



## **THE MANAGEMENT OF TRADE FOR INTERNATIONAL SECURITY: AN ANALYSIS OF SOME STRENGTHS, WEAKNESSES, OPPORTUNITIES, AND THREATS OF THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP**

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The Transatlantic Trade and Investment Partnership (TTIP) is publicised as an economic agreement designed to foster economic growth in the Western Hemisphere and Europe, although at closer inspection it displays hallmarks of regional security architecture and managed trade crafted to remedy failings of the Doha Round of World Trade Organisation talks that ended in impasse. Whether it will liberalise trade with construction of a Transatlantic Free Trade Area (TAFTA) by reducing tariffs and non-tariff barriers (NTBs) or instead promote the management of trade by behemoth nations and their oligarchs is another question. Will the TTIP benefit the European Community and the United States, only the United Kingdom and the United States, only the United States, or none of the foregoing? This article will analyse the interplay of Strengths, Weaknesses, Opportunities, and Threats of the TTIP, sometimes interfacing it with its Trans-Pacific Partnership (TPP) counterpart on the other side of the world that will impact the United States directly and the European Union indirectly, concluding that the TTIP will benefit all of the European Union as well as the United States, with large corporations perhaps reaping the largest rewards but with quality of life across the board being improved as well exponentially.

**Keywords:** Economic growth, Europe, TTIP, TPP, International trade, Regional security.

### **Introduction**

The Transatlantic Trade and Investment Partnership (TTIP) is publicised as an economic agreement, ostensibly to fit neatly into the package of Neo-Liberalism and cooperation among its partners through the construction of a Transatlantic Free Trade Area (TAFTA). It will be that, but something much more. It emerged in the aftermath of the Doha Round of talks held by the World Trade Organisation (WTO) that ended with impasse, when proponents of the Doha Round became frustrated with failure and turned instead to preferential trade agreements (Erixon, 2013). This alternative has vexed some scholars who view 300 Free Trade Agreements (FTAs) worldwide as being too many atavistic throwbacks to the 1930s when FTAs constrained rather than liberalised trade (Bhagwati, 2008). If someone worries about too many FTAs, one or several comprehensive FTAs such as the TTIP should provide a pleasant alternative: *e pluribus unum* (one out of many).

However, the TTIP is more than an outline for an economic agreement. The TTIP will function as a security pact on both sides of the Atlantic Ocean, and in this way encompass the objectives of Neo-Realism also, or this appears to be the wish of its architects, the United States and the European Union (EU). In this respect, the TTIP displays a striking similarity to the Trans-Pacific Partnership (TPP), its Asian-American counterpart, also being structured by the United States Trade Representative on behalf of the administration of United States president Barack Obama (USTR News, 2014) and the Directorate-General for Trade in the European Commission (de Gucht, 2014; “Trade Policy”, 2014). Both powers on each side of the Atlantic Ocean portray the TTIP as an engine and as a strategy for global growth (de Gucht, 2010). What really matters is whether this is true in fact, at least *in partem* if not *in toto*. Analysing this is one aim of this article. Another objective is to identify what additional elements, if any, such as regional security and regulatory harmonisation, form the core strategy of the TTIP, from the viewpoint of the EU, the United States, or both.

## Literature Review

An emerging argument contends that the TTIP and its counterpart on both shores of the Pacific Ocean, the TPP, together reflect frustration by the Western Alliance at failure of the Doha Round of World Trade Organisation (WTO) negotiations due to opposition from emerging nations such as Brazil, India, and China particularly (Alden, 2013a). This argument praises the United States and the EU for constructing both partnerships in an effort to “reassert control” over international rules pertaining to trade without capitulating to developing nations and their quest to tie trade to their own agendae in agriculture, manufacturing, and intellectual property laws (Alden, 2013b). Some critics have cautioned that the TTIP will usher in “business-managed democracy” (Beder, 2009).

Perhaps the most important article published recently on this effort addresses what its authors call “precautionary principles” in relation to “the post-modern regulatory process” that envisions and if agreed will entail “regulatory convergence” between Europe and United States (Bergkamp & Kogan, 2013). Or at least the European Union and the United States seem to feel this article is of major importance, judging from the fact that it appeared recently on two official websites, that of the European Union Parliamentary Research Service, and that of the United States Embassy in Brussels, Belgium, according to the law firm at which Professor Bergkamp is a partner, Hunton and Williams (“Bergkamp Article,” 2014). Convergence of the regulatory processes long in effect on both sides of the Atlantic Ocean, but different in character, is likely to be the paramount stumbling block to agreement on the TTIP, in principle, although in principle this does not have to be the case.

