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## TPP and TTIP in comparative context: what can Europe learn?

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### Theme

There are lessons for Europe to learn from the experience of the Trans Pacific Partnership (TPP).

### Summary

Commitments to trade multilateralism under the aegis of the WTO have, over the last decade, weakened in the face of protectionist urges after the 2008 financial crisis and the rising pressures for mega-regional Preferential Trading Arrangements (PTAs) and smaller regional trading arrangements (RTA). Notwithstanding a broad consensus amongst economists and trade policy officials that PTAs and RTAs are sub-optimal when compared with multilateralism, they continue to flourish. Explanations for the adoption of second-best strategies are driven more by political considerations than economic ones. The Trans Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) conform to this pattern. They are products of politics as much as economics. Either way, the success or failure of either project will cast policy shadows over the evolution of the global trade regime in the next decade with attendant implications for the states of the Asia Pacific and Europe. There are lessons for Europe to learn from the Asia Pacific experience.

### Analysis

#### Introduction

The Trans-Pacific Partnership (TPP) has been signed but not ratified and the Transatlantic Trade and Investment Partnership (TTIP) negotiations are in train. The former faces challenges in securing legislative ratification in the US and some other member states, but its progress faces widespread, and growing, resistance in key European countries, with opposition coming from both within national bodies politic and wider civil societies. The success of both projects hangs in the balance. This short paper looks at the cases for and against both projects and analyses the political dynamics at play. Putting its judgment upfront, the paper's conclusions are threefold: (1) Europe has much to learn from the TPP experience; (2) assuming a Clinton victory in the forthcoming US presidential election, the TPP has more chance of success than the TTIP at this time; and (3) the TTIP's chances are further diminished by a likely UK departure from the EU.

## TPP and TTIP compared

The TPP is an agreement between 12 countries with very different economies but all of who are members of APEC.<sup>1</sup> The TTIP is a bilateral negotiation. They have much in common but also much that differentiates them. Ostensibly their broad aims are almost identical –and ambitious– although at different stages of development: to further integrate the trans-Pacific and trans-Atlantic market places.

The TTP negotiations concluded in early October 2015 with the legal text being signed on 4 February 2016. To ‘enter into force’ all members must ratify the agreement. If this has not happened after two years, then it can enter into force if six of the 12 members representing 85% of the total GDP of the group ratify it. The US, with nearly 62%, and Japan, with over 17% of total GDP, effectively have a veto over ratification. Anti-trade populism is currently a source of considerable concern in the US and features strongly not only in Europe but also in the current US presidential election. Donald Trump is opposed. Hillary Clinton is trimming for political purposes but can be expected to come on board if elected.

The TTIP negotiations are entering a very difficult phase with an unprecedented and articulate opposition skilled in the use of modern social-media technologies and at a time of acute multi-dimensional crisis in the European project. The TTIP, like the TPP, must be seen as a logical extension to the wider elite-driven foreign economic policy of both the US and the EU. It also reflects a frustration with the failed multilateral trade negotiations (MTN) during the lost decade of the Doha round. It also reflects a commitment of both Washington and Brussels policy elites (to be distinguished from much activist civil society and populist politics) to engage in ‘competitive trade liberalisation’ that attacks ‘behind the border’ non-tariff barriers (NTBs) in the service and finance sectors –the sectors that now dominate trans-Atlantic trade–.

## The case for TPP and TTIP

There are basically five arguments in favour of both agreements. First, the TPP is seen as a major step forward in opening up trade in goods between the member countries. And it should be noted that, in contrast to trans-Atlantic trade, trade in goods is still more important in the Pacific than trade in services. The combined population of the 12 members of the TPP is just under 800 million and the total GDP is approximately US\$28.5 trillion. Advocates of the TPP point out that roughly 98% of tariffs in the region will be eliminated and trade facilitation measures will ensure that goods are moved between members as freely as possible (USTR, <https://ustr.gov/tpp/>). Supporters of the TPP see potential income gains by 2025 of US\$295 billion, of which US\$78 billion would go to the US and US\$119 billion to Japan (Hamilton, 2014, p. 83).

As with the TPP, the TTIP is argued to possess the potential to deliver substantial economic benefits on both sides of the Atlantic and, like the TPP, given its size it is not just another trade deal. Indeed, it is the size of the interactions, both in absolute and comparative terms that the TTIP boosters identify as an important incentive. They stress

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<sup>1</sup> Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US and Vietnam.

