

Post-Brexit Global Trade Relations: The Death of TTIP?

Amanda Lyons-Archambault

Student at Washington & Lee University School of Law

[\[lyonsarchambault.a@law.wlu.edu\]](mailto:[lyonsarchambault.a@law.wlu.edu])

TTIP Negotiations Mired in Controversy

Prior to Britain's popular referendum on whether to remain a member of the European Union, parts of the public in Britain and other European states had already expressed a great range of emotions concerning on-going negotiations between the European Union and the United States regarding the bi-lateral Transatlantic Trade and Investment Partnership, more commonly referred to as "TTIP." In February 2013, the European Commission optimistically projected that TTIP "would be the biggest bilateral trade-deal ever negotiated," with the potential to "add 0.5% to the EU's annual economic output."¹ Most notably, TTIP seeks to streamline administrative rules and technical product standards in order to remove trade barriers, and aims to "achieve ambitious outcomes" across three broader areas—(a) market access, (b) regulatory issues and non-tariff barriers, and (c) rules, principles, and new modes of cooperation to address shared global trade challenges and opportunities.²

In March 2013, the European Commission announced from Brussels: "The aim is to build a more integrated transatlantic marketplace, while respecting each side's right to regulate in a way that ensures the protection of health, safety and the environment at a level it considers appropriate."³ Since July 2013, TTIP negotiations have progressed through thirteen rounds.⁴ Upon the conclusion of the most recent round of negotiations in April 2016, EU Chief Negotiator for TTIP Ignacio García Bercero anticipated a conclusion of these

¹ *European Union and United States to launch negotiations for a Transatlantic Trade and Investment Partnership*, MEMO 13/95, European Commission (Feb. 13, 2013) <http://trade.ec.europa.eu/doclib/press/index.cfm?id=869>.

² *Id.* at 1.

³ *European Commission Fires Starting Gun for EU-US Trade Talks*, European Commission (Mar. 12, 2013) <http://trade.ec.europa.eu/doclib/press/index.cfm?id=877>.

⁴ http://ec.europa.eu/trade/policy/in-focus/ttip/documents-and-events/index_en.htm#negotiation-rounds

negotiations later this year.⁵ However, just as Bercero announced his willingness to achieve the ambitious aims so eagerly anticipated by both governments in 2013, several voices within the British press lambasted the trade agreement as a bald power grab by big business. Journalist Nick Dearden of the UK's *Guardian* wrote:

It's true that TTIP is a symbol of all that's wrong with Europe: dreamed up by corporate lobbyists, TTIP is less about trade and more about giving big business sweeping new powers over our society. It is a blueprint for deregulation and privatization [sic]. As such it makes a good case for Brexit.⁶

Specifically, some UK citizens grew worried about the viability of public services, especially Britain's National Health Service, the protection of food and environmental safety, privacy, and financial security under TTIP.⁷ These concerns were none-too-assuaged when media outlets revealed the heavy influence of Big Oil, including BP and ExxonMobil, by which the companies gained unprecedented access to "confidential negotiating strategies considered too sensitive to be released to the European [and American] public...."⁸

Roughly a year before Britain's referendum, Greenpeace Netherlands leaked draft text from the thirteenth round of TTIP negotiations that occurred in New York on April 25–26, 2016.⁹ The consolidated documents, totaling 248 pages, compared the positions of the EU and US side-by-side—the first exposé of America's official positions on various topics.¹⁰

⁵ Ignacio García Bercero, EU Chief Negotiator for TTIP, Remarks at the Conclusion of the 13th TTIP Negotiation Round (Apr. 29, 2016) (transcript available at http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154480.pdf).

⁶ Nick Dearden, *TTIP is a Very Bad Excuse to Vote for Brexit*, THE GUARDIAN (Apr. 25, 2016) <https://www.theguardian.com/commentisfree/2016/apr/25/ttip-vote-brexit-barack-obama-leave-eu-trade-deal>.

⁷ Lee Williams, *What is TTIP? and Six Reasons Why the Answer Should Scare You*, THE INDEPENDENT (Oct. 6, 2015) <http://www.independent.co.uk/voices/comment/what-is-ttip-and-six-reasons-why-the-answer-should-scare-you-9779688.html>.

