The Transatlantic Trade and Investment Partnership (TTIP): The devil will be in the detail

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Abstract

The European Union and the United States of America are currently engaged in negotiations on a comprehensive bilateral trade agreement, known as the Trans-Atlantic Trade and Investment Partnership (TTIP). According to the European Commission (2015), the resulting bilateral agreement should "help people and businesses large and small, by: opening up the US to EU firms; helping cut red tape that firms face when exporting; setting new rules to make it easier and fairer to export, import and invest overseas." Despite these ideals, the proposed agreement and the negotiations to achieve it have been subject to criticism by many people and organisations across Europe. This article attempts to shed some light on the issues and the potential benefits (or otherwise) of TTIP with a particular focus on Scottish interests.

I Introduction and background

It may be helpful to provide some background to the current negotiations. The first question that might be asked is why the US and EU, both strong advocates of multilateral negotiations, have turned to these bilateral trade talks.

Since the end of World War 2, barriers to international commerce have fallen dramatically across the globe. This has been achieved largely under the aegis of the World Trade Organisation (WTO) and its pre-1995 predecessor, the General Agreement on Tariffs and Trade (GATT). These institutions are multilateral in nature, such that that member states (currently numbering 161 countries) are required to give equal treatment to imports from all of the other members. Countries therefore set a single, "Most-Favoured Nation" (MFN) tariff (import tax) on a product regardless of its source (though countries outside of the WTO can face less-favourable access). The major advantage of multilateralism in trade negotiations is that, while larger countries generally focus on resolving trade issues between themselves, the benefits of improved market access in the resulting trade deal are extended to smaller countries. These nations would probably not have the clout to wring similar concessions out of their big trading partners on their own. Consequently small countries may be the collateral damage if large countries switch from multilateral to bilateral trade negotiations.

Bilateral trade talks are nothing new. Prior to the establishment of the GATT in 1948, trade talks would generally occur between small groups of countries. Despite the benefits of engaging in trade negotiations at a global scale, the multilateral nature of the GATT left it unable to address political and economic conditions specific to some of its member countries. Thus, almost from its inception, the GATT had to accommodate special deals arranged amongst smaller groupings of nations. Article XXIV of the GATT permits free-trade agreements amongst its members, whereby groups of countries can offer preferential access to each other's markets with tariff rates less than their MFN rates. Indeed, the strict interpretation of Article XXIV is that the alternative to MFN is free trade and these bilateral tariffs should be zero.

Article XXIV reconciles the trading regime within the EU with its membership of the WTO. The current 28 member countries of the EU trade freely amongst themselves, with the MFN tariffs on imports only applying to goods from outwith the EU (although many of these exporters also enjoy preferential access thanks to the EU's participation in additional free-trade agreements). Equally, though more recently, the US has availed itself of Article XXIV, most notably in the establishment of the North American Free Trade Agreement (NATFA) which, though less comprehensive than European integration, allows goods manufactured by Canada, Mexico and the US to move across their borders without import tariffs.

While deeper integration in Europe is motivated by much more than mere economics, many of the other bilateral deals, including NAFTA, were in part a result of the perception that the central mechanism driving trade liberalisation, GATT/WTO, was running out of steam. In a respect, the multilateral trading system is a victim of its own success. Average tariffs have declined quite sharply, while an increasing share of the world's trade is accounted for by members of the WTO as their numbers have grown. In a respect, the earliest rounds of tariff-cutting addressed the "low-hanging fruit", products for which increasing market access did not present any great domestic concerns or political controversy. However, eliminating trade barriers on remaining products and services might be more politically charged, with strong domestic lobbies opposing further trade liberalisation. This issue might have been easier to resolve had the expansion of membership of the WTO not have also increased the diversity of the member countries. The increasing numbers and influence of developing nations has raised issues that the older membership of industrialised countries did not have to address. The larger and more diverse the membership of the WTO, the harder it has become for it to reach agreement on new trade deals. Indeed, the current, Doha Round of multilateral negotiations has been stalled for several years with little hope of an imminent breakthrough. Consequently, it is little surprise that many countries have lost patience with the WTO and have decided to pursue free-trade deals with their biggest trading partners.