US and European control of 75% of global financial markets, 50 % of global GDP in terms of value and 41% in PPP terms, in excess of 40% of global trade in services and 33% of global trade in goods, 57% of inward FDI and 75% of outward FDI, half of which goes to each other. US investment in Europe was, as late as 2011, still four times greater than in Asia (Hamilton, 2014, p. 82-3). Actual economic gains from the TTIP were initially calculated as high as US\$159 billion per year for the EU and US\$127 billion for the US.

Secondly, the proponents of both the TPP and the TTIP point to NTBs as the biggest remaining obstacle to trade. As is well understood in the economic literature, the multiple rounds of GATT multilateral trade negotiations throughout the second half of the 20<sup>th</sup> century successfully whittled away the tariff as the main instrument of protection. Champions of both agreements see the dismantling of 'behind the borders' measures as the final frontier.

The major NTB identified by both projects is 'regulatory incoherence' –that is, bureaucratic and regulatory obstacles to trade–. It is argued that some regulations exist simply to make it more expensive for foreign firms to sell goods into home markets, thus protecting home firms. The harmonisation of regulation, it is argued, would undermine the protective practices of NTBs. At the very least, it is argued, it offers a framework for a continuing trans-Pacific and trans-Atlantic dialogue and greater acceptance of common standards (Chia, 2015) –what is often referred to as 'a living agreement' that will continue after the formal Agreement comes into being–. Moreover, regulatory harmonisation will create a fairer playing field and make it easier for foreign firms to compete for public procurement contracts by limiting the subsidies, discriminatory treatment and favouritism afforded to state-owned enterprises.

Third, an Investor State Dispute Settlement (ISDS) mechanism in both agreements is argued to encourage trans-Pacific and trans-Atlantic investment and afford better protection for investors. ISDS mechanisms are not new, having been incorporated into bilateral agreements since the 1950s. The argument in their favour is that the updating of these rules will encourage investments in countries with weaker legal regimes at the same time as they control for abuse.

Fourth, both agreements aim to work towards common labour and environmental standards, putting all members on an equal footing when exporting goods and services.

Fifth, both bodies are seen as a leading-edge 21<sup>st</sup> century agreements setting higher threshold standards for future trade and investment agreements. Whatever their differences, the US and the EU have higher threshold standards than big developing countries –notably China, India, Mexico and other DCs trying to extract funds from a highly competitive global investment market–. Agreed higher standards through The TPP and the TTIP will give the US added leverage with the emerging trading countries. Any future requests for accession to the TPP or the TTIP would have to accept these thresholds. In the words of Edward Alden '... these arrangements are the best opportunity available for rich-world governments to gain a bit more control' (<http://www.politico.eu/article/the-case-for-ttip/>).

## The case against TPP and TTIP

Opponents of the TPP and the TTIP have a variety of criticisms to make.

First, the negotiations and some of the provisions of both Agreements are said to be anti-democratic. The lack of transparency and the denial of democracy is a common cry (see, for instance, Ville & Siles-Brugge, 2015). This has some substance in both cases but perhaps more in Asia Pacific than across the Atlantic. During the TPP negotiations, corporate lobbyists were consulted extensively but no meaningful consultations took place with consumer groups, taxpayer organisations, union organisations, healthcare professionals or environmentalists. Even elected representatives, such as US members of Congress, were given only restricted access to the negotiating documents that they were not allowed to further discuss. Detractors, therefore, see the TPP as an agreement negotiated in the interests of major corporations, not of the populations of the member countries (Reich, 2015). Similar views are to be found in the oppositions of other TPP countries.

The TTIP evokes similar objections. The actors are the same: government negotiators, consumer groups, labour organisations, environmentalist and other interested CSOs. But opposition from such groups has been stronger and more extensive and fiercely articulated in Europe than in the Pacific. This can be explained by the differing levels of political development in the two regions and especially the fact that labour, environmental and consumer standards are lower in Asia than in Europe. The TPP can be expected to enhance standards in many of the US's Asian partners (Australia and New Zealand excepted); thus, resistance is weaker than in Europe, where the view is that TTIP will challenge standards already higher there than in the US.

Moreover, and also in contrast to the Asia Pacific, negotiations across the Atlantic are bi-lateral and the European Commission, representing 28 European states needs to be accountable to a wide range of decision groups. Democratic control is present and, in the last instance, details of the Agreement will still need to be approved by the European Parliament. Civil society, value-based driven opposition to trade negotiations is not new, as the history of the WTO attests. But public debate about the TTIP on both sides of the Atlantic is robust. The opposition to the TTIP is certainly more informed, more articulate and perhaps less ideologically-driven than opposition to the birth of the WTO or the TPP. In addition, the EC has tried hard –although not without criticism– to utilise good governance principles of openness and participation in the TTIP decision-making process.

