Inside U.S. Trade - 06/17/2016 , Vol. 34, No. 24

After TISA Ministerial, Focus Is On What Provisions Get Into Final Deal

This month's meeting of trade ministers from countries participating in the Trade in Services Agreement (TISA) brought to the forefront the issue of which rules and disciplines will ultimately make it into a final deal, according to Geneva negotiators.

At the June 1 TISA ministerial, ministers discussed the fact that parties ultimately have to decide which annexes have enough support to be part of a final deal and which provisions in otherwise broadly supported annexes will not make the cut, sources said.

However, ministers did not make a specific recommendation on which annexes and provisions to take off the table, these sources emphasized. Instead, European Trade Commissioner Cecilia Malmstrom in her role as chair of the ministerial invited participants to evaluate annexes and provisions along those lines, sources said.

The next TISA round is scheduled to start in the first full week of July and is expected to include a further stocktaking of annexes' status. The European Commission has announced the round is taking place from July 8-18, according to a June 13 report it issued on the last round. But a Geneva source said this week that the date could still be changed.

Ministers also reviewed the revised market access offers, which will be superseded by a second round of revised offers in early October, sources said. The U.S. revised offer did not include concessions on maritime services and the temporary movement of persons, and the EU only minimally changed its initial offer.

However, in the last TISA round, the EU signaled it is willing to improve its offer if other trading partners do as well, sources said. However, this did not amount to firm assurances to do so nor a commitment by the EU to offer in TISA what it has given to Canada in a bilateral free trade agreement struck in August 2014.

The EU is very focused on getting the U.S. to improve its offer on telecommunications services by lifting U.S. equity caps, sources said. The U.S. so far has taken the position that the Federal Communications Commission is open to lifting the caps on a case-by-case basis and has done so for T-Mobile from Germany, for example.

But a review of the offers showed that one hotly debated issue has evolved, though it is not yet solved, sources said. The issue is the extent to which members can take so-called policy space exemptions on new services, which means they reserve the right to impose new regulations in the future.

The U.S. opposes these broad exemptions with the argument that they amount to undermining the national treatment commitment that countries agreed to apply across the board with limited exemptions in TISA. National treatment obliges countries to treat foreign service suppliers no less favorably than domestic ones and exemptions for new services could lead to discriminatory regulations.

In their revised offers, Norway, Korea, and Japan scaled back their policy space reservations, and Japan, along with other countries, said it would eliminate them provided other countries did as well.

That is not likely to happen with the EU, which has taken multiple policy space reservations, and is under strict instructions from member states and the European Parliament to preserve the right to regulate for new services that have not yet been invented and go beyond those listed in the so-called W120 document, a services classification system used in the World Trade Organization.

The document covers the universe of all services in 12 sectors, and in the past 25 years there has not been an instance of a new service being developed outside this classification. The only new developments in services have been different modes of supply and delivery. For example, instead of conducting banking operations from a brick and mortar building, banking services can be offered via internet, sources said.

The July meeting will include a stocktaking by capital-based officials that will move to the next phase of identifying the status of annexes or certain provisions in otherwise broadly supported annexes.

The stocktaking officials will try to establish which annexes are advanced or "stabilized" to the point of having only issues that must be decided at the political level, Geneva sources said. They will also identify which annexes still have technical issues to resolve. The third task will be to identify the annexes and provisions that must have more support to survive, they said.

That latter category could include two annexes that are a priority for the U.S. and the European Union; the first deals with delivery and postal services and the second with direct selling, sources said. Also lacking support is a Turkish proposal on road transport that is now part of a transportation annex that also covers maritime services and specialty air services, such as aerial firefighting.

One informed source said the road transport issue will likely be addressed bilaterally between Turkey and the EU in their new trade negotiations that have been announced as the EU courts the Turkish government due to its role in stemming the flow of refugees to the EU.

But even in the core annexes on which negotiators have been most focused, there are many outstanding issues. For example, the data flow and data privacy issues raised in the annex on electronic commerce have not yet been discussed in detail, sources said.

This is partially because the EU does not have in place the three key elements on data privacy that it has said are needed to engage in such negotiations. They are the U.S.-EU framework on protecting personal data of EU citizens known as the Privacy Shield, the umbrella agreement that governs the transfer of data for law enforcement use, and the Judicial Redress Act passed in the U.S. that gives EU citizens the right to litigate in the U.S. if they feel their data have been misused.

The other core annexes are telecommunication services, financial services, transport and temporary movement of people for services delivery.

There will be no decision in the July stocktaking on which annex or provisions to jettison over lack of support, Geneva sources said. Instead, that decision to do so will emerge more organically, they said.

There are two more rounds scheduled for September and November, but a December negotiating round is also under active discussion, according to a Geneva source. Nevertheless, the goal of concluding TISA this year remains a highly ambitious target given the number of outstanding issues that remain to be solved.

Among those issues are the institutional provisions of a TISA deal, which participants have just begun to tackle in the last round (see related story). There is also the controversial U.S. demand for an most-favored nation forward provision, which would obligate countries to automatically extend to TISA participants any trade concessions they have made to other trading partners in a separate bilateral or regional deal. This MFN forward fight pits the U.S. against the EU, which opposes it.

Related News | World Trade Organization |

Inside U.S. Trade - 06/17/2016 , Vol. 34, No. 24

Inside U.S. Trade

6/20/16

Administration Drafts TPP Implementing Bill In Preparation Of Potential Lame-Duck Vote

U.S. Trade Representative Michael Froman today (June 20) said the Obama administration is drafting the implementing bill and other reports required for a potential lame-duck vote on the Trans-Pacific Partnership under the fast-track law. He said the lame duck represents the earliest window of opportunity given Senate Majority Leader Mitch McConnell's (R-KY) opposition of a vote before the election.

"We're working with congressional leaders and with the leaders of the Finance Committee and the Ways & Means Committee to chart that pathway forward, laying the groundwork, doing the preparatory work, drafting the bills, drafting the reports that need to get done so that when that window of opportunity opens, we'll be ready to walk through it," he said. "That's what the work over the next few months is going to take."

According to the fast-track law, the president must submit to Congress a copy of the final legal text of the agreement; a draft statement of administrative action (SAA) proposed to implement the agreement; and a plan for implementing and enforcing the agreement thirty days prior to formal submission of the draft TPP implementing bill to Congress.

At the same time, he must also submit to the House Ways & Means and Senate Finance committees three reports that spell out how the deal will impact U.S. employment, labor rights in the U.S. and FTA partners, and the environment. USTR has said earlier this year that these reports will promptly be made available to the public "to the maximum extent possible."

On the timing of the vote, McConnell "has made clear publicly that he doesn't want to see a vote before the election, so that really means, from the Senate perspective anyway, in the lame-duck period," Froman said. "But to even do this in the lame duck, you want to do as much of the preparatory work as possible under Trade Promotion Authority beforehand, and that's what we're working on now."

Froman spoke to the Council on Foreign Relations in New York City about the future of the TPP and the importance of U.S. engagement in defining trade rules in the Asia-Pacific region. He is the first administration official to acknowledge that the administration is working on the implementing bill, when other officials both publicly and behind closed doors have sidestepped this issue.

Froman highlighted that there is "a certain urgency" to get TPP done this year because the speaker of the House, the Senate majority leader and the president are all pro-trade but warned "that all could be different a year from now."

He noted that President Obama is "fully invested" in pushing for a TPP vote this year. "We have a whole White House, whole cabinet effort underway with hundreds of events around the country by cabinet and sub-cabinet officials," he said.

Obama's level of engagement was apparent when he reached out to Senate Finance Committee Chairman Orrin Hatch (R-UT) last week to discuss the outstanding issue of market exclusivity for biologic drugs. Hatch and Obama on June 15, however, were not able to reach an agreement on the provision that would satisfy Hatch's demands of 12 years of market exclusivity. But the exchange was proof that Obama sought to address Hatch's complaints rather than have his trade officials try to go around him.

Froman said the administration “bit by bit” has been able to address issues that were flagged by Congress after the TPP deal was concluded last year. He reiterated his comments from last week that market exclusivity for biologics is the “main outstanding issue right now."

Froman said USTR is working with Congress and stakeholders to find solutions that do not require reopening or renegotiating the agreement. Renegotiation on one issue, Froman warned, will lead to “unraveling across several other issues.” But he held open the possibility of gaining additional commitments through implementation plans.

