Sandler Trade LLC

The Transatlantic Trade and Investment Partnership: A New Engine for Global Development?

1. <u>*From the Doha Development Round to the Bilateral "Super-FTA"*</u>

As proponents of the stalled "Doha Development Round" (Doha) seek to salvage its remnants at the upcoming Bali World Trade Organization (WTO) Ministerial, the newly minted "Transatlantic Trade and Investment Partnership," named the "TTIP," has taken center stage in the hopes and imaginations of trade gurus.

A free trade agreement (FTA) between the United States (U.S.) and the European Union (EU) has been a longstanding dream for trade advocates, but few believed that it would ever come to fruition. Knowledgeable observers believed that fundamental differences in trade policy and regulatory approaches between the two giants would pose insurmountable obstacles to removing bilateral tariff and non-tariff barriers to trade. Many observers remain skeptical about the TTIP's chances for success. Others, especially emerging economies, seek to understand the likely impact of this "super-FTA" on their exports and economies in the context of a weakening WTO, the complex web of regional trade agreements, and the shrinking role of unilateral trade preference programs.

The EU has gone to some length to stress to emerging market observers that the TTIP will help advance the goal of "development." In his speech on April 19, 2013,[1] EU Commissioner De Gucht sought to provide reassurance. Answering a rhetorical question about the likely impact of TTIP on emerging economies, he made the following comment, "This [question] is crucial… the economic benefits of this agreement will not be confined to the transatlantic area. This is because much of what we plan to do will not discriminate against any of our other trading partners, developing or developed."

[1] Karel De Gucht, European Commissioner for Trade, "The Transatlantic Trade and Investment Partnership: Global Impacts," Institute for International and European Affairs/ Dublin, Ireland, 19 April 2013.

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Fair enough. To the extent that the TTIP unlocks opportunities for increased trade between the two giants, the rest of the world will likely benefit based on sheer volume. The U.S. and the EU account for over a third of global trade in goods ($650 billion in merchandise trade in 2012) and over 40 percent of global foreign direct investment. Because modern manufacturing relies heavily on global supply chains, an increase in U.S.-EU trade will, by necessity, include increased sourcing from third-country suppliers and, thus, will benefit their exports. The OECD estimates that, on average, some 20 percent of U.S. and EU exports incorporate imported products. That share is higher for many sectors.

A study commissioned by the European Commission and released in March 2013 by the Center for Economic Policy Research in London[2] found that, "The impact [from the TTIP] on the rest of the world is estimated to be positive and amounts to a total of approximately 99 billion euros as an upper bound in the ambitious FTA scenario. The EU and U.S., collectively, are a huge economic force. To the extent that they can work together to better promote establishment and recognition in standards, reduce regulatory divergence, and otherwise reduce the impact of rules and regulations on the cost of business, it is likely that parts of such a framework (for example recognized product or safety standards) will be adopted elsewhere, reducing trade costs for third markets.... To the extent the EU and U.S. together drive global standards, this has potential to promote economic gains across the globe."

Sandler Trade LLC undertook to evaluate these general assertions from the perspective of emerging market exporters. We found that, while the assertion of overall positive effects is no doubt true, the picture becomes much more mixed and murky when we evaluate the potential impact for emerging economies with respect to specific trade practices, sectors, and products.

In our analysis, we first recalled the development goals envisioned by Doha. If the TTIP is the only international trade negotiation left that could be effectively used as a vehicle for advancing these development goals, we wanted to see if any efforts were underway to encourage the U.S. and the EU to explore how the TTIP could do so. After all, Commissioner De Gulch's statement implies that this is the EU's desired result. So to start with, we looked back at the Doha development goals and considered to what extent they would be included in the TTIP negotiations. Our analysis indicated that, by and large, they are not on the negotiating table in the TTIP.

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[2] "Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment", Centre for Economic Policy Research, London http://trade.ec.europa.eu/doclib/html/150737.htm

We also considered the EU's claim that emerging economies will benefit from the removal of non-tariff barriers (NTBs) and the harmonization of standards under the TTIP. We found that the TTIP poses the risk of displacing a number of important emerging economy exports. After all, the objective of an FTA is the removal of bilateral barriers to trade, which, by definition, discriminates against third countries. While global supply chains and some harmonization of standards may offset overall trade displacement losses for third countries, these losses may be substantial for certain priority emerging economy exports.

