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The Truth about the Transatlantic Trade
and Investment Partnership

Ferdi De Ville & Gabriel Siles-Brügge

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polity

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Abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
AFL-CIO	American Federation of Labour and Congress of Industrial Organizations
ATTAC	Association for the Taxation of Financial Transactions and Aid to Citizens
BEUC	Bureau of European Union Consumer Organisations
BIT	bilateral investment treaty
CEO	Corporate Europe Observatory
CEPR	Centre for Economic Policy Research
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CGE	computable general equilibrium
DG	Directorate-General
ECI	European Citizens' Initiative
EDC	endocrine disrupting chemical
EP	European Parliament

ABBREVIATIONS

EPA	Environmental Protection Agency
ESF	European Services Forum
ETUC	European Trade Union Confederation
EU	European Union
FDA	Food and Drug Administration
FQD	Fuel Quality Directive
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GMO	genetically modified organism
HLWG	High Level Working Group on Jobs and Growth
IA	impact assessment
IAB	Impact Assessment Board
INTA	International Trade Committee of the European Parliament
ISDS	investor-to-state dispute settlement
MAI	Multilateral Agreement on Investment
MEP	Member of the European Parliament
MRA	mutual recognition agreement
MRL	maximum residue level
NAFTA	North-American Free Trade Agreement
NATO	North Atlantic Treaty Organisation
NGO	non-governmental organisation
NHS	National Health Service
NTA	New Transatlantic Agenda
NTB	non-tariff barrier
NTM	non-tariff measure
OIRA	Office of Information and Regulatory Affairs

Dierckx, Nicolette Butler, Dorte Sindbjerg Martinsen, Donna Lee, Jean-Christoph Graz, Jens Ladefoged Mortensen, Yelter Bollen, Marjolein Derous and Stijn Van Wesemael. Any remaining errors are our sole responsibility. Similarly, we would like to thank all those who agreed to be interviewed for this book whom we are unable to name in the interest of preserving their anonymity – and all those individuals who have discussed TTIP with us over the last couple of years and who have immensely enriched our understanding of trade politics. In addition, a big thank you is owed to the University of Manchester Press Office (especially Mike Addelman) and the people at Policy@Manchester (in particular Alex Waddington) for helping us to communicate our research on TTIP to a wider audience.

We wish to thank the publisher Taylor & Francis for allowing us to draw on material (in a significantly revised and expanded form) previously published by us in the following journal article: (2014), ‘The Transatlantic Trade and Investment Partnership and the role of computable general equilibrium modelling: an exercise in “managing fictional expectations”’, *New Political Economy*, doi: 10.1080/13563467.2014.983059. Gabriel would like to express his thanks to Ghent University’s Centre for European Union Studies for hosting him in November–December of 2014. This was an invaluable opportunity to work closely with co-author Ferdi – as well as to put an ear to the ground of the politics surrounding TTIP in Brussels. He is also very grateful to the University of Copenhagen’s Department of Political Science for hosting him as a Visiting Scholar (and External Associate on the EuroChallenge research project) over the last few months of book-writing in what has been an extremely stimulating research environment,

Acknowledgements

A lot has happened since we first discussed doing collaborative research on the Transatlantic Trade and Investment Partnership (TTIP), the trade agreement currently being negotiated between the European Union (EU) and the United States (US). We were both attending an academic conference being held in the European Parliament back in April 2013. Much like other ‘trade nerds’, we were not quite expecting the negotiations to generate as much interest as they have over the past couple of years. Let’s face it, trade policy is often seen as an extremely technical, acronym-laden, even soporific area of politics, best left to bureaucrats. While Ferris Bueller has his ‘day off’ school in the cult 1980s film bearing his name, his history teacher bores the class with a lesson on US tariff policy during the Great Depression (although this in itself is also not an unimportant issue, as we touch upon in the book). At dinner parties and other social gatherings, neither of us was used to talking at much length about what we do in our

Dierckx, Nicolette Butler, Dorte Sindbjerg Martinsen, Donna Lee, Jean-Christoph Graz, Jens Ladefoged Mortensen, Yelter Bollen, Marjolein Derous and Stijn Van Wesemael. Any remaining errors are our sole responsibility. Similarly, we would like to thank all those who agreed to be interviewed for this book whom we are unable to name in the interest of preserving their anonymity – and all those individuals who have discussed TTIP with us over the last couple of years and who have immensely enriched our understanding of trade politics. In addition, a big thank you is owed to the University of Manchester Press Office (especially Mike Addelman) and the people at Policy@Manchester (in particular Alex Waddington) for helping us to communicate our research on TTIP to a wider audience.