Secondly, the benefits of both agreements are argued to be grossly overstated and the drawbacks equally understated. For example, opponents of the TPP in developed countries –and the US in particular– see previous trade agreements, such as NAFTA and the recent Korean-US FTA, as contributing to the hollowing out of the industrial and manufacturing sectors and the shipping of jobs offshore. The TPP, they argue, will mean more of the same (Harford, 2016; Wallach, 2016).

In the case of the TTIP, assertions that it will be a major source of economic growth have lost traction. As the negotiations have progressed, the putative macroeconomic effects, on GDP growth, have been scaled back (Capaldo, 2104). Moreover, these gains

(between 0.2% and 0.4% of GDP for the US by 2027 and 0.3%-0.5% for the EU) would also be accompanied by a net loss to most workers and an increase in inequality (Rosnick, 2015). But these are not simply European concerns. As they do with the TPP, opponents of the TTIP in the US worry about negative macroeconomic effects exacerbating job losses and declining manufacturing industries (especially in the automobile industry in the face of European competition).

Third, critics of both agreements resist arguments about the benefits of regulatory reform. Specifically, European opponents of the TTIP resist the notion of 'regulatory incoherence'. Rather, they assume that government regulation addresses challenges in areas of human development, notably health, agriculture and the environment. Opponents see a fundamental incompatibility between US and European philosophies on regulation. Europe adopts a precautionary principle in contrast to the US cost-benefit analysis-driven approach to regulation. As Ackerman (2016, p. 4-5) demonstrates, the savings from just two key European regulatory policies alone –(a) the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and (b) renewable energy standards– could be up to €110 billion a year, a figure that equates to the best estimate of Europe's trade gains from the TTIP. The TTIP, opponents argue, would put at risk those benefits –especially in the domains of health, environmental sustainability, labour and social standards– that European regulation is deemed to have enhanced in the early 21<sup>st</sup> century.

Fourth, ISDS mechanisms give foreign corporations the right to by-pass domestic courts in favour of an international tribunal to seek compensation for policies that interfere with their ability to make a profit. While there are some restrictions on corporations' rights to sue, those who are against this chapter of the agreements argue that it severely limits the sovereignty of democratically elected governments, particularly in policy areas such as the environment and public health issues and the regulation of sectors such as real estate and finance (Warren, 2015). As noted earlier, these are new to neither the TPP nor the TTIP. They have been instruments of US bilateral trade deals in the past, but by limiting the public policy space afforded governments the pendulum is said to have swung too far towards investor protection and away from the rights of consumers and workers.

The EC insists that it resists the argument that the TTIP is a race to the bottom. Yet opponents, including even members of the TTIP Advisory Group (<http://www.eph.org/6502>) argue this may still not ward off the lowering of standards in areas where Europe and the US see things differently –climate and energy policy, food safety, chemicals, data protection, public procurement and labour standards– and where the measures to support downwards harmonisation would need to be made to introduced to secure agreement.

Fifth, and in similar vein, those against the Intellectual Property Rights (IPR) chapters of the Agreements also see an excessive protection of investor rights. For example, in the TPP Agreement the rights of IP holders are referred to as 'mandatory' while those of users are generally noted as 'optional'. Similarly, the extension of copyright provisions and, often disproportionate, penalties for their infringement are also resisted. The most frequently cited problem is the increase in the cost of pharmaceuticals that will result

from the IPR provisions (Geist, 2016). Opponents argue they lock in place the existing economic and technological hierarchy among members. Those TTP countries that produce high-tech products and hold large numbers of patents –essentially the US and Japan– will be able to protect their high-tech industries while resource-extraction countries and low-cost manufacturers will find it difficult to move up the technological ladder.

Sixth, both agreements, like other US bilateral FTAs, are seen in Asia and Europe as negatively asymmetrical. From a specifically European perspective some even argue they reflect a clash of models of capitalist organisation where the issues at stake are not simply trade concessions. Rather, they see the TTIP redefining the very relationship between states, the market and the large global corporate actors who make, or at least shape, markets. Regulation for the opponents of the TTIP is not simply an economic matter; it is a political choice about how to govern global capitalism. For the former distinguished Eurocrat Pierre Defraigne, the TTIP is ‘... *une offensive frontale contre le modèle européenne*’ (2016, p. 11-13 *passim*).

