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Discussion Paper # 185



RIS
Research and Information System
for Developing Countries

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RIS-DP # 185

November 2013



RIS

**Research and Information System
for Developing Countries**

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Transatlantic Trade and Investment Partnership

V. S. Seshadri*

Abstract: Efforts are underway to forge a Transatlantic Trade and Investment Partnership (TTIP) between the United States and the European Union for which negotiations have commenced this year. It is proposed to be an ambitious free trade and investment agreement, whose focus will not only be towards achieving deeper liberalisation of their trade and investment regimes, but also towards bringing about greater convergence, if not harmonization or mutual recognition, of standards and regulations across all products and services sectors. With both economies having a significant share in the world GDP and world trade, the two trade majors are also hoping that some of the WTO plus disciplines that they can agree on, including in areas like competition policy, raw materials and energy and state owned enterprises, could provide a basis for future multilateralisation. If the two parties are able to conclude such an agreement, it could have a profound impact on world trade as a whole, not only on the bilateral trade and investment relations between the two parties. India could also be affected as a result. Developments in this regard will need to be carefully monitored and a suitable strategy devised. The paper briefly dwells on several of these aspects.

Key word: TTIP.

1. Introduction

Negotiations have begun towards forging a comprehensive Transatlantic Trade and Investment Partnership (TTIP) between the two largest economic powers, US and EU. The first round was held in July this year and the next round, delayed due to US shut down, is being held from 11-15 November 2013. With their combined output accounting for 45 per cent of World GDP, and their overall trade in goods and services adding up to 30 per cent of world trade, a successful TTIP will not only further enhance economic engagement among the

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820 million people in these advanced economies, but could also create benchmarks for world trade governance.

Even presently, the bilateral relationship is one of the strongest with an annual two way trade of US\$ 1 trillion in goods and services. More importantly, their stock of investment in each other's economies were worth US\$ 3.7 trillion in 2011. Investment stocks of US in Ireland and the Netherlands are far greater than in China and India, and this is also true of investments in the reverse direction.

Notwithstanding these strong economic bonds, a study process to explore an even closer partnership was announced at the annual US-EU summit on 29 November 2011. This was just few days after the leaders of Trans Pacific Partnership (TPP), including President Obama, issued a declaration on 12 November 2011, outlining the broad features of their high standard partnership. There was disquiet in Europe when TPP was projected as part of America's rebalancing strategy and pivot towards greater engagement with the Asian region. A corrective was felt needed to convey that US was not reaching out to Asia at the expense of Europe.

The study process by the High Level Working Group on Jobs and Growth (HLWG) co-chaired by EU Trade Commissioner Karel De Gucht and US Trade Representative Ron Kirk was tasked to identify "policies and measures to increase US-EU Trade and Investment to support mutually beneficial job creation, economic growth and international competitiveness". After examining various options, HLWG reached the conclusion that a comprehensive agreement that address a broad range of bilateral trade and investment issues including regulatory issues and contributed to the development of global rules would provide the most significant mutual benefit. The report which was submitted on 11 February 2013 also went on to

elaborate the structure and content of the comprehensive agreement. President Obama promptly announced, a day later, the launch of talks for TTIP in his State of the Union Address. After both sides completed all their internal procedures and stakeholder consultations, including a Congressional hearing in US and a go-ahead resolution from the EU Parliament, EU and US leaders formally launched the initiative on 17 June 2013.

Many explanations have been offered for why such an initiative should have got off now when some of the earlier moves for a Transatlantic Free Trade Agreement (TAFTA) or a North Atlantic Free Trade Agreement (NAFTA) did not succeed. Several related factors are relevant. The severe economic down turn in EU and the earlier recession in US have forced the leaders to look at all possible ways to revive growth and employment. Decision makers may have been put off earlier by the daunting efforts required to deal with differing approaches to standards and regulations on either side of the Atlantic that have also given rise to several high profile trade disputes. Also, the modest gains expected to accrue from further reducing their already low level of average tariffs were perhaps not incentive enough. The Doha round was expected to do this any way. EU, in fact, was also initially observing the Lamy Doctrine of negotiating no further FTA's while Doha negotiations were underway. But with Doha round not making progress, EU followed US in terms of becoming active once again on the FTA front (including with India). The Lisbon Treaty (December 2009) that *inter alia* also brought Foreign Direct Investment and Trade in Services under the exclusive competence of EU Commercial Policy has also enabled EU to look at negotiating more comprehensive partnerships. Internally too, a good TTIP agreement that promises to revive growth and provide jobs could help dispel doubts about Euro and persuade EU to stay together despite talk about a in/out referendum in UK.

Finally, and perhaps most importantly, with emerging economies coming to be seen as gathering more influence, be it in WTO or elsewhere, it was felt the time was ripe for the two major economic powers in the west to overcome their differences and see that world trade and economic governance continue to evolve in ways suited to their needs, values and interests.

At the ceremony to launch negotiations for TTIP, President Barroso of EU Commission saw the core challenge as moving the regulatory regimes of EU and US closer and addressing the harmful effects of behind the border barriers. President Von Rompuy of European Council considered what was at stake was “to ensure Europe and America’s role as the World’s standard setters beyond product specification”. President Obama believed that the two sides “can forge an economic alliance as strong as our diplomatic and security alliance” and added “and by doing that we can also strengthen the multilateral trade system”.

2. What is the agreement about?

The HLWG has already indicated, while outlining the structure and content of the comprehensive agreement, that the aim should be to achieve ambitious outcomes in three broad areas:

- a) Market access in Goods, Services, Investment and Government Procurement;
- b) Regulatory issues and Non-tariff barriers; and
- c) Rules in IPR, Environment, Labour, Customs and Trade Facilitation, Competition policy, State owned enterprises and in other areas to address shared global challenges and opportunities.

