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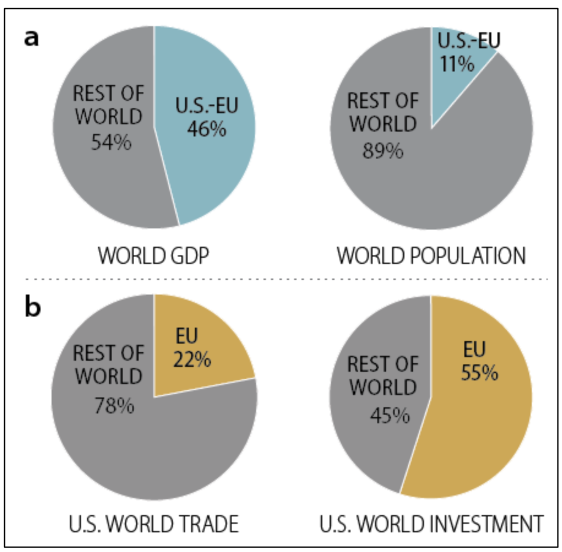
Transatlantic Trade and Investment Partnership (T-TIP)

Background

T-TIP is a potential "comprehensive and high-standard" free trade agreement (FTA) under negotiation since 2013 between the United States and European Union (EU), each other's largest overall trade and investment partner. T-TIP aims to liberalize U.S.-EU trade and investment; address barriers to trade in goods, services, and agriculture; and set globally relevant rules and disciplines to support economic growth and multilateral trade liberalization. The 15th and latest negotiating round was in October 2016. Negotiations presently are on pause as both sides evaluate T-TIP's status.

Role of Congress. Congress has a constitutional responsibility to regulate foreign commerce. It establishes overall U.S. trade negotiating objectives, updated in 2015 in Trade Promotion Authority (TPA) (P.L. 114-26), and would need to pass implementing legislation for a final T-TIP to take effect. The negotiations and a potential agreement's implementation and enforcement present oversight issues.

Figure 1. U.S. and EU-28 Economic Snapshot, 2016



Sources: (a) World Bank; (b) U.S. Bureau of Economic Analysis.

Debate. Supporters see T-TIP as a way to boost economic growth and jobs, strengthen the U.S.-EU relationship, advance strategic interests, and enhance trade liberalization through developing globally relevant rules. Critics express concern about T-TIP's potential adverse effects on import sensitive sectors, detraction from multilateral trade liberalization, and impact on regulatory sovereignty.

Key Negotiating Issues

Market Access. Average U.S. and EU tariffs are low, but further tariff liberalization could yield significant gains given the transatlantic economy's size. The United States and EU have agreed tentatively to eliminate duties on 97% of tariff lines, and to increase the number of tariffs that would be eliminated immediately upon T-TIP's entry into force (rather than phased out over a period of time). Remaining tariffs to be negotiated include those on among the most sensitive products, such as in agriculture.

Regulations and Standards. Negotiations have progressed on regulatory transparency and cooperation to enhance compatibility of U.S.-EU regulatory systems. Sector-specific regulatory cooperation discussions have advanced for some sectors (autos, pharmaceutical, medical devices), but are more limited for others (chemicals, cosmetics, engineering, information and communications technology, pesticides, textiles). Some question if T-TIP can bridge U.S. and EU differences in science-based regulatory approaches given, broadly speaking, the U.S. risk-based approach and the EU's application of the "precautionary principle."

Possible T-TIP Regulatory Approaches

Cooperative Frameworks to discuss technical differences, as well as processes for increased transparency, accountability, and stakeholder participation across sectors.

Mutual Recognition Agreements (MRAs) by regulators to accept products and services from each other's jurisdiction under certain conditions. For example, a 2011 U.S.-EU MRA recognizes each side's safety inspections for civilian aircraft, and 2017 changes to a 1998 MRA allow U.S. and EU regulators to rely upon each other's inspections of pharmaceutical manufacturing facilities to avoid duplication of inspections.

Harmonization of standards or rules across jurisdictions, particularly for future technologies.

Global Standards Leadership is a possibility if T-TIP results in meaningful regulatory outcomes based on common standards.

Rules. The two sides have been negotiating trade rules, some of which could exceed existing U.S. FTA or WTO obligations. Talks reportedly have advanced in areas such as customs and trade facilitation, state-to-state dispute settlement, and labor and the environment. Sticking points remain in other hotly contested areas, such as geographical indications (GIs), digital trade, and investor protections.

Specific Issue Areas

Agriculture. T-TIP aims to eliminate and reduce tariff and nontariff agricultural trade barriers. Sensitive issues remain on market access for genetically modified organism (GMO) products, sanitary and phytosanitary standards (SPS), and treatment of regional agricultural products as GIs.

Customs and Trade Facilitation. Efficient cross-border flow of legitimate goods supports access to foreign markets and global value chains. T-TIP aims to address burdensome customs procedures while balancing security concerns.

Digital Trade. Cross-border data flows are key in U.S.-EU trade. Progress on digital trade has been complicated as the EU engages on parallel issues in its internal market through its Digital Single Market (DSM) initiative, as well as by debate over U.S. government surveillance and the EU-U.S. Privacy Shield (rules on personal data transfers by firms).