Finally, we found that the U.S. and the EU will likely miss important opportunities offered by their engagement under the TTIP to address longstanding, as well as new 21st century issues that threaten emerging economies export expansion. Our ensuing recommendations suggest ways in which the two heavyweights should consider using the TTIP opportunity to promote emerging economies' export expansion goals and take steps to ensure that the TTIP does not undermine development goals. We argue that this would also benefit U.S. and EU economies.

2. *Doha Development Goals: How Many Have Been Accomplished?*

In November 2001, at the WTO Doha Ministerial Conference, the U.S. and the EU announced that, "With the Doha Development Agenda, WTO Members have placed development issues and the interests of emerging economies at the heart of the WTO's work." The development agenda was adopted in part to secure the endorsement for the Round from emerging economies. It also reflected recognition by the U.S. and EU that economic growth in the developing world greatly benefits developed countries.

There are many tangible benefits linked to economic development. Wealthier economies are more likely to avoid armed conflict, raise labor and environmental standards, and improve the health of their populations. Along with the benefits of poverty reduction comes increased consumer demand generated by millions more people in expanded middle classes. This in turn creates opportunities for business growth and increased sales of higher-value products, often sold by U.S. and EU manufacturers. As U.S. leaders never tire of saying when trying to persuade the U.S. public and legislators of the benefits of newly negotiated FTAs, 95 percent of potential U.S. customers live outside the U.S. Trade liberalization helps promote trade-led development in emerging economies, but it also helps expand U.S. exports, thus creating more and better paying U.S. jobs.

The impetus for the U.S. and the EU to support Doha and economic growth in the emerging markets remains as strong today as it was in 2001. In the intervening years, substantial progress has been made. The per capita gross domestic product (GDP) has grown significantly in many emerging economies, which tangibly demonstrates the benefits and additional opportunities created by increased economic growth. OECD studies[3] show that non-OECD economies' global purchasing power parity (PPP) share is growing rapidly and overtaking OECD countries' share. In 1990, non-OECD countries' global PPP share was 38 percent. By 2011, OECD and non-OECD countries' shares were equal, and it is projected that, by 2030, the global PPP share of non-OECD countries will reach 57 percent. Since the share percentages are based on a growing global pie, this is a win-win for all economies. Between 2001 and 2012, non-OECD countries also grew substantially as a destination for U.S. exports. In 2001, 25 percent of U.S. goods exports went to non-OECD countries, compared to an increased 38 percent in 2012.[4]

However, emerging economies' growth is not evenly distributed. China, Brazil, and India have reaped a disproportionate share. Addressing some of the Doha Development Goals would prove especially beneficial to those economies that are on the lower end of the growth curve.

Now that many Doha Round development goals envisioned in 2001, especially those related to improved market access, appear to have been largely abandoned, a key question is whether the TTIP could help accomplish some of these goals. Developing countries and many stakeholders should have a great deal to say on that topic, but not much has been heard so far. We believe it is important to look at these goals and the potential for advancing them under the TTIP.

According to WTO documents,[5] the key development-focused Doha priorities for emerging economies were:

A. Agriculture
   i. increase market access;
   ii. improve access for tropical agricultural products;
   iii. tariff escalation;
   iv. improve administration of TRQs (tariff-rate quotas);
   v. enact disciplines on domestic supports;
   vi. eliminate trade-distorting cotton subsidies;
   vii. eliminate export subsidies; and

[3] OECD, "Perspectives on Global Development 2010 Shifting Wealth."
[4] U.S. International Trade Commission data; data adjusted to account for the addition of Chile, Estonia, Israel, and Slovenia to the OECD in 2010.
[5] WTO Committee on Trade and Development: Development Aspects of the Doha Round of Negotiations; October 28, 2010; WT/COMTD/W/143/R

viii. enact disciplines on export credits.

B. Anti-Dumping/Countervailing Duties (AD/CVD)

i. use less trade-restrictive applications of anti-dumping and countervailing duty procedures; and
ii. make it more difficult to apply these procedures to imports from emerging economies.

C. Enact strict rules on fishery subsidies with special treatment for small businesses.

D. Industrial goods

i. reduce tariff peaks in developed country markets; and
ii. eliminate non-tariff barriers (NTBs) of high importance to emerging economies.

E. Allow movement of natural persons.

As shown above, many of the developing countries' Doha Round goals were aimed at changes in developed country practices. However, studies showed that many benefits for emerging economies would result from the removal of trade barriers by other developing countries, and from the reduction of their internal, "behind-the border," impediments to trade-led growth.