It is estimated that an ambitious and comprehensive trade and investment agreement could result in significant economic gains of

Euro 119 billion a year for EU and Euro 95 billion a year for US. Over two million new jobs are also expected to be created on both sides of the Atlantic.

In the first round of negotiations, both sides discussed possible approaches to follow. What may be a likely starting point for negotiations, particularly in respect of market access issues, could be the deepest set of concessions so far granted by each side to any other FTA partner. Some analysts see the recently concluded Korea-US and Korea-EU Free Trade Agreements as providing such a basis. The on-going TPP negotiations which are significantly ahead may also be used as a benchmark, particularly in respect of regulatory issues and rules.

TTIP negotiations may not be held in as confidential a manner¹ as TPP. Both sides are evenly matched in terms of negotiation experience and expertise. EU Commission, which will negotiate on behalf of all EU members, will have the responsibility of keeping its 28 members states and the EU Parliament and civil society adequately informed. Unlike in TPP, neither side can assume that their own standards or regulations will finally prevail. Law makers may have to be kept fully informed in view of legislative or regulatory changes that may have to be undertaken.

In what follows, the possible lines of negotiation and the sensitivities and concerns that may be projected by each side on each of the main topics are briefly dealt with.

2.1 Market Access

2.1.1 Goods

The HLWG has recommended that TTIP should eliminate all duties, with a substantial elimination of tariffs upon entry into force and a

phasing out of all but the most *sensitive tariffs* (highlighted by this writer) in a short time frame.

Around 37 per cent of tariff lines are already duty free in US and this is 25 per cent in case of EU. The simple average of all duties is 4.7 per cent for US and 6.4 per cent for EU. Gains from duty elimination may therefore appear to be not so significant. But both of them levy higher rates of duty on textiles and clothing, leather and footwear, automobile products, fisheries and agriculture products. Over 5 per cent of US tariffs are above 15 per cent, and 25 per cent of its tariffs are in the range of 5.1 to 14.1 per cent. In the case of EU, close to 9 per cent of all tariffs exceed 15 per cent. Tariff elimination in these sectors could have considerable impact on bilateral trade. They could also result in trade diversions vis-a vis third country partners.

It is to be seen if the two sides would follow the same pattern as in their FTA commitments with Korea. In Korea-US FTA, non-agricultural tariffs on 91 per cent of industrial products are to be eliminated within three years, with an additional 4 per cent in 5 years and remaining tariffs within 10 years. In Korea-EU FTA, tariffs on 99 per cent of industrial products are to be eliminated in 3 years with all remaining tariffs within five years.

More difficult to negotiate will be agricultural products. EU has 81 agricultural duties over 100 per cent and in the case of US, 25 duties exceed 100 per cent. Dairy products, sugar, meat, peanuts, food preparations, to name some, attract very high duties in both markets. Their FTA's with Korea saw rice being excluded, tariff rate quotas being specified for dairy products and other sensitive agriculture products seeing a long phase out. In TTIP, with potential trade impact being much larger, entrenched sectoral lobbies in sugar, dairy, cotton,

peanuts, and certain grains will try to see if they can be exempted from reduction by inclusion as among ‘most sensitive tariffs’.

In case of certain agricultural products, however, mere reduction of tariffs may not result in market access unless domestic and export subsidies are also addressed. While HLWG makes no reference to these aspects, some trade analysts have suggested that the two sides could agree to eliminate farm export subsidies, which have been largely phased out, and agree on new disciplines and limits on domestic agricultural subsidies. If indeed they make such a move it could provide a real impetus to moving WTO Doha Round negotiations forward.

2.1.2 Services

The HLWG has recommended to

- bind highest level of liberalisation that each side has committed to in other FTAs;
- achieve further market access, recognising sensitive nature of certain sectors;
- include commitments to provide transparency, impartiality and due process with regard to licensing and qualification requirements and procedures; and
- enhance regulatory disciplines.

US has followed a more ambitious negative list approach to scheduling services commitments in its FTAs while EU has followed a positive list approach even in its FTA with Korea. Most likely, they may decide on a ‘hybrid’ approach which would follow a negative list for national treatment and a positive list for market access commitments. This is also the approach being taken in the plurilateral Trade in Services Agreement (TiSA) that is currently being negotiated among 23 countries² including EU and US.

While binding liberalisation as in other FTAs may not pose a serious issue, liberalisation in ‘sensitive’ sectors such as air transport (Foreign airlines cannot now take over American carriers or carry passengers between American cities) or maritime services (restrictions apply to coastal shipping in US) could see tough negotiations. Similarly, insistence by France (as also a few other EU members), on ‘cultural exceptions’ in respect of audio visual services and products will be a factor to contend with.³

In respect of regulations, a question may arise to what extent the complex area of financial regulations can be coordinated within the rubric of TTIP. Both EU and US also have differing views about privacy and data protection and their relative importance vis-à-vis security. (This has assumed more significance after the Snowden revelations and reports about interception of phones of EU leaders). How will the issue of trans border data flows be dealt with in the context of e-commerce or IT services would be another major issue.

2.1.3 Investment

The HLWG has recommended that TTIP include investment liberalisation and protection provisions based on highest levels negotiated to date.

This chapter is not expected to see deep differences. The provisions of US-Korea FTA could be taken as a starting point by US in terms of provisions relating to Investment Protection. For EU it may be the Investment Protection chapter of EU-Singapore FTA.⁴ While the rest of this FTA has been initialled, the investment chapter negotiations are still continuing, having started later under EU’s new mandate under Lisbon Treaty.