### Mega-regionalism and the geo-politics of TPP and TTIP

The previous section has presented in brief the ‘for’ and ‘against’ case for TPP and TTIP. Clearly there is a considerable overlap in both sets of arguments. More generally, both projects reflect the major shift away from multilateralism towards (mega) regionalism. The regionalisation (and politicisation) of trade policy is not new. Regional (and bilateral) FTAs and PTAs have been around for a long time and they are often as much politico-strategically driven as economically driven. Indeed, after 9/11 FTAs became integral to the ‘securitisation’ of US foreign economic policy (see Higgott, 2004). But there are differences between the TPP and the TTIP on the one hand and standard FTAs on the other.

First and most obviously, the TPP and the TTIP, while they are meant to be trade liberalising negotiations, extend far beyond in terms of both their ambition and their size. The TPP and the TTIP together account for two thirds of global output.

Secondly, beyond standard trade negotiations, traditionally focussed on tariff reductions, they aspire to bring about a major normative change in the global trade order in the areas of standard setting, the harmonisation of regulation and dispute settlement –pushing out beyond the agenda of the increasingly marginalised WTO–.

There are also specific differences between the TPP and the: (a) one argument in favour of the TPP, although not presented as part of the public argument in Asia, is that it will enhance the growth of democracy in a way that is, in theory at least, less necessary in the TTIP; and (b) the TPP is expected to enhance labour and environmental standards in Asia, while this argument carries less weight in Europe where the fear is rather that the TTIP will attack such standards.

Thirdly, the negotiations are different to the extent that the TPP is both a multilateral negotiation between the 12 partners and a series of cross-partner bilateral discussions; especially between the US and those members of the TPP that do not have a bilateral

FTA with it. By contrast, the TTIP is effectively a bilateral negotiation between Washington and Brussels.

Fourthly, for the US, the two projects are seen as exercises to revitalise its wider trans-oceanic relationships and contain the growing power of 'rival' poles of influence, notably China in Asia and a recrudescing Russia in Europe. As the US Ambassador to the EU, Anthony Gardner, unambiguously puts it: 'the winning argument for TTIP is the geopolitical argument... It's about re-booting the trans-Atlantic partnership' (<http://www.euia.be/euia16/policy-link-panel-2/>). Such an approach is not without dangers. The emotional intensity of the debate over the TTIP in Europe (Germany and France in particular) appears to be exacerbating anti-Americanism (see Kundnani, 2016). The TTIP, rather than becoming Hamilton's (2015) 'second anchor' for the trans-Atlantic relationship could in fact generate as much friction as harmony if the negotiations deadlock.

Without elaboration here, the politico-security context in Europe is different to that in Asia. If the TTIP is to carry geo-strategic significance as both concept and practice then it needs to be driven by a wider set of (preferably universalised) values other than geographically defined economic interest, especially in an era of growing national populism. Placing geo-strategic value on regional trade arrangements is always politically risky. The TTIP and the TPP are both reflections of the politicisation of preferential trade activity similar to that of many PTAs over the last 20 years. But while many of those were small, bilateral and asymmetrical, there are much bigger stakes in play with the TPP and the TTIP. The former has been central to the Obama strategy of Asian re-balancing in the face of the rise of China (see Tellis, 2014). The TTIP is seen as a way to address European fears that the pivot to Asia might represent a lessening US commitment to Europe. Should either fail then there will clearly be negative consequences for the wider credibility of US foreign policy.

Finally, both exercises will not remain untouched by the British decision to exit the EU. The implications are greater for the TTIP than the TPP, but the latter is not immune. Clearly it is too early to say anything definitive but several self-evident implications can be noted. It certainly demands a larger role from Asia in containing any knock-on effects for the global economy, especially the degree to which Brexit may hit global growth outlooks and carry negative externalities for the continued openness of the global trade regime (<http://www.eastasiaforum.org/2016/06/27/can-asia-shield-the-world-against-europes-brexit-woes/>).

The implications for the TTIP are not clear. On the one hand, there is currently no Brussels plan for EU trade policy without UK membership. Certainly, the departure of the UK shrinks the EU market and weakens EU leverage with the US, which has always seen the UK as the strong liberal counterweight to the more economically statist EU members in the negotiations, such as France and Italy. Simply put, Brexit will give the protectionist political voices in the EU more influence. On the other hand, trade is the competence solely of the EU, not individual member states, and the desire for talks with the US remains strong in most European capitals. The concerns of opponents to the TTIP outlined in this paper exist irrespective of Brexit and some argue that the UK's exclusion from the negotiations could even free up some areas of EU trade policy, for

example in trade defence instruments (<http://www.politico.eu/article/trade-agenda-will-wobble-but-continue-despite-brexite/>).

