictable. On the other hand, one Commission official said that he doubted that the presence of eurosceptic MEPs would make it "any more difficult" to work with the EP. One MEP predicted that a critical mass of MEPs (60 per cent, in his estimate) would still be from the mainstream parties and only a small share would be part of Europe's "Tea Party fringe". The MEP predicted that "strong support across all EU institutions" for TTIP would persist.

TTIP and the global trading system

TTIP was part of a growing trend towards bilateral and regional trade deals that threatened to **undermine the multilateral trading system** maintained by the World Trade Organisation (WTO), warned participants. One EU expert said TTIP would lead to "fragmented trade, not free trade". Another warned that the 400-odd FTAs that had so far been agreed were increasingly reaching beyond the traditional remit of the WTO, into investment, services, labour standards and so forth. Therefore, international rule-making on commerce was inexorably moving away from the WTO.

One economist argued that TTIP was a "last hurrah" attempt by the EU and the US to cement their **pre-eminence** in global rule-making before the emerging markets became large enough to set the rules themselves. However, since emerging markets and developing countries already surpassed developed countries in terms of GDP (at purchasing power parity), this attempt was futile and counterproductive. The economist said that TTIP's benefits would be short-term, in the form of a one-off contribution to the level of GDP, and would not change the rate of economic growth. It did not make sense, the expert argued, to draw up rules that were not acceptable to, or compatible with, countries such as India and China. TTIP would hasten, not slow, the relative economic decline of the West. It would deliver "short-term feel good gains at the expense of long-term economic costs".

Another participant reported that China thought that TTIP was motivated by geopolitical reasons. He explained that the Chinese elite saw TPP (which includes many Asian countries but not China) in political, not purely economic terms. When the US then launched trade talks with the EU, many Chinese were asking "are the developed countries going against us?"

One US official, however, took issue with the view that TTIP was an attempt to cement the US's economic predominance. The main reason for the US was that the multilateral rule-making machinery was **stuck**: "The last rules written at the WTO date back to 1993/94." And the last multilateral trade negotiations, the Doha round, were in their 12th year without success [editor's note: at the time of the Allianz-CER Forum, the Doha round had not yielded any results].

Other participants argued that an attempt by the US and the EU to set global standards was perfectly legitimate. First, regulatory divergence – especially since the financial crisis – was genuinely harming transatlantic business and was best addressed in bilateral talks rather than the 155-nation WTO framework. Second, if the EU and the US could agree on clever solutions, for example for the intractable issue of rules of origin, such solutions could later be a blueprint for multilateral talks on the issue.

Several participants were hopeful that – rather than sounding the death knell of the WTO – TTIP could actually help to **revive the moribund Doha talks**, just like NAFTA once helped to revive the Uruguay round. Trade talks were driven by two motivations, one expert explained: the search for economic benefits and fear of being left out. TTIP could be a "gigantic wake-up call for the WTO" if other countries realised that rules on commerce were being made without them at the table. A successful TTIP could also serve as proof that two very different economic entities could overcome their differences, even in difficult regulatory areas. TTIP could thus give global trade "a shot in the arm", as one participant put it.

Nevertheless, many participants acknowledged that reconciling TTIP with global trade rules would not be easy. One official reminded the Forum of the debate about the pros and cons of regional trade agreements, which was long-standing and well-rehearsed. But he argued that "**mega-preferential deals**" like TTIP and TPP were different in size and scope and could thus change the dynamics of global trade. Since the new agreements were more about regulations than tariffs, traditional calculations of net benefits (how much new trade was created minus how much trade with third countries was diverted) were no longer valid.

Calculations submitted to the Chinese government showed that TTIP would cost **China** around $20 billion in trade diversion – a small number in China's overall trade accounts. But the Chinese government was very concerned about TTIP irrevocably setting 21st century rules on issues of great importance to China: intellectual property, state-owned enterprises, labour standards, public procurement norms and many more. Therefore, there were demands that China should be included early in the rule-making process.

Such demands were not restricted to emerging markets. Switzerland, Norway and Canada, for example, traded a lot with both the US and the EU. They would very much like to have a say in setting rules and processes that would invariably affect them. However, there was no easy way of including third countries in the negotiations. Either a third country had a seat at the table and its consent was needed for an agreement – in which case they had the leverage to hold up the agreement, making a deal less likely. Or they could be offered to join later and would ultimately face a take-it-or-leave-it choice when presented with a finished deal.

One economist presented a number of ideas for making TTIP more compatible with multilateral trade and minimising risks for third countries. First, TTIP should be kept open for accession by third countries, especially those with which the EU and the US already had close trade ties, such as Mexico, Norway or Turkey. Second, in areas where the EU and the US agreed on mutual recognition of standards, they could offer third countries to comply with only one set of standards (say the EU ones) to be allowed to sell into the entire transatlantic market. Third, the EU and the US should use the dispute settlement mechanism of the WTO as much as possible. And fourth, the US and the EU should pursue a parallel push to revive and reform the WTO.

However, several participants thought that the onus was not only on the EU and the US. Some urged China to assume a more constructive and responsible role in global trade, in recognition of the fact that it was one of the main beneficiaries of an open, global trading system. With China's help it might be possible to **reform the WTO** in a way that would guarantee its continued relevance in international trade. For example, more flexible rules would enable "coalitions of the willing" to strike trade deals that would stay open for all members, suggested one participant. Another urged that the WTO's mandate needed to be extended to 21st century regulatory issues. TTIP was considered a second-best option to a multilateral trade deal.

Despite its multiple pitfalls and obstacles, most participants at the Allianz-CER Forum agreed that TTIP was **worth the effort**. Not only would it make doing business across the Atlantic easier, it would also put pressure on governments on both sides of the Atlantic to open up and reform their economies. Such reforms could lead to more innovation and higher productivity and thus better-paid jobs. All calculations of the gains from TTIP have focused only on the one-off gains from removing trade barriers, lamented one economist. These gains were usually found to be tangible but small. If the dynamic gains of more competition and increased investment were included, the benefits of TTIP would be significantly higher. But, as one official concluded "the benefits of TTIP depend on what we negotiate".

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