It is also interesting that faced with criticisms about Investor State Dispute Settlement (ISDS) provisions, EU has clarified that while providing for ISDS in future agreements it shall ensure the following

- All hearings will be open. All submissions to and discussions of the tribunal shall be public and interested parties will be able to make their views known.
- EU will negotiate in such a way so as to ensure that laws reflecting legitimate public choices, e.g. on the environment, cannot be undermined through investor-state dispute settlement.
- Costs must always be borne by the losing party which would act as a deterrent for investors to bringing tactical, frivolous or spurious claims.
- Presiding arbitrators will be appointed by agreement of both disputing parties. If parties cannot agree they will be appointed from lists established by parties to the Agreement.
- A far reaching code of conduct for arbitrators designed to prevent conflicts of interest arising will be included.

The negotiations can also be expected to focus on investment market access and specific barriers faced by companies of each party in the other's market. The US report on Foreign Trade Barriers has flagged role of 'Golden Shares' owned by sovereign wealth funds in strategic companies (France), Foreign Investment restrictions in real estate, media, and construction in Cyprus, licensing process for non-EU investors in Greece, lack of predictability in the legal and regulatory systems in Romania, to mention some of them.

2.1.4 Government Procurement

The HLWG has called for substantially improved access to government procurement opportunities at all levels of government. While EU and US are both members of the limited Government Procurement

Agreement (GPA) of WTO, the GPA commitment of US, as per one report,⁵ covers only 3.2 per cent of total government procurement while EU has opened 15 per cent of its market (13 Federal States of US have made no commitments under GPA). Both will seek to enhance market access under TTIP by expanding sectoral coverage and negotiating lower thresholds for different types of purchases and contracts. Because of the wide usage of ‘Buy American’ provisions in US, EU can be expected to take a more active role on this subject.

In fact, in an initial Position Paper, EU has outlined areas it seeks to improve, in a GPA plus manner, among the domestic regulations and practices in US. It seeks to ensure that rules on off-sets/set asides or domestic preferences such as but not limited to Buy American and SME policies do not restrict procurement opportunities. Further, it is seeking to ensure that committed coverage at federal level is also extended to cover federal funding at the state level. The Position paper also seeks extensive improvement in market access in all Federal States, as also procurement by public authorities and public benefit corporations with multi state mandates or state owned enterprises, public undertakings and private companies with exclusive rights.

Similarly United States could also be expected to take up the strong pro-EU bias in government contract awards of various EU member states. There are several barriers perceived to have been faced by US companies as brought out in its annual Foreign Trade Barriers compilation that include defense procurement by various EU members, the ‘national interest’ standard used by Slovenia, the exemption from tendering enjoyed by Austrian power utilities, majority of which are government owned, the onerous certification requirements from companies seeking to bid for government tenders in Greece, to mention just a few.

Potential exists for significant trade enhancement if TTIP works out an ambitious package.

2.2 Regulatory issues and Non-tariff barriers

These may be the most difficult issues to tackle in TTIP negotiations even as the EU Ambassador to US termed regulatory cooperation as the ‘Crown Jewel of the negotiations’. Several high profile trade disputes have figured among EU and US including those relating to chlorine treated poultry, hormone treated beef and genetically modified crops. EU relies more on precautionary principle as against US insisting on science based determinations about safety and health. While the beef hormone dispute is settled, the other two are not. There are also wide differences among them about vehicle safety features, their emission standards and energy efficiency. Their approaches towards testing of pharmaceutical products are also different. Indeed, for many sectors, exporting countries have separate assembly lines for sale in EU and for sale in US. As against this backdrop, HLWG has recommended for TTIP to include:

- a) A chapter on Sanitary and Phyto-sanitary (SPS) measures that would go beyond the existing rights and obligations under the WTO SPS agreement and build on the scientific and risk-based assessment provided in the SPS agreement; and
- b) A chapter on Technical Barriers to Trade (TBT) that would again go beyond the existing rights and obligations under the WTO TBT agreement with objectives to include convergence in regulatory approaches and standards. It also seeks to reduce double testing by promoting confidence in conformity assessment testing of institutions.

HLWG has also recommended establishment of forums and framework for continuing dialogue and cooperation in various sectors.

As in the case of TPP, cross cutting disciplines on regulatory coherence have also been proposed that will require prior notification to each other about new regulations with opportunities for consultations. It is also proposed that there could be specific annexures related to certain goods and services sectors that provide for commitments or steps to be taken in respect of regulatory harmonisation, equivalence or mutual recognition.

A comprehensive study on Non-tariff measures (NTMs) in EU-US Trade and Investment has assessed, in an ambitious scenario, that virtually 50 per cent of NTMs and regulatory divergence can be eliminated. Under this scenario, EU's GDP could be pushed by 0.7 per cent in ten years time while for US it will be 0.3 per cent.

2.2.1 Sanitary and Phyto-sanitary Measures (SPS)

The fundamental basis for determining SPS measures is different in US and EU. For example, the Korea-US FTA emphasizes that the resolution of SPS matters 'must rely on science and risk based assessment' and that 'scientific risk analysis shall be conducted and evaluated by the relevant regulatory agencies of each Party'. On the other hand, the Korea-EU FTA does not include explicit language committing to reliance on science and risk based assessment. According to a paper by the German Marshall Fund of US, the EU view is that US has rushed into new technologies and has approved products without giving consumers a chance to decide between bio-tech and non-biotech products. There are also concerns that biotechnology may undermine biodiversity. In its position paper on SPS issues for TTIP negotiations, EU has proposed that the two sides revisit the issue in a collaborative manner 'while recognising the right of the Parties to appraise and manage risk in accordance with the level of protection that each side deems appropriate'. There is no explicit reference to science here.