“That doesn't mean that in the process of implementation -- and we have a robust process of making sure countries are meeting their obligations, we're working with Congress on that -- that there aren't things that we can do to give reassurance that we are addressing the issues with the countries and with Congress. But I think opening up the Pandora's box of renegotiation I think will ultimately lead to it unraveling itself.”

He said TPP has “broad support across the economy” and mentioned the pork and dairy industry groups, which have previously taken issue with the market access granted in TPP, are “now fully supportive.” On the financial services fix, Froman said that the administration and stakeholders are “quite close to reaching a solution.” The administration plans to present the legal text of the fix to cleared industry advisory groups next week.

FOR IMMEDIATE RELEASE

June 22, 2016

Maine Congressional Delegation Applauds the Consideration of Critical Findings that Conclude the Lobster Would Not Be Invasive to Europe

WASHINGTON, D.C. – U.S. Senators Susan Collins and Angus King and U.S. Representatives Chellie Pingree and Bruce Poliquin said today that a scientific committee of the European Union is considering arguments presented by U.S. and Canadian researchers in response to a Swedish request to ban the import of American lobsters into the EU. The researchers, who prepared their report at the request of the Maine Congressional delegation, found that there was no valid scientific evidence that lobsters are an invasive species. That report was then submitted to the EU Scientific Forum on Invasive Alien Species to counter a claim from Swedish scientists that American lobsters were posing a threat to the European environment.

"We are pleased that both U.S. and Canadian experts have found there is no firm evidence that American lobsters are an invasive threat to Europe and that their analyses will be considered in the risk assessment," **Senators Collins and King and Representatives Pingree and Poliquin said in a joint statement**. "We will continue to fight for Maine's lobster industry and do everything we can to ensure that all of the facts are considered in this assessment."

After reviewing the Swedish request and reviewing information from U.S. and Canadian scientists, an EU official told the Maine Congressional delegation that "the feedback provided by Canada and the U.S. provided new elements, some of which were not yet considered in the risk assessment. Therefore, the Scientific Forum requested Sweden to update the risk assessment taking into account these elements as appropriate."

EU officials have told the Maine delegation that Swedish scientists have until July 31 to provide additional information and the Scientific Forum will then issue a decision on the scientific evidence by August 31. If the Scientific Forum finds the scientific evidence convincing, it will be then up to the Committee on Invasive Alien Species to take other factors, including economic considerations, into account before ruling on a proposed ban.

Top U.S. and Canadian scientists, including Dr. Bob Steneck of the University of Maine, produced this joint paper concluding that there was no scientific evidence to support that Maine lobsters could survive long enough in European waters to be considered an invasive species.

In recent months, the Maine Congressional delegation, along with other members of the New England delegation, has rallied against a proposal by Sweden to ban the import of live Maine lobsters to the European Union.

http://www.politico.eu/article/trade-agenda-will-wobble-but-continue-despite-brexit/

'A midsummer night's nightmare' for European trade

UK's EU exit will make transatlantic trade talks even tougher.

By
Hans von der Burchard and Alberto Mucci

6/26/16, 12:00 PM CET

Updated 6/28/16, 6:17 AM CET

The U.K.'s decision to leave the EU means the loss of a major political and economic partner with a history of championing free trade at a critical moment for a mammoth agreement being negotiated with the U.S.

At the very least, this latest blow to an already strained effort is sure to make the task of reaching an EU-U.S. trade deal that much more difficult.

"A midsummer night's nightmare" was how European Commissioner for Trade Cecilia Malmström labeled the Brexit decision on Twitter.

Some are putting the best face on it they can, saying they will redouble efforts to keep momentum going for the Transatlantic Trade and Investment Partnership with the U.S., negotiations with the South American bloc Mercosur, Mexico and Asian countries, and ratifying a trade pact with Canada, a Commission official said.

"Brexit makes our trade agenda much more urgent," said Daniel Caspary, a German Christian Democrat MEP and spokesman of the center-right EPP group in the European Parliament's Committee on International Trade.

"There is no plan B ready for changing our trade policy" — *MEP Bernd Lange*

The U.K. is typically viewed in Brussels circles as the EU's liberal force, a counterweight to more state-driven European countries including France and Italy.

"Without the U.K., we lose influence on the international economic scene, an influence we are already losing to China and other Asian nations … meaning that we have even less time to do these necessary trade agreements," Caspary said. "We must now move swiftly ahead."

No plan B for trade

When European trade negotiators met with their counterparts from Mercosur on Friday, however, they had to deliver the message that the EU market will be getting a bit smaller.

"We certainly lose an important market," said MEP Bernd Lange, the chair of the European Parliament's international trade committee, of the U.K. "In a way, that means losing leverage."

"There is no plan B ready for changing our trade policy," he added.

On the other side of the Atlantic, U.S. Trade Representative Michael Froman said that "the importance of trade and investment is indisputable in our relationships with both the European Union and the United Kingdom."

He added, however, that while "the economic and strategic rationale for a transatlantic trade deal remains strong," the U.S. is "evaluating the impact of the United Kingdom's decision on TTIP."

"The U.K. has been a force for greater liberalization, and in TTIP, losing that voice in negotiations would be a blow," former Acting U.S. Trade Representative Miriam Sapiro said.

TTIP campaigners in London, where the trade agreement thew fuel onto the euroskeptic fire | Rob Stothard/Getty Images

Negotiations for the TTIP began three years ago. European Commission estimates say that once ratified it would add €120 billion (or 0.5 percent of GDP) to the EU economy and €95 billion (or 0.4 percent of GDP) to the same measure in the U.S.

The next round of TTIP negotiations will be in July. Despite calls from both sides to wrap up talks by the end of the year, the deal has several stubborn sticking points. They include the protection of regional specialty foods, called geographical indications.

Zsolt Darvas, a senior fellow at the think tank Bruegel, noted that the EU is still a 450-million-strong market, without the U.K. but "there might be reason to worry about the impact of Brexit on populist movements in France and Italy and the repercussions on the growing German anti-TTIP sentiment." He predicted the worst-case scenario means that negotiations will be delayed.

His confidence stems from the fact that trade is a competence of the European Commission, and commissioners aren't elected. They are technically free to ignore the rise in anti-trade sentiment and populism that could grow further in Europe following Brexit.

Not that TTIP faces unilateral opposition. Hosuk Lee-Makiyama, director of the European Centre for International Political Economy, pointed out that many European capitals want to see trade talks with Washington persist despite the U.K. leaving.

"The U.K., partly because of what's been going on with Brexit … hasn't had much political capital" anyways, he said. "Sure, they're very strongly in favor, but [Britain] has played a very little role in how the Council has moved so far."

The Council, the body of the European Union representing the 28 member countries, gives the European Commission guidelines on how to approach the bloc's trade policy.

Tim Bennett, director-general of the Transatlantic Business Council, has a similar view.

"There's been historically strong support for TTIP in countries such as Sweden, Denmark, Italy. That will remain," he said. "The concerns have primarily been in Germany and Austria, and that's going to be there with or without Brexit."

Changing course

With U.K. involvement in TTIP potentially off the table, anti-TTIP activists in the U.K. expressed worries over another scenario. They fear an individual free trade agreement negotiated between London and Washington will be "even worse" than one negotiated by the EU.

"There's every reason to believe that the right-wing lurch of Brexit could turn the U.K. into a paradise for free market capitalism: a TTIP on steroids," said Nick Dearden, the director of Global Justice Now.

Swati Dhingra, assistant professor of economics at the London School of Economics, said such fears are not unwarranted. "During a trade negotiation, when a smaller country negotiates with a bigger one, in this case the largest in the world, it often ends up conceding much more than it wants in order to be granted market access."

In Brussels, trade committee chief Lange said the EU must use Brexit to reconsider how trade deals are done. "TTIP and CETA weren't the main arguments in this campaign, but the fact that trade negotiations are not transparent enough, and their merits not clear enough to the people, do play a role in the rising Euroskepticism all over the continent," he said.

He added that he expects the U.K. to push for getting access to the EU's single market and trade agreements, like the Canada agreement that it "always wanted."

He also mentioned that Brexit could help unlock some aspects of EU trade policy.

"The U.K. has also been blocking in some areas of trade, particularly concerning the reinforcing of trade defense instruments," Lange said. "There, the EU could actually become stronger in action" without Britain.

