



May 9, 2016

## Latest TTIP Round Yields Progress, Gridlock

by Michael McKeon

Negotiators, regulators and stakeholders from civil society and industry convened in New York City last month for the 13<sup>th</sup> round of negotiations of the Transatlantic Trade and Investment Partnership, or TTIP. The round followed the highly anticipated visit of U.S. President Barack Obama to the Hannover Messe, the world's largest industrial trade fair, where he and German Chancellor Angela Merkel extolled the potential benefits of the agreement and called for its conclusion in 2016. In a concerted effort to meet that challenge, TTIP negotiators from the United States and the European Union continued intense talks on nearly all chapters of the agreement. Incremental progress was made, but significant points of disagreement remain in areas such as market access, regulatory cooperation and the overall structure of the agreement.

Negotiators focused primarily on **consolidating chapters**, with the goal of working off of tabled texts, or offer proposals, from both sides in all negotiating areas by the 14<sup>th</sup> round, which is expected to take place this summer in Brussels. According to the European Commission's TTIP State of Play, 17 consolidated texts had been tabled as of April 27, with chapters on anti-corruption, small- and medium-sized enterprises (SMEs), state-to-state dispute settlement, and customs and trade facilitation in advanced states of consolidation. Commission officials have stated that the United States and EU must consolidate texts for all chapters, which will likely number between 25 and 30, by the end of summer in order to reach the "end game" of negotiations in 2016.

**Market access** negotiations advanced in some areas, but did not yield significant breakthroughs. Negotiators continued to discuss the 97 percent of total tariff lines that they had agreed to eliminate as of the 12<sup>th</sup> round in February. Of those tariffs, 90 percent will now be eliminated upon the agreement's entry into force, an increase of 2.5 percent from the last round. U.S. and EU negotiators maintain that the remaining 3 percent of duties, which apply primarily to industrial and agricultural goods, will not be addressed until the end game of negotiations.

Tariff elimination, particularly in agriculture, is a top priority for the United States, which itself has low average inbound tariffs but faces relatively high duties in the EU. U.S. government officials and agriculture industry stakeholders point out that the United States has an approximately \$13 billion trade deficit in agriculture with the EU, even as both U.S. agriculture exports to the rest of the world and EU imports to the United States have increased over the past decade. Both the United States and the EU have linked tariff elimination to offensive interests in other areas. Although some officials have publicly speculated that the EU will not ultimately eliminate its remaining agricultural duty lines—opting instead to place them in an "other treatment" category subject to tariff quotas—any movement on sensitive tariffs will likely be conditional on U.S. concessions in other areas, such as government procurement and geographical indications.

Negotiations on **government procurement** continued after the United States tabled its first offer in the February round. Although both parties have made proposals for procurement disciplines and market access that go beyond their existing WTO commitments, each side claims that the other does not offer

enough. In particular, the EU is seeking access to contracts for the Federal Aviation Administration and rail and urban transportation, as well as state projects that utilize federal “flow-down” funds, or money provided by the U.S. government to states for local projects. The United States claims that member state government procurement regimes are not consistent throughout the EU, and that some are corrupt or fail to factor legitimate metrics beyond product cost into contracting decisions. U.S. officials have dismissed calls for a revised procurement offer and insist that the parties work off of currently tabled texts.

The timing of discussions on government procurement is particularly sensitive in the United States, as the EU is seeking concessions that go beyond U.S. commitments in the Trans-Pacific Partnership, or TPP. As the agreement lingers unratified in Congress and the legislative bodies of other TPP countries, U.S. negotiators are reluctant to table an offer that might prompt Pacific trading partners to seek a better deal on procurement and other issues.

The parties are consolidating texts on **rules of origin**, which determine the amount of a product that must be produced within a trade agreement partner country in order to receive preferential treatment, such as tariff-free market access. Negotiations for this chapter are particularly complicated, as manufacturers in both the EU and the United States operate within complex global supply chains. Automobiles and textiles have been important areas of focus in TTIP, and will likely remain contentious until the negotiations’ end game.

The EU and United States have exchanged two offers on **services** market access and continue to work on texts submitted last July. Disagreements remain as to whether to codify exceptions through positive lists – which would explicitly lay out the services to which provisions *would apply*, and *exclude* anything not listed – or through negative lists – which would identify the services to which provisions *would not apply*, and *include* anything not listed. The EU has signaled a willingness to scale back broad exceptions it had proposed for services, which before the 13<sup>th</sup> round amounted to nearly 250, compared to approximately 10 that the United States had made. The United States is pushing the EU to match or exceed the commitments it made in the EU-Canada Comprehensive Economic and Trade Agreement, or CETA, and the EU continues to seek greater access to the U.S. aviation, telecommunications and maritime services markets. The parties made progress on provisions related to **professional services**, devising ways in which professionals from one market may work in another. Negotiators discussed **financial services** in terms of what market access text might look like, but have not yet agreed to include broader provisions, namely regulatory issues, in the final agreement.

Negotiators made inroads on both **sectoral and horizontal regulatory cooperation**, but remain at odds over several important issues, including appropriate levels of stakeholder input, testing and approval requirements, and the means by which U.S. and EU regulators might cooperate. The parties began work during this round on concrete texts for sector-specific regulatory cooperation. The EU tabled text on **pharmaceuticals** and the United States has put forth proposals on **medical devices, pharmaceuticals** and **cosmetics**. Significant headway was reportedly made in negotiations on pharmaceutical regulatory cooperation, particularly on mutual recognition of good manufacturing processes. In the weeks leading up to the 13<sup>th</sup> round, regulators also made progress toward harmonization of certain **auto standards** related to lighting, visibility and seatbelts. Negotiators expect to have text proposals for all nine sectors under discussion by the 14<sup>th</sup> round.