But the UK accounts for 25% of all US exports to the EU. It is possible that outside the EU, the UK may achieve terms more favourable than it would have within it. Conversely, the EU could achieve less favourable terms. More importantly, and if as looks likely, the US and UK enter into a bilateral trade negotiation, then any trade deal between the US and the EU is unlikely to be finalised until the US has settled terms with the UK. By voting to leave the EU, the UK has in fact leapfrogged the queue and put itself in a pivotal position in EU/US trade negotiations.

## Conclusions

As a consequence of their ambition, both the TPP and the TTIP are highly contentious. Most leaders who signed the TPP are strong advocates of the Agreement, as are major corporations who will gain from its implementation. But large numbers of people have taken to the streets in member countries to demonstrate against the Agreement. And a wide range of civil society groups –from union and environmental organisations to health professionals, to Presidential candidates– do not support the TPP. While ratification of the TPP may well occur in both the two major partners –the US and Japan–, in neither country is it assured (Mulgan, 2016). The completion of the TTIP looks even more difficult. Only begun in June 2013, negotiations are running several years behind the TPP and progress in the negotiations is proving protracted and contested. If negotiations are not secured prior to President Obama's departure, then a pre-2021 completion is unlikely.

It is not just an articulate anti-TTIP lobby that has successfully mobilised against it, senior national politicians –in France and Germany especially– also have reservations and both countries have general elections in 2017. Such has been the success of the opposition to the TTIP, especially to the ISDS provisions, that both US and EU government officials are highly sensitised to the need to engage more with non-official stakeholders than has been the case in many a trade negotiation in the past. In response to the opposition, the EU has come up with a set of reforms likely to prove unacceptable to the US. Similarly, in the face of opposition to the US proposal for liberalisation of trade in services, the EU has proposed over 200 exclusions, many of which would also prove unacceptable to the US. There is also no sign that agreement would be reached any time soon on contentious issues in agriculture, especially genetically-modified crops, antibiotics, hormones in beef and geographical indications.

Thus are the politics and economics of TTIP inextricably intertwined and largely unresolved and there are several specific take-home messages for Europe to be had from the Asia Pacific experience to-date. Notably, many of the issues are less contentious in the Pacific than in Europe. This is explained by a number of factors including: (a) the different levels of both economic and political development in the two regions; (b) that the opposition is less developed (and in some instances less free to oppose) in the Pacific than in Europe; and (c) that the negotiations also have a difference of emphasis. In particular, the issue of regulatory harmonisation has been less of a political hot potato in the TPP than in the TTIP. This in part reflects the fact that services



are a more important dimension of the trans-Atlantic economy than they are currently in Asia-Pacific, where trade in goods still, for now, predominate. Opponents of the TTIP see regulatory harmonisation as more of a fundamental challenge than was the case in Asia Pacific. The departure of the UK from the EU, a stronger supporter of regulatory harmonisation, and indeed the TTIP in general will only make trans-Atlantic agreement in this area even more difficult.

Further, not only has the ostensibly less controversial CETA negotiation been slowed down, but any idea of 'fast tracking' the agreement has gone, and grass-roots opposition to the TTIP is also stronger than is often assumed, as protectionist rhetoric appears to grow stronger on both sides of the Atlantic. Even in Germany, where it is set to be an issue in the forthcoming Federal election, support for it is at only 17% (<http://www.politico.eu/article/the-man-who-killed-ttip-thilo-bode-foodwatch-germany-free-trade/>). At this stage the most likely outcome is that the TTIP's progress grinds to a halt.

At the macro level, the key comparative and contextual lesson to be had from an observation of the TPP and TTIP projects is that they represent a fundamental change in the attitudes of economic and corporate elites towards the management of the global trade system in the 21<sup>st</sup> century and nowhere more so than in the US and the other major economic powers. Trade negotiations since the turn of the century, and especially since the financial crises of 2008, now increasingly privilege (mega) regional over WTO-style multilateral activity. This activity is driven as much by geo-political consideration as any desire for trade liberalisation with all the attendant negative implications for the future of the WTO in particular but multilateralism in general. The yet to be resolved question is whether these trends in thinking and practice about the global economy can resist the growing populist opposition to them.

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