Victoria Guida and Benjamin Oreskes contributed reporting.

http://insidetrade.com/daily-news/uk-vote-exit-casts-doubt-over-ttip-despite-froman-malmstrom-reassurances?s=em

UK Vote To Exit Casts Doubt Over TTIP Despite Froman, Malmstrom Reassurances

June 27, 2016

The United Kingdom's decision to leave the European Union will have a damaging effect on the Transatlantic Trade and Investment Partnership negotiations, experts say, but they disagree on how bad that impact will be and whether it will produce a materially different outcome since the negotiations were already lagging and unlikely to conclude this year.

The scenarios laid out by former negotiators and lobbyists range from TTIP simply being pushed aside as heads of government wrestle with the fallout of the UK vote in an effort to prevent a deeper economic crisis, to TTIP being slowed by the fact that it is hard for the U.S. to assess the value of a deal when the final terms of the UK departure are unknown.

One of the key issues in the withdrawal negotiations is to what degree the UK will retain access to the single market. Until the negotiations between the EU and UK are finished, the UK will remain an official member of the EU.

Sources in the first camp say it will be critical to deal with the internal EU fallout of the vote first, such as the timing of notifying the UK withdrawal and setting up the negotiations for the terms of the withdrawal. Some sources also noted that the fallout of the UK vote goes way beyond economic and trade issues to border security issues, for example.

Former EU Ambassador and senior negotiator Roderick Abbott said in an interview with *Inside U.S. Trade* that these issues are far more important than TTIP. "It is just not credible to talk about TTIP" [given these larger issues,]" he said.

The sources who focus more on the details of the TTIP negotiations post-Brexit say that the progress will be limited by the fact that the final terms of the UK withdrawal will not be known for a number of years. This means the U.S. cannot measure benefits of a potential TTIP deal nor the trade flows within a 27-member state EU, they said.

Peter Chase, a senior fellow at the German Marshall Fund and former vice president for Europe at the American Chamber of Commerce in the EU noted that the value of the EU procurement market is reduced if the UK withdraws. This means the EU can offer the U.S. less in terms of market access, which reduces its negotiating leverage in that area to get U.S. concessions.
He also said that without the UK, the EU has also lost negotiating leverage on its demand that TTIP include regulatory cooperation for financial services. Financial services regulatory cooperation was a key offensive interest for the UK as London is a hub for that industry, but the Treasury Department continues to oppose that. According to Chase, it is now even more unlikely that it will be included in TTIP than it was before the Brexit vote.

He also said that the UK accounts for roughly 16 percent of the EU economy and therefore the U.S. offers to the EU will have to account for that reduction in size. Michelle Egan, a professor at American University and fellow at The Wilson Center signaled that the negotiating dynamic could change because the EU loses a "a key liberalization voice" with the departure of the UK. One informed source said these uncertainties could lead the U.S. to withdraw or decide to suspend the negotiations. In a related development, member state trade ministers have also been slated to make a decision on whether to enter the final phase of TTIP negotiations at a Sept. 22-23 stocktaking, which was planned well before the Brexit vote took place.

These scenarios stand in stark contrast to the official statements made June 27 by U.S. Trade Representative Michael Froman and EU Trade Commissioner Cecilia Malmstrom. Malmstrom is scheduled to meet with Froman this week for a stocktaking on TTIP and give a speech to the Atlantic Council in advance of the 14th round of negotiations to be held in Brussels from July 11-15.

Froman emphasized that Brexit does not diminish the economic and strategic rationale for TTIP, but that the U.S. would have to evaluate how it would impact the negotiations. "We've made a lot of progress on the agreement during the last eight months, and our goal remains to continue working with the EU to conclude an ambitious, comprehensive and high standard agreement this year," he said in June 27 remarks at the Bretton Woods Committee annual meeting.

He said the U.S. is evaluating the effect of Brexit on the TTIP negotiations, echoing a similar message from White House principal deputy press secretary Eric Schultz.

In her June 27 statement, Malmstrom said that the EU will be engaged in pursuing its ambitious trade agenda with the U.S. and Canada, as well as plurilaterally and multilaterally. For example, the European Commission will soon make a proposal for the ratification of the Comprehensive Economic and Trade Agreement, she said.

"I am determined to make as much progress as possible in the months to come," she said. This is particularly true for our negotiations with the United States on a [TTIP]."

EU Ambassador to the U.S. David O'Sullivan also reiterated the commission's goal of concluding TTIP in 2016 in a statement. "The most important thing now is to reach a conclusion between the negotiators this year, and that is how we will go forward, and then it will be for the U.K. to decide what kind of trade relationship it wants with the United States," he said.
Along those lines, Tim Bennett, Director-General and CEO of the Transatlantic Business Council in a June 24 interview with *Inside U.S. Trade* argued that completing TTIP is more important than ever. The vote to leave "reinforces the need to complete a TTIP deal this year in order to demonstrate that the U.S. and EU can still complete major initiatives and can still play a key role" in global economic developments, he said.

Bennett made the case that completing TTIP this year is not hindered by the UK's exit from the EU because that will not occur before the negotiations are concluded. He referred to Prime Minister David Cameron's plan to leave it to the next prime minister, who will not be chosen until October, to formally notify the EU of the UK withdrawal. This would coincide with the

final stages of the TTIP negotiations if the U.S. and EU will try to conclude it this year, Bennett said.
But that time line is now in dispute as Commission President Jean-Claude Juncker is pushing for quicker notification.

Bennett noted that the conditions for concluding TTIP may not be favorable next year, when the Netherlands, France and Germany have elections. The elections in the Netherlands are to take place no later than mid-March, April and May for France and between August 27 and October 22 for Germany.

https://www.crowell.com/NewsEvents/AlertsNewsletters/all/International-Trade-Implications-of-Brexit-What-Companies-Should-Do-Now

International Trade Implications of Brexit – What Companies Should Do Now

Jun.27.2016

The ramifications of the United Kingdom's decision to leave the European Union will be significant, but as of today nothing has changed in practical terms. What does this mean for trade – imports, exports, sanctions, antidumping, and other daily trade issues for global business? Not very much immediately, but now is time to plan and develop a strategy for the weeks and months ahead. Isolate your U.K. operations in the supply chain, gather data, and identify options. You will then be ready to act when the time comes.

Legal Background

The U.K. remains a member of the EU, at least for now. The European Communities Act 1972 remains in force throughout the U.K., and the U.K. remains subject to its obligations under the EU Treaties. Article 50 of the Treaty on European Union provides a two-year period from a Member State notifying its intention to leave the EU to that state's withdrawal, although this period can be extended by agreement with the European Council. It is not currently clear when the U.K. will formally submit its notification under Article 50. Until a clear picture of the post-Brexit world emerges, there may only be limited change to contend with in the short term. However, even at this early stage one thing is for sure: the consequences of the Brexit vote will be wide-reaching, and cannot be ignored by those doing business in or with the U.K.

Trade Background

Over the years, the EU has come to assume exclusive competence over international trade in a broad sense, including the promotion of trade liberalization and the negotiation of trade agreements, the establishment of tariff rates and the imposition of trade remedies, as well as aspects of export policy and foreign direct investment. As a Member State, the U.K. has thus ceded much of its competence to the EU in the negotiation and implementation of international trade rules. Upon the U.K.'s departure from the EU, it will regain exclusive competence in the areas enumerated above. However, much will ultimately depend on the trade arrangement the U.K. will be able to agree to with the EU.

Import Duties

Absent a customs union between the parties once the U.K. leaves the EU, the U.K. will have to issue its own tariff schedule to remain a Member of the World Trade Organization. All other WTO Members will have to approve this schedule, which could lead to the burdensome renegotiation of tariff commitments between the U.K. and key trading partners.

In the European context, not much is likely to change regarding trade between the U.K. and the EU if the U.K. obtains preferential access to the EU market equivalent to that enjoyed by Norway and Switzerland. However, a number of restrictions on trade could still apply with respect to rules of origin, trade remedies, and trade in services. Short of a preferential access arrangement, the parties may otherwise negotiate a trading arrangement based on the principle of Most-Favored Nation (MFN), the implications of which would vary much more considerably by sector.

Therefore, companies will have to follow closely and analyze carefully the negotiation of the new EU-U.K. trade arrangement and related developments at the multilateral level. The effects of the resulting changes may have a significant impact on companies' duty planning and supply chain management activities, including the location of new production facilities or the relocation of existing ones.

Trade Agreements

As a result of leaving the EU, the U.K. will no longer be a party to the trade agreements between the EU and third countries. It will also forego the considerable weight of the EU in trade negotiations. Although it may thus enjoy greater autonomy in setting its negotiating objectives and positions (*e.g.*, with respect to market access in services), the U.K. may be forced to make greater concessions to trading partners enjoying equal or greater bargaining power over it alone.