An emerging issue is evident from the slightly different titles of two articles by Alden: do the United States and the EU really want to “chart a new path for global trade” (Alden, 2013a), or do they want to “reassert control over rules of global trade (Alden, 2013b)? This difference is potentially profound, and the manner in which the parties answer these questions conceivably will be adumbrative of eventual success or failure of the TTIP itself and transatlantic relations. What some prominent authors have referred to as “regulatory convergence” is at the core of the TTIP and of its acceptance by parties on either side of the Atlantic Ocean (Bergkamp & Kogan, 2013), because unless a “third option” can be agreed upon EU and United States regulations will have to become the same, and historically they have been very different. This should not mean, necessarily, that America must adopt European regulations, or that Europe must adopt American ones. Some “wobble room” does seem to exist, albeit with economic and social consequences, and it is dangerous to presume that “European” regulations stand paramount when, as has been pointed out, in many respects regulations are EU member state specific, and the United States should respect each EU member state’s internal regulations (Bizarri, 2013, 23, n. 112). Easier said than done. This component requires augmentation, and may be required in order to preclude the draft TTIP from becoming unraveled at the hands of Continental Europe, particularly smaller EU member states.

Additional value to both Europe and the United States appears to be evident from different preliminary studies and initial assessments (Maniaki-Griva, 2013), although to be sure some evidence does suggest that EU institutions have conducted more research than their American counterparts, possibly obviating that the TTIP is more important (positively or negatively so) to Europe than to the United States. This alone is hardly cause for alarm, even if it means the TTIP will benefit Europe more than the United States, because the North Atlantic Treaty Organisation (NATO) always has benefitted Europe more than America in the short term. Mutual security will benefit both sides of the Atlantic equally in the long term.

Another obstacle, derivative of the above, is “the economic and political integration of regions with unequal productivity,” that marked the distinction between “markets and clubs” in a seminal publication 22 years ago (Cassella, 1992). Across nearly the past quarter century, our world has changed, and the TTIP is one paradigm for coping with such changes, favourably from the perspective of the United States and its strongest EU trading partners. Part of the value of the TTIP reposes not only in its aim to strengthen its partners but also in its covert ambition to weaken non-partners, an aspect of the TTIP that is approached much more quietly, but gradually becoming visible with deterioration of both United States and EU relations with the Russian Federation. Authors from outside of the EU and the United States, most notably Russian authors, have alleged squarely that the true purpose of the TTIP and TPP alike is to exclude Russia as a counter-measure to the actual or perceived rise of the Brasil, Russia, India, China, South Africa (“BRICS”) bloc (Skidanov, 2013). Even if this contention were untrue or only partially accurate last year, in the wake of annexation of the Crimean Peninsula by the Russian Federation in 2014, followed by its arming of Ukrainian separatists in 2014 thought responsible for shooting down Malaysian Airlines flight MH 17, this allegation makes sense currently.

Relations between the United States and the EU on the one hand, and China on the other hand, have not weakened, and so the question is ripe to emerge whether China should be included in either the TTIP or in its Transpacific partnership, the TTP, that includes several countries that border the Pacific Ocean including the United States. Then there is the question, ripening if not yet ripe, whether the EU should have membership in the TPP although no EU member state borders the Pacific Ocean. Are oceans figurative here? Are oceans even relevant? Should the world be discussing a Trans-Oceanic Trade and Investment Partnership (TOTIP)?

### **Threshold Constraints**

Several obstacles have delayed progress on both the TTIP and TPP historically, and are threshold constraints because they are not substantive in principle and easily can be overcome. Some EU member states always have mistrusted one another, a primary case in point being England and France. This historical rivalry has become buttressed recently when Conservative (Tory) Party in the United Kingdom (UK) adopted rhetoric advancing its desire to devolve from the EU, that wish also supported by prime minister David Cameron’s avowed intention to hold a referendum on the UK withdrawal from the EU in 2015. This procedure is viewed more seriously and with potentially more gravity by a scheduled referendum in 2014 on whether Scottish voters want Scotland’s devolution from the UK with possible accession into the EU as a sovereign member state. If the UK were to withdraw from the EU, however unlikely that will be, little doubt exists but that the TTIP would benefit the UK all the more. Less is said about the obvious fact that a strong and healthy TTIP is likely to dissuade UK withdrawal, and so, far from stalling, other EU member states should be speeding up TTIP progress on a “fast track.”

