

Statement for Record for Hearing

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**Hearing: Chairman Camp Announces Hearing on President Obama's Trade Policy Agenda with U.S. Trade Representative Michael Froman**

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**Statement: Michelle Egan, Professor, School of International Service, American University**

There has been a significant surge of media and policy attention on both sides of the Atlantic on the recently approved mandate for negotiations on the US and EU Trade Agreement and Investment Partnership (TTIP). At the same time as negotiations started in Washington DC, between the US and EU in July 2013, the TPP negotiations were continuing in Malaysia, and the Canadian-EU Comprehensive Trade Agreement, along with a host of other FTAs continue to move forward at different speeds. Though the continuing centrality of the transatlantic economic relationship is often cited and noted in terms of trade in goods and investment, with various reports estimating the potential gains in terms of jobs and growth, and commissioned reports estimating gains of 0.4 % GDP for US and 0.5 % for EU by 2027, there have also been some concerns about the trade diversion effects on neighboring states. The TTIP negotiations have generated anxiety in the world's 11th, 14th, and 17th largest economies respectively, Canada, Mexico, and Turkey, and have led to accession of Mexico and Canada to TPP. The average annual growth has been 2.5 percent in Canada, 4.4 percent in Mexico, and 6.3 percent in Turkey, and all three have focused on regulatory alignment with their neighbor, as part of the accession negotiations and customs union in Turkey, and regulatory initiatives and border security measures through NAFTA. Some in Canada and Mexico have advocated bridging the TTIP negotiations with the EU into a broader NAFTA-EU agreement. This will be difficult as NAFTA is not a customs union with a common external tariff, the EU has spent four years negotiating with Canada for a Comprehensive Economic Agreement (CETA) that has not yet been concluded, and the FTA agreement between Mexico and the EU stemming from 2000 needs updating, as it was written at a time of NAFTA parity, and concerns about trade diversion. Bertelsmann Foundation in a commissioned study, found that these three states have the most to lose from a comprehensive TTIP, with potential long term losses of 9.5 percent for Canada, 7.2 percent for Mexico, and 2.5 percent for Turkey.

What we are seeing is a new trend in FTAs: major states are going to the negotiating table to deal with a broad range of issues that cover both horizontal issues and sectoral concerns. If we break these down: TPP 12 (38%), RCEP (30%), Japan – EU FTA (34%), US-EU FTA (46%) – share of world GDP –

Preferential negotiations are emerging among industrialized nations. This agenda is more complicated and controversial as the areas for consideration focus on non-tariff measures and regulatory barriers -so called behind the border issues- that have substantial impact on domestic rule-making and administrative authority. Can these trans-regional trade agreements become a vehicle to achieve a deep integration agenda ? Given the limited progress at Doha can these new efforts yield substantial gains, update rules on trade, investment and services, and foster a new dynamic for effective global governance ?

Despite the attention given to TTIP, it is a departure from Obama's longstanding trade agenda. The announcement comes on the heels of the North and Central American Free Trade Agreements (NAFTA and CAFTA, respectively) with Mexico and the small Central American countries, as well as continuing negotiations over a Trans-Pacific Partnership (TPP). The US has signaled its interest in these regional arrangements as the World Trade Organization (WTO) Doha round on global trade liberalization has all but stalemated. Recent steps by other countries, including China, Singapore, and South Korea, to move forward with regional and bilateral trade agreements places even more pressure on the US and Europe to follow suit. The US is pushing for market access in services to be as substantial as that in goods, and promoting significant trade and investment rules in the TPP and TTIP. US agricultural groups are also pushing the administration on ensuring dispute settlement measures in TPP to address potential problems in the sanitary and phytosanitary (SPS) area which is likely to reoccur in any subsequent US EU FTA. That said, the differing perspectives over financial services highlights the internal divisions in US, with Treasury more hesitant to include financial services regulations in any trade agreement. While both sides work within the existing U.S.-EU Financial Markets Regulatory Dialogue, industry feels that this has amounted to no more than a dialogue, and are frustrated by the reluctance to push for greater regulatory cooperation or mutual recognition, which has some backing among specific members of Congress. The Transatlantic Legislators' Dialogue between the European Parliament and the House of Representatives endorsed a joint statement that argues that TTIP should include financial services regulations.

While TPP has just completed its nineteenth negotiations in Malaysia with concerns about slow pace of discussions, the TTIP has just begun its first round in DC. However, much groundwork has been undertaken in the latter negotiations, and the bilateral transatlantic trade relationship during the Obama administration, has been remarkably peaceful and constructive. The global financial crisis, contrary to expectations, did not prompt increased conflict between the two sides. There were no new major trade disputes or escalations of existing ones, and progress was made on resolving a number long-standing disputes. Low-key cooperation on trade facilitation continued prior to proposed FTA, dialogue on regulatory cooperation has evolved, and negotiations on container security and other issues have made significant progress.

In all of these discussions about the vaunted TTIP deal, and the ongoing TPP negotiations, few pay attention to the North American market. More than \$1bn worth of goods cross it every day. Bilateral US-Mexico trade topped \$500bn, about the same as total US-European trade, and there are close-knit supply chains, making the inclusion of Mexico and Canada in the TTIP, as a strategy to match that of TPP, one that is being strongly advocated by both neighbors.