In practice, the U.K. may also be required to agree to terms fairly similar to those between a particular trading partner and the EU, as countries may seek to achieve a degree of uniformity across multiple trade agreements. Therefore, the likelihood U.K. independence over its trade policy would lead to more favorable outcomes for the U.K. in its negotiation of trade agreements with third countries is unclear.

Special Measures

The EU and U.K. could initiate trade defense proceedings and impose additional duties against unfairly traded imports from one another once the U.K. leaves the EU, whether their trade relations are governed by a preferential access or MFN-based arrangement. Although the EU currently has the administrative capability to conduct trade defense investigations, the U.K. does not. Thus, it will have to develop such a capability and related rules to conduct independent trade defense investigations to protect British domestic industries from unfair foreign competition in the future.

As these industries are currently protected by EU trade defense orders imposed on the basis of EU-wide conditions and analyses, the U.K. cannot automatically maintain these measures once it leaves the EU without exposing itself to significant challenge under the WTO rules by the trading partners whose industries are affected. Considerable time and effort will be required for the U.K. to afford WTO-consistent protection to the full range of its industries affected by unfairly traded imports.

By virtue of limiting its analyses to its own territory in this context, the U.K. might be able to more easily impose trade defense measures in certain cases. However, in others, in which its domestic industry may currently be enjoying protection as part of the EU-wide affected industry, it may be difficult for the U.K. to find injury within its own territory and impose measures. The ultimate outcome will thus once again be mixed.

Export Controls

The U.K. itself is currently a member of all the relevant international agreements in the context of export controls (*i.e.*, the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group, and the Australia Group). These memberships are not contingent on the U.K.'s EU membership and the U.K. Secretary of State has the statutory power to elaborate and impose export controls under domestic U.K. legislation. Therefore, the U.K. will most certainly maintain its own export control regime upon leaving the EU and there will likely be little change in the manner in which the U.K. will continue issuing licenses for exports to third countries.

A rare strong proponent and enforcer of export controls within the EU, the U.K. after its departure from the EU will no longer participate in EU-wide efforts to ensure greater harmonization in the interpretation and application of export control rules by EU Member States' authorities. This will constitute a loss to the EU and may lead allies like the U.S. to view the EU export control regime to be weaker than when it included the U.K. The grant of authorizations to EU Member States remaining within the EU may thus be affected.

The extent to which U.K. export control authorities may continue to coordinate with certain of their counterparts remaining in the EU will also have to be monitored closely. The U.K. will likely provide for preferential treatment of exports to more trusted Member States with a view to preserving existing collaboration with those Member States' authorities. However, given persistent concerns regarding the integrity and uniformity of export control enforcement in certain other Member States, the U.K. will likely impose stricter controls over exports to such Member States. Upon the U.K.'s departure from the EU, transfers of dual-use items from the U.K. to the remaining 27 EU Member States will officially become exports the licensing of which will have to be reviewed carefully for compliance purposes.

Economic Sanctions

Similar to the other areas of international trade compliance, the U.K.'s departure from the EU will lead to an increasingly complicated economic sanctions compliance landscape. It may take years for all of the effects to be understood fully, but the following represent a few initial thoughts.

Nothing will change immediately. The U.K. will continue to implement all United Nations (as a permanent member on the United Nations Security Council), EU, and national sanctions until Brexit is fully implemented. Yet, even if these negotiations take months or years, the referendum outcome will have an impact, not least in the marginalized influence of the U.K. in ongoing EU discussions. For example, the EU's sectoral sanctions against Russia may be the first victim.

Despite strong pressure from Russia and substantial question from Eastern European countries, the EU was successfully able to extend its sectoral sanctions for six months last week, in part as a result of strong U.K. advocacy. Without the U.K., will the EU have the political will to overcome the internal and external opposition to extend them? If it does not, it will create a transatlantic regulatory divide with which compliance officials will need to grapple.

These impacts will only grow more acute once the Article 50 process has been completed. Yet, even then the impacts will be difficult to determine. Given the U.K.'s strong support for economic sanctions, as well as its role (at least currently) as the global center of international finance, it seems likely that the U.K. will continue to rely heavily upon economic sanctions as a tool of foreign policy. Without the limitations imposed by a 28-country consensus-based negotiation, the U.K. will be free to pursue the strong sanctions for which it often advocates. While it will likely, for pragmatic reasons, closely follow EU sanctions, it will now be free to react more quickly, and more aggressively, if it chooses.

This could include closer alignment with the U.S., a path that may be facilitated by the U.K.'s recent creation of an Office of Financial Sanctions Implementation (OFSI) modeled, in part, on the U.S.'s Office of Foreign Assets Control (OFAC). Nevertheless, despite the easy impulse to assume stronger U.K.-U.S. alignment, their approaches to certain foreign policy matters remain fundamentally divergent. For example, the U.K. has been actively encouraging its businesses to pursue business in Iran, while the U.S. has retained virtually all current primary sanctions on Iran, pursuant to the recent Joint Comprehensive Plan of Action (JCPOA).

From the perspective of economic sanctions, the real victim of Brexit may be the global centrality of the EU's sanctions regime. To date, the U.K. has been one of the strongest proponents of economic sanctions within the trading bloc. With its departure, it remains to be seen whether the other Member States will have the political will, or interest, to enact strong economic sanctions that will, inevitably, impose disproportionate costs on at least one of the EU's Member States. France remains a permanent member of the UN Security Council and Germany a strong proponent of tailored sanctions, but it only takes one EU Member State's disagreement to disrupt consensus and bring down an entire regime.

Compliance Management Challenges Ahead

Until the U.K. officially exits the EU, current laws remain applicable without any gaps. Nonetheless, the Brexit vote and the ongoing negotiations will no doubt have an impact on Commission decisions implementing EU trade laws in many ways. For example, how will decisions on trade defense cases be affected? Might the maintenance of sanctions against Russia or the implementation of sanctions relief for Iran be altered? These questions form only the beginning of what will no doubt be a new art form: predicting the extent and nature of the gap between London and Brussels as the daily work of government collides with the Article 50 negotiations.

http://www.foe.org/news/blog/2016-06-500000-petitions-to-congress-demand-rejection-of-tpp

Friends of the Earth, U.S.

500,000 petitions to Congress demand rejection of TPP

Posted Jun. 29, 2016

Today, June 29, Friends of the Earth, Sierra Club, Food and Water Watch and other environmental advocates delivered more than 500,000 petitions to Congress demanding the rejection of a Trans Pacific Partnership trade deal that promises to ramp up fossil fuel exports, accelerate climate change and encourage deregulation of environmental safeguards across the board.

Among other anti-environment provisions, the Trans Pacific Partnership would offer thousands of new foreign firms virtually the same broad rights included in NAFTA and similar deals that have resulted in an explosion lawsuits before private tribunals successfully challenging safeguards for our air, water and climate.

For example, TransCanada has filed a NAFTA suit, using virtually the same rules included in the TPP, to demand that U.S. taxpayers pay the pipeline company over $15 billion because of the U.S. rejection of the Canadian firm's environmentally dangerous Keystone XL Pipeline.

Ironically, President Obama is meeting today in Ottawa with NAFTA and TPP partners, Prime Minister Justin Trudeau of Canada and Mexican President Enrique Pena Nieto, for a North American Leaders' Summit in Ottawa that allegedly will focus on the environment and trade policy.

Malmström says EU-US trade talks can survive Brexit

June 30, 2016

By EurActiv.com with Reuters
7:21 (updated: 7:56)

The European Union's top trade official said on Wednesday (29 June) that she is still aiming to complete negotiations for a sweeping free trade deal with the United States this year, despite Britain's vote last week to leave the 28-nation bloc.

EU Trade Commissioner Cecilia Malmström said her team is pressing ahead with talks over the Trans-Atlantic Trade and Investment Partnership and is still negotiating on behalf of Britain as a member state, a condition that will continue for perhaps more than two years as London negotiates an exit.

"We will do whatever we can to make sure that we make as much progress as possible in the coming month, and, if possible, conclude it before the Obama administration leaves office," Malmström said at an Atlantic Council event in Washington. "That is still the 'Plan A' and that has not changed even if the (British) referendum is there."

Trade experts have said that Britain's looming departure from the EU will dash hopes for completing TTIP in the final months of Obama's term, cutting out Europe's second-largest economy and diverting attention and political capital to sorting out the UK-EU relationship.

