

CHAPTER 2. THE TTIP AS THE ENGINE OF GROWTH: TRUTHS AND MYTHS

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Overview

The TTIP negotiations between the EU and the US which began in July 2013 aim to integrate the two biggest economies in the world. This aim is in line with the thinking of the Confederation of Employers and Industries of Spain (CEOE) as the TTIP talks present a unique opportunity to foster growth and jobs. This essay presents the viewpoint of the CEOE by: (a) explaining why the TTIP talks matter to Spanish business; (b) presenting the position of the Confederation of Employers and Industries of Spain in this regard; (c) focusing on misunderstandings concerning the ongoing negotiations, which, from our perspective, require certain clarifications.

Spain and the US have a strong economic relationship, as substantiated by recent trade data. The US was the most significant destination for Spanish exports with more €10.6 billion over 2007-14, and Spain was the biggest trading partner outside the EU, reaching a bilateral trade volume of almost €21 billion. Though these figures seem modest in comparison to the overall value of goods exchanged in that same period between the EU and the US, which amounted to more than €524 billion, the trend between 2007 and 2014 has been very positive from the perspective of Spanish exports, with an increase of more than 30% from 2007-14. Exports of goods to the US represented 4.4% of total Spanish exports in 2014, with bulk of exports constituting intermediate products, which include chemicals (24.5%), engineering goods (21.6%), energy products (19.8%), food and beverages (11.3%) and cars (11.3%). As far as the composition of US imports goes, intermediate products like chemicals (34.9%), engineering goods (27.1%), food and beverages (13.5%) and energy products (9.4%), constituted 84.9% of total US exports to Spain. A comparison of Spanish exports in 2014 with 2011 shows that the highest increase was in cars (+78.6%) and engineering goods (+24.8%). The positive trend in bilateral trade continued in the first half of 2015 compared to the same period in the previous year, with an increase of more than 15% in exports and imports. Regarding services, in 2013 the US was (after the United Kingdom) the second largest destination for Spanish service exports and at €7.6 billion represented 7% of Spanish service exports. It was also the second largest provider of services to Spain after the UK.

The depth and scope of the economic linkage between the two partners (i.e. the EU and USA), cannot be fully appreciated without taking into account the foreign direct investment flows between them. The USA has investments of more than €45 billion in Spain and plays a significant role in key Spanish industrial sectors like the car, chemical and pharmaceutical industries which have enabled Spain to develop strong domestic industries, like the car-part industry, which is very well embedded in the value chain. Further, what makes the TTIP relationship worthy of pursuing is that investment relations increased from 1995 to 2015. Since then, more than 700 Spanish companies have set up bases in the U.S.A and the stock of Spanish direct investment has soared to over €43 billion, making the US the third largest destination for Spanish foreign investments, behind only the United Kingdom and Brazil. The main presences are in the infrastructure development, energy, banking and insurance sectors.

Bearing in mind all the aforementioned economic interests and aspects, the CEOE has traditionally supported a trade agreement as long as discussions for an agreement are ambitious in scope. The confederation was of the view that an agreement that only focused on tariffs was insufficient not only because of the fact that the average tariff on both sides of the Atlantic is 3.5%, but also because it would not take in other major aspects which are hampering trade and investment, like the NTBs and a series of restrictions on investment, services or public procurement. Therefore an ambitious agreement enabling deep and wide discussions for liberalisation complemented by more regulatory coherence and regulatory cooperation are critical for eliminating issues relating to divergences between the two trade areas.

But before passing to the last point of my exposition attempting to dispel some fears, I would like to present a deeper insight into certain critical points like regulatory cooperation, government procurement, services, energy and cross-border data transfers for business and SMEs. Regulatory cooperation and standard convergence with the goal of avoiding national conflicts on product and trade standards should be the core objective of the agreement. We recommend using international standards, such as the International Organization for Standardization, the International Electrotechnical Commission or the International Telecommunication Union. Testing and certification should be performed according to international IEC/ISO standards. Cooperation in other sectors should be enhanced by the establishment of a mechanism to allow counterpart regulatory agencies and standard bodies to formally recognise compatible, functionally equivalent approaches to approving products and services allowed for sale in their respective markets.