Will the two sides be able to find a compromise? An optimistic assessment points to the agreement reached between the two sides in 2012 on mutual recognition of certified organic products, despite intense previous distrust. A compromise being suggested for biotech products that will give due regard to both science and consumer preference is for EU to allow import of these products subject to appropriate labeling that is neutral and not derogatory.

2.2.2 Technical Barriers to Trade (TBT)

Even for non-agricultural products, regulations and standards differ widely in many sectors between EU and US. In the automotive sector, for example, there are different standards related to vehicle safety for seat belts, windscreen wipers, passenger seats, headlamps, bumpers, rear view mirrors, etc. Similarly, emission standards and fuel efficiency are also different. Some of these also vary between EU members and among US states. Chemicals, cosmetics, biotechnology, and aerospace, have also been cited as areas where the Transatlantic regulatory divide is huge. In a Position paper on TBT issues for the negotiations, EU has proposed some elements for a horizontal TBT chapter that include (a) a principle that commitments apply to both the sub-regional (all member States in the EU) and sub-federal level of regulation (in US); (b) where appropriate, regulations on product requirements be spelt out in terms of performance than detailed design prescriptions; (c) mutual recognition of conformity assessment (double testing will then not be necessary); (d) holding regular consultations and advance information exchange between regulators. EU has also proposed separate sectoral annexes to deal specifically with medical devices, chemicals, pharmaceuticals, automobiles, etc. It would appear that US would prefer to come up first with a horizontal framework that would apply across industries before deciding on sectoral discussions. While there are no sectoral annexes in Korea-US FTA, although automotive standards have been set out, there are four

sector specific annexes outlining regulatory compatibility in Korea-EU FTA for consumer electronics, motor vehicles, pharmaceuticals and chemicals.

2.3 Rules in areas that are seen as impacting on Trade and Investment

2.3.1 Intellectual Property Rights (IPRs)

The HLWG's recommendations are rather brief in relation to IPR issues. Partly, this may be account of a belief on both sides that the levels of protection offered by each of them to various IPRs including Patents, Copy Rights, Industrial Designs, and Trade-marks are quite adequate even if somewhat different. Secondly, they are not ready to undertake any effort to harmonise their respective laws and rules that may be difficult to accomplish as part of TTIP negotiations. Even among EU member states harmonisation is far from complete such as in respect of Patents. While both parties have been active in incorporating TRIPS plus provisions in their FTAs with other partners, the HLWG interim report in June 2012 noted 'both sides agree that it would not be feasible in negotiations to reconcile the broad differences in IPR obligations that each typically includes in its comprehensive trade agreements'. Thirdly, memories are fresh in EU about how the plurilateral Anti Counterfeiting Trade Agreement (ACTA) that was negotiated somewhat secretively involving criminal sanctions for those who use internet to break copyright was voted down by the European Parliament last year, after it was negotiated and initialled including by 22 EU Members. Votaries of internet freedom won the day.

Finally, on the issue of Geographical Indications (GI), their interests and approaches are very wide. EU attaches a lot of importance to them in view of the high value commanded by wines and food

products identified with a region or locality. US, however, has been reluctant to agree to such special protection, partly also because of cases such as Parmesan Cheese, where it feels, the product name has become generic. The only exception has been in respect of wines and spirits, due to a recognition that California's wines had a GI worth protecting.

For all the above reasons, the HLWG was not confident as to what extent the negotiations may be able to bridge the wide gulf in position on IPRs. Its Report has given a cautious recommendation for both sides to "explore opportunities to address a limited number of significant IPR issues to either side, without prejudice to the outcome".

The most challenging part will no doubt be to find a compromise on GIs. The Korea-EU FTA already has expansive provisions on the subject with more than 160 products covered for EU (105 wines and spirits and 60 food products like, cheeses, hams, pasta, and beverages) and 64 products for Korea (tea, rice and spices). On the other hand, the Korea-US FTA gives no special protection to GIs other than as trademarks and, unlike Korea-EU FTA, does not cover GIs infringement with criminal procedures and remedies and cross border measures. When this matter of additional GI protection in EU-Korea FTA was taken up by US, Korean Trade minister sent a letter to United States Trade Representative (USTR) in June 2011 clarifying that GI provisions in EU-Korea FTA would not limit US from using generic names like Parmesan and Mozzarella to identify cheeses and that Korea-EU FTA GI protection applied only to compound terms such as 'Parmigiano Reggiano' and 'Mozzarella di Bufana Compana' and not to 'Parmigiano' and 'Mozzarella' themselves. The question still arises what happens to some varieties like Feta or Gorgonzola which do not have compound terms and figure in the Korea-EU GI register.

It has been proposed that a compromise in this area should find a middle ground that identifies a few specific products and names that have become truly generic and should remain so. For the rest, TTIP could include an arrangement for mutual recognition of GIs and registration bodies. Acceptance of such a compromise may depend on how few such identified generic products are and how much trade is involved in them. As part of overall compromise, some have hoped, US could agree to extend concessions in this area since on the totality of agriculture trade, lowering of barriers is expected to benefit US much more than EU. At this stage in the negotiations, however, it may be difficult to assess how this issue that has seen polarised positions will be resolved.

2.3.2 Environment and Labour

With both EU and US including provisions relating to these standards in the FTAs being signed by them, agreeing to similar rules for TTIP should not pose a major problem for either. The HLWG has recommended that both sides explore opportunities for high levels for protection for the environment and workers by taking into account work done in the Sustainable Development Chapter of EU trade agreements and the Environment and Labour chapters in US trade agreements.