But Malmström insisted that the TTIP deal would survive the Brexit decision. She met on Tuesday with US Trade Representative Michael Froman in Washington to make preparations for the 14th round of TTIP negotiations in Brussels starting 11 July.

"There are a lot of uncertainties related to Brexit. We can't answer them now we will have to wait until we see a clearer picture," she said. "But for now and for the immediate future, the United Kingdom is a member of the European Union, and we negotiate this on behalf of all 28 members."

EU prime ministers and heads of state on Tuesday (28 June) affirmed that the bloc's trade agenda, which includes TTIP and a number of other prospective trade deals, would continue.

She said EU negotiators who are British citizens will continue to participate in the talks, adding, "They do not work for the UK, they work for the European Union and they will stay."

Background

Negotiations between the United States and the European Union to forge an ambitious Transatlantic Trade and Investment Partnership (TTIP) started in July 2013.

If successful, the deal would cover more than 40% of global GDP and account for large shares of world trade and foreign direct investment. The EU-US trade relationship is already the biggest in the world. Traded goods and services between the two partners are worth €2 billion daily.

But the path to reach an acceptable deal is not without hurdles. Citizens all over Europe are petitioning against TTIP and CETA, the newly agreed Comprehensive Economic and Trade Agreement with Canada.

Brussels and Washington had initially set an ambitious goal of completing negotiations by the end of 2015, a target it already missed. Negotiators are now hoping to conclude talks before the end Barack Obama's mandate as US President, on 19 January 2017.

In the wake of the global economic crisis and the deadlocked Doha round of international trade talks, the EU and the United States started negotiating a Transatlantic Trade and Investment Partnership, which seeks to go beyond traditional trade deals and create a genuine transatlantic single market. But the road ahead is paved with hurdles.

http://insidetrade.com/daily-news/us-shoemakers-importers-could-clash-over-ttip-footwear-provisions?s=em

U.S. Shoemakers, Importers Could Clash Over TTIP Footwear Provisions

July 11, 2016

A group of U.S. footwear manufacturers is at odds with an alliance of U.S. and European Union footwear distributors and retailers over demands for provisions in the Transatlantic Trade and Investment Partnership that the U.S. shoemakers charge would incentivize fraudulent transshipment through immediate tariff elimination and too flexible rules of origin.

In a joint declaration signed last month by the American Apparel & Footwear Association (AAFA), Footwear Distributors and Retailers of America (FDRA) and the European Confederation of the Footwear Industry (CEC), the distributors and retailers urged "the negotiators to reach a satisfactory T-TIP that ensures full, immediate, and reciprocal elimination of all tariffs for duty-free access to footwear products." They further asked in the June 8 declaration for TTIP to "allow more flexibility in the determination of the rules of origin."

But the Outdoor Industry Association (OIA) and the Rubber and Plastic Footwear Manufacturers Association (RPFMA), which represent made-in-USA shoemakers as well as importers, were not asked to participate in formulating those demands, informed sources said. And RPFMA trade counsel Marc Fleischaker in an interview with *Inside U.S. Trade* criticized the demands laid out in the joint declaration, mainly because the tariff elimination upon entry into force would incentivize countries like Vietnam -- which under the Trans-Pacific Partnership faces tariff phaseouts of up to 12 years for footwear -- to fraudulently transship products through the European Union and take advantage of the tariff treatment under TTIP.

He said immediate tariff elimination for all footwear would create "too much of a risk that products coming from China or Vietnam would enter through the EU."

While one U.S. industry source said the groups are not trying to put the provisions in a priority list, FDRA President Matt Priest said there is no need for tariffs to phase out and made clear that the immediate elimination of all footwear tariffs is the groups' highest priority. "We don't see any reason for any sort of phase-out in this agreement, and tariff elimination is our top priority," Priest told *Inside U.S. Trade*.

He said this demand is due to the fact that the U.S. paid $196.6 million on the $2.058 billion in footwear imports from the EU in 2015, which implies an average duty rate of 9.55 percent. According to AAFA Senior Vice President of Supply Chain Nate Herman, the U.S. primarily imports leather upper footwear from the EU -- most of which are women's leather upper footwear at a 10 percent duty and some men's leather upper footwear at a 8.5 percent duty.

Herman said U.S. exports to the EU include leather upper footwear and waterproof boots as well as work and hunting boots. Those tariffs range from 5 percent to 17 percent, depending on the footwear, he said.

The 14th TTIP round kicked off in Brussels today (July 11) and will last until July 15, but some U.S. industry sources said the footwear provisions are likely to be part of the endgame of the talks because they consider them to be "much less controversial" and "politically much easier to navigate" than other outstanding issues.

Fleischaker told *Inside U.S. Trade* on June 27 that RPFMA has made it clear to the Office of the U.S. Trade Representative that it opposes immediate tariff elimination and flexible rules of origin. Instead, the group is asking negotiators to establish rules of origin that are akin to the ones in TPP or the North American Free Trade Agreement (NAFTA).

"Our major concern is shipments originating in Asia, and then going through Europe if there are easy -- flexible -- rules of origin that would enable preferential duty rates by qualifying as a shipment from Europe," Fleischaker said. "So the rules of origin need to be equivalent to those in the TPP and NAFTA to avoid this problem."

Under TPP, there are two options for companies to qualify footwear as originating. The first one requires a company to fully assemble footwear in the region but allows using materials of any origin, given the materials are classified in any chapter of the tariff code except the one covering footwear.

The second option requires 55 percent of the value of the footwear to come from the region, which is calculated through a formula. An additional requirement for option two is that an upper or hanging upper -- which is a partially assembled upper that is open at the bottom -- must also come from the region.

Priest said FDRA is pushing for "the most flexible rule [of origin] available that allows producers in the EU to import materials from outside of the EU to make footwear that is still duty free." He added that the group is seeking such rules of origin in all trade agreements.

Other demands of the joint declaration include the harmonization of labeling, product safety, testing regulations, and prohibitive substances; the facilitation of customs procedures; as well as the promotion of regulatory convergence and/or mutual recognition of regulations and standards.

An AAFA source said this declaration is not a statement of support or opposition for TTIP but rather "an outline of what the groups think is a good deal." That source said the demands laid out in the joint declaration are aiming to "give advice for the negotiators" to ensure they know what is required "if you want a commercially meaningful outcome." -- *Jenny Leonard* (jleonard@iwpnews.com) http://iatp.org/selling-off-the-farm

Selling Off the Farm: Corporate Meat's Takeover Through TTIP

By Sharon Anglin Treat Shefali Sharma
Published July 11, 2016

Executive Summary

Citizens in both the European Union (EU) and the United States (U.S.) are demanding a healthier, more just and more sustainable food system. As parties negotiate the Transatlantic Trade and Investment Partnership (TTIP), proposed trade rules threaten to undermine the good food and farm movements on both sides of the Atlantic. The negotiations are taking place at a formative time: consumer interest in locally grown, organic and minimally-processed food is expanding in both regions, along with public policy supporting these consumer choices. At the same time, globalisation and an increasingly concentrated and vertically integrated agricultural sector are pushing food production, in particular the meat sector, toward increasing overall production through industrialised systems located where labour is cheap and environmental and animal welfare standards are weak or non-existent.

If agreed to, TTIP would be the largest and most comprehensive bilateral trade agreement ever signed, as well as a blueprint for future international agreements. Consequently, TTIP not only threatens current efforts in the EU and U.S. to build a healthier, more compassionate and more sustainable food system, but the trade deal could also expand factory farming worldwide by harmonising standards of two of the largest meat markets (U.S. and EU) and setting the terms for global standards in future trade deals. Eliminating all tariffs on agricultural products in the market-access chapter as proposed would favor ever cheaper production methods. Likewise, TTIP's focus on reducing or eliminating regulatory differences and protections—"regulatory harmonisation"—would promote cheaper industrialised practices prevalent in the U.S. and increasingly prevalent in the EU. As a result, TTIP is likely to stand in the way of much-needed regulatory reform in the U.S. as well as proposals in the EU that seek to address climate change, animal welfare and the role of GMOs in the food system.