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Introduction

Advocates and opponents of the Transatlantic Trade and Investment Partnership (TTIP) agree on very little. But both share the view that the negotiations to create a free trade agreement (FTA) between the two largest economies in the world, the European Union (EU) and the United States (US), represent a 'game-changer'. According to supporters, TTIP is a 'no-brainer', making us all wealthier and allowing the EU and the US to set the standards for the global economy. Critics, on the other hand, warn that TTIP will benefit only big business and leave us all with worse jobs and less environmental, food and health security – undermining our democracy through secretive negotiations and the establishment of corporate tribunals with the right to challenge national laws. George Monbiot has gone as far as to call it a 'full-frontal assault on democracy'. But who is right? What is the truth about TTIP? Will the agreement get us out of the economic crisis and allow Europe and the US to continue exercising global

leadership in the twenty-first century, as advocates argue? Or will Europeans soon be buying chicken washed in chlorine and hormone-treated beef without their knowledge and have their democratic policy choices undermined by corporate tribunals, as critics claim?

While the debate has been extremely polarised, we argue that neither of these stark predictions will follow from this agreement.¹ On the one hand, the debate has been centred too much on 'horror stories' and too little on the economic, geopolitical and regulatory effects of TTIP. However, we have also waited in vain for TTIP's proponents to come up with clear, convincing arguments about *how* this deal will lead to the prophesied economic and geopolitical gains they consistently proclaim. Our hope in this book is to move beyond these caricatures of the agreement and try to explore with more rigour what its likely consequences will be.

Although TTIP is far from concluded at the time of writing and its fate remains uncertain, we seek to look at the deal's broader impact on the politics of global trade. These negotiations are already having some interesting unintended consequences (other than filling up the previously relatively bare 'outreach' schedules of academics focusing on trade issues). Even if some of the debate has tended towards oversimplification, it is a generally very welcome development that public interest in trade policy – usually a quite technocratic and secretive policy domain – has increased significantly over the course of the negotiations, with a major mobilisation of civil society groups on the issue. TTIP may not yet have been the subject of a star-studded motion picture like the *Battle in Seattle* – the well-known protests at the 1999 ministe-

rial conference of the World Trade Organisation (WTO). But it is a potential ‘game-changer’ in its own right and should be seized upon to deepen the debate on twenty-first-century trade policy. This book aims to be a critical contribution to this discussion.

Why TTIP now?

In this book we focus on the motivations for and consequences of TTIP. But, in this section, we first want to set the scene, giving the reader a bit of background on the history of trade relations between the EU and the US and why these negotiations are taking place *now*. Before the TTIP negotiations, the EU and the US discussed trade issues primarily within the multilateral trading system under the auspices of the General Agreement on Tariffs and Trade (GATT), which morphed into the WTO in 1995. At first the US assumed leadership in this system, promoting gradual trade liberalisation in the global economy, with the EU adopting a more proactive leadership position since the Uruguay Round (1986–94). Through a succession of such multilateral trade negotiating rounds since the establishment of the GATT in 1947, tariffs (taxes levied on imports) have been lowered dramatically. Meanwhile, membership of the GATT/WTO expanded significantly, as did the agenda for the negotiations.

In the case of the EU and the US, this new trade agenda has emerged because tariffs have become an almost negligible barrier to imports. Average ‘most-favoured-nation’ tariffs (those negotiated as a result of the non-discriminatory liberalisation undertaken in the GATT/WTO) are 5.2 per cent for the EU and

3.5 per cent for the US, with both parties actually applying even lower tariffs on each other's imports of under 3 per cent on average (European Commission 2013a: 17). As we will explain in more detail in later chapters, trade negotiators have since the late 1970s increasingly focused on 'non-tariff barriers' to trade (a concept we also unpick later). These include differences in product and services regulation, lack of investor and intellectual property rights protection, closed government procurement markets, and so on. This led to a host of new agreements on such issues during the Uruguay Round. The Doha Round (which kicked off in 2001) was meant to deepen further the reach of the global trading system but has so far failed to deliver on this ambition.

The failure of the multilateral trading system to proceed with 'deep liberalisation' has resulted in first the US and then the EU pursuing economically motivated bilateral FTAs. Both have concluded or are negotiating agreements with a number of mostly (Latin-)American and Asian countries, including Canada, Colombia, Korea, Peru and Singapore, all of which feature 'WTO plus' (that is, going beyond WTO obligations) commitments on trade-related issues. The United States is also at an advanced stage of bi-regional negotiations with eleven Asian-Pacific countries² in the so-called Trans-Pacific Partnership (TPP). TTIP thus represents the latest iteration of a broader trend to negotiate an ever-expanding list of 'trade' issues not exclusively within the WTO but through an agreement with a preferred partner.