Substantial progress has been made on this front. The OECD's "Perspectives on Global Development Report" noted that trade and investment links between developing economies are growing rapidly. It estimated that, although world trade flows quadrupled between 1990 and 2008, flows among emerging economies increased tenfold at the same time.[6]

Less progress has been made with respect to developing countries' goals listed above aimed at developed country practices. Accomplishing most of these still unrealized development-related Doha Round objectives requires the U.S. and EU to make changes to their practices and laws that impact international trade and markets. Progress can be achieved only if the U.S. and EU governments decide to do so.

The TTIP negotiations provide a timely opportunity to make progress on these developing country priorities. Our analysis, however, shows that these goals are largely absent from the TTIP agenda.

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[6] See also the IMF June 2010 report: Asia Leading the Way" by Anoop Singh at http://www.imf.org/external/pubs/ft/fandd/2010/06/

3. *Avoiding Negotiation Land Mines and Keeping the TTIP focused on Mutual Interests*

To what extent will the TTIP address the Doha Round unmet development goals? Under the published U.S.-EU High Level Working Group's (HLWG) final report outlining TTIP negotiating objectives and the EU Commission's negotiating instructions published in *Inside U.S. Trade*, it appears that few of these issues will be on the negotiating agenda. They are certainly not identified among the negotiating priorities. The word "agriculture" is completely absent from these documents due to known EU sensitivities.

Since 2001, the EU has reduced its agricultural production and price subsidies and has moved toward direct farm income supports, which are less trade-distortive. However, high levels of agricultural import barriers and subsidies remain, and they are still the most significant way in which the EU's Common Agriculture Policy (CAP) affects emerging economies.[7] The U.S. has undertaken fewer agricultural subsidy reforms than has the EU and has increased several supports since the launch of the Doha Round. The U.S. share of agricultural subsidies that distort production and trade now account for some 60 percent of U.S. producer supports, compared to 48 percent under the EU's CAP.[8]

The U.S. is still paying compensation to Brazil to forestall that country's WTO-approved retaliation against U.S. imports. This is due to the U.S. failure to make changes to its cotton support programs that were found to be WTO-inconsistent. Press reports indicate that the new U.S. farm bill now under discussion would cut overall agricultural subsidies, but many product-specific trade-distorting programs will not be eliminated. Prospects for progress on agriculture issues at the Bali WTO Ministerial also appear slim.

Not surprisingly, press reports indicate that the U.S. and the EU have agreed not to negotiate on agricultural subsidies. "Subsidies" are mentioned in the HLWG report and the EU negotiating mandate documents only once, in the context of "competition," but no specific negotiating goals have been established. We know that in other FTAs, the U.S. has refused to negotiate on subsidies, deeming them a multilateral issue. Several U.S. FTAs include a bilateral commitment not to provide export subsidies to agricultural exports shipped to the partner country's market. The same FTAs, however, also provide for an exemption from this commitment when a third country's competing shipments benefit from export subsidies.[9] EU FTAs do not address subsidies and exempt many agricultural products.

[7] "The development interest in the CAP reform debate," at CAPreform.eu, January 30, 2013.
[8] February 2013, "Achieving a Successful Outcome for Agriculture in the EU–U.S. Transatlantic Trade and Investment Partnership Agreement," by James Grueff, with contributions from Stefan Tangermann.
[9] Text of the U.S.-Australia FTA states: ARTICLE 3.3: EXPORT SUBSIDIES

With subsidies off the table, to increase trade and competition, the TTIP will have to focus on agricultural market access, an important priority for both sides. Overall, progress may be possible because each side's producers place a priority on different products. Many obstacles remain, however, so this will likely prove to be a difficult negotiation involving extensive compromise and creativity. Long-standing standards-related issues appear to be particularly intractable.

Opportunities exist for emerging economies in this area of the TTIP negotiations, as do pitfalls. Of course, the focus for U.S. and EU negotiators will be on agricultural products of key interest to their producers and not, for example, tropical and other products produced and exported by emerging economies.

The other Doha development goals listed above that are important to emerging economy exports are also absent from the TTIP's negotiating mandate. There is no mention of fisheries, for example.[10] As in any FTA, tariff reductions and TRQ liberalization will be granted on a bilateral basis, so tariff peaks and quotas affecting emerging economies' exports into the two markets will remain intact. AD/CVD and the movement of natural persons are also not on the negotiating agenda.