II Bilateral trade agreements: the Trans-Pacific Partnership (TPP) and Trans-Atlantic Trade Investment Partnership (TTIP)

The US is seeking to develop two major bilateral trade agreements on a grand scale. Not only is it in talks with the EU over TTIP but it has been engaged in negotiations for the Trans-Pacific Partnership (TPP) for much longer. Success with the TPP negotiations would result in a trade deal with eleven other countries on the Pacific Rim (Australia, New Zealand, Malaysia, Brunei, Singapore, Vietnam, Japan plus Canada, Mexico, Peru and Chile). In order to negotiate international trade agreements, the US President has to receive Trade Promotion Authority (TPA), more commonly referred to as Fast-Track negotiating authority, from the US Congress. This delegates to the executive branch of the US government the responsibility to negotiate trade deals which are then presented to Congress for approval in their entirety, preventing them from being picked apart on the floor of the House of Representatives or the Senate. TPA expired in 2007 and trade negotiations have been conducted as is if it were in place but it will have to be renewed before either TPP or TTIP can be presented to Congress.

The Obama administration has faced an uphill battle to get Congress to agree to a renewal and at the time of writing this is still in active debate in the US Congress. In part, this difficulty in getting renewed

TPA is a reflection of the concerns regarding the specific trade deals in the pipeline. These proposed deals go beyond the conventional trade issues of tariff rates and product standards and extend into the areas of labour laws, environmental laws, Intellectual property (IP), state-owned enterprises and government procurement.

From a European perspective it is worth noting that commentators in the US view TPP as the more controversial of the two prospective trade deals. Thus, while TTIP is the focus of this article, it is worth noting briefly the opposition to TPP. The negotiations for TPP have been shrouded in secrecy (an accusation that has also been levelled at TTIP) but there have been a number of leaks that indicate where some of the opposition lies. These include objections to: Hollywood studies that wish to extend copyright protection to the life of the author plus 70 years; pharmaceutical companies that want to make it harder to introduce generic versions of brand-name drugs; and international investors who want better ways to challenge alleged government expropriation of their investments (Timothy Lee, 2015). As Paul Krugman has said on TPP: "(T)his is not a trade agreement. It's about intellectual property and dispute settlement; the big beneficiaries are likely to be pharma companies and firms that want to sue governments." (Paul Krugman, 2015).

Given this damning assessment of TPP, does the same hold true for TTIP? One popular myth can be immediately disposed. The claims of secrecy levelled against TTIP are largely unsubstantiated. The European Commission maintains a comprehensive website on TTIP objectives and negotiations (http://ec.europa.eu/trade/policy/in-focus/ttip/). Hence, what is up for discussion is not in much doubt. The gains or losses from TTIP will arise from the specifics of the agreement.

The remainder of this article will look at the current state-of–play as regards trade relations between the two economic giants, the prospects for further liberalisation and harmonisation, and the other aspects that might be included in a comprehensive trade deal.

Table 1: Shares in world trade US, EU and TTIP (2013)

Shares in world trade 2013	USA	EU	TTIP
Goods trade			
Share of world exports	8.39%	25.19%	33.58%
Share of world imports	12.33%	19.74%	32.07%
Services trade			
Share of world exports	14.25%	15.33%	29.58%
Share of world imports	9.85%	14.78%	24.63

Source: WTO, stat.wto.org

Table 1 shows the importance of the US and the EU to the world economy. Collectively, the two contribute around one third of global trade in goods and around one quarter of trade in commercial services.

Not surprisingly, both the US and EU are very important trading partners to each other, even before any bilateral agreement is reached. This is shown in Table 2. From the perspective of the USA, the EU is its 2nd-most important source of imports and destination for exports. The USA is the most important market for EU exports and is the EU's 3rd largest source of imports.