Another constraint, until recently completely veiled, is the Russian Federation’s private but vehement opposition to the TTIP or to any global or regional partnership that excludes it. Fear of annoying the Russian Federation contributed to TTIP slow down by the Germanic member states led by Germany, much of which recalcitrance appears to have shifted in the wake of Dutch fury over losing so many citizens of the Netherlands in the MH17 aircraft shoot down 17 July 2014 in Eastern Ukraine. This moment is at hand right now to propel the TTIP ahead full throttle to defy Russian blackmail.

An opportunity exists at this moment to divide the People's Republic of China ("China") from the Russian Federation and consequently from the BRICS bloc. As a good neighbour, China remained silent in the United Nations Security Council on matters critical of the Russian arming of separatists in Eastern Ukraine. Separatism is one of China's announced "three evils," however and each disturbing event involving separatist violence in Eastern Ukraine threatens stability in China. An offer should be made to China to join both the TTIP and the TPP, an offer that China hardly will refuse, and this offer does not require Russian Federation consent.

Energy is a commodity on which all industrialised nations rely, Austria, Germany, Italy in particular, and these EU member states have placed too many hopes upon the Russian Federation for supplying energy. China is following along this same primrose path. An abundance of energy is becoming available from within the Western Hemisphere, not only Latin America but also the United States. This is another strong reason for European and Asian countries to join trade and investment partnerships with countries in North and South America, reducing their dependence upon the Russian Federation, and at the same time further isolating Russia generally and from China particularly. Western countries in the Americas and Europe should welcome China into the TTIP and the TPP, perhaps the latter initially, because as industrialised as China has become it will otherwise stand to be too dependent upon the Russian Federation, and Western countries that have or will have petroleum products to export stand to lose an important market.

China has made veiled attempts to corner petroleum sources from Latin America, with Russia lurking in the background evidently hoping to delay China's success or benefit itself along the way. Without membership in the TTIP or TPP, both China and Russia will confront a very strong barrier in the Western Hemisphere in the form of the 1823 Monroe Doctrine, as amended. Although the Barrack Obama administration does not seem to be concerned about this obstacle, his successors will be, particularly if as expected they are more politically conservative. Neither Republicans Theodore Roosevelt or Ronald Reagan or Democrats Harry S. Truman or John F. Kennedy would overlook the measures both China and the Russian Federation already have taken in the Western Hemisphere, exemplified by Russian Federation president Vladimir V. Putin's cancellation of 90% of Cuba's USD 32 Billion debt to the Russian Federation (Walklate, 2014).

### **Categorical Projections**

An implemented TTIP is projected to increase EU economic gains by Euro 119 Billion annually, meaning an increase of Euro 545 annually in disposable income for a family of four persons, and to increase United States economic gains by Euro 95 Billion annually, translated to an increase of Euro 655 per family in the United States, all the while increasing global income by Euro 100 Billion annually, based on an estimated increase by 28% of EU exports to the United States without requiring more than one half of one percent of either the American or the European labour force to relocate across economic sectors (Francois, Manchin, Norberg, Pindyuk & Tomberger, 2013, vii). Thus, the TTIP will not enrich the EU or the United States at the expense of the developing world as some skeptics have alleged. On the contrary, the developing world will stand to develop faster and more to reach a higher quality of life sooner because of the TTIP and the value added it will bring to the EU and to the United States.

This paradigm appears to create a "win win" outcome for both sides of the Atlantic Ocean, both corporately and individually. It does eliminate some costly tariffs and non-tariff barriers (NTBs), arguably costing all governments some revenue, more than offset by reduction of huge bureaucratic expenses. Most government workers who will be displaced by the TTIP's reduction of tariffs and NTBs should be continued in their employment by supervising the increase in trade flow (Francois, et al., 2013). What this portends is straight out of Franklin Delano Roosevelt's First Inaugural Address: "the only thing we have to fear is fear itself -- nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance" (Roosevelt, 1933). Fear is the obstacle today just as it was in a different context 81 years ago, and leadership will reverse that fear nowadays as it has done before.

More than most other programmes, the TTIP will be a test of President Barrack Obama's leadership and of David Cameron's and of other EU leaders. It is subject to a sense of urgency unknown since the Cold War period. This current version of a TTIP alone will be insufficient without an Asian component. As some have argued, a Eurasian Trading Partnership that will join the EU and China is sorely needed (Jones, 2013), yet it has not advanced concretely. The final version of an effective TTIP should include China, possibly other Asian trading partners.