In summary, the U.S. and EU committed to address development objectives in the Doha Round. Most have not been achieved and are not on the TTIP negotiating table. The TTIP presents a singular, and what appears to be untapped, opportunity to fulfill them.

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1. Except as provided in paragraph 2, neither Party may introduce or maintain any export subsidy on any agricultural good destined for the territory of the other Party.
2. Where an exporting Party considers that a non-Party is exporting an agricultural good to the territory of the other Party with the benefit of export subsidies, the importing Party shall, on written request of the exporting Party, consult with the exporting Party with a view to agreeing on specific measures that the importing Party may adopt to counter the effect of such subsidized imports. If the importing Party adopts the agreed-upon measures, the exporting Party shall refrain from applying any export subsidy to exports of such good to the territory of the importing Party.

[10] Some U.S. FTAs provide for consultations on fishery issues. The U.S.-Korea FTA, for example, includes the following provisions in Annex 22-C - Fisheries Committee:

> 1. The Parties hereby establish a Fisheries Committee, comprising representatives of each Party, to promote cooperation between the Parties regarding fisheries matters.
> 2. The Committee shall discuss: (a) each Party's policies on commercial activities within its Exclusive Economic Zones; (b) cooperation on scientific research on fisheries matters of mutual concern; and (c) global fisheries issues of mutual concern.
> 3. The Committee shall meet within one year after the date this Agreement enters into force and annually thereafter unless the Parties otherwise agree. The Committee shall inform the Joint Committee of the results of each meeting.

4. *Shared Global Benefits from TTIP or Trade Displacement?*

We now look at what is on the TTIP negotiating table.

The TTIP agenda sets the removal of non-tariff barriers to trade and regulatory convergence among its highest priorities. In his Dublin speech, Commissioner De Gucht argued that the results of this effort would be a key benefit for emerging economies. "The most important new issue we will have to look at is regulation. Barriers caused by technical regulations and standards are much more important than tariffs in blocking transatlantic commerce. In fact, we estimate they have the same dampening effect on trade as would tariffs of between 10 percent and 20 percent depending on the product." The Commissioner explained that, in harmonizing the U.S. and EU standards affecting a product, all exporters to the two markets would benefit by having to meet only one standard. "So they [non-TTIP exporters] will reap the same cost savings as U.S. and European companies from not having to make separate models for either side of the Atlantic."

However, as to how regulatory convergence will be achieved, the Commissioner added, "In some cases we might conclude that even if our approaches are different, they protect citizens equally. In those cases, we could recognize our regimes as equivalent – saving the costs of complying twice. In other cases we might actually be able to have our models converge somewhat before later granting equivalence."

Thus, the assumption is that standards harmonization will benefit emerging economies by either allowing them to more easily export to both the U.S. and EU markets based on a single standard, or allowing them to benefit from U.S.-EU trade expansion when they contribute inputs through the global supply chain. There are other scenarios, however, in which the TTIP could adversely affect emerging economies' exports.

First, *trade displacement* could occur when the TTIP removes tariffs and NTBs for U.S.-EU trade for products that emerging economies also export to the TTIP markets or directly competing products. Current or future exports from emerging economies could lose out as U.S. and EU producers become more competitive because of bilateral trade liberalization.

Second, for products where the TTIP adopts *mutual recognition*, rather than standards harmonization, U.S.-EU bilateral trade would increase, but third countries would still face unchanged competing standards to the U.S. and EU markets. They would not benefit from the TTIP standards agreements and, as above, their market share could drop if U.S.-EU trade increases.

Third, the TTIP agenda does not envisage identifying and harmonizing standards and removing NTBs for *products that emerging economies export to the TTIP markets*, if they are not also traded bilaterally between the U.S. and the EU. Therefore, there will be no standards harmonization or NTB reductions for products of particular export interest to emerging economies.

Finally, the U.S. and the EU do envision harmonizing standards for certain priority products that they do not trade bilaterally, when these are priority exports to third country markets. They envisage doing so with a view to *influencing and promoting global standards harmonization* for these priority exports that will pave the way for their producers' export growth to third markets.

Let us consider more closely the impact of these various scenarios on emerging economies.

Trade Displacement. Vegetable oils, for example, are traded between the U.S. and the EU, and are also imported in large quantities into the two markets from emerging economies. The TTIP's removal of tariffs and non-tariff barriers for vegetable oils for bilateral U.S.-EU trade could displace emerging economy exports. While U.S.-EU trade in oilseeds, fats, and oils will be duty-free, emerging economies will still face a 4.2 percent average tariff rate in the U.S. and 6.6 percent tariff rate in the EU.