Taking into consideration the growing complexity of trade and the increasing importance of services and public procurement, two particular areas which make up a significant part of Spanish investments and services, the CEOE is highly interested that negotiations conclude with substantial results in these two particular chapters. The public procurement chapter should go beyond the Government Procurement Agreement (GPA) by extending coverage to government and public entities and by reducing thresholds. It should also eliminate certain obstacles European companies face in the US procurement market, especially when it comes to particular domestic provisions such as the Buy America Act and local content requirements. The ongoing negotiations are also an

important opportunity to ensure more transparent, open and predictable and procedural requirements. Being aware that “Buy America” provisions are stipulated at state level, negotiators should find ways for these provisions not to apply to European companies. This particular chapter is of particular importance for small and medium-sized European companies.

Concerning services, the general rule should be that full market access and national treatment should be granted for the provisions of all services in all modes of supply, with very limited exceptions. As many sectors as possible should be covered by the agreement, including financial services, banking, insurance, telecommunications and transport. Greater coordination of financial regulation is recommended as the benefit would accrue not only to the financial sector but to all sectors of the economy. More coordination of financial regulations would reduce cost to companies. We would like to stress that the purpose of including financial services is not to lower prudential standards or to change any legislation put in place by either side in the financial crisis, but to ensure that the reforms are implemented in a compatible way. The Financial Market Regulatory Dialogue and the EU-US Regulatory Dialogue Project could be strengthened and supported by the inclusion of financial services within the TTIP negotiations. The inclusion of these dialogues in the overall regulatory cooperation that will be put in place by the TTIP will constitute a major opportunity for the establishment of a financial services regulatory framework that would enhance regulatory consistency and promote appropriate recognition of the respective regimes. Further, EU and US negotiators should aim towards full market access and national treatment for the (re) insurance sector, going beyond the commitments of the General Agreement on Trade in Services. The TTIP should include ambitious and transparent standards, including a consultation process.

Due to the fact that the operations are increasingly integrated within the global supply chain and distribution channels are operated at a global level, it is more important than ever that similar approaches are taken with respect to the management of talent, skills and competences within business. In particular, the negotiators should seek to exempt EU and US nationals from labour market tests, volume quotas or remuneration tests for short term intra-corporate transferees; ensure that visas and work permits for EU and US nationals are issued for the maximum permitted duration; provide a fast track application procedure for EU and US nationals applying for visas and work permits for intra-corporate transferees and establish a “stand still” principle preventing the application of any new barriers or restrictions on US and EU nationals in the context of an intra-corporate transfer.

In addition, an ambitious chapter on energy should also be included in the agreement removing all export restrictions on energy and energy-related products and services in the form of export bans, export quotas, licenses, or export subsidies, tariffs and any discriminatory measure on crude fossil fuels, refined products, equipment and other goods that support exploration, production, manufacturing, transport and retail. With regards to energy, although the association is aware that the TTIP is not the solution to improving the European energy situation, the TTIP should aim to secure the lifting of existing gas export restrictions on all US LNG and relax US export restrictions on US crude oil reaching the European market, as this will be of benefit to the industry.

Data driven innovation is key for jobs and growth in Europe. Data flowing across borders is a key driver of international trade, the digital economy and European companies. Therefore, it is necessary that the TTIP include provisions that avoid the imposition of data localisation requirements, encourage mechanisms to reinforce trust and security, introduce 'adequacy requirements' that are implemented in order to impede undue restrictions on international data flows, provide adequate rules for data transfers within groups of companies, ensure the effective functioning of the 'safe harbour' mechanism, and avoid weakening trust in the digital environment.

Since negotiations started in 2013, the CEOE and the other national business federations – apart from BUSINESSEUROPE – are following the ongoing negotiations very closely and trying to clarify certain fears and criticisms exerted against the TTIP. I develop these arguments in the latter part of this essay.

Main issues: dispelling the fears

The criticism that there is a lack of democracy in the ongoing negotiations is far from reality if we take into consideration that the capacity of the European Commission is enshrined within the strict limits of the mandate agreed between the twenty-eight democratic governments in member states and that any final text agreed between the negotiators will have to be submitted to the final approval of the European Parliament. Furthermore, at the beginning of July 2015 the European Parliament adopted a non-binding resolution in regard to the trade agreement with the US with a set of recommendations for the European Commission. Among others, transparency is one of the main guiding principles of these negotiations. Most of all, since the new trade commissioner took office, the commission has been making serious efforts to explain and inform all the national parliaments and civil society stakeholders about the TTIP. Additionally, the negotiating texts of the EU are being published on the website of the European Commission and an advisory group has been created where the commission shares confidential information with civil society stakeholder (business, trade unions, consumers and NGOs). These decisions, unprecedented in the history of trade negotiations, constitute an important step forward because they consolidate greater public support, dispel myths and misperceptions about the TTIP agreement, allowing for a much more fact-based debate. However, we do recognise the need for the commission to keep sensitive information confidential, mainly with a view to defending the interests of EU businesses. The disclosure of the whole strategy pursued in the negotiations could potentially lead EU negotiators into a position of weakness and seriously undermine the ability of the commission to strike the best deal for the EU.