Dispute Settlement. Government-to-government dispute settlement provisions would establish the mechanism for each side to enforce obligations under T-TIP.

Energy and Raw Materials. Market access and regulatory frameworks for energy and raw materials are a focus, but the sides have not agreed on whether to address these issues in a standalone T-TIP chapter or as part of other chapters.

Public Procurement. T-TIP aims to expand market access, including at the sub-central level, and enhance rules for transparent, nondiscriminatory treatment of foreign firms in government purchasing decisions. These are politically sensitive issues where U.S. and EU approaches differ.

IPR. T-TIP could include rules to protect and enforce intellectual property rights (IPR)—legal rights to copyrights, trademarks, and patents, designed to promote innovation—as well as cooperation on digital environment challenges such as cyber theft of trade secrets. Geographical indications (GIs) remain controversial: France, Italy, and other EU members favor enhanced GI protections, while the United States generally prefers protection through trademark law.

Investment. T-TIP could include investment market access and investor protections (e.g., nondiscriminatory treatment). Investor-state dispute settlement (ISDS) raises debate about investor protections, government regulatory ability, and other issues. Some in industry view ISDS as providing balanced investor protections and oppose the EU's proposal to replace ISDS with an Investment Court System (ICS), while some in civil society hold that the ICS fails to resolve their issues with ISDS. The Administration reportedly favors an "opt-in" approach to ISDS in the North American Free Trade Agreement (NAFTA) renegotiations, in which businesses could bring cases for direct expropriation only. It is possible that this approach could also become the U.S position in T-TIP negotiations should they continue.

Labor and Environment. The United States and EU maintain high levels of domestic protection in worker rights and the environment. T-TIP could set rules to protect labor and environmental interests in the trade context.

Localization. "Forced" localization measures, such as requirements to process data in-country, may favor domestic firms at foreign firms' expense. T-TIP may address such barriers, balancing privacy and other concerns.

Rules of Origin. Rules of origin would determine which U.S. and EU goods would benefit from T-TIP.

Services. T-TIP could include greater market access and enhanced rules for services. EU and U.S. financial services firms favor including regulatory cooperation about that sector in T-TIP. Other issues are "cultural exceptions," temporary movement of service providers across borders, and maritime services.

State-owned Enterprises (SOEs). T-TIP aims to craft globally relevant disciplines on SOEs, entities subject to significant government control or influence. The subsidies, preferential financing, or other privileges that SOEs can receive may disadvantage foreign firms competitively.

T-TIP Outlook

By the end of 2016, the United States and EU had consolidated negotiating texts in many areas, but sensitive issues remained unresolved, leading to debate over whether political momentum existed to overcome differences.

In the EU, more complexity has been added due to the UK withdrawal process ("Brexit"). National elections in France and Germany —where public opposition to T-TIP runs high due to concerns over GMOs, ISDS, and data privacy—have also added uncertainty, and Germany's governing coalition still remains an issue. Some in the EU Parliament and European Commission (EC) are reportedly calling for a tougher EU approach against the Trump Administration's "America First" policies, and are also concerned about ongoing antidumping and countervailing duty cases against Bombardier that could result in the imposition of duties.

On the U.S. side, T-TIP's outlook is also uncertain. Support for T-TIP remains high among some Members of Congress, yet trade remains a controversial issue. The Trump Administration is reportedly evaluating the status of T-TIP. U.S. Trade Representative (USTR) Lighthizer recently commented on the importance and size of the U.S.-EU trade relationship. He added, "improving the rules, there is something we should do, whether we start that agreement up ... when and if is something that we're looking at right now, I know they're looking also. But in the meantime, we're coordinating quite closely with them." At an October 2017 meeting, Secretary of Commerce Wilbur Ross and EC Vice President Jyrki Katainen reportedly discussed addressing certain U.S.-EU trade barriers and regulatory differences on a sectoral basis. Among particular sectors of interest were medical devices, autos, and pharmaceuticals.

Should T-TIP negotiations terminate, Congress may wish to examine other ways to enhance U.S.-EU trade relations. If negotiations resume, potential issues include the following:

- the priority placed on T-TIP, given the U.S. renegotiation of NAFTA and ongoing EU trade negotiations with other countries (e.g., Japan, Mexico);
- whether the concerns leading to President Trump's withdrawal from the Trans-Pacific Partnership (TPP) may extend to T-TIP, or if T-TIP, as an FTA between two advanced economies, would have broader appeal;
- the extent to which the EU-Canada Comprehensive Economic and Trade Agreement (CETA), provisionally entered into force in September 2017, may serve as a basis for future EU negotiations on T-TIP, since some CETA provisions, such as on GIs and the ICS, have been controversial among U.S. stakeholders; and
- whether Brexit will complicate T-TIP, given the UK's liberalizing role in the EU, or prospects for a post-Brexit U.S.-UK bilateral FTA, which some Members of Congress support, could place pressure on T-TIP.

Shayerah Ilias Akhtar, Specialist in International Trade and Finance

Vivian C. Jones, Specialist in International Trade and Finance

IF10120

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