Removal of EU tariffs and NTBs to U.S. soybean exports would likely lead to substantial U.S. export growth that could displace EU's palm and coconut oil imports from third countries. Let us consider the tariff levels emerging economies will continue to face in the EU market. The EU tariff schedule subdivides the four six-digit HTS tariff lines for palm and coconut oils into between four and seven tariff sub-categories each. Tariff rates under these sub-categories range from 2.5 percent to 12.8 percent on an MFN basis, and up to 8.9 percent under the EU's GSP program. Thus, EU importers and emerging economy exporters face a complex range of tariff rates, even if emerging-economy producers receive preferential tariff treatment.[11]

Mutual Recognition. If the U.S. and the EU agree to facilitate trade expansion by mutually recognizing each other's regulations based on equivalence, it is hard to imagine how emerging- economy competitors would benefit from this arrangement. Their exports would still face two different sets of standards when exporting to the U.S. or EU market. Akin to bilateral tariff elimination, these benefits would flow to third countries only indirectly, i.e., only if their products were part of a global supply chain. Emerging economies' exports of these or competing products directly to the U.S. and

[11] EU Council Regulation No 732/2008.

EU would likely lose import share due to increased U.S. and EU product competitiveness stemming from mutual regulatory recognition as well as tariff reductions.

A case in point would be a mutual recognition agreement for soybean products. U.S. soybean product exports to the EU are severely constrained by EU biotechnology regulations and by the Renewable Energy Directive (RED) for biofuel feed stocks. Since the EU requires food products to be labeled if they contain biotech ingredients and 93 percent of U.S. soybeans are biotech, food companies exporting to the EU have reformulated their products to avoid using U.S. soybean oil. As a result, most of the oil derived from processing U.S. soybeans in the EU has been used in biodiesel production. Other countries' non-petroleum oil exports, such as palm oil, benefitted initially and have grown steadily. EU imports of palm oil doubled from 2000 to 2010, and are now quadruple its soybean oil imports

Biofuel exports to the EU now face additional barriers. Under RED, they require sustainability certifications, which are further depressing U.S. soybean oil exports and are starting to affect third countries' palm and coconut oil exports.[12] The sustainability certifications are burdensome and expensive. The EU maintains a list of pre-approved entities that perform and monitor the certifications. These entities also implement burdensome, expensive, and intrusive sustainability investigations and audits that are required for producers to be RED-certified. This type of certification by approved EU entities is particularly burdensome for small and medium size emerging-economy suppliers of affected products. These complex certification procedures have succeeded in cutting out of the EU markets all but the largest, vertically integrated biofuel crops suppliers. [13]

A top U.S. priority for the TTIP is to achieve accommodation with the EU on the biotech issue and on sustainability certification schemes. Accomplishing this goal, for example through mutual recognition or simplified certifications under RED, could pave the way

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[12]In order to receive government support or count towards mandatory national renewable energy targets, biofuels used in the EU (whether locally produced or imported) have to comply with sustainability criteria. These criteria aim at preventing the conversion of areas of high biodiversity and high carbon stock for the production of raw materials for biofuels. The entire biofuels' production and supply chain have to be sustainable. To this end, the sustainability of biofuels needs to be checked by Member States or through voluntary schemes, which have been approved by the European Commission (EC).
http://ec.europa.eu/energy/renewables/biofuels/sustainability_schemes_en.htm
http://europa.eu/rapid/press-release_MEMO-11-522_en.htm?locale=en

[13] Note that enforcement under the U.S. Lacey Act, which protects trade in animals and plants, relies on importer self-declarations, rather than third-party certifications, thus substantially reducing trader compliance costs.

for sharp growth in EU's soybean oil imports from the U.S. that would likely displace palm oil and competing products from third countries.

The attraction of sustainability certifications to retailers and consumers is strong. Even if the EU does not adopt mandatory certification schemes for other products, a movement is underway by large retailers to adopt certification on a voluntary basis to attract environmentally conscious consumers. U.S.-EU cooperation under or in the context of the TTIP to accommodate each other's proliferating sustainability certification requirements could become a growing barrier to third-country exports since they would not benefit from such "mutual recognition."

One question to consider is whether mutual recognition schemes adopted between the U.S. and the EU could also be extended to emerging economy exporters whose products meet either the U.S. or the EU standard. Thus, under this scenario, an emerging economy also could produce goods to one standard and export them to both TTIP markets. This approach should not be rejected as unworkable. It creates an important opportunity and would avoid discrimination against emerging economy exporters.