Significant points of contention remain in regulatory negotiations, the pillar of the agreement that is expected to have the greatest impact on the trans-Atlantic economy. The EU and United States use

different processes to seek and incorporate stakeholder input into new regulations, and each side is reluctant to change its approach. Negotiators continue to discuss **technical barriers to trade**, or **TBT**, with some difficulty, but are currently in the process of consolidating texts. The parties hope to harmonize or mutually recognize standard-setting and conformity assessments to avoid duplicative testing on both sides of the Atlantic, a process that is particularly burdensome for SMEs.

**Sanitary and Phytosanitary measures**, or **SPS**, negotiations did not yield significant progress in this round. Both the United States and the EU claim to have high levels of protection for food safety and animal and plant health, but disagree on practices for vetting goods and mitigating health risks. In particular, the parties maintain considerably different positions on **genetically modified organisms**, or **GMOs**. The United States is seeking a faster, more efficient approval process for U.S.-produced GMOs and is reportedly pressuring the EU to accept trace elements of GMO traits in shipments of foodstuffs. The EU reports that the United States maintains SPS measures for certain fruits and vegetables that impose barriers that are too burdensome to surmount, especially for small producers. Although SPS text consolidation is underway, the chapter is heavily bracketed and will likely remain contentious until the end game of negotiations.

**Geographical indications**, or **GIs**, have become a major sticking point in the TTIP negotiations. European stakeholders in Brussels and member states such as Italy, Greece and France assert that protection of GIs is critical to the eventual passage of the agreement in Europe. U.S. government officials and industry stakeholders contend that many of the terms that the EU seeks to protect are in fact generic names. To further counter arguments for the protection of these goods, many point out that European agricultural products are competitive in the U.S. market, while U.S. products that carry these names cannot enter the EU market at all. Among other interests, the EU seeks to update and incorporate into TTIP the 2006 Agreement between the United States and the European Community on Trade in Wine, which protects some names of wines and spirits but permits the generic use of others, such as Port and Chablis, in certain circumstances. According to U.S. and EU officials, progress was made on discussions related to spirits, but the parties continue to disagree on wine and on the extent to which the Wine Agreement might be updated in TTIP. The parties disagree fundamentally on the most effective way to categorize and regulate these goods in general, and it is clear that high-level political engagement will be required to resolve their differences. The negotiators made other technical progress on this front during the 13<sup>th</sup> round, however, including the submission and consideration of a significantly pared down EU list of GIs that the Commission is seeking to protect.

Negotiators made notable progress in other trade rules disciplines. The parties continue to discuss the EU proposal on **sustainable development** tabled during the October 2015 round and the **labor and environment** texts tabled by the United States in February 2016. Both the EU and U.S. proposals go beyond commitments made in other existing trade agreements. The parties have not yet determined how provisions in this chapter might be enforced, and expect to begin consolidation soon.

Few outstanding issues remain in the proposed chapters on **competition, customs and trade facilitation, state-to-state dispute settlement** and **SMEs**. Beyond GIs, discussions on **intellectual property rights** advanced during the 13<sup>th</sup> round; both parties have put forth proposals and have begun to discuss specific issues, such as border measures.

The EU and United States resumed talks on **investment** in February 2016 after the European Commission suspended negotiations at the end of 2013 to conduct an EU-wide public consultation on the issue. In

September 2015, the Commission released a new proposal for an investment court, which would supplant the **investor-state dispute settlement**, or **ISDS** system common to many U.S. and European trade and investment agreements. Among other changes, the EU proposal would establish an appeals mechanism and a standing roster of permanent arbitrators. The parties continue to discuss both proposals with the goal of identifying areas of easy convergence. During the 13<sup>th</sup> round, negotiators discussed ways to ensure each party's right to regulate in the public interest, the impartiality of arbitrators, the prevention of frivolous claims, and the establishment of consistent jurisprudence.

In addition to negotiating the technical details of TTIP, officials are mapping out the agreement's eventual structure. Specifically, the parties continue to discuss whether to include standalone chapters on **agriculture** and **energy and raw materials**. The EU hopes to include both in the final agreement, but the United States maintains that provisions on these issues could be addressed elsewhere. The EU has put forth a position paper on energy, and consolidation of various texts related to agriculture are already underway.

Elected representatives on both sides of the Atlantic are commenting with greater regularity on the TTIP agreement. Twenty-six U.S. senators recently sent a letter to U.S. Trade Representative Michael Froman outlining agriculture concerns and interests that they have in the trade deal. They pointed to regulatory barriers on beef, produce and dairy that effectively keep U.S. products out of the EU market. In the European Parliament, members of the INTA Committee, which oversees international trade, caution against lowering consumer standards through the agreement and concluding a tariff-only "TTIP-lite."

The more frequent statements from elected officials may reflect increasing engagement on TTIP among their constituencies. [A recent Bertelsmann Stiftung survey on attitudes toward TTIP and trade in Germany and the United States](#) addressed increasing concern about – and in many cases, disapproval of – TTIP. As negotiations advance, it is clear that policymakers must undertake meaningful information campaigns to address public concerns. Froman and EU Trade Commissioner Cecilia Malmström intend to meet for stocktaking and political oversight at the end of May. The meeting will be the sixth high-level meeting of the trade representatives this year, and will serve as a platform to address both the technical issues of negotiation and the importance of public support.

*Michael McKeon is project manager for transatlantic relations at the Washington, DC-based Bertelsmann Foundation. [Michael.McKeon@bfna.org](mailto:Michael.McKeon@bfna.org)*