EU has also come out with a position paper on a possible Trade and Sustainable Development chapter envisioning three basic elements for inclusion:

- a) Reflect commitment of both sides to internationally agreed conventions and standards on labour and multilateral environmental agreements. (This should cause no problem to both of them.)
- b) Each party to have the right to define and regulate its own domestic levels of environmental and labour protection deemed necessary even as domestic labour and environmental

standards are not used as a form of disguised protectionism or lowered as a means of competing for trade or investment. (Both US and EU would regard the right to domestically regulate on these matters as important. There have, however, been wide objections including from US, after EU imposed a tax on aircrafts exceeding certain emission levels over its air space. The issue is pending resolution with International Civil Aviation Organisation (ICAO). EU also attempts to attach environmental concerns towards agricultural trade issues and subsidies that are some times seen by others as disguised trade barriers.

- c) Include initiatives for trade and investment as a means to promote sustainable development objectives. What could be suggested under this head could include front loading of liberalisation of environmental goods and services in market access negotiations, removal of non-tariff barriers in them and inclusion of corporate social responsibility practices.

EU is generally regarded as giving higher priority to sustainable development objectives and it needs to be seen to what extent US will agree to go along in respect of (b) and (c).

On the other hand, while the Labour and Environment chapters in Korea-US FTA are subject to the dispute settlement provisions of the agreement, this is not the case in Korea-EU FTA, in which differences are to be resolved through consultations. Will EU agree to subject the commitments made in the Chapter to dispute settlement provisions in TTIP? The EU position paper only talks about importance ‘to ensure there are channels for the Parties to deal effectively with disagreements’ and indicates ‘government consultations and third party assessments’ as ways to facilitate the search for implementation of solutions.

2.3.3 Globally relevant rules and other areas

The HLWG has recommended that US and EU seek bilateral agreement on globally relevant rules in several areas including trade facilitation and supply chains, competition policy and state owned enterprises, SMEs, transparency and raw materials and energy. In trade facilitation, HLWG has proposed that the disciplines aim to go beyond those under negotiation in WTO. Here as well as in other areas in which there are no WTO disciplines at present, the idea is for the negotiations to introduce rules with a future agenda for them to be multilateralised. Facilitating supply chain forms an important part here since many companies of developed countries rely on international trade in intermediate goods. Similarly, on competition policy, while one aspect will be on agreeing to certain minimum standards in their competition regimes (including Mergers and Acquisitions) and how they will be applied in a non-discriminatory manner, the other will be devoted to developing disciplines on state owned enterprises and state supported enterprises to provide a level playing field.

The Business Coalition for Transatlantic Trade (BCTT) papers outlining objectives for the negotiation have noted that the general disciplines be articulated with also multilateral application in view and not just fashioned to deal with particular situations between the two parties. If this is the objective, it may be necessary for the two parties to consider that there should be no denial for other developing countries for the usage of several of the policy measures and options that they themselves used when they were climbing up the development ladder. State Aid, Buy-American type provisions and Performance requirements, to mention a few, have been liberally used by the developed countries during their earlier development stages, and in some cases even now. Not envisioning similar usage by developing and emerging economies under the garb of providing ‘high standard’ and ‘21st century’ agreements and taking off some rungs of the ladder will be unfair. In this regard, both TPP and TTIP negotiations will have to be carefully monitored.

Raw materials and energy, will be a new topic to be included (it does not figure in TPP). EU has proposed elimination of export restrictions, non-discriminatory rules for exploitation, limiting government interventions in the form of price setting and developing specific rules for State Owned Enterprises. It also points to lack of definition of energy services in GATS, an absence of effective rules on international transit of energy goods transported by pipelines and widespread use of local content requirements. The urge to develop rules bilaterally and then seek multilateralisation in this area may also derive in part from EU's disputes with Russia in the past about gas prices and supply uncertainty.

It is not clear how US would be reacting to these proposals. But with US poised to become a large exporter of natural gas, it may calibrate its position. It may also prefer to await the judgment in the WTO dispute it has raised against China on exportation of rare earths. India itself will have both offensive and defensive interests. Depending on perceived surpluses or shortages or need for value addition domestically we do impose export restrictions from time to time on raw materials including iron ore, cotton and raw hides and skins. The implications of disciplines evolving in this area will need to be carefully studied. What could also be an issue to ponder is why cannot then there be disciplines to promote and to ensure freer export of technology.

3. What are the chances of TTIP getting successfully concluded?

There are many skeptics who doubt if TTIP will happen. Uri Dadush, a former director of international trade at the World Bank, has warned that expectations are dangerously high and reaching an agreement will likely take much longer and produce significantly smaller gains. Douglas J. Elliott, a senior fellow at Brookings, feels there may be a

1-in-3 chance that TTIP will happen. He correctly notes that ‘there will be small benefits for a lot of people but big losses in certain sectors (particularly in agriculture products) and they will fight’. As commentators have observed, it will happen ‘only if both sides are willing to make sacrifices and confront protectionist lobbies at home’.

Indeed much will depend on whether by the time a draft meanders towards deal making stages there will be enough political capital and will be left with this US Administration to overcome resistance from vested interests and push for a grand bargain. Even as EU Commission has rich experience, deriving from its internal market consolidation negotiations, where such regulatory convergence issues are routinely discussed and resolved, ratification of a deal cannot be assumed in EU as well unless the ground is well prepared. Negotiations in areas like market access in agriculture, regulatory convergence and harmonisation, food and safety standards, government procurement, data privacy, treatment of audio visual services, if it is included, and Geographical Indications will be tough. Negotiations are also not just between two parties, but 28 EU member states on the one side and the 50 federal states of US which have varying regulations and sensitivities in many areas.