Emerging-economy export priorities and the NTBs they face: Products that are not produced by either the U.S. or the EU will likely not be on the negotiating agenda for standards harmonization or NTB removal. This includes, for example, tropical products such as melons, coffee, certain fruits, and rubber. The U.S. and the EU do not trade melons and papayas between them, but they do annually import over a half a billion dollars each from emerging economies.

Our research indicates that emerging-economy exporters of melons have to pay EU duty rates that change every fourteen days, based on the unit value of that period's largest shipment into the EU. (No, we've never heard of such a thing either…)

Apparently, duty collections for melons and papayas, applied on a per 100 kg basis, are determined by the European Commission after EU member states report the unit values of shipments imported into their country. Once the European Commission has received this information, it selects the largest shipments, makes cost adjustments to each, and then determines a per-100kg EU customs import value to which the applicable duty rate is applied for the next two weeks. The outcome is that the applicable duty rate for imports is not based on the exporter's actual customs value, but a higher, constructed value, that can vary on a biweekly basis. A number of emerging economy fruit and vegetable imports into the EU are subject to this type of opaque and unpredictable application of duties based on other shippers' custom values.

The U.S. also has a trade-restrictive method of assessing duty rates on melons and papayas that requires a review. Tariffs on melons are determined on a seasonal basis, with products imported during the pre-set seven-month U.S. growing season being assessed the highest import duties.

During a September 2012 trade mission to the U.S., Brazilian Melon Growers Association's Vice President, Mr. Luis Roberto M. Marcelos, noted that changing weather patterns have shifted the length of the melon harvest in the U.S., as well as in Brazil. These changes are not reflected in the pre-set seasons of the U.S. TRQs. Accordingly, a variety of melons from emerging economies cannot be exported to the U.S. during their own growing season if they overlap with the TRQ months unless U.S. importers are willing to pay duty rates of up to 29.8 percent.[14] None of these issues will be addressed by the TTIP.

Other trade barriers also not under discussion include the maze of dueling trade agreement and preference-program standards and practices adopted by the U.S. and the EU. These include complex and divergent rules of origin, labeling, and packaging requirements; sanitary and phytosanitary standards; customs rules and practices; and other strictures.

These requirements differ between the U.S. and EU for reasons that are rarely obvious, yet they establish two completely distinct sets of rules for emerging economies' access to U.S. and EU markets. As written and applied, they often discourage emerging market exports because the cost of compliance is often too complex and expensive. They routinely cause emerging economy exporters to give up on the U.S. or EU market entirely.

Global U.S. conglomerates have repeatedly stated that they also routinely do not use U.S. FTAs and preference programs because the rules of origin and import regulations are too complicated and the cost of customs compliance is often higher than tariff savings. The difference is that the conglomerates often can afford to bypass these agreements and remain profitable. Less competitive small businesses cannot.

The TTIP provides a unique opportunity for the two major importing markets and tariff preference suppliers to harmonize these complex rules. This is exactly what the Doha goals envisioned in terms of removing internal market barriers. Through the WTO trade facilitation talks, the U.S. and the EU are pressing developing countries, and justifiably

[14] European Commission Regulation 215/2005.

so, to adopt simplified and harmonized customs procedures to facilitate imports. However, the U.S. and EU have not considered doing the same with their web of complex importation requirements and have not put such a goal on the TTIP agenda.

Emerging economies should identify for U.S. and EU negotiators discrete, priority products and practices where harmonization could be of most use to their exporters. The TTIP provides the only opportunity available for harmonization and simplification of these complex and burdensome rules in the world's two largest markets. If you don't ask…

Harmonization to promote global standards to facilitate export growth to third countries: The TTIP partners have a strong incentive to use the TTIP to harmonize standards for agricultural and other products they export to third countries, with a view to influencing global standards. A recent discussion paper on TTIP agricultural issues published by the International Food and Agricultural Trade Policy Council (IPC)[15] notes that both countries' share of their agricultural exports to third countries has soared as a proportion of their overall exports: "For both, the value of agricultural exports has increased substantially more to other destinations, particularly in recent years. Looking at the time period of 2002 through 2011, EU agricultural exports to the U.S. were valued at €12 billion in 2002, 20 percent of the nearly €58 billion total, but by 2011, at €14 billion, (they) represented only 13 percent of the total of €105 billion. For the U.S., the value of agricultural exports to the EU in 2002 at $8 billion was 13 percent of the total, $61 billion. By 2012, U.S. agricultural exports of $12 billion were only 8 percent of exports to the world of $154 billion."