Sooner or later, the EU and the United States must openly admit that the TTIP is patently an expansion of NATO utilising new methodologies by combining military instruments of power with non-military instruments that include trade, Foreign Direct Investment (FDI), Foreign Portfolio Investment (FPI), and currency exchange mechanisms, amongst other factors. This is a necessary response in view of advancing technologies, globalisation, extensive cross-migrations worldwide, and the burgeoning rise of a global middle class (Jones & Campbell, 2014).

### **Core Elements**

The TTIP contains several core elements. Each evokes both strengths and weaknesses for both sides of the Atlantic and each side of what we term the corporate versus consumer divide. Most TTIP core elements exhibit more strengths than weaknesses from the viewpoint of both the EU and the United States. It is true that some strengths of the TTIP do favour the business community on both sides of the Atlantic Ocean, especially "big business." This becomes a drawback only if business is viewed parochially as the enemy of the consumer. In the aftermath of the 2008 global recession, it should be obvious that strong business sectors will improve quality of life for consumers. Even if some trade does become "managed," whether this is good or bad depends on the quality of this management and on who become the main beneficiaries. Projected increases in global trade, reductions in trade barriers, increases in employment, with reductions in cost of products (DeGucht, 2010) point to an improvement in quality of life for all, an increase in corporate shareholder value, and very little divide between companies that make products and consumers who will be the end purchasers and users of those products (DeGucht, 2014).

Besides an augmentation of trade volume, what core elements are included within TTIP? This question is important, because in view of recent events in Eastern Europe and elsewhere the core elements of the TTIP and the TPP that extend beyond trade volume may be most important. Foremost amongst the core elements of the TTIP that extend beyond trade volume is what has become known as the "Whole-of-Government Approach" aimed at consolidating the various instruments of power of the United States (Jones & Campbell, 2014, 7), presumably in concert with its principal Allies. This involves the United States taking advantage of its strategic assets by more fully integrating its instruments of national power including "diplomatic, informational, military, economic" in order "to advance US interests at the regional level" (Ibid., 11). Presumably, consolidation of the instruments of national power in turn requires consolidation of the instruments of international power.

This is in response to the United States National Intelligence Council's Report that forecasts the emergence of "megatrends" and "tectonic shifts" that will require diffusion of power from hegemony into networks (National Intelligence Council, 2012, iii) prompted by the emergence and growth of a "global middle class" (Ibid., v) the concatenation of which mandates TTIP or a similar Transatlantic Partnership for the security of both the United States and Europe. Security from what or from whom? Although dangers lurk everywhere in an anarchistic world devoid of global governance, the principal danger to Europe and the United States together is the Russian Federation. It is this danger ahead of other national dangers the TTIP aims to neutralise. Increase of trade volume and improvement of regional security are Strengths and Opportunities.

Weaknesses and Threats must be viewed as accompanying Strengths and Opportunities in any context. What are they here, and how severe? Several have been identified. One involves food distribution. Although the United States National Security Council has projected a "growing nexus"

between food, water, and energy” shortages (iv, 7), the German organisation *Brot für die Welt* (Bread for the World) has projected that the TTIP will induce food shortages in much of the developing world (“German NGO”, 2014). Certainly this sort of an outcome will be unacceptable, but hardly a legitimate basis for aborting or cancelling the TTIP *ab initio*. To the extent that the TTIP or any international programme such as the TPP negatively impacts quality of life upon any population, this aspect must be corrected without abandoning the paradigm.

In addition, harmonisation of regulations by the TTIP frequently is alleged to be a Threat to both the EU and the United States, depending upon one’s perspective. Each blames the other. This is the same argument made consistently across the 1950s through the 1980s as the EU matured. In reality, harmonisation seldom if ever has harmed Europe. What has been harmful beyond a point is the recalcitrance of many EU member states to harmonise in actual fact. Upon promising to do so, some of the larger states in the EU have backtracked in practice, ignoring harmonising regulations as a form of protectionism sometimes disguised as health inspections in agricultural and fisheries sectors, as safety in manufacturing sectors such as automotives. However, these are hurdles that Europeans continue to cope with, they have been unable to disrupt unity, and should not be permitted to derail the TTIP either, because sufficient time will be available post-implementation to iron out harmonisation details across the Atlantic much as has been done within Europe.