The hearing has brought together the numerous trade efforts of the current administration that illustrate the variety of forums in which trade, regulation and investment are being negotiated. There are criticisms that the various agreements go against the spirit of multilateralism. Yet Asian integration has been based on regionalism through the growth and development of global

supply chains and production network that has created levels of economic interdependence through intra-regional trade. Part of this increase is due to supply chains where services, including transport, communications and other business services are key components in the operation of supply chains (ADB-JETRO). There are concerns about the growth of FTAs, the consolidation of regional trade agreements into lowest common denominator, the impact on developing economies, and the difficulties of implementation and compliance given regulatory heterogeneity.

But one notable feature of the growth of such FTAs is their focus: they focus primarily on NTB such as standards, technical regulations, in standards, the certification and testing procedures, in services regulations, and in prudential rules in financial services.

### **For the US**

- There is potential for US trade facilitation, market access, and regulatory cooperation given that the US Administration is engaged in bilateral, plurilateral, and regional agreements simultaneously (Trade in International Services Agreement, TPP, TTIP, BITs). There could be synergy between agreements if carefully managed through using successful negotiations being used as a template for other agreements.
- The effort to create common principles on issues such as state owned enterprises, subsidies, domestic ownership requirements, and intellectual property protection measures can yield substantial gains.
- Real benefits for business and consumers would accrue from promoting regulatory cooperation with early consultations on significant regulations, impact assessment, upstream regulatory cooperation, and good regulatory practices if there is genuine equivalence and similar shared regulatory objectives and outcomes.
- Avoid certain terms that evoke contention on both sides: precautionary principle and mutual recognition have generally been viewed in negative terms and such debates have yielded limited results.
- There is much to be recognized from other regulatory dialogues and achievements that collectively highlight a more positive set of outcomes: eg. US-EU wine agreement, insurance dialogue, container security agreement. Recognition that these initiatives can be transferred across different contexts to avoid duplication.
- There needs to be recognition that some of same issues that have involved NAFTA partners are also on the agenda with the EU. Both would benefit from regulatory harmonization. Yet the United States and its neighbors reverted to old habits of bilateral, ad hoc negotiations.

- A Business Coalition for Transatlantic Trade has been recently established to bolster support for pursuing TTIP negotiations, although there are also some groups mobilizing to ensure their views are heard as well. The issue of transparency has been raised in TPP negotiations, by various groups, so this is something that needs to be considered to ensure wide public support. Notable concerns and mobilization in Japan about TPP suggest that this is a broader issue of public engagement and policymakers in the US will have to engage with labor, environmental, consumer and other groups, and to engage public opinion to avoid dysfunctional trade politics.

## **For the EU**

- The TTIP negotiations have generated widespread attention in Europe. The stakes are high for both sides as they have made strong political commitment. However, there needs to be more attention given to the efforts in Europe to complete the single market through the various proposed levers of growth through the Single Market Act. This will have an important impact on the TTIP negotiations through fostering specific reforms.

- The trade negotiations will be impacted by the Lisbon Treaty and the role of the European Parliament which is subject to elections in the coming year. As a result, foreign direct investment (FDI) and some sensitive services sectors, including education and healthcare, were brought under EU competence, making EU authority for trade policy “comprehensive” and EP now plays a role in trade policy- The EP is thought to be more likely to assert its preferences with respect to bilateral agreements. The recent NSA issue should not be underestimated in the European Parliament given the prior role in Passenger Name Recognition, ACTA and other transatlantic issues that have been amended or challenged by the European Parliament.

- The issue of cultural exceptions needs to be downplayed in the TTIP negotiations. Though this was a major concession to specific European states, this was not a priority of Motion Picture industry who are much more concerned about coordination on copyright, piracy and intellectual property issues. It will be important to not let this issue cloud progress in other areas.

- The EU is currently pursuing bilateral negotiations with Canada, Singapore, Japan and India, establishing long-term, closer ties with important trading partners, and hence have similar issues under consideration in various bilateral negotiations. They are often viewed in isolation when many issues (eg public procurement are part of discussions in each separate negotiation).

- There are more than 1000 BITs negotiated by member states. The new Lisbon Treaty and subsequent negotiations between the EP, Commission and Council have left to some important changes in future BIT agreements but leave those already concluded grandfathered in and hence not subject to challenge in the European Court.

## **For Japan**

- Entrance in FTAs shifts Japan from passive to active player in trade politics and is being used in much the same manner as the Korean negotiations with US and EU to leverage domestic structural reform (Abenomics).
- These major FTAs cover more of Japanese trade than past trade negotiations, although there is a need to ensure that the agreements focus on NTB rather than the preferred Japanese goals of tariffs, to yield substantive gains.
- For the United States, Japan's TPP membership dramatically increases the economic significance of this agreement, and the fact that US and Japan have indicated that there are sensitive sectors, that all goods subject to negotiation, but full tariff elimination is not precondition for TPP worth watching as this suggests different kind of trade ambitions emerging than in TTIP where tariff reduction is one element but has garnered less attention than regulatory issues.

