The possible merits of TTIP

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The Transatlantic Trade and Investment Partnership (TTIP) is hyped up in various ways, negative and positive. Both are overblown. One wonders why various groups or politicians do this so blatantly. A sober look at the possible merits of TTIP is needed.

The two central reasons why TTIP has been in the spotlight are the economic size of the two partners (the EU and US) and the ambitious and wide-ranging nature of the proposed agreement. With nearly 40% of world trade conducted with the EU plus the US, the enormous potential of TTIP is obvious. The economic preponderance of the EU + US is even greater in terms of stocks of foreign direct investment in each other's markets. If well-done and WTO-compatible, TTIP could 'lead' the world economy into a new, more advanced set of rules for trade and investment.

However, that one-liner has to be thought through for a host of reasons. One is that many other WTO members might not want to be placed before a 'fait accompli'; another, that most WTO members might not be economically capable to maintain such more advanced rules (note that a number of specific agreements of the Uruguay Round – eg. on pre-shipping inspections, TRIPs, customs valuation, etc. – have still not been fully incorporated in national laws of several WTO countries, not to speak of proper enforcement); yet another is that such Atlantic rules might not fit or be preferred by (say) China, India or Brazil; still further, even if TTIP might serve as the beginning of a new world regime, what about the WTO as a negotiation platform? What would remain of it, and what rights or opportunities will genuinely exist for the large bulk of the WTO membership? Should one multilateralize TTIP, and, if so, will the US and the EU be prepared to genuinely modify it, or, would the world be dragged into a Doha Round 2.0 again?

The nature of TTIP is incredibly broad. When a negotiation round is held, in Washington DC or Brussels, the airplane is full with regulators and regulatory advisors, besides a more limited number of trade negotiators. The principal reason is that, strictly, TTIP is a so-called 'FTA-plus' negotiation, but in fact it is meant to become a 'regulatory agreement'.

Good old-fashioned trade policy is not the core of TTIP at all; one might even ask the question whether TTIP would or should be shaped or drafted as a trade agreement. The main problem with trade agreements is that trade negotiators (in an old tradition of GATT and even older commercial diplomacy, but also for reasons of building a political alliance at home to support the deal) strive after a 'balanced' agreement, implying trade-offs during the end-game of talks. Such trade-offs are usually about tariff concessions and, in the past, quotas as well, with great flexibility over thousands of tariff lines for goods.

But in regulatory agreements, such a balancing would be utterly mistaken, as the improvements in market access are built on fundamental regulatory principles, not ad-hoc deals on individual tariffs. If, say, mutual recognition would be agreed in TTIP in product market x, it would be inconsistent and arbitrary to disallow that for some subcategories of these products, merely because the result in some other area in the negotiations is not fully to the satisfaction of EU or US negotiators.

But the nature is also determined by the huge spectrum of policy domains included, be it services (like the GATS but with more ambition for access commitments), investment (including the now much discussed dispute settlement via arbitrage in ISDS), competition, IPRs, horizontal regulatory arrangements (also with an eye to future regulatory initiatives in new domains like electric cars or, even more fundamentally, as a 'living agreement', and about 'transparency' and openness to comments from each other), standardisation, a series of sectorial approaches meant to reduce 'regulatory barriers' to market access (eg. cars, chemicals, food & feed with SPS measures, machinery, air transport, etc.), public procurement, environment and climate issues, energy (although it is still an open question how much and how far, for instance, about lifting export restrictions) and so on.

There are also some 'taboo' areas, kept out of the talks such as broadcasting, the US Jones Act (an old super-protectionist device to protect shipping), GMOs, perhaps financial markets, and whether these might come in later is unclear. Almost all aspects in these domains are about regulation. The central question is whether such ambitious negotiations would not undermine or at least possibly affect the EU and/or US regulatory autonomy to regulate as its electorate wants it, now and in future? A lot of the recent debate – if it deserves that label – boils down to an all-or-nothing ping-pong between authorities explicitly denying that such autonomy would be affected, and loud (though unsubstantiated) assertions that it will.

The mandates on both sides as well as subsequent formal documents from negotiators, all public, are clear: TTIP is not about questioning or undermining regulatory autonomy. This is sensible as neither Congress nor the EP (not to speak of the Council of the EU) would accept this anyway. Why then the unproductive exchange of denials and repetitions of the mandates? One explanation is that some political currents and NGOs have chosen a confrontational attitude – irrespective of whether it is based on facts or mandates – in order to bind or please their electorates having pre-conceived views. In some sectorial instances, this is supported, but the hidden reasons may well be protectionist. The upshot is an artificial non-debate about what TTIP is not!

This is not to say that the regulatory aspects in TTIP do not present challenges, they do. But regulation is not so easy to change. Since about two/three decades, the EU has become much more interested in how to 'better regulate' for given societal objectives such as safety, health, environment and investor/consumer/saver protection. In the past, given objectives were often strived after with inefficient means or heavy-handed procedures. The Commission Impact Assessments (in operation since 2003) have gradually caused a much more careful and analytical thinking about how to draft legislation (including, where relevant, reference to standards) properly, considering alternative options, with their societal benefits and costs. It is in this type of thinking where the EU and the US have become much closer.

But if that is so, then there must be numerous opportunities to lower regulatory barriers over the North Atlantic, without in any way sacrificing one's regulatory autonomy. However, in the EU there are fears that such thinking might be unduly influenced by lobbies, hence perhaps end up in deregulation where it should not. In the US one stumbling block consists in the many independent federal regulatory agencies, which have proven in the past to be almost immune to suggestions from international negotiations.

In 1998 the US and EU concluded six sectorial Mutual Recognition Agreements (MRAs, recognising conformity assessment - for export purposes - by technical bodies, themselves recognised as competent, in the 'other' partner economy, on the regulatory requirements of the importing country) but three of them – with most of the potential trade – are not operational due to a refusal of US Agencies to respect the details and spirit of the MRAs. In many areas, the US and the US have developed 'soft' forms of regulatory cooperation for years, with some concrete results (eg. in aircraft certification, organic farming, wines, etc.). In the OECD the EU and US have committed to mutual recognition of chemical test data. TTIP has to build on that but

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amplify and 'deepen' such cooperation over a wide spectrum of sectors, including services.

There is also some discussion about the economic gains of TTIP. Here the US and EU have hyped a little too much at the outset, calling TTIP a kind of growth engine, in times when other sources of growth are hard to come by. With more empirical economic studies around, and disregarding one outlier which suffers from highly unrealistic assumptions, one may say that, if TTIP is achieved more or less as intended, the addition to EU GDP would be somewhere between 0.5% and 1%, including so-called dynamic longer-run effects. This is most welcome but not really a growth engine.

There are a few studies predicting doom, even negative output effects, as well as negative impact of third countries. If TTIP can succeed in making rules attractive for third countries and/or principles which would be MFN-based (ie. non-discriminatory in WTO), there would be positive spill-overs to third countries, possibly larger than any other negative effects. The intra-EU negative effects on output seem not credible on the whole and are due to modelling aspects. Of course, sectorial negative effects can occur but the positive effects for the sectors mentioned above almost certainly dominate by a considerable margin.

The TTIP is a major effort and will take a long time. here might be an 'early harvest' for political reasons in 2015 and that may well be wise. Anyway, it is meant to be a 'living agreement' and if there is enough stamina (yet, some urgency as well), the talks may well continue for another three years. Better a sound agreement which is truly acceptable in domestic politics on both sides, than a partial and unsatisfactory one. ■