Intellectual property concerns require consideration both in the EU and United States, but in the most important areas most of the time many of the differences pose little difficulty at all. In the case of design and utility patents, sometimes together with trademarks, United States and EU requirements vary slightly. In principle, the parties to the TTIP should lengthen periods of protection to conform the shorter model to the longer, to encourage innovation. Thus, if Europe provides protection for a shorter period than the United States, that should be enlarged to render both parallel. Such a controversy is considerably less important in the age of the Internet because anyone contemplating patent or trademark infringement should be deterred until the longest time of protection has elapsed, to avoid civil penalties and criminal prosecutions in the jurisdiction where the product continues to be protected. So also with book and other print copyrights, with broadcast and sound recording copyrights, plus film and photographic copyrights. It is too risky to infringe on any jurisdiction’s protection because that jurisdiction is entitled to award damages for infringement anywhere on the Worldwide Web.

A final example involves disparagement of individual reputation, where the law of the United States appears to protect “freedom” of speech under the pretext of the First Amendment to the United States Constitution provided what is said or written is “true,” regardless of the harm it causes, whereas EU laws and the laws of EU member states strictly limit when anyone may invade another person’s information privacy pursuant to Personal Data Protection laws.

### **Projected Amendments**

Whenever negotiations reach impasse, international partnership discussions being no exception, an analysis must be made to determine where disagreements are the most profound. With the TTIP, disagreements seem to focus largely on the international enforcement of foreign regulations. This should be no problem at all, if properly addressed instead of being relegated to a pretext for delays.

Of some concern is the fear in America and in Europe that the judiciary on each side of the Atlantic Ocean, including state courts in the United States and national courts of the EU member states, but especially the Federal judiciary in the United States and the Community courts of the EU, will be required to enforce each others regulations and judgments. This need not be the case, at least not immediately, and can be made subject to a lengthy phase in period. Litigants in the United States can be heard in Europe on European issues, and European litigants can be heard in American courts on America issues. If cost of travel becomes a problem, it will be rather simple to open for a to hear and determine issues arising under the TTIP with circuit judges: Europeans sitting in the United states and Americans sitting in Europe, again at least during a phase in time period. Foreign jurisdictions on both sides of the Atlantic Ocean will

have to become prepared to cross-enforce judgments entered abroad that are subject to TTIP jurisdiction. This will expand each territory's conflict of laws precedents, although this should pose little difficulty in courts of the United States or EU Community Courts, all courts of precedent. Some confusion may result in the national courts of Continental Europe and island member states (Greek Cyprus and Malta) other than the UK itself and Republic of Ireland.

In many if not most respects, the TTIP and the TPP are parallel counterparts. China should be invited to join both, Russia neither, and if China is not invited to join the TPP, it should be invited to join the TTIP soon. Across the first 14 years of the 21<sup>st</sup> century, China has grown to be the number one or number two trading partner of the United States and the EU (alternating with one or the other year after year). An appearance is given that the TTIP is designed and intended to make the EU and the United States independent of China, when this is not the case and must not be the case. If this were to happen, then China would be channeled to become the lead trade partner of one or more nations from the BRICS bloc, least favourably the Russian Federation's.

When Chinese government officials retire, and increasingly more frequently even before, they tend to migrate to the EU or the United States, a sign that Chinese officials view both the EU and the United States as being, and remaining, stable economically, militarily, politically, and in every other respect. If as it appears the TTIP is an economic NATO designed and intended to protect the North Atlantic Alliance from Russian aggression, Chinese membership will be only helpful, not harmful.

## Conclusions

That the TTIP is viable is without question. Europe and the United States simply must speed up their negotiations to achieve a result during the year 2014. The time is ripe. This is because TTIP is more than a trade enhancement agreement. It is a national and international security apparatus. Some member states of the EU have been holding back, fearful of Russia's wrath and reprisals in delivery of energy resources. That stands to change in the wake of the MH17 airline shoot down, where the Russian Federation has shown its true colours. This display of a willingness to depart from international norms is evident to the EU, the United States, and very evident to China. It is exactly the correct time to move ahead aggressively with the TTIP as an international security pact. Proceeding forward immediately will send the correct message to the leadership of the Russian Federation and China. Inviting China to join will send an even stronger message also.

The TTIP does involve the management of trade, this is a fact, and it is criticised. Also, it is important to the international security of the North Atlantic region, and on this ground alone it should survive judicial challenge in the European Court of Justice and in the Supreme Court of the United States of America. The TTIP possesses both Strengths and Weaknesses internally and both Opportunities and Threats externally. It provides more Strengths than Weaknesses and more Opportunities than Threats to both the EU and the United States, on balance. It should be speeded up for a "fast track" implementation. Without further delays the TTIP should become adopted by the EU and the United States.

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