EU will also be expecting that at some stage during the negotiations US will secure fast track Trade Promotion Authority from the Congress, in the absence of which it may be forced to, after finalising the agreement, negotiate once again to obtain US Congressional approval. Stuart Eizenstat a former US Ambassador to EU has said TPA is ‘absolutely essential since EU is not going to accept our final deal if they know it can be second guessed by Congress’.

EU, however, appears keener of the two to secure an agreement. It will not only help EU in its economic revival but also ensure that as US seeks to strengthen its ties with Asia, the importance of

transatlantic partnership does not get diminished in any manner. The pressure to conclude may particularly mount if TPP gets to be successfully concluded.

Both sides can also be expected to domestically use the argument that a successful TTIP could help them deal with the challenges posed by emerging economies. They could also use TTIP model to revive and take leadership in redirecting Doha Round negotiations. The build up to TTIP has also been such that with the involvement of top leaders from both sides, it may now have become too big to fail. Very likely, therefore, the question may not be whether it will happen but how far the various agreed commitments would go. In case certain issues prove very difficult there is also a possibility that the Agreement may set up institutional mechanisms to resolve pending and future issues thus making it a 'living' agreement. This could particularly be so in respect of regulatory convergence and harmonisation in various products and services sectors.

The other question is how long it will take for the Agreement to get concluded. A two year period may be too short considering that TPP negotiations are already in the fourth year and it does not appear that a deal will be signed this year. The conclusion of a possible TTIP may, therefore, not be possible before 2016 and since the ratification process will also take an year or so, its implementation is not likely before 2017.

4. Will TTIP include more countries?

There is no clarity about additional countries joining TTIP even as Turkey which is bound with EU through a Customs Union and Canada and Mexico which are closely tied to US through North American Free Trade Agreement (NAFTA) may be keen to be part of the negotiations. More members may not be contemplated now however

since the main focus of the negotiations, regulatory convergence, may become further complicated with the participation of more countries. EU already has an FTA with Mexico and EU is also in the final stages of concluding an FTA with Canada. Mexico and Canada are also parties in the ongoing TPP negotiations which are being led by US. It is, therefore, Turkey, which does not have any FTA with US, that may be most keen to join TTIP.

5. China and TTIP and other similar initiatives

China, which is the world's largest exporter and which has also emerged as the world's second largest economy (if EU is not regarded as a single economy), has built a large bilateral exports turnover which amounted US\$425.6 billion with US and Euro 428.36 billion with EU (2012 figures). Moreover, it hosts an investment stock of US\$ 54 billion and Euro 101.5 billion (2011 figures) respectively of US and EU companies which have set up production facilities whose output not only caters to the Chinese market but also gets exported overseas. China's export industry has also developed close supply chain interdependence with many of the South East Asian countries as well as with US and EU. While it has no such lead role in the services sector but China sees this sector as an important driver of economic growth in the next step of economic restructuring.

Against this backdrop, agreements like TTIP, TPP and TiSA could shift the balance of advantage against China in favour of participants in these initiatives through trade and investment diversions. Considering the huge stakes involved, China appears to be evolving a strategy to deal with the challenge. This is evident from its recent decision to join the ongoing plurilateral negotiations on 'Trade in Services Agreement (TiSA)' which it had opposed along with countries like India, Brazil, and South Africa till not long ago. In a letter dated 29th September 2013 to TiSA participants it has undertaken to participate

in the negotiations 'positively, constructively and equally'. China is also attaching importance to the trilateral FTA negotiations with Korea and Japan which were initiated in December 2012 apart from RCEP.

The question that arises is, will China join TPP? A report was put out in May this year that China will study the pros and cons as well as the possibility of joining TPP 'based on careful research and principles of equality and mutual benefit'. Recent reports suggest that the Chinese position may now have evolved and the new leadership may be looking at TPP more favourably. Unlike what some Chinese scholars earlier felt, that TPP was essentially intended to contain or constrain China, Long Yongtu, China's chief negotiator for entry into WTO said: 'I was informed by high level officials recently that the US side has'nt meant to exclude China from the TPP arrangement'. Another scholar, Chi Fulin, President of the China Institute for Reform and Development is reported as having said China has become 'serious and proactive' in engaging US on TPP and also added 'I think regional negotiations for trade and investment agreements also mean opportunities if we handle them properly'.⁶ The question that arises then is if China decides to join, will US and other TPP participants agree and what may be the entry price?

In any case, it will be very difficult for TPP negotiations to conclude this year or soon thereafter if China joins the negotiations at this stage. A minimum delay of two years in the negotiations can be envisaged. And if China is allowed entry, applications of Thailand and Taiwan which have already shown interest cannot be ignored, apart from other APEC members who may also show interest. While South Korea is widely expected to join soon, its participation may not affect the negotiations timeline a great deal in view of its recent FTA with US that has TPP like provisions. But those with others will and widening the membership will inevitably bring pressure on the 'high standard' of commitments. Some commentators have surmised that this may in fact be China's strategy.

On the other hand, if TPP concludes soon, as presently envisaged, and China is asked to join on a ‘take it or leave it’ basis and an entry price is also sought to be negotiated, will China be willing to accede? Will China be able to honour the ‘high standard’ disciplines on State owned enterprises, government procurement, domestic subsidies, labour and environment standards, export controls and regulatory coherence while also agreeing to WTO plus commitments such as on IPRs? Or will China, placing greater priority on getting entry than staying out, show willingness to take all the commitments in its stride and include them as part of the next stage of the reform process, that the new leadership is looking at? Developments in the next few months could provide a clearer picture.

It will be important for India to closely monitor developments in this regard. If China joins TPP, it could considerably alter the scenario including in respect of RCEP negotiations in which the balance between those who hold TPP membership and those who don’t will tilt in favour of the former with many trade heavy weights among them.

