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TTIP Negotiations: A Summary of Round 11

by Michael McKeon

Representatives from the United States and the European Union participated in the 11th round of TTIP negotiations in Miami, Florida during the week of October 19th. U.S. and EU officials are hopeful for TTIP's conclusion by the end of 2016. To that end, U.S. Trade Representative Michael Froman and EU Trade Commissioner Cecilia Malmström have committed to meet more frequently and to accelerate work in all areas of negotiations. In the weeks leading up to latest TTIP round, the United States concluded Trans-Pacific Partnership (TPP) negotiations with eleven Pacific-rim countries, and the European Commission released a new international trade and investment strategy for the European Union.

Takeaways

Market Access

- The U.S. and EU presented a second round of goods market access offers and are now more or less on par in terms of eventual duty reduction, with 97 percent of tariff lines expected to become duty-free at some point.
- The remaining 3 percent of tariff lines are likely in the U.S. and EU's sensitive sectors of agriculture, textiles, and automobiles. These lines, if reduced to zero, will likely be addressed in the 'end game' stage of negotiations.
- The parties began serious discussions on public procurement, with the exchange of initial offers expected in February 2016.
- The EU signaled that it would focus on gaining public procurement market access in three specific sectors – transportation, energy and environmental services – and that it would not seek to undo U.S. purchasing preferences for small- and minority-owned businesses.
- The EU is pushing for the U.S. to expand coverage of sub-federal entities beyond its commitments in the World Trade Organization Government Procurement Agreement (GPA). Thirteen U.S. states have not signed on to the GPA¹; the EU hopes to gain

¹ The U.S. states not bound to the GPA are Alabama, Alaska, Georgia, Indiana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, Virginia and West Virginia.

purchasing access to those states, but the U.S. federal government cannot bind the states to the agreement.

- The U.S. and EU are preparing a framework for what public procurement offers could encompass; the benchmarks will be exchanged in January 2016 before the 12th negotiating round.

Regulatory Cooperation

- Regulatory discussions were constructive. Discussions on horizontal regulatory cooperation were based on previously tabled texts. According to U.S. government sources, discussions on technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS) were particularly productive.
- The parties are also discussing cooperation in nine specific sectors: automobiles, chemicals, cosmetics, engineering, information and communications technology, medical devices, pesticides, pharmaceuticals and textiles. In an open statement at the end of the 11th round, EU Chief Negotiator Ignacio Garcia Bercero said that discussions on sectors were “particularly constructive and intensive.”

Other Issues

- The EU tabled proposals on rules of origin (ROO) for certain industrial products and on sustainable development, which includes provisions on labor and the environment.
- Negotiations continued on the revised services offers that the parties tabled at the 10th round in July.
- Negotiations continued in other areas, including customs and trade facilitation, competition, energy and raw materials, ecommerce and telecommunications.

Challenges

- The parties discussed **geographical indications (GIs)**, but there has been little progress on the issue in this and previous rounds.
- The EU is seeking to reshape **investment protections** in TTIP, and has proposed, among other changes, the establishment of a permanent investment court and a formal appeals process. In the recently concluded Trans-Pacific Partnership (TPP) agreement, the U.S. instituted changes to the **investor-state dispute settlement (ISDS)** system that could address challenges of transparency, efficiency and

reliability. These changes do not seem to go as far as what the EU has published, however, and the issue will likely remain a point of contention between the parties in TTIP negotiations. The EU's proposal has yet to be tabled formally at negotiations.

- The parties have not agreed on whether to include a chapter specifically on **energy** in the agreement. The EU would like to see codified provisions on energy and raw materials in TTIP, but the U.S. has not concluded that such a chapter is necessary.
- No progress was made on the contentious issue of **financial services**, but intersession discussions on cooperation in this area and the establishment of prudential carve-outs that would allow governments to regulate more freely in times of financial crisis will continue.

On the Margins

- At a stakeholder event, businesses, associations, and other non-governmental organizations (NGOs) presented concerns and what they would like to see out of the agreement. There were presentations from 34 groups, roughly half the number that presented in the previous round. The presentations were organized along three thematic groups: agriculture, market access, goods and customs and trade facilitation; environment and labor; and investment and services, data and telecommunications and intellectual property rights (IPR).
- On October 15, the European Commission released a new international trade and investment strategy entitled [Trade for All: Towards a more responsible trade and investment policy](#). According to the Commission, the new approach will “involve trade policy being more effective at delivering new economic opportunities; more transparent in terms of opening up negotiations to more public scrutiny and address not just interest but values... It also lays out an updated programme [sic] of negotiations to put them into place.”
- On October 6, the European Court of Justice (ECJ) invalidated Safe Harbor, the EU-U.S. data-sharing scheme. European data law provides that personal data may not be transferred outside the EU unless it is adequately protected against third party theft or misuse. The U.S. and EU have had an agreement for the past fifteen years that allowed U.S. companies complying with agreed-upon privacy principles to transfer data from Europe to the U.S. The decision has significant implications for transatlantic business, and U.S. and EU regulators are working to devise a new scheme by the end of January 2016, at which point EU data protection authorities may take action to suspend data transfers.

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