Table 2: Bilateral goods trade, EU and US imports / exports, by rank and % share, 2013

Bilateral goods trade 2013	Ranking	Share
Ranking as export destination		
EU exports for US	2	16.7%
US exports for EU	1	16.4%
Ranking as import origin		
EU imports for US	2	17.0%
US imports for EU	3	11.6%

Source: WTO, stat.wto.org

III TTIP - Trade in Goods

Given that the US and many of the constituent countries of the EU have engaged in every round of the GATT multilateral negotiations, their MFN tariffs have already been driven to low levels. Looking at the trade-weighted tariffs (averages based upon the volumes of trade in the products imported), the US imposes an average tariff of 2.1% and the corresponding average tariff of the EU is 2.6%. While the trading partners have good access to each other's market, there is room for further bilateral trade liberalisation that could have important effects for producers and consumers. The difficulty in looking at average tariffs is that they can mask high import taxes on individual products, so there may be some industries for which trade liberalisation under TTIP may have significant effects.

For many sectors of the economy, TTIP will have no direct impact. Over half of the goods traded between the US and the EU are freely traded with no tariffs. This is the case for Scotland's most famous export to the US, whisky. The US has an MFN tariff on whiskies of zero, so TTIP will not improve distillers' market access.

The tariffs are higher between the US and EU for some traditional manufactures. Both have high average tariffs on Clothing: the US charging 11.6% and the EU 11.5%. Consequently, trade liberalisation under TTIP could make a significant difference to textile companies in Scotland if they were granted preferential access to the market in the USA.

Imports of cars into the US are subject to a tariff of 2.5%, while the EU's tariff on cars is the significantly higher rate of 10%. While there is no longer any production of cars in Scotland, TTIP could have a beneficial effect on Scottish consumers if imports from the US were not subject to the EU's MFN tariff on cars.

Establishing a free-trade area between the EU and US should allow substantially all of their products to cross the Atlantic without customs duties. But this is not as straightforward as it sounds and the gains from further trade liberalisation may be muted. The issue is to identify where goods are actually manufactured. Modern production processes often involve extended global supply chains where production takes place in different countries using inputs from a wide range of international sources. Hence, what is the "nationality" of a car that is assembled in England by a Japanese manufacturer using parts are manufactured in plants located throughout Europe and the rest of the world? There are few modern goods that could claim to be the product of a single country in every respect. The globalisation of manufacturing means that EU products are likely to have inputs from countries outside its 28 member nations while production in North America – Canada, the US and Mexico – is heavily integrated through NAFTA.

If no good can claim to be 100% from a single country, what proportion of its production has to take place within the borders of that country in order for it to be deemed to be a product of that nation? The EU and the US have to decide upon the minimum domestic content of a product that will allow them to treat the good preferentially, letting in imports from each other without charging the MFN tariff. These Rules of Origin (ROO) are quite contentious to negotiate and are expensive to monitor. Given the nature of existing trade agreements, all goods can move freely across the internal borders of the EU regardless of origin, but this is not the case for trade amongst the member countries of NAFTA. Nor will it happen even if TTIP successfully eliminates all tariffs on the products of the US and the EU. Customs inspection will still be needed to ensure that traded goods meet the ROO and can enter freely or, if they do not, are subject to the appropriate MFN tariffs.

In summary, eliminating the tariffs remaining between the EU and US will bring benefits to consumers but, given that the trade taxes are low to start with, the gains will likely be modest.

IV TTIP and trade in services

The EU's expressed goals for TTIP with respect to services trade is to ensure that EU firms are able to compete in the US on the same terms as US firms, while safeguarding public services. A successful agreement from the point of view of the EU would be one that improved access to the US market for EU businesses and professionals, achieving mutual recognition of some professional qualifications (such as for architects) and enhancing the ability of firms to get licences or formal approval to provide consultancy services (accountancy, legal, management consultancy, etc.). This will promote opportunities for suitably qualified professionals to enter new markets while ensuring that there is less contagion resulting from the activities of underqualified professionals, particularly in the light of the recent financial crisis.