6. Implications for India

- (i) Elimination of tariffs could create trade diversion particularly in tariff sheltered sectors like agriculture, textiles and footwear. Footwear made in certain southern European countries could for example, become more competitive in US, in turn affecting our exports. Likewise, garments made in Romania or Portugal could edge out some of our products in the US market. In all, 17 per cent of our exports are destined to EU market and 12 per cent to the US. Considering the huge importance of these markets in our export profile, it will be important to examine in detail potential impact sectorally.

- (ii) More than tariff elimination, however, it will be elimination of non-tariff barriers that can alter fortunes, particularly in heavily regulated sectors like food products, chemicals, pharmaceuticals, automobiles and parts etc. Harmonisation or mutual recognition of standards and acceptance of conformance testing results as sufficient can reduce costs and time. These efficiency gains can again result in trade diversion following products in one of TTIP member becoming more competitive in another. This can happen even within EU where a German consumer may find a US product cheaper than a French or UK product. However, unlike tariffs, standards and regulations have to be observed on MFN basis and, therefore, even Indian products and services exports will become eligible for exports to US market if they have already met the criteria for export to EU market and vice versa. India could, therefore, also benefit from some trade diversion/creation and there can be gains in sectors like chemicals, pharmaceuticals and automotive parts.
- (iii) Any commitment to reduce agricultural subsidies in TTIP will be significant. Even if they may not result in immediate market access for non TTIP countries like India, they would signal some flexibilities from the strong agricultural lobbies in the west that have stood in the way of the Doha Round moving forward.
- (iv) In terms of standards and regulations for products and services at the international level, India has largely been a rule taker and not a rule setter. Very likely, the harmonisation/convergence exercise mooted by US and EU as part of TTIP would help the move towards a single set of internationally acceptable standards/regulations. While this would be welcome, we can, however, derive full benefit only if our various sectoral regulatory agencies and exporting companies keep themselves fully abreast of evolving developments.

- (v) India has considerable interest in greater protection accorded internationally to Geographical Indications. India herself has a 'Sui Generis' legislation in this area with several products like Darjeeling Tea and Basmati Rice getting this protection nationally. To the extent EU is able to prevail over US in terms of getting additional GI protection to food products this can help in promoting similar moves internationally including in WTO, that in turn will be favourable to us.
- (vi) There is certainly a strong case for India to quickly conclude the pending Broad-based Trade and Investment Agreement (BTIA) with EU to mitigate some of the possible trade diversion effects from tariff elimination in TTIP and also possible reductions in non-tariff barriers between EU and US. EU could however, with the 'high standard' TTIP negotiation now in progress, turn more rigid in terms of its position on IPRs, Investment, Sustainable Development and deep liberalization as well as towards accommodation of some of our interests. On the other hand, EU will also recognise that an FTA with a very large emerging market like India will give it a first mover advantage vis-à-vis US, will strengthen its ability to derive more gains from TTIP with the possibility of getting more competitive intermediate products from India and will buttress its position on GIs, to mention a few. It will be best if both sides review their positions on the remaining differences and look at possible flexibilities that can be shown to arrive at a mutually beneficial result.
- (vii) Successful conclusion of TTIP, if it is also similarly preceded by TPP, could build pressure for inclusion of similar provisions on deeper trade and investment liberalisation and 'high standard' disciplines on regulatory aspects in the multilateral Doha negotiations. After all, the combined GDP of the membership of both these agreement adds up to 61.6 per cent of world output

and 42 per cent of world trade. As argued elsewhere, it will be important for India to work with other like minded countries to evolve more balanced outcomes as an option that allows sufficient policy space for developing and emerging economies. The RCEP negotiations, which includes sixteen countries in all (ASEAN plus its six development partners - Australia, China, India, Japan, Korea and New Zealand) with a significant share in world trade, could be a platform to developing such fair and equitable rules. This avenue needs to be fully explored.

- (viii) It is essential to craft a national strategy that can effectively meet the challenges arising from the emerging mega plurilateral trade initiatives. Firstly, on the supply side, sectoral strategies have to be designed to monitor, examine and adapt to evolving standards and regulations even as the ever present need for improving competitiveness and bringing about product diversification of our exports become more urgent now. No less important is strengthening our trade infrastructure and putting in place further trade facilitational measures that can bring down transaction costs and eliminate time delays. Secondly, we will have to bring about optimal utilisation by our exporters of FTAs already signed by India. The tariff reduction and other commitments of our FTA partner countries will have to become more widely known. Also, a consultative process has to run in parallel involving the industry and all other stakeholders that can assist in factoring in our sensitivities and offensive and defensive interests into future FTAs as they are being negotiated or when periodic reviews of FTAs take place. Such information which has to come from our industry associations and export promotion councils (and also Commercial Wings of our diplomatic missions in respective partner countries) will have to be specific, preferably at a tariff line level (or specific service and mode of delivery) with other aspects like any

subsidisation that may be given by the partner country, non tariff barriers, regulatory bottlenecks, etc. Disenchantment after FTAs are signed will be of no use but can be a great handicap in building domestic support for further FTAs and liberalisation that appear to be shaping the global trend. Thirdly, with a strong IT services sector, India will need to examine the possibility of joining TiSA negotiations. While we have been opposed to plurilateral initiatives taking place outside of WTO framework, particularly with the Doha Round currently underway, but with 23 countries already participating in the negotiations, and with China now opting to join, India may need to examine carefully the price of remaining out of an agreement whose current participation, if China also gets accepted, will span over 75 per cent of global services trade. Finally, due attention needs to be given to RCEP negotiations as indicated in (vii) already. Similarly, we need to examine with EU if we can quickly bring to closure the BTIA negotiations while protecting our key interests.