⁸ Arthur Neslen, *TTIP Talks: EU Alleged to Have Given ExxonMobil Access to Confidential Strategies*, THE GUARDIAN (Nov. 26, 2015) <https://www.theguardian.com/environment/2015/nov/26/ttip-talks-eu-alleged-to-have-given-exxonmobil-access-to-confidential-papers>.

⁹ See generally Greenpeace Netherlands, *TTIP Leaks*, <https://www.ttip-leaks.org/>.

¹⁰ *Id.*

The leaked text largely substantiated the concerns regarding environmental safety, representing a move away from the Paris Climate Agreement.¹¹

After the Greenpeace leak, the European Commission intensified the air of secrecy surrounding TTIP negotiations by introducing a new rule limiting physical access to the actual text of the trade agreement to a secure reading room in Brussels.¹² The decision to restrict access was seen by many as an attempt by the European Commission to block smaller EU member states like Cyprus from sitting at the negotiating table, as these countries lack the abundance of resources to facilitate the journey necessary to view the actual documents.¹³ The reading room in Brussels represented yet another means by which the EU could force “third countries”—those countries on the periphery of the trade agreement—to accept its terms.¹⁴ The European Commission’s message to third countries seemed crystal clear: Third countries are to obey the rules or “they do not export [into Europe], just like Switzerland.”¹⁵

TTIP and Brexit: Three Scenarios

It might have been more than mere coincidence that the calls for the UK’s departure from the European Union reached fever-pitch mere weeks before the latest round of TTIP negotiations were slated to begin. Prior to the referendum, some viewed a vote for Brexit as a vote against TTIP. Certainly a vote to leave the EU would seamlessly equate to a vote to abandon participation in TTIP, as the UK would no longer be an automatic party to the trade agreement. However, European opponents of TTIP should be hesitant before celebrating the referendum results: TTIP may be ‘down,’ but it is by no means ‘out.’ Three possible scenarios come to mind:

¹¹ *Id.*

¹² Zachary Davies Boren, *TTIP Controversy: Secret Trade Deal Can Only be Read in Secure ‘Reading Room’ in Brussels*, THE INDEPENDENT (Aug. 14, 2015) <http://www.independent.co.uk/news/world/europe/ttip-controversy-secret-trade-deal-can-only-be-read-secure-in-reading-room-in-brussels-10456206.html>.

¹³ *Id.*

¹⁴ Mark Dearn, *What Now for TTIP, CETA, and UK Trade?*, THE HUFFINGTON POST (June 24, 2016) http://www.huffingtonpost.com/mark-dearn/what-now-for-ttip-ceta-an_b_10658470.html.

¹⁵ *Id.*

1. A severely weakened United Kingdom, fighting for a smaller seat at the TTIP negotiating table.

“While voting to leave the EU would immediately remove you from TTIP,” seasoned anti-TTIP campaigner Mark Dearn explained, “it doesn’t mean that five years from now you remain outside those powers.”¹⁶ If TTIP is accepted and enforced, it will function as “a template for all world trade.”¹⁷ A post-Brexit UK may still have to eventually accept the terms of TTIP, even despite walking away from present negotiations, if it wants to engage in future trade with EU countries and the US. Without the backing of the EU, the UK will have substantially weakened negotiating power due to its smaller market size if it does decide—or rather, is allowed—to continue participating in TTIP negotiations.¹⁸

2. A wholly independent United Kingdom, with completely severed ties from the EU and TTIP; or
3. A ‘wild card’ United Kingdom, who enjoys the potentially frightening power to negotiate a new multi-lateral trade agreement with the US and the EU.