Thus, using the TTIP to harmonize their standards for products they export to emerging markets -- even if they are not a high priority in U.S.-EU bilateral trade -- will put the two in a strong position to push through the adoption of these standards in international standards-setting bodies. Under the WTO Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) standards agreements, all WTO members will be expected to consider adopting these new international standards, facilitating U.S. and EU exports globally and potentially displacing emerging economy production and exports.

In sum, we do not find any direct benefits from the TTIP to emerging economies. It is also not clear that the indirect benefits to emerging economies from the TTIP will exceed costs from trade displacement and increased import competition from U.S. and

[15] February 2013, "Achieving a Successful Outcome for Agriculture in the EU–U.S. Transatlantic Trade and Investment Partnership Agreement", by James Grueff with contributions from Stefan Tangermann, page 5.

EU exports. What is clear is that export obstacles faced in U.S. and EU markets by emerging economy exporters will not change, as they are not on the TTIP negotiating agenda.

5. *TTIP as a 21st Century Agreement*

The U.S. and the EU have stated that they want the TTIP to be a 21st century agreement and to influence and set precedents for the global trade agenda.

Almost two full pages of the six-page February 11 HLWG's Final Report are dedicated to "Rules Addressing Shared Global Trade Challenges and Opportunities." Aims include "developing rules in several areas that would not only be relevant to bilateral commerce, but would also contribute to the progressive strengthening of the multilateral trading system." None of the goals mentions "development." They focus exclusively on U.S. and EU priorities in areas such as: intellectual property rights; environment and labor protection standards; subsidies and other privileges granted to state-owned enterprises (SOEs); emerging economy export restrictions on raw materials; localization requirements; and similar concerns with respect to impediments to U.S. and EU economic expansion.

When discussing the novel nature of the 21st century FTAs, the U.S. has focused on issues that its large producers face. In the Trans Pacific Partnership (TPP) negotiations, U.S. industry prioritized these issues as new disciplines on the commercial activities of SOEs, setting standards and expectations for the behavior of regulatory-setting agencies, discussion of competitiveness issues, and issues faced by multinationals in their global supply chains.

The EU has endorsed the U.S. TTIP 21st century trade agenda.

However, other 21st century issues have emerged since the 2001 Doha Round, such as U.S. and EU policies that affect food production and food security in emerging economies, biofuel policies, sustainability-related certification requirements, additional climate change-based concerns as they relate to international trade patterns, and other issues, such as the treatment of farm animals. No legitimate justification has been given for why these issues should not be covered in a 21st century FTA, whereas the others should.

A variety of emerging global issues and practices affect international trade and distort companies' and economies' relative competitiveness. Including some of these issues in an FTA and omitting others creates additional distortions. Since developed countries are largely writing the FTA provisions, the rules are being further skewed in their favor. The TTIP should take a fresh look at the 21st century challenges, including a balanced and comprehensive review of their impacts on emerging economies, and consider appropriate ways to use FTA provisions to promote policies that encourage globally balanced economic growth. This is in everyone's interest.

The European Council Decision authorizing TTIP negotiations seems to understand these broader opportunities and responsibilities. The Decision's paragraph 24 on "Trade and sustainable development" states, "[The TTIP] should also include provisions in support of internationally recognized standards of corporate social responsibility, as well as of the conservation, sustainable management and promotion of legally obtained and sustainable natural resources, such as timber, wildlife or fisheries' resources."

6. <u>Would Adding Emerging Economy Issues to the TTIP Agenda Sink This Super-FTA or Help It Swim</u>?

The pro-free trade American Enterprise Institute (AEI) expressed deep skepticism that the TTIP will succeed,[16] "… the U.S. and the European Union have been at odds for decades on many of the issues identified as key to a successful FTA negotiation. Given that tariff rates between the two economies are quite low (an average of around three percent), the real payoffs must come from (removing) so-called nontariff barriers (NTBs), such as differing regulations and warring standards in the areas of health and safety, data privacy, cultural diversity, competition policy, services regulation, genetically modified organisms (GMOs), agricultural subsidy and protection, aviation subsidies, labor and environmental rules, and geographical indicators in trademarks… Special White House–appointed business coalitions have attempted (without notable success) to achieve some convergence or even mutual recognition on these issues. Opposing interest groups and domestic regulators, jealous of their authority, have stymied forward progress at almost every turn."

