B|Brief

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MAKING TTIP A 21ST-CENTURY AGREEMENT

by Annette Heuser

The United States and the European Union meet again this week to try to make progress on a Transatlantic Trade and Investment Partnership (TTIP). This ninth round of talks aims to advance a deal that further reduces tariffs on goods and services while setting common standards for both. The eventual hope is that such stipulations would serve as models for other countries to adopt.

The negotiations have been ongoing intermittently for more than a year and half, and have been dogged by criticism in Europe, particularly in Germany. Opponents of a deal bemoan a lack of transparency in and the exclusion of civil society from the talks. Both complaints are to an extent justified, making TTIP the first trade agreement that requires enhanced public input if a deal is to have any chance at ratification and implementation.

TTIP's prospects for success, however, also depend on its being an agreement designed for the 21st century. That means it must address three policy areas that wield significant influence over current trans-Atlantic relations.

The first area is financial regulation. The 2008 financial crisis made clear the degree to which global financial markets are interconnected and the ease with which risks cross national borders. The turbulence led American and European officials to overhaul financial-market regulation in the hope of creating greater market resilience. Their actions, however, have yet to translate into any trans-Atlantic financial-market integration. This would not be the case if policymakers had truly learned lessons from the crisis.

TTIP fortunately provides an opportunity to reverse this neglect, but Washington is blocking any discussion of financial services in the negotiations. The primary American concern is TTIP's potential for weakening the Dodd-Frank Act, the 2010 legislation that introduced the most comprehensive US financial-market reform in decades in an effort to prevent a repeat of the 2008 crisis. Meanwhile, Europeans, who favor including financial regulation in TTIP, removed it from their agenda last year in the face of strong US opposition.

These are regrettable developments. Joint standards on capital and liquidity requirements for banks, derivatives and financial accounting could strengthen an integral part of the trans-Atlantic marketplace by providing greater regulatory stability.

The second area that should be included in TTIP negotiations is the digital economy and e-commerce. With more than 80 percent of Americans and Europeans having online access, the Internet is a major source of economic opportunity and growth. The digital marketplace has become a primary platform for international trade despite minimal international regulation. This lack of clarity is partly responsible for the costly legal issues facing US Internet giants operating in Europe.

The US and Europe must find a consensus on managing ever-increasing data flows, data protection and data privacy if they are to govern virtual space. The digital world can certainly thrive without TTIP, but TTIP is of limited value if it fails to address the "new economy" and Internet privacy.

The third critical area for a deal is an investor-state dispute settlement (ISDS). In short, this mechanism protects foreign investors from adverse changes in host-country regulation by providing legal ways to claim compensation. More than 3,000 international agreements contain ISDS clauses, including many of the 1,400 bilateral trade agreements concluded by EU member states. TTIP negotiators are working to include an ISDS in a deal despite fierce calls from critics to exclude it.

The negotiators should forge ahead. An ISDS would allow the trans-Atlantic partners to expand investment opportunities by providing reasonable legal assurances. But TTIP requires a new, upgraded ISDS that respects public concerns about the potential bypassing of national legal structures. Such a reformed ISDS would provide for more transparent rules and procedures, increased public access to relevant information and settlement provisions, and independent arbitrators at a forum specifically created for TTIP-related disputes. None of this would compromise a sovereign country's right to regulate. A reformed ISDS within TTIP would, however, set the stage for a similar mechanism on a global level, an especially useful item in future US and EU investment treaties with China.

There is still time for an initial TTIP agreement to include a modernized ISDS since it remains a topic for discussion at the negotiations. Financial regulation and digital issues, however, are now off the agenda, and it is unrealistic to expect them to be reconsidered. Instead, TTIP, once concluded, should be regarded as a living document that can be expanded in a second stage of talks. All three policy areas are key, however, if we Americans and Europeans are to set the parameters for our own economies. For others will do it if we don't.

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