Improving access in services is more controversial that liberalising trade in goods. The EU is adamant that TTIP will not involve any commitments with respect to the provision of services in sensitive areas, such as publicly-funded health, education, or social services. Nor will public authorities be forced to outsource public services that are currently produced in-house. Furthermore, EU member states will still be free to maintain any restrictions in film, television and radio to protect EU media production. This is the area where the details in the final draft treaty will be crucial in determining whether TTIP will bring benefits. TPP has already been condemned for promoting the interests of Hollywood to the detriment of local cultural industries and there are concerns that service providers in the US will be seeking to enhance their position in the EU through TTIP.

V TTIP and customs and trade facilitation

The general goal of this is to streamline customs rules and controls to make exporting easier. This would save time and money for all exporters but might have greater impact on some sectors of the economy. The task is to avoid unnecessary technical differences between the two markets, which often involves determining when standards are actually the same. When they differ, finding commons standards will reduce firms' costs in selling in foreign markets. There is, indeed, an aspiration that the standards that TTIP establishes will become the global norm, giving EU and US firms an advantage in global markets.

The fear about deepening regulatory cooperation is that the lowest standards will prevail, resulting in a detrimental impact on consumers to the advantage of large corporations. Negotiators have tried to re-assure the public that EU restrictions on, for example, genetically modified crops and hormone-fed beef are not on the table. Once again, the final draft will reveal what compromises have been reached.

Engineering goods account for around 25% of the bilateral trade volume between the US and the EU. This sector is characterised by big differences in technical regulations and the procedures used to check that products are in conformance with them. This is a particular problem given that the volumes of products traded are relatively small, meaning that the fixed costs of meeting another country's standards can have a significant impact on the firms' average costs of serving the market. Scottish companies, in particular, have a big presence in this sector and stand to benefit from successful negotiations that establish common standards on both sides of the Atlantic.

VI Issues facing SMEs

Small and medium-sized enterprises (SMEs) are at a particular disadvantage in selling into foreign markets. These are firms that employ fewer than 250 staff but account for two-thirds of private-sector employment. However, their production levels are generally so small that even small trade costs or minor differentials in product standards can create insuperable hurdles to their ability to export.

TTIP negotiations are attempting to address the problems of SMEs by making progress on removing remaining customs duties, simplifying the custom procedures, sorting out differences in technical standards, and improving the protection of firms' intellectual property rights.

One goal of the TTIP negotiations is to have the US provide a free, online helpdesk to small firms that addresses questions of doing business across the Atlantic. This may sound trivial, but it could be of great significance to small firms that do not enjoy access to the consultants and advisors at the beck and call of larger firms (and would mirror a similar facility offered by the EU).

VII Conclusions

Much of the proposed TTIP treaty is uncontroversial in promising to lower the remaining barriers to trade in goods and services that prevent consumers from benefitting from the variety of goods and services that are available on both sides of the Atlantic. We are looking at two of the world's largest trading partners taking the opportunity to deepen their trading relationship and this should provide dividends to firms and consumers on both sides of the Atlantic. It may even have knock-on effects and reinvigorate the multilateral negotiations within the WTO.

For Scotland, TTIP has some clear implications. If successful, TTIP may create opportunities for the textile and engineering sectors by way of reduced clothing tariffs and an agreement on common technical standards. Further trade liberalisation in services may have positive impacts for Scotland's important financial services sector, while any decrease in red-tape and other regulatory burdens may help more of Scotland's SMEs to enter the US market. However, TTIP will have little or no impact on perhaps Scotland's most iconic export, Scotch whisky, given that it already benefits in the US market from a zero-rated Most Favoured Nation (MFN) tariff.

As noted, the caveats are largely in the realm of the non-traditional areas of trade agreements, where TTIP might be used to force the partners to accept standards or behaviours that are unpalatable to their citizens. However, the EU is clearly aware of these issues. The question remains as to whether EU negotiators are able to provide a sufficiently robust defence of European wishes and values.

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