In discussing fundamental differences in U.S. and EU regulatory approaches, the AEI notes a deep divide between U.S. and EU regulatory approaches, especially with respect to food and drugs, with the U.S. using a science examination - and testing-based approach, and the EU using the broader precautionary principle. The AEI concludes, "Popular sentiment, particularly in Europe, will not move quickly (if at all). Further, European and U.S. regulators certainly will not change their stances on these issues in the timeframe posited for U.S.-EU FTA negotiations — and in most cases

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[16] American Enterprise Institute: The American: "Not So Fast: Conflicting Deadlines for the TPP and U.S.-EU FTA," by Claude Barfield, Friday, March 8, 2013.

cannot do so because of binding legislative mandates. The end result will be watered-down regulatory provisions, continued stalemate, or leaving such areas out of the agreement altogether."

Many government officials who have worked on these issues readily share this pessimism. The TTIP could go the way of the Doha Round due to these differences. If negotiators manage to paper over many of these discrepancies, and avoid true change and regulatory harmonization, the economic benefits and the agreement's value to producers, workers, and traders will be substantially reduced. If a way is found to develop extensive mutual recognition approaches, it is difficult to see how the benefits from such a step would flow to third countries or set useful global precedents. The idea that widespread mutual recognition approaches are the wave of the future seems far-fetched.

Under the circumstances, the fallback assumption seems to be that burdening the TTIP agenda with emerging economies' development issues would add another unacceptably high level of complication and further undermine progress. In the Doha aftermath, U.S. and EU negotiators, disappointed with Brazil's, China's and India's reluctance to further remove tariff and non-tariff barriers in their markets, will argue strenuously that addressing emerging economy issues through the TTIP would mean a free ride for these countries and encourage their protectionism.

An alternative view is that adding a development-focused agenda item to the TTIP might add a third dimension on which they could work in partnership. It could give the two negotiating partners a new perspective and help them escape falling into the predictable negotiating positions that have been molded over decades. Adding a development perspective to the TTIP may bring into the fold new constituencies and stakeholders that could help identify new growth opportunities, expand horizons, and possibly save the TTIP.

Other precedents exist for using FTAs to promote third-country interests and goals that go beyond the FTA partners' bilateral interests. For example, U.S. Qualified Industrial Zone (QIZ) programs allow products produced in the West Bank or the Gaza Strip to benefit from duty-free treatment under the U.S.-Israel FTA, if co-produced with Israeli inputs. Similarly, Egypt's QIZs take advantage of the U.S.-Jordan FTA benefits through co-production.

By adopting as one of its objectives the removal of obstacles to emerging economy exports, the TTIP could truly help grow the global economy, reduce global poverty, and create new customers for internationally traded goods. These new customers will be found among U.S., EU, <u>and</u> emerging economy consumers.

7. *Steps the U.S. and the EU Should Take to Promote the Global Economic Development Agenda through the TTIP*

If successful, the TTIP and its many and substantial economic impacts will be with us for many decades to come. The U.S. and EU governments and negotiators must take the time to consider fully these impacts. Once these impacts are identified, the negotiating partners should take steps to ensure that the benefits for the global economy and those for emerging economies, in particular, are maximized. These actions will reinforce, not detract from, bilateral benefits flowing from the TTIP. We recommend that the following specific steps be considered for integration into the TTIP, as well as the following studies undertaken to elucidate these issues further.

Within the TTIP:

1. *Adopt standards harmonization, rather than mutual recognition agreements, for products that emerging economies export to the TTIP markets to ensure benefits also flow to them.*
2. *Extend the benefits of mutual recognition to emerging economies for products that they also export to TTIP markets.*
3. *Where bilateral removal of tariffs and NTBs is likely to adversely affect competing emerging- economy exports, provide potentially affected countries the opportunity to negotiate plurilateral or multilateral liberalization.*
4. *For key exports of emerging economies (as identified by them), harmonize the U.S. and EU preferential rules of origin as well as overall product, shipment, and inspection standards.*
5. *Grant the benefits of TTIP tariff elimination and NTB removal or reduction to GSP beneficiary countries.*

Identify other changes that should be included in the TTIP by promptly:

6. *Elicit public comments on development aspects of the TTIP*. Both the U.S. and the EU have asked for public comments on their negotiating objectives and priorities in the TTIP, but the request for comments did