## **For Canada**

There are concerns that the recent start of TTIP will sideline the EU-Canada negotiations which have now been going on for four years. Though close to completion, there seems to be limited effort to bring together all the different FTA negotiations to reduce transaction costs.

Both the neighboring countries in &US, Canada and Mexico, would benefit from regulatory harmonization. Yet the United States and its neighbors have reverted to old habits of bilateral, ad hoc negotiations. The case for a North American market has lapsed, despite some advantages that would accrue from negotiating a common external tariff and eliminating restrictions on transportation and services.

### Assessment

Most of the assessment so far have been positive with many pundits citing the trade benefits and gains from commissioned studies by German Marshall Fund, ECIPE, ECORYS and Chamber of Commerce among others.

Among the concerns are:

- a. TTIP reinforces the shift away from multilateral trade policy in recent years. For some in Europe, the negotiations reflect a power asymmetry between US and EU, and that in such a transatlantic market the US will be dominant due to regulatory heterogeneity and internal division within the EU. This understates the importance of TTIP in Europe where austerity and lack of stimulus had led European leaders and business to strongly hope that such a deal will yield dividends. It also

b. the language of containment is problematic. FTAs are open to extension and the goal of marginalizing China in TPP, creating an economic "NATO" is counterproductive, given that China is negotiating in other regional forums (RCEP) with other Asia-Pacific countries.

c. If TPP fails to deliver major liberalization as the traditional pattern of shielding sensitive sectors continues and a much diluted trade agreement emerges, there are other trade initiative in Asia.

d. The US and the EU may agree on core issues such as zero tariffs, and liberalization of services and investment in principle, but these negotiations will be - based on prior experience - a hard slog.

However, there is a sustained commitment to common procedural norms and principles (eg e.g. early notice of planned regulatory initiatives and transparency, horizontal coordination as well as sectoral coordination, regulatory upstream cooperation. Both of them have Regulatory Impact Assessment (RIA) that tend to look at domestic competitiveness concerns. Changes in RIA in Europe through the creation of RIA Board as well as Executive Orders in US to consider the international impact of domestic regulations, are critical. The *Review of the Application of EU and US Regulatory Impact Assessment Guidelines on the Analysis of Impacts on International Trade and Investment and other documents need to be a central component in negotiations.*

The European Commission's Impact Assessment Guidelines and the US Office of Management and Budget's Circular A-4, Regulatory Analysis contains relatively clear instructions on the matter- executive and statutory - obligations to take international trade impacts into account when developing regulatory proposals. This is essential for new technologies, upstream regulations, and when evaluating existing regulatory practices.

e. Creation of a Transatlantic TRIS system: TRIS stands for a Technical Regulations Information System where national regulations and standards are notified to EU. An improved bilateral mechanism for comments and replies in the context of the WTO TBT Agreement would provide for enhanced transparency and would allow for a dialogue between regulators with regard to the notified draft measure.

f. A twinning or partnership system where regulators would spend time in their respective counterparts system so that there could be exchange of information, discussion of best practices and policy learning.

g. The EU has also identified measures it wants to promote in any negotiations, most notably the liberalization of American government procurement contracts, especially since the US has put public infrastructure spending at the centre of its economic stimulus packages. Many of these provisions are state and local. There will need to be stronger focused discussions with Governors

as agricultural standards, public procurement, insurance and other regulations are often local or state measures.

h. One of the more important issues is financial services with sharply divergent views between the US and EU masking internal differences in the EU. Of major concern to the EU is prudential regulation. Though the US and EU have agreed to temporary arrangements on derivative trading rules, the prospect of piecemeal negotiations, temporary exemptions, and substitute compliance should not be underestimated as tools to manage negotiations.

i. The Obama administration has made it a priority to complete the Trans-Pacific Partnership (TPP) with Asia and the Transatlantic Trade and Investment Partnership TTIP with the EU. However, a number of the economies in TTIP are emerging economies and the export markets are much less significant than that of its neighboring states so the US should consider the impact on Canada and Mexico and the importance of this regional supply chain in terms of exports, energy, labor, and regulatory cooperation.

j. TTIP talks will not revolve around traditional areas of negotiation, such as tariff reduction and market access as much as issues of regulatory dialogue, substitution, and exchange through best practice, information sharing, coordination of upstream regulatory measures, impact assessment and alternative dispute resolution mechanisms. These may not have immediate pay-off but will have a much longer term effect given investment patterns, global supply chains, and the salience of regulatory issues in trade disputes and negotiations.

k. There needs to be some parallel movement in terms of the North American market. A CET and current “rules of origin” requirements mandate that goods must contain a certain level of North American content to qualify for NAFTA tariff preferences, which slows commerce (Pastor, 2013). Given Mexican and Canadian engagement in TPP, and their interest in TTIP, this is an opportunity to review NAFTA and consider some of the elements of the EU Single Market and Single Market Act (eg cabotage restrictions, occupation and professional licensing, professional card, trans-European networks, among other issues).