7. Conclusion

TTIP is a mega free trade initiative that can potentially trigger significant changes in trade and economic relations between not only the world's two major economic powers that will be parties to it but could also affect the economic fortunes of third countries. For US, it further consolidates its approach of entering into ambitious and comprehensive free trade agreements, while being able to show, with TPP negotiations already in progress, that it has no intention of paying any less attention to Europe. For EU, TTIP is an important reaffirmation of transatlantic ties particularly at a time when it needs support to revive the economies of various EU members many of whom have been severely affected by mounting debt, unemployment

and economic decline. This deal will, however, be different from other FTAs in that the key focus will be on regulatory convergence and harmonisation or mutual recognition of standards and other requirements. These are expected to deliver more trade and efficiency gains than tariff liberalisation and liberalisation of other areas of market access which will however also be keenly watched particularly in relation to sensitive areas like agriculture, automotive products etc. Both EU and US are also hoping that a model TTIP that covers several new areas like supply chains, competition policy, state owned enterprises and raw materials and energy, will be able to come out with disciplines that can be later multilateralised.

India could be affected by some of the trade diversions that may result from EU and US products gaining competitiveness in each other's markets. The scale of potential impact and the products affected will however need to be determined after detailed sectoral studies, particularly relating to chemicals, pharmaceuticals, automotive products, textiles, footwear and certain agricultural items. Trade diversion impact, however, may not all be negative. Positive gains could accrue from some intermediate products finding favour with EU or US companies that have gained new opportunities for finished products, or as a result of reduction of non-tariff barriers and harmonisation of EU/US standards. But the impact of a successful TTIP, if it is also preceded similarly by TPP, could be significant on international trade governance. The developed country trade majors may seek to push for the acceptance of similar disciplines in WTO detracting from the objectives of Doha Round that is intended to have a development agenda. Such moves will constrain policy space for developing countries including emerging economies. India along with other like minded countries will have to work towards evolving alternative outcomes and options that can be more balanced and fair and equitable. The ongoing RCEP negotiations could be one of the

forums for this purpose. In this regard, however, China's evolving position vis-à-vis TPP also needs to be watched. India will have to devise an all round strategy to effectively meet the challenges arising from the emerging plurilateral initiatives.

Endnotes

- ¹ EU Commission has already come out with position papers on several issues many of which have been released to the public. From US side as well, the Business Coalition for Transatlantic Trade (BCTT), has set out the objectives of the negotiations in key areas.
- ² The twenty three countries/economies are Australia, Canada, Chile, Colombia, Costa Rica, EU, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Republic of Korea, Switzerland, Taiwan, Turkey and US
- ³ The EU Council mandate for TTIP negotiations presently excludes Audio-Visual services but the EU Commission would have opportunity to make recommendations on additional negotiating mandates.
- ⁴ The Korea-EU does not have a separate investment chapter since Korea already has bilateral investment agreements with many EU members.
- ⁵ According to the publication *Jobs and Growth Through a Transatlantic Economic and Trade Partnership*, brought out by BUSINESS EUROPE, EU has substantially larger GPA commitments than the US in terms of coverage and of thresholds. As per this report, Euro 340 billion of EU public procurement was open, versus only Euro 40 billion in the US for 2011 but the report adds that in practice US market is more open than its GPA commitments.
- ⁶ Interestingly, notwithstanding the onerous commitments that China had to fulfill as a price for its WTO entry, Chi Fulin notes 'we have had a very successful experience in transforming the pressures of entry into WTO into incentives and development opportunities'.

References

- Akhtar, Shayerah Ilias and Vivian C. Jones. 2013. "Proposed Transatlantic Trade and Investment Partnership (TTIP): in brief". Congressional Service Report, July.
- BUSINESS EUROPE. 2012. *Report on Jobs and Growth Through a Transatlantic Economic and Trade Partnership*. March.
- Dadush, Uri, March 2013. 'Don't buy the hype on the Transatlantic trade deal. Q&A, Carnegie Endowment for International Peace.

- ECORYS. 2009. Study on Non-Tariff Measures in EU-US Trade and Investment, December.
- Erlanger Stern. 2013. “To Create Jobs Europe Pushes for Trade Deal with US”. *New York Times*, June 12.
- Exchange of letters between Ambassador Kirk and Trade Minister Kim on Geographic Indicators, June 2011, available on USTR Website.
- Final Report of the High Level Working Group on Jobs and Growth, February 11, 2013.
- Franco, Joseph *et.al.* 2013. “Reducing Transatlantic Barriers to Trade and Investment”. Center for Economic Policy Research, London. March.
- Fu Jing. 2013. “China, US ‘ready to engage’ on TPP talks”. *China Daily USA*. 1 November.
- Trachtenberg, Eric. 2012. “A Transatlantic Partnership – Agricultural Issues: Different Visions, A Common Destiny”. The German Marshall Fund of the United States. October.
- Report from the Commission to the European Council Trade and Investment Barriers Report 2013.
- Schott, Jeffrey J., and Cathleen Cimino. 2013. “Crafting a Transatlantic Trade and Investment Partnership: What can be done?” Peterson Institute for International Economics. March.
- Seshadri, V.S. 2013. “Three Mega Deals that can Change the World”. *The Hindu*. 7 October.
- Seshadri, V.S. 2013. *Trans Pacific Partnership*. RIS Discussion Paper, 182, July.
- WTO. 2011. *Tenth Review of Trade Policies and Practices of the European Union*. WTO Secretariat Report.
- WTO. 2012. *Eleventh Review of Trade Policies and Practices of the United States*. WTO Secretariat Report.

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