Chapter 1: The current U.S. and EU meat industries

The U.S. is the largest producer of beef in the world at 11.4 million tonnes (over 12.5 million American tons), and large-scale industrial feedlots dominate the U.S. industry. Such facilities can hold more than 18,000 head of cattle at a time. In comparison, a feedlot with 200 head of cattle is considered "large" in the EU. The U.S. is also the largest exporter of pork, and both sectors have experienced a shift from family farms to large operations controlled by consolidated global corporations. Over the last two decades, 90 percent of the independent pig farms in the U.S. have been wiped out, leaving one company in control of over half of the pork production in the country and depressing prices paid to farmers. A similar story can be told about chicken production. In 2012, the average size of U.S. broiler chicken operations was 166,000 birds, a number that pales in comparison with the largest operations, such as in California, where the average broiler inventory per operation at any one time exceeded 1.7 million birds, making the U.S. the largest poultry meat producer and second largest exporter.

The expansion of industrialised farming in the EU has been slower than in the U.S. About 40 percent of the land area in the EU's 28 Member States (EU-28) is farmed, and family farms in the EU's 28 Member States were responsible for rearing 71.1 percent of all livestock in 2010. Organic farms are a growing share of EU agricultural holdings, comprising a significant percentage in some countries such as Austria. The family farm model is nonetheless threatened as the EU's meat sector becomes increasingly concentrated. Through mergers and acquisitions and expansions into additional countries, five producers now dominate in the major meat-producing countries.

Although the EU beef industry has contracted since the early 2000s, Europe remains third in global production of beef at over eight million tonnes. EU beef production is considered at a competitive disadvantage compared to the U.S., with higher costs and more regulatory restrictions. Three countries—France, Germany and the U.K.—accounted for roughly half of the total EU beef production in 2013. Instead of the feedlot system, pasture finishing of beef is common in Ireland and to a lesser degree in the U.K. and France, while silage systems predominate in the rest of Europe.

The EU is the second largest exporter of pork. With stagnating EU demand, the focus on export markets has driven overproduction, bigger farms and intense price pressures, ultimately lowering the prices pig farmers receive. While the sector is less consolidated than in the U.S., the industry has experienced similar structural change, including more vertical integration and increasing control by slaughtering firms. By 2012, 55 percent of the commercial value of pork in Germany was in the hands of the four biggest slaughtering companies operating in the EU—Danish Crown, Tonnies, Vion and Westfleisch. In fact, fully 42 percent of German pig producers went out of business between 2001 and 2009 during a period of rapid consolidation.

The European broiler business is currently a domestic-focused industry. Here as well, vertical integration of production and slaughtering, pushed by mergers and acquisitions, is increasing. According to the 2010 Farm Structure Survey, 18.5 percent of all European farms raised broilers. "Professional farms"—barely one percent of the total number of broiler farms—are considered those with more than 5,000 birds. More than three-quarters of farms with more than 5,000 broilers were located in France, Spain, Poland, Italy, Germany and the U.K.

Chapter 2

Climate

The U.S. lacks binding regulations to cap methane and nitrous oxide emissions resulting from feedlots or livestock production, and government estimates may understate the amount of methane in the country's annual greenhouse gas inventory by as much as half. In the EU, agriculture has been deemed responsible for 40 percent of the EU's methane emissions, and the recently revised National Emissions Ceilings Directive includes a cap of 30 percent on methane emissions. Nonetheless, the agriculture-related provisions of the Directive have come under attack by the European livestock industry. Lobbyists specifically identified the TTIP negotiations as a reason not to cap agriculture-related emissions. Thus, the prospect of increased competition resulting from TTIP is already providing incentives for deregulatory harmonization, and new trade-based rules will make it even more difficult to effectively address climate change.

Labour

In both the U.S. and EU, meat operations exploit some of the most vulnerable workers who often lack full legal protections accorded employees in other sectors of the economy and who work in unsafe and dehumanizing conditions. In the U.S., animal agricultural operations are exempted from many wage, hour and other labour standards applicable to other industries, and many operations are located in states with weak environmental standards that also discourage collective bargaining. In the EU, agribusiness operations take advantage of the Posting of Workers Directive that allows them to skirt wage standards and collective bargaining protections available to other workers. These companies have also greatly expanded their operations into newer Member States in Eastern Europe, taking advantage of weaker economies and fewer environmental and other protections. Increased competition through TTIP would exacerbate these terrible labour conditions and diminish possibilities for trade unions to push for needed reforms on both sides of the Atlantic.

Animal Welfare

Significant disparities between the EU's modern-day animal welfare standards and those in the U.S. which are based on 19th century sensibilities and law, make this policy area ripe for agribusiness attacks through trade rules. The EU's enhanced animal welfare standards are already being blamed for higher production costs, and efforts to continue to improve are meeting resistance because of competition. TTIP negotiations will be a large "elephant in the room" if and when the Commission decides to embark on a new strategy on animal welfare based on its recent survey of public opinion, which demonstrated that an overwhelming majority of EU citizens support even stronger animal welfare protections.

Environment

Both U.S. and EU governments have failed to recognise and adequately address the environmental damage and climate impacts caused by industrialised agriculture. A UN Food and Agriculture Organisation (FAO) report found that livestock farming alone costs the environment $1.81 trillion per year, equivalent to 134 percent of its production value. Our review of environmental regulations on air, water and soil governing the meat sector shows an urgent need to address the gross environmental externalities of industrial animal production on both sides of the Atlantic.

Cloning

The European Parliament resolution on the TTIP negotiations identified animal cloning for farming purposes as a policy area where the EU and U.S. have very different rules and where changes to the EU ban should be "nonnegotiable." Nonetheless, with cloning legal in the U.S., the TTIP negotiations appear to be adding pressure on the European Commission to accede to agribusiness interests and modify its policies. In 2013, following the initiation of TTIP negotiations, the Commission put forward two linked proposals that would ban farm animal cloning but allow the sale of meat and milk produced by descendants of cloned animals. To date, negotiations on the Commission proposals have been stalled, but this is an emerging policy area that could be at risk under TTIP's regulatory cooperation provisions.

Public health and antibiotic resistance

Threats of increasing bacterial resistance to antibiotics have been recognised since the 1970s, yet antibiotic use in food animal production continues to rise. At least two million Americans are infected with antibiotic-resistant bacteria each year and a minimum of 23,000 die as a result. In the EU, infections from antimicrobial resistant bacteria kill 25,000 people annually. In response to this public health crisis, governments in 2015 agreed to launch the Global Action Plan on Antimicrobial Resistance led by the World Health Organisation. The U.S. currently has only voluntary restrictions on antibiotics use in animal production, and its SPS proposals encourage mutual recognition of its policies. The EU's proposed article in TTIP's SPS chapter on anti-microbial resistance suggests creating a technical working group and harmonising data collection on the use of antibiotics. However, it is highly unlikely that U.S. negotiators would agree to this weak proposal, given the power of the U.S. meat industry, which spent considerable resources to undermine even non-binding federal dietary guidelines suggesting eating less processed and red meat.

Traceability and accountability

A key requirement of EU food safety policy is traceability, which aims at tracking food and ingredients for human consumption at all stages of production, processing and distribution. This approach is based on the precautionary principle and incorporates food hygiene throughout the production chain, providing the legal and policy basis for restrictions on the use of antibiotics, hormones and other chemical inputs in meat production, as well as strict GMO regulation. The U.S. lacks both the authority and the capacity to insure traceability, and the U.S. meat industry has stressed that to be acceptable to the industry, participation in this system must be voluntary. In short, traceability is bad for the U.S. industry's bottom line.

Assessing risk-precaution versus cost-benefit

Both the EU and U.S. regulatory systems look to science to assess, manage and communicate risk, but there are key differences in how each government uses science in developing its regulations and how scientific uncertainty is dealt with. The EU uses the precautionary principle to prioritise public health and the environment, whereas the U.S. uses the cost-benefit approach that tends towards regulating the safety of the end product rather than focus on preventing contamination throughout food production, processing and distribution. The U.S. meat industry continues to challenge the precautionary principle and expects convergence with the U.S. approach through TTIP.

Genetically modified (GM) feed and zero tolerance

GM risk assessment, approval and labeling issues have been highly contentious on both sides of the Atlantic. Policies of EU Member States and U.S. states have been inconsistent with central government decisions, often taking a more cautious approach and supporting more comprehensive labeling. The biotech and feed industries have made it clear that they see TTIP as a prime opportunity to speed up GM approvals and to centralize decision-making at the EU and U.S. levels of government. Even before the formal initiation of TTIP negotiations, the European Commission started relaxing its biotech rules under industry pressure. Europe's zero tolerance contamination policy was watered down in 2010 to allow for a low-level presence of GMOs in animal feed under certain conditions.

