

TTIP Won't Come Easy On Either Side Of The Atlantic

Law360, New York (May 19, 2016, 10:51 AM ET) --

Following two productive rounds of formal negotiations in February and April, EU and U.S. officials remain in close contact to ensure all negotiating texts for the Transatlantic Trade and Investment Partnership (TTIP) can be consolidated, or at least tabled, by the next formal round foreseen in July. This is in keeping with President Obama's recent remarks at the Hannover Messe, in which he emphasized the necessity to conclude a deal before the end of his term. However, significant work remains to reach that goal.

Areas Marked by Progress

Particular progress was achieved in the latest round with respect to regulatory cooperation and good regulatory practices, for which the texts have now been consolidated. The aim in this context remains to facilitate greater compatibility in future regulations and to strengthen transparent rule-making by ensuring opportunities for public input. This must be achieved without impinging on the parties' regulatory authority or compromising existing high standards of protection for human health, consumer safety and the environment.

The specific industrial sectors considered in the context of the regulatory cooperation negotiations include automotive, chemicals, cosmetics, engineering, information and communication technologies, medical devices, pesticides, pharmaceuticals and textiles. In the latest round, negotiators continued making progress specifically with respect to the automotive, cosmetics, medical devices and pharmaceuticals sectors. Their aim is to table texts for most, if not all, of the sectors by the next round of negotiations in July.

Officials also report having reached a very advanced stage of negotiation in the areas of competition, customs and trade facilitation, and small- and medium-enterprises (SMEs). Only a few issues remain to be resolved in some instances. Discussions in the area of competition continue with respect to state-owned enterprises (SOEs) and subsidies, while those in the area of customs and trade facilitation progress based on a consolidated text towards an ambitious chapter. SMEs could benefit significantly from TTIP.

In addition, progress was achieved in the area of sustainable development, which includes labor and environmental protection. Negotiators are now in the process of consolidating the two sides' textual proposals, with both sides committed to strong labor and environmental protection within TTIP as a



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means of promoting these standards in the rest of the world. However, in practical terms, agreement must still be reached on this chapter's substantive disciplines and their enforceability.

Areas Marked by Difficulties

In terms of market access, a concerted effort will be needed to eliminate the few remaining tariff lines proposed for duty elimination. The small percentage of tariffs that remain subject to discussion cover goods of high political sensitivity, including certain agricultural and food products. The EU reportedly might seek to exempt some of these goods from tariff elimination, but U.S. officials have maintained that work must proceed towards the eventual elimination of all transatlantic tariffs under TTIP. As is expected in trade negotiations, such "high impact" tariff changes on both sides will be part of a package of issues negotiated in the end-game of the TTIP negotiations.

Much remains to be discussed with respect to trade in services, with negotiators suggesting both sides could improve their market access and national treatment offers. U.S. negotiators have specifically identified the significant list of reservations the EU seeks to preserve, including a proposal that would allow for the protection of "new" services, which the United States dismisses as overbroad. For its part, the EU is emphasizing the linkage between liberalization of financial services and its proposal to include financial services regulatory issues within TTIP. Discussions in the TTIP context are also relevant to the position of the European Union and United States in the negotiations on the Trade in Services Agreement (TISA).

Similarly, significant differences remain in the area of Technical Barriers to Trade (TBT). U.S. officials have expressed surprise at the lack of progress in this area, which they deem to be one of the fundamental issues to have driven the initiation of TTIP negotiations. For example, the European Union is perceived as unnecessarily retarding the issue of mutual recognition of conformity assessment bodies, when the United States and the European Union agree to maintain their existing high standards of health, consumer and environmental protection.

Public procurement also remains sensitive. Both sides have tabled texts and have started to consolidate them for proposals. Despite limits on what the United States may be able to offer, EU officials are eager to push for greater access to the U.S. procurement market. As a result, the United States is trying to manage EU expectations in this context. Disagreement also remains between the parties as to both the degree of openness of each other's procurement markets and the value of opportunities open to each other's government contractors.

In addition, the contentious issue of investment protection has been revived in the last two rounds, following an EU proposal that advocates the establishment of a new Investment Court System. The European Union is strongly promoting this approach in its bilateral negotiations with other trading partners, but the United States has significant reservations. The parties are reportedly starting to identify areas of convergence in this context, but the negotiators did not specifically address investment protection in their remarks at the end of the last round.

The parties have sought to maintain transparency and democratic oversight as guiding principles for the TTIP negotiations. For example, the European Union makes public all its position papers and negotiating proposals shortly after they are tabled in the negotiations. It also issued a report on the state of play of the TTIP negotiations during the latest round. Despite such unprecedented displays of transparency by a party to a major trade negotiation, campaigns against TTIP continue to focus on demands for additional transparency. In a way this debate reached a crux earlier in May when Greenpeace Netherlands

released what it alleged were TTIP negotiation documents. EU and U.S. officials refused to confirm the documents' authenticity, as TPP parties had done when Wikileaks released purported draft TPP texts in 2014 and 2015.

Some Political Implications of the Current State of TTIP

Facing entrenched and vocal opposition from some politically active advocacy groups, and less robust support from traditional business voices favoring trade agreements, governments in both the United States and the European Union are struggling to make the case for free trade. To a degree, the strategy of mollifying concern about the impact of trade on domestic policy priorities such as labor and environment by incorporating labor and environment disciplines into the agreement has not paid off in fostering a broader base of support for FTAs. Similarly, incorporating regulatory cooperation into the negotiation of TTIP has strengthened rather than addressed concern about the impact of harmonizing regulation. At this point authorities do not have a persuasive answer against their critics. A finalized TTIP is likely to help in this respect by clarifying the benefits that would come from eliminating remaining trade barriers and establishing better transatlantic mechanisms for preventing duplicative regulation. But that is some time off in the future.

Near-Term Outlook

As officials unequivocally dismiss the possibility of concluding a "TTIP light," sustained intercessional efforts will be required to conclude the ambitious, high-standard agreement that satisfies both sides' interests before the end of President Obama's term. Given their close working relationship, U.S. Trade Representative Michael Froman and EU Trade Commissioner Cecilia Malmstrom, along with their negotiators, are clearly committed to this goal. Thus, the next formal round foreseen in July will be critical to the timely completion of successful negotiations.

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