There are two other factors that are often given as justifications for the start of TTIP negotiations (and which we explore, respectively, in chapters 1 and 2). Firstly, the global financial and economic crisis that started in 2008 is argued to have made exter-

nal demand a welcome and even necessary source of domestic growth. Secondly, TTIP occurs against the backdrop of the supposed rise of China and other emerging economies vis-à-vis the EU and the US, not only as competitors in global economic *flows* but also as contenders in global economic *governance* – with policymakers across the Atlantic expressing concerns that they are losing geopolitical and global economic relevance. The stagnation of the Doha Round of multilateral trade talks owes much to the rise of these emerging powers, which have broken the EU/US ‘duopoly’ of global trade governance (Grant 2007; Narlikar 2010).

What is novel about TTIP is the degree of ‘deep liberalisation’ being sought. Negotiators are explicitly seeking to align EU and US regulatory practices as much as possible. There is, however, also a history to this. The EU and the US tried a number of times after the end of the Cold War to establish a Transatlantic Free Trade Area (TAFTA) and/or Market. The first step in this direction was the ‘Transatlantic Declaration’ of 1990 in which, for the first time, they institutionalised their bilateral relationship, committing to cooperation on economic, cultural and security issues. But the results soon proved disappointing, due to a lack of interest by Member States and because the Commission was anxious to preserve the EU’s own identity before embarking on transatlantic cooperation (Steffenson 2005: 24). Realising that a TAFTA would be too sensitive, in 1995 the EU and the US agreed on the New Transatlantic Agenda (NTA). The main substantive outcomes of the NTA were mutual recognition agreements (MRAs), signed in 1997 for a small number of sectors, intended to eliminate duplicate testing and certification systems. The late 1990s also

saw attempts by the EU's Trade Commissioner at the time (Leon Brittan) to establish a 'New Transatlantic Marketplace' that would have substantially removed tariff and non-tariff barriers to trade (Pollack and Shaffer 2001: 16). These plans were ultimately abandoned in 1998 for a much less ambitious and vague 'Transatlantic Economic Partnership', which tried to build the transatlantic market more incrementally. But none of these initiatives really delivered. What is more, on account of administrative resistance on the US side, only two of the six MRAs that had already been signed were ultimately implemented. In the 2000s the EU and the US tried to reinvigorate this process of regulatory cooperation many times, but this has again led to only very limited results. The latest attempt to establish a transatlantic free trade area, before TTIP, was therefore seen as 'over ambitious' and 'unlikely to be realised' (Peterson et al. 2004: 76–9). Overcoming the lack of support for past attempts at transatlantic cooperation may be why policymakers are now so keen to hype up the promise of the current negotiations.

The negotiating process

Having provided a necessarily brief overview of the history of transatlantic trade relations, we now (again very succinctly) introduce the reader to the negotiating process for TTIP and the respective trade policymaking machinery in the EU and the US. The current set of transatlantic trade negotiations trace their origin to a summit in November 2011 between US President Barack Obama, European Council President Herman Van Rompuy and European

Commission President José Manuel Barroso. This set up a High Level Working Group on Jobs and Growth (HLWG), led by the European Commission's Directorate-General (DG) for Trade and the Office of the United States Trade Representative (USTR), which was tasked with identifying how increased trade and investment might contribute to job creation, economic growth and competitiveness. Its final report was published in February 2013 and concluded that 'a comprehensive agreement, which addresses a broad range of bilateral trade and investment issues, including regulatory issues, and contributes to the development of global rules, would provide the most significant mutual benefit of the various options considered' (HLWG 2013: 5).

Following this, the TTIP negotiations were formally announced during President Barack Obama's 2013 State of the Union address. Thereafter, on the EU side, Member States had to authorise the European Commission to start the negotiations (as trade policy is considered to be an EU competence). After some discussion about the negotiating guidelines ('the mandate'), especially on the issue of carving out 'audio-visual services', eventually the Council of the European Union gave the green light in June 2013. Negotiations started one month later. The negotiating teams of both sides – the European Commission and the Office of the USTR, an agency that is part of the Executive Office of the President – meet more or less every two months, alternately in Brussels and Washington, during one-week negotiating rounds (although, so far, one negotiating round has also been held in New York). In between, technical work is done by the negotiating teams in each 'capital'.

The negotiations are divided into three pillars and a larger