



Negotiating Perspectives on the EU-U.S. Trade Agreement

Marek Wąsiński

Trade ministers convened on 23 September for a Council of the European Union meeting to assess the state of play of the TTIP negotiations. The European Commission needs to gain political consent to enter the final stage of negotiations, should the U.S. make sufficient concessions. Because of diverse interests of EU Member States and plummeting public support, the chance of finalising talks early is slim. Forthcoming elections in the United States, France and Germany are decreasing willingness for compromise. On the other hand, halting negotiations at this stage may thwart all prospects of a free trade area between the U.S. and the EU.

Negotiations on the Transatlantic Trade and Investment Partnership (TTIP), a free trade agreement between the European Union and the United States, began in 2013. The 14th round of negotiations was held in July 2016, but even a consolidated version of the text is yet to be agreed. There are still huge discrepancies, mainly in regard to the different interests of the partners. The EU puts pressure on regulations on trade in energy resources, geographical indications, reformed investment protection and access to the public procurement market. The United States demands the elimination of tariffs, especially in agri-food sectors. The lack of compromises means that there is no chance of finalising the negotiations by 8 November, when the U.S. presidential election will take place, nor by 20 January 2017, when Barack Obama's term ends.

TTIP on the Sidelines of TPP. The TTIP is barely mentioned in U.S. public debate. A Bertelsmann Stiftung study from the beginning of 2016 found that 63% of respondents had not heard enough information about the TTIP, or had no opinion on the subject. Neither have the presidential candidates from either leading party presented their official position on this treaty. Public interest is concentrated on another free trade agreement, the Trans-Pacific Partnership (TPP), which the U.S. has signed with 11 countries. Both Donald Trump and Hillary Clinton have declared their strong opposition to the deal, which in their opinion threatens American jobs. At the same time, Obama has struggled to gain sufficient support in Congress to have the TPP ratified during the "lame-duck session," after the November election but before new Congress gathers. Then, a "yes" vote would not harm re-election plans of members of the legislative branch.

Irrespective of the result of TPP ratification, Americans may later take a closer look at the TTIP. It is difficult to guess Trump's opinion, as he generally criticises all trade deals while nevertheless describing himself as a supporter of free trade. Clinton is cautiously in favour of the TTIP, but a strong protest from the Democratic Party left wing could lead her to change her stance. Both candidates, if they decide to continue negotiations, will try to change parts of the new regulation projects in order to demonstrate their own negotiating success.

Failure to finalise negotiations by January 2017 will also mean a break in talks as the new U.S. administration is formed. After winning the election in 2008, Obama took a year to declare his wish to continue TPP negotiations. A similar delay may be anticipated in the case of the deal with the EU. Meanwhile, the U.S. Trade Promotion Authority (TPA), which has a mandate to negotiate, may expire on 1 July 2018. Its term may be extended until 2021 if Congress does not oppose this. Therefore, the free trade stance of the not only the new president, but also of the new Representatives and Senators, will influence progress of the TTIP.

Elections in Europe and Brexit. In contrast to the situation in the United States, the debate about the TTIP stirs up great public emotion in the EU. More than three million signatures have been collected across the Union, most of them in Germany (1.6 million), the United Kingdom (0.5 million) and France (0.4 million), against the TTIP. In Germany

and France, 2017 will be an election year. French President François Hollande said that the agreement in its current shape is not acceptable. On 30 August, French trade minister Matthias Fekl called for negotiations to be halted. With public support for the President at close to 20%, the French government's adoption of such a position may be seen as an effort to regain left-wing voters before the presidential election next year. According to the Eurobarometer 85 opinion poll, support for the deal still dominates in France (50%), but the number of opponents is growing (from 32% in 2014 to 37% in 2016). The Socialist Party will be vying for the votes of the anti-TTIP section of the electorate, in competition with Marine Le Pen, who also opposes the deal.

In Germany, Chancellor Angela Merkel, of the Christian Democratic Union, has not withdrawn her support for the deal despite great objections from the public. Opposition to the TTIP in Germany (59% compared to 26% in favour) is second only to Austria (70% against) among EU nations. On 17 September about 160,000 people protested against it and another free trade agreement with Canada. Public opinion has influenced the position of Vice-chancellor Sigmar Gabriel, chief of the SPD and minister of the economy, who said on 28 August that negotiations had failed and Europe could not yield to the United States. He also announced that none of the 27 negotiating chapters had been concluded. However, these statements do not mean that Gabriel is generally against the TTIP. Such words could be seen as an effort to put pressure on the U.S. counterparts in the event that of a negotiating end-game. And there is a political struggle within the party, with the start of the election campaign. Apart from the CDU, only the Free Democratic Party (liberals), who since 2013 have had no representation in the Bundestag, support the agreement. In the unlikely event of a rapid conclusion to the negotiations, elections may partly become a referendum on the text of the TTIP.

TTIP negotiations have also been hit by the result of June referendum in the UK. Brexit changes the negotiating position of both the U.S. and the EU, and since the details of Britain's departure from the EU are yet to be agreed (which may take few years), this does not bode well for the prospects of a rapid conclusion to TTIP talks. In July, the U.S. chief negotiator Dan Mullaney admitted that the impact of Brexit on the TTIP required close analysis. The UK accounts for 18% of European GDP and the same in trade between the U.S. and the EU. Since the EU market will decrease after Brexit, the U.S. may demand additional concessions during the final rounds of negotiations.

Conclusion. The European Union Council meeting on 23 September will assess the state of play of the TTIP negotiations. The European Commission expects to win consent to enter end-game negotiations, if there is a compromise from the United States. Only 12 ministers (from, among others, the UK, Sweden, Finland, the Netherlands, the Baltic States and Italy) have signed a letter to the EU trade commissioner showing strong support for the negotiations. Ministers from Germany, France and Poland did not sign. During the meeting, Member States will have to decide between a push to finalise the deal in its current state, with unfulfilled demands and concerns such as Brexit, and delaying negotiations. In both cases the risk of a failure is significant. Pushing ahead could see the deal fall apart at the ratification stage, while stalling could derail the TTIP due to lack of determination.

Furthermore, the EU has to take into account that its future negotiating position may be weakened, as Brexit will reduce Europe's economic power. If Trump wins, he may prove an unpredictable partner in talks. Ratification of the TPP would strengthen elements of U.S. demands in regard to the TTIP, for example on regulations concerning data flows. Nevertheless, it is vital for the EU and Poland that the agreement is not limited to the elimination of tariffs. It also has to lower regulatory barriers and secure the energy and agri-food sectors that will be most vulnerable to U.S. competition. If these goals cannot be reached this year, European negotiators should not rush to conclude the deal.

Were talks to extend to the next U.S. President's term, they will not be finalised before 2018 or 2019 at the earliest. This would mean that the TTIP would not enter into force until the next decade. The agreement is important for both partners as an additional source of economic growth and a mechanism to spread standards and trade regulations. For Poland, the strategic significance of the deal is vital, namely strengthening Transatlantic cooperation and liberalising trade in relation to energy sources, especially gas. In order to avoid a failure of negotiations, at least a consolidated text has to be agreed before January 2017. This would make it more difficult for the next U.S. administration to reject the agreed solutions that could become the basis for further negotiations.