
THE GEORGE WASHINGTON UNIVERSITY

THE ELLIOTT SCHOOL
OF INTERNATIONAL AFFAIRS

Written Comments on the “Transatlantic Trade and Investment Partnership”

**Susan Ariel Aaronson, Ph.D., Associate Research Professor, GWU and Minerva Chair,
National War College**

Enclosed please find my comments related to: 3f- the process of negotiations and issues of transparency and good governance; and j. - Internet issues.

Overview: Implications of T-TIP for democracy and governance-Transparency and Accountability of the Negotiating Process

The winner of the 2012 Nobel Peace Prize and the 2009 Peace Prize are hooking up. After years of talk, the European Union, the common market among 27 democracies of Europe, and the United States, have launched negotiations for a free trade area called the Transatlantic Trade and Investment Partnership or T-TIP. I strongly support US and EU efforts to achieve a free-trade agreement. However, because so much of this negotiation will focus on regulatory coherence, I believe that the trade agreement has even more important implications for the future of democracy than the expansion of trade. Hence, this section of my comments focuses on America’s negotiating strategy. I have also made recommendations for language on internet issues on pp. 3-4.

Trade diplomats from both the US and EU want to achieve coherence among a wide range of regulations. Negotiators must find common ground on regulations protecting consumers such as food safety and data protection rules; regulations affecting how business is conducted such as banking and labor regulations; and regulations affecting the global commons such as environmental regulation. But coherence will not be easy to achieve. First, both the EU (at the national and EC-wide level) and the US have honed these regulations over time based on public and business comments. Whatever their opinion about particular regulations, the public accepts them as legitimate. They may not feel the same about regulations negotiated in secret. Secondly, the US and the EU have very different approaches to designing and implementing such rules and regulations; these differences stem from two very different approaches to democratic capitalism and governance. The EU focuses on risks from not regulating; the US on the cost and benefits of regulating. In general, US policymakers fear distorting markets and prefer that the private sector self-regulate. In contrast, the EU tends to regulate in a top down, state-controlled manner with labor, business and civil society input. Third, trade policymaking

in both the US and the EU remains stuck in a 19th century time warp of opacity and secrecy that undermines public support for trade liberalization.

Given the stakes for democratically determined regulation for both the US and the EU, the public must have active and continuous input into the negotiation or the negotiation could be seen as illegitimate. Trade policymakers have taken some steps to seek public comment as evidenced by this Federal Register notice. But the US has not shown how policymakers will incorporate public comments as the negotiations proceed – in short they have not devised a negotiating strategy and input structure that meets the demands of our 21st century information-fueled economy. They have also not met promises made by the Obama Administration to ensure transparent, accountable governance. While trade negotiators require secrecy to discuss sector-specific tariffs or business confidential information, such secrecy should not apply to the negotiation of chapters on regulatory issues such as labor rights, internet issues, environmental issues etc...

The US has not changed its approach to seeking input on trade policy since the Clinton Administration. The US has industry advisory committees and broad issue advisory committees focused on topics such as labor and the environment. However, the advisory committee structure remains too focused on U.S. commercial and economic interests rather than on a broader conception of the national interest in promoting trade. Such a broader advisory process could be especially helpful as the US works towards regulatory coherence.

Although the Obama Administration has made “openness” a meme of this Presidency, openness has not characterized the Administration’s approach to trade policymaking. When he campaigned for President, then Senator Obama promised to restore the American people’s trust in their government by making government more open and transparent. When he attained the Presidency, he issued the Open Government Directive in 2009, requiring government agencies to go public with their data. The regulation was designed not only to make government agencies more accountable, but also to improve public knowledge of the agencies and create economic opportunities. Although USTR now has a breezy weekly newsletter, USTR reveals little to the public about specific negotiations related to regulatory issues. Moreover, the Obama administration led efforts to establish the Open Government Partnership. Participating states pledge to meet minimum standards for government accountability. The US has yet to do so. In order to achieve such support for T-TIP, the Administration will have to build trust through education and dialogue. Hence, I suggest:

Recommendation: USTR and other agencies involved in the negotiation must be more proactive and interactive online. The Administration should develop a web site encouraging consistent public comment on T-TIP, rather than solely at the beginning and end of the negotiations. The web site should clearly delineate the objectives of the regulatory coherence negotiations as well as the Administration’s desired outcome. The web site should also include

updates that describe the state of ongoing negotiations for each chapter of the proposed agreement, particularly those that relate to environmental and social regulations.

Regulatory coherence is an important objective for the US and the EU. If the two trade behemoths can find common ground on regulations in a transparent and accountable manner, their shared standards will set the bar for the global economy and facilitate high standards worldwide.

On Electronic Commerce and Cross-Border Data Flows:

In a recent study funded by the MacArthur and Ford Foundations, I compared US, EU and Canadian internet trade policies. I found:

1. Policymakers in the US, EU, and Canada want to advance the free flow of information, but have not developed a consensus on how to balance Internet openness (policies and procedures that allow netizens to make their own choices about services and content to create or share) and Internet stability (policies to prevent hacking, piracy, or spam and policies to protect privacy and security).
2. US and EU officials make Internet policies in bureaucratic silos of intellectual property rights (IPR) and privacy without weighing the collective effects on e-commerce or Internet openness.
3. Policymakers around the world increasingly rely on intermediaries to warn users and content creators of sites that may violate domestic laws, but this reliance on business to filter or censor the Internet raises questions of due process, ethics, evenhandedness, and oversight.
4. The US and EU's use of bilateral trade agreements without mutually recognized Internet/e-commerce provisions may, without deliberate intent, gradually fragment the web.

Recommendations:

Countries have different priorities for privacy, free speech, and national security, which make international harmonization of strategies to advance the open Internet unlikely. Thus, policymakers should use language that encourages interoperability among signatories' privacy, online piracy, and cyber-security policies in T-TIP.

Policymakers cannot sustain an open Internet simply by including rules advancing the free flow of information in trade agreements. As trade agreements have long addressed governance, the US and other governments negotiating binding provisions to encourage cross-border information flows should also include obligations related to the regulatory context in which the Internet functions. Hence, they need to include language requiring free expression, fair use, and due process related to activities of the government as well as web providers in T-TIP.

The US and EU should show their commitment to Internet openness by annually reporting when and why they blocked specific applications or technologies and/or limited content (or asked intermediaries to limit access) to sites or domains. With this information, policymakers may get better understanding of how to achieve a flexible and effective balance of Internet stability and Internet openness. *Such language could be included in the Internet-related provisions of the T-TIP agreement.*

Susan Ariel Aaronson, Ph.D.