While the latter two scenarios appear to be semantically identical to each other, they actually represent vastly different roles. The second scenario sees the UK as an emancipated, insular entity with both a diminished global market share and virtually no negotiating power in any future global trade agreement. This position represents an outright rejection of both the EU and the controversial TTIP. Indeed, the UK would face almost certain economic ruin if it completely severed the existing trading ties with the US and the EU. For that reason, this scenario seems unlikely to happen. By contrast, the third scenario casts the EU as an extroverted and eager trading power, armed with the existing

¹⁶ Harry Cockburn, *TTIP: UK Will be Powerless Against Trade Deal Outside EU, Say Campaigners*, THE INDEPENDENT (June 23, 2016), <http://www.independent.co.uk/news/business/news/ttip-eu-referendum-brexit-leave-uk-powerless-trade-a7095846.html>.

¹⁷ *Id.*

¹⁸ Ian Johnston, *‘TTIP on Steroids’: Campaigners Warn Post-Brexit UK Faces ‘Disastrous’ Trade Deal with the US*, THE INDEPENDENT (June 24, 2016), <http://www.independent.co.uk/news/uk/politics/ttip-brexit-uk-steroids-disastrous-global-justice-now-war-on-want-a7099986.html>.

TTIP negotiations to strike a new deal with both the EU and the US. This scenario has been labeled “TTIP on steroids” by many in the British media.¹⁹

In many regards, the UK’s membership in and association with the EU provided a backstop against the possibility of a truly mercurial form of the TTIP becoming enforceable international law. While occasionally dominant within the EU-side of TTIP negotiations, the British government’s political interests in the trade agreement were at least nominally tempered by the presence of other EU members. Hesitancy on the part of some European politicians, including French President François Hollande, have prevented TTIP from becoming a runaway train of American and British interest in deregulation and so-called ‘barrier-free’ trade.²⁰ Now, with the removal of the EU-backstop, Britain has more freedom and power to start anew and legitimately disregard the concerns of their EU-member neighbors in the negotiation of a new trade agreement.

Conclusion: A Forecast for Post-Brexit Britain

The aura reinvigoration and anticipation that currently envelops almost all discussion of the Brexit could represent a dangerous potential for Britain to inject political instability into the country’s global trade relations. Britain’s interest in streamlined, barrier-free trade certainly will not evaporate with its exit from the European Union. While secretive TTIP negotiations may have been an integral motivating factor behind the British public’s endorsement of the Leave vote, it would be a short-sighted mistake to describe the Brexit as “the last straw that broke the TTIP camel’s back.”²¹

The empowered and reinvigorated UK government may very well resume TTIP negotiations in its new form; the Brexit may be little more than an additional hurdle to the implementation of the trade agreement as the template for global trade. Today’s newly emancipated British government may promise a TTIP-free future, while the post-Brexit government of tomorrow may nonetheless adopt the agreement’s provisions.

¹⁹ See, e.g., Johnston, *supra* note 18 and Dearden, *supra* note 6; see also Tim Helm & Andrew Rawnsley, *David Cameron Says State Pensions Could Be at Risk if Brexit becomes Reality*, THE GUARDIAN (June 11, 2016), <http://www.theguardian.com/politics/2016/jun/11/brexit-axe-state-pensions-david-cameron-nhs-cold-reality>; Asa Bennett, *The EU Referendum Has Plunged Britain into a Topsy-Turvy World of Alice and Wonderland Politics*, The Telegraph (June 20, 2016), <http://www.telegraph.co.uk/news/2016/06/20/the-eu-referendum-has-plunged-britain-into-a-topsy-turvy-world-o/>.

²⁰ For more information about President Hollande’s critique of TTIP’s embodiment of “unregulated trade,” see Dan Cancian, *Brexit: TTIP Post-Leave Vote Could be Disastrous for Britain*, INTERNATIONAL BUSINESS TIMES (June 24, 2016) <http://www.ibtimes.co.uk/brexit-ttip-post-leave-vote-could-be-disastrous-britain-1567318>.

²¹ *Id.* (“Brexit may well be the last straw that broke the TTIP camel’s back.”)

It appears highly unlikely that the British public will be able to reverse course on international trade agreements with the Leave vote alone. Rather, British citizens may soon find themselves in even choppier and more uncertain waters. Uninhibited by the reservations of their neighbors, the post-Brexit UK government may speed full-throttle towards a radical, new trade agreement that eclipses the current controversial terms of TTIP—truly becoming a wild card within global trade relations.