The TTIP will not put into question fundamental rights in the EU such as freedom of expression and information. It will also not hamper specific EU regulations relating to data security and protection. The transfer, storage and processing of data are essential for 21st century economic activity. To enhance the trust of users it should be guaranteed that cross border data flow provisions are in compliance with data protection standards and the rules in force in the country of residence of the data subjects.

As regards regulatory cooperation, its final purpose is neither to change existing legislation nor to lower existing standards. Its final aim consists of eliminating unnecessary bureaucratic overlaps which do not entail any legal change. Bearing in mind this last point, regulatory cooperation will only be possible in those specific areas where the standards guarantee the same level of protection but where the proceedings, practices and methodologies are different. Therefore, apart from so-called vertical regulatory cooperation aimed at achieving results in specific sectors such as the automotive, chemical, pharmaceutical, textile and engineering goods industries, it is necessary to set up a general framework where the commission and the US administration can exchange and engage in a structured dialogue on any new legal proposal, with the final purpose of avoiding any additional burdensome overlapping requirements. This aspect gains importance when it comes to setting regulations to avoid divergences in the new areas related to the development of new technologies and products.

Another point of controversy is that the agreement could imply the privatisation of essential public services, which is not the case. In this regard, it must be highlighted that the negotiators have not been empowered to do so. Furthermore, both the US and the EU are committed to the multilateral General Agreement on Trade in Services (GATS), which excludes services supplied in the exercise of governmental authority (social security schemes and any other public service, such as health or education) from its scope. Finally, the EU and the US have unambiguously stated that the TTIP would not predetermine the legal nature of services, a decision which lies within the remit of each government to decide.

As far as the sustainability chapter is concerned, the main objective of the TTIP is to boost trade and investment between the US and the EU. Having said that, the TTIP offers the opportunity to foster sustainability through trade. The TTIP can promote decent work on both sides of the Atlantic through the reference to the 1988 ILO Declaration. However, it is neither necessary nor appropriate to include in the sustainability chapter a commitment by parties to ratify ILO conventions. Using the TTIP in order to force the ratification of ILO conventions by the US and the EU member states (we should recall that the EU is not empowered to ratify ILO conventions) would be unrealistic. In the particular case of the USA, the political decision-making as well as the 1988 Tripartite Agreement, which stipulates that no ILO convention will be submitted to the US Senate if ratification would require any change in the US and state laws, would render the ratification process extremely difficult.

Another point worth stressing is that the TTIP is going to benefit SMEs more than the big multinationals, which have the capacity and resources to operate in different business environments. SMEs have so far resisted attempts to access the US market due to the additional costs from bureaucratic overlaps and differences in technical requirements. Tariffs are an element, but the differences in technical specifications, standards and conformity assessment procedures and licensing procedures represent a serious problem for SMEs in transatlantic trade. All products must comply with regulations, which makes the costs of complying with divergent rules and requirements high for SMEs. In many cases, it is simply not worth the effort for an SME to invest capital and human resources in market access.

The confederation is aware that the US and the EU have different jurisdictions and we consider it essential that the TTIP should include a comprehensive, well-oiled ISDS mechanism to ensure the neutrality and application of public international law. ISDS is a vital part of investor protection, as it provides a neutral, fact-based resolution mechanism in cases where an international agreement has been breached. Further, ISDS also reaffirms states' obligations under public international law, offering fair and equitable treatment. Though the legal systems in the EU and US are developed and sound, it is not guaranteed that investors will be able to receive adequate protection. For instance, the right to non-discrimination is not guaranteed in the US unless there is an international agreement to which foreign investors can refer.

The CEOE expects and hopes that the TTIP negotiations will result in an ambitious and balanced agreement that will deliver for both partners. An ambitious agreement can spur trade and investment, generate growth and jobs and ultimately establish a set of standards which can be the benchmark and set the 'gold standard' for the rest of the world.