In each issue area—be it climate and the environment, GMOs, antibiotics, animal welfare, food safety or social justice—citizens in both Europe and the United States are interested in seeing stronger, more effective regulations. And they are interested in reining in the excesses of transnational corporations. TTIP will take us in the opposite direction and set the global standard for other trade deals.

Chapter 3: Corporate Meat's takeover through TTIP

Liberalised tariffs

Industrialised practices prevalent in the U.S. produce meat more cheaply than in the EU. Farm gate prices for beef, pork and poultry for U.S. and EU farmers in the last ten years demonstrate that U.S. farmers are paid consistently lower prices for their animals. Such cost-cutting is only possible with the extreme corporate concentration of the meat industry that allows for exploitation of farmers and workers and shifts environmental and public health costs onto the taxpayer. The EU lacks the reliable livestock supplies, low-cost feed and economies of scale that define the U.S. meat industry. Studies by the United States Department of Agriculture (USDA), European Commission, European Parliament, NGOs and farming interests all find that TTIP, as currently proposed, will increase meat imports to the EU from the U.S. and could seriously disrupt the meat sector and other agricultural sectors of Europe's economy. The EU meat industry will likely respond by further concentrating market power and in the process, price out many more independent and small producers.

While EU officials insist that the most sensitive agricultural products will be exempt from "complete tariff liberalisation," leaked documents demonstrate that negotiators' actions do not match the rhetoric. Live beef cattle, animal and dairy products, and animal feed products are all slated for tariff liberalisation, even up to zero tariffs over time. The EU has also indicated that although some tariffs will not be eliminated, tariff rate quotas for hormone-free beef are likely to be expanded. These market access offers alone will result in a "race to the bottom" for EU production as European meat processors compete with the U.S. However, combined with TTIP's deregulatory agenda, food and agriculture in the EU are likely to undergo their biggest industrial transformation yet.

Threats from regulatory cooperation

TTIP's goal to eliminate "non-tariff barriers" or "trade irritants" threatens sustainable farming regulations on the environment, public health and animal welfare. Where there are vast differences between regulatory regimes, those standards that are more protective (and usually, more costly to implement) are at significant risk. With TTIP envisioned as a "living agreement," future rulemaking processes at the EU and Member State levels (and likewise at U.S. federal, state and local levels) will be affected. Proposals on regulatory cooperation that would lower food and farming standards run throughout TTIP both in a "horizontal" chapter on domestic regulatory practices intended to apply across the entire agreement, and embedded in specific chapters.

These provisions would grant unparalleled influence to business as a key stakeholder, screening regulations to insure that only the "least trade restrictive" can go forward and shifting policy-making from open, democratic processes to informal, less accountable negotiations. Many civil society organizations have identified the real dangers presented by increased corporate influence on the development of public health and safety standards posed by both the U.S. and EU regulatory cooperation texts.

Taken together, these measures implement a deregulatory agenda that will:

- Prioritise trade effects over the public interest
- Undermine the precautionary principle
- Weaken protective standards through mutual recognition and harmonisation of standards
- Streamline "modern agricultural technology" approvals relying on confidential industry studies
- Heighten the burden of proof on regulators to make and defend regulatory decisions
- Delay protective regulations through "paralysis by analysis"
- Create a regulatory chokepoint by "managing" regulations
- Chill the development of new standards addressing changing circumstances and new data
- Institutionalize and expand corporate influence throughout the standard-setting process
- Limit more protective standards at EU Member State and U.S. state levels of government
- Create new possibilities for trade-based corporate legal challenges and new pools of data to support those challenges

State to state and investor-state dispute settlement (ISDS)

Combined with these provisions in the agreement, public interest regulations may be at serious risk when considered more trade restrictive than "necessary" and when they impinge on a corporation's expected profits. This has great significance for a number of rules that are being revised or created in the EU, such as the Posting of Workers Directive, cloning, Country-of-Origin-Labeling (COOL), climate legislation and future Animal Welfare rules, as well as policies adopted by U.S. state governments that go beyond federal standards, such as GMO and chemical labeling requirements. With transnational meat corporations such as JBS, Cargill and Smithfield present and expanding on both sides of the Atlantic, ISDS could newly empower these firms to challenge food and farming policies that hurt their bottom line—even if they are nominally headquartered in other countries such as Brazil or China.

Conclusion

TTIP threatens citizen-led movements toward a healthier, more just and more sustainable food system in the EU and the U.S. It will promote the expansion of industrial meat production at a time when civil society is demanding the opposite—meat produced humanely, locally, free of harmful substances and benefiting rather than degrading the environment. Both by eliminating tariffs and through its regulatory cooperation provisions, TTIP will encourage a race to the bottom to achieve the cheapest methods of production and processing at the expense of other public goods. While undermining EU food policies that are strongly supported by consumers, it will also provide the framework for corporate attacks on U.S. state-level policies that go beyond federal minimum standards, undermining progress made by the U.S. food justice, farmer and consumer movement to regulate the meat industry and ultimately transform the U.S. food system. Negotiators' statements to the contrary, TTIP must be recognised for what it is: a multi-pronged strategy promoted by global agribusiness concerns on both sides of the Atlantic that will establish an ongoing mechanism for deregulation and meat industry consolidation. It is undemocratic; the policies it promotes are unsustainable; and it must be rejected by anyone who cares about good food and farming, human and animal rights and the future of our planet.

Senators: Politics again gives Malaysia a pass on human trafficking rating
Politico Pro

July 12, 2016

By Megan Cassella

Senators on both sides of the aisle today criticized the State Department's decision to give Malaysia, a member of the Trans-Pacific Partnership, a mid-level rating in its annual human trafficking report, saying the designation was undeserved and given for political reasons.

At a Senate Foreign Relations Committee hearing, Republican Chairman Bob Corker and ranking member Democrat Ben Cardin said they remained concerned about the department's decision to preserve Malaysia's standing on its so-called "Tier 2 watchlist," a rating that makes it legally easier for the country to remain a member of the TPP.

"Malaysia is simply not doing enough, and the facts bear this out," Cardin said. "It's hard to justify the fact that we did not downgrade them to Tier 3."

Cardin said this year's report showed remnants of the same problem the committee saw last year, when Malaysia was upgraded from the list of worst human trafficking offenders — a move that sparked outrageamong lawmakers. He requested that the committee receive regular updates on Malaysia's efforts to combat trafficking.

"I think we get the sense that a politically motivated decision was made last year, and therefore it's very difficult to back off of that this year," Corker added, saying doing so would make it look like last year's upgrade was indeed done for political reasons.

Susan Coppedge, an ambassador-at-large in State's Office To Monitor And Combat Trafficking In Persons, repeated at the hearing the department's stance that no political factors affected the decision-making process.

INSIDE US TRADE

Lange: TTIP Deal In 2016 Is 'Unrealistic' Because U.S. Won't Move On EU Priorities

July 12, 2016

BRUSSELS -- Bernd Lange, the chairman of the European Parliament's International Trade Committee said Tuesday it is 'unrealistic' that the U.S. and EU will be able to close a deal in 2016 due in part to the U.S. refusal to move on key EU priorities such as market access on procurement and services.

In an interview with *Inside U.S. Trade*, Lange also said his assessment was based on the negative trade rhetoric by U.S. presidential candidates, the uncertainty of whether the U.S. Congress would approve the Trans-Pacific Partnership, and the simple fact that negotiators are running out of time to complete a deal this year.

This would push back negotiations on the politically sensitive issues to the next U.S. administration, Lange said. Those discussions could start as soon as the second half of 2016. Member state trade ministers are set to meet in Bratislava, Slovakia, on Sept. 23 to decide on whether the TTIP negotiations are mature enough to enter into the final stage of discussions, but Lange said he doubts such a decision will be taken.

"I assume they will have a similar assessment as me that we could agree on some more or less technical issues, but the hot potatoes in the room aren't so close that a deal could be possible," he said. In addition to procurement and services, Lange also cited agriculture, geographical indications, investor protections, labor standards and climate change provisions as areas where the U.S. and EU are far apart.

For instance, Lange said negotiators are expected to discuss the substance of the sustainable development chapter, but not how those provisions would be enforced, which is one of the key differences between the U.S. and EU approaches.

The fate of TTIP will lay in the hands of the next U.S. president and administration as the political issues will likely fall to them, according to Lange. Giving negotiators more time could also inject "rationality" in the conversation and lead to stronger engagement by "some governments," Lange said, signaling hope that a new U.S. administration may be more willing to address EU priorities in a way the Obama administration has not.

The textual work expected at this round could provide the foundation of a final agreement, even though it is unlikely the politically sensitive issues will be tackled, Lange said. Commission sources last week reiterated their goal of consolidating all texts so that the final version of an agreement can start to take form.

But consolidating texts does not mean the two sides have narrowed the gaps on any given position, Lange said. For example, Lange said the agriculture chapter has been consolidated, but that it is rife with brackets stating the different U.S. and EU positions. Even this will not be possible unless the U.S. offers proposals in all areas, but Lange said he was uncertain if that would happen.

However, the textual work as well as the progress made on tariffs is not enough to conclude a partial agreement he said, and a so-called "TTIP light" deal is not an option. Rather, these aspects can be used as a basis for negotiations to continue with the new U.S. administration, according to Lange.

"Perhaps this is the package we have to put in the icebox and take it from there in the next year," Lange said.

On investor protections, Lange said he envisions only two possible outcomes: either the U.S. accepts the EU's proposal for an international investment court system (ICS) or the deal is concluded without investor protections as the U.S. did in its trade agreement with Australia. Either way, parliament has made clear that it will not accept the investor-state dispute settlement (ISDS) mechanism used by the U.S. in its other trade agreements.

The biggest sticking point on the EU's ICS proposal is its change to how judges are selected to hear cases, Lange said. The EU proposal would establish a 15-member roster of judges as opposed to utilizing the International Center for Settlement of Investment Disputes (ICSID) roster of nearly 700 judges, which is the practice of the U.S. in the investor-state dispute settlement mechanism included in its trade agreements. The U.S. has refused to accept this change at least in part because it claims that a 15-member roster of judges inherently lacks the specific expertise that can be offered by the ICSID roster.

The dispute over investment protections is not a deal-breaker, according to Lange, who also reiterated his preference for a deal without a mechanism for investment protections. -- *Brett Fortnam*(bfortnam@iwpnews.com) http://www.euractiv.com/section/trade-society/news/eu-us-negotiators-falter-to-make-decisive-progress-on-ttip-destabilised-by-brexit/

July15,2016

EU-US negotiators falter to make decisive progress on TTIP, destabilised by Brexit – EurActiv.com

EU and U.S. negotiators said on Friday (15 July) that they still needed to overcome large differences for a transatlantic free trade deal to be sealed this year, and factor in the setback of Brexit, as the UK is one of the United States' biggest export markets.

The two sides are trying to agree on the Transatlantic Trade and Investment Partnership (TTIP), which supporters say could boost each economy by some €90 billion at a time when growth in China and emerging markets is slowing.

Chief EU negotiator Ignacio Garcia Bercero and U.S. counterpart Dan Mullaney told a news conference after a 14th round of talks that both sides were committed to sealing a deal before U.S. President Barack Obama leaves office at the turn of the year.

The partners have made progress on tariff elimination and on regulatory cooperation. However, they are stuck over EU demands including greater access to public sector tenders; Garcia Bercero described the U.S. offer as a serious cause of concern.

Likewise, Washington is unhappy with the EU offer on services.

"Given the importance of this sector to both of our economies … progress here has been noticeably and painfully slow," said Mullaney.

He also said that, while the economic rationale for TTIP remained strong, Britain's exit from the European Union would force a rethink as it was the largest market anywhere for U.S. services, and took 25 percent of U.S. exports to the EU.

"Imagine if the United States said, for instance, 'Well, maybe TTIP will not apply to California'. There is a certain reflection that the parties need to have on those kind of developments."

The two sides had previously planned to produce a single consolidated TTIP text by the end of July. Garcia Bercero said that was now more likely to come by the end of September after further meetings between U.S. trade chief Michael Froman and EU commissioner Cecilia Malmström.

Garcia Bercero acknowledged that the political environment was becoming more challenging. The environmental group Greenpeace echoed the view of many anti-TTIP campaigners on Friday by saying that it was time to hit the 'Stop' button.

But the EU negotiator said TTIP was instead a positive response to concerns about globalisation.

"If we want to have a shot at shaping globalisation, we need a like-minded partner that shares largely our views," he said.

Mullaney talked of a "unique window of opportunity" to complete TTIP this year that should not be allowed to slip away.

"After this year, with one political transition after another over the next few years, it could be quite a while before we pick up negotiations again."

From: Matthew Porterfield <porterfm@law.georgetown.edu>
Date: August 15, 2016 at 1:12:20 PM EDT
To: Kay Wilkie, "Hamilton, Robert, Sharon Treat
Cc: Robert Stumberg
Subject: The TPP implementing legislation conflicts with TPA on state sovereignty

Sharon, Kay & Robert –

I wanted to call your attention to language in the recently released Draft Statement of Administrative Action (Draft SAA) for the TPP that appears to contradict assurances that were made in the Trade Promotion Authority (TPA) bill last summer concerning state and local law. Basically, the TPA legislation indicated that, contrary to prior practice with trade agreements, the federal government would *not* be able to sue to preempt state or local law based on a conflict with a provision of the TPP. The Draft SAA, however, indicates that the TPP's implementing legislation will retain the federal government's ability to seek preemption of state and local laws.

The standard implementing legislation for trade agreements states that provisions of trade agreements do not "have effect" to the extent that they violate "United States" law, which refers only to federal law. *See, e.g.,* the implementing legislation for the U.S.–Korea FTA (*available at* https://www.congress.gov/112/plaws/publ41/PLAW-112publ41.pdf):

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—
(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

The TPA legislation passed last summer extends this protection to state and local law:

SEC. 108. SOVEREIGNTY.

(a) UNITED STATES LAW TO PREVAIL IN EVENT OF CONFLICT.—
No provision of any trade agreement entered into under section 103(b), nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States, any State of the United States, or any locality of the United States shall have effect.

H.R. 2146, Defending Public Safety Employees' Retirement Act (2015), *available at* https://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf.

The Senate Committee Report indicates that this provision "specifies, for the first time, that no provision of any trade agreement entered into under trade authorities procedures that is inconsistent with the laws of the United States or any State or locality will have effect."
https://www.congress.gov/114/crpt/srpt42/CRPT-114srpt42.pdf

The Draft SAA for the TPP, however, indicates that the TPP's implementing legislation will allow the federal government – as under other FTAs – to sue to preempt state and local law based on inconsistency with the TPP:

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event of an unresolved conflict between a state law, or the application of a state law, and the TPP Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

Draft TPP SAA at 5, *available at* http://0-insidetrade.com.gull.georgetown.edu/sites/insidetrade.com/files/documents/aug2016/wto2016_1547.pdf.

Let me know if your have any questions. We'd also be interested in any information you might have about how the new language ended up in the TPA legislation, and whether there is anyone in Congress who is interested in preserving the protection for state law.

Regards,

Matt

http://www.msn.com/en-nz/news/other/obama-set-for-full-fledged-tpp-push/ar-BBvGV07

Obama set for 'full-fledged' TPP push

August 17, 2016

NZ Newswire
Peter Mitchell, NZN US Correspondent 16 hrs ago

US President Barack Obama is launching "a full-fledged, full-throated effort" to push the Trans-Pacific Partnership mega trade deal through Congress in the final lame duck months of his presidency.

This is despite vocal opposition from the leading candidates to replace him, Hillary Clinton and Donald Trump, and labour unions that helped Mr Obama win two terms in the White House. The TPP, a mega trade deal proposal between the US, Australia, New Zealand, Japan, Canada and seven other key Pacific Rim nations, would be the final landmark piece of Mr Obama's presidency.

"This will be a full-fledged, full-throated effort," Mr Obama's deputy US trade representative, Robert Holleyman, told an event this week at Atlanta's Commerce Club.

The Atlanta event reflected the huge divide between TPP supporters and critics in the US. David Abney, the chief executive of the world's largest package delivery company UPS, talked up what he believed would be the TPP's ability to cut red tape for US small and mid-sized businesses entering new Asia-Pacific markets.

As Mr Abney spoke, UPS drivers and union representatives supporting them protested outside the Commerce Club.

"We're opposed to the TPP because we feel like it's going to undermine American workers' standard of living," Teamsters Local 728 political director Eric Robertson told the Atlanta Journal-Constitution.

Mr Obama has put Congress on notice he will be sending a TPP bill their way.
The White House has also organised 30 pro-TPP events to support Democrat and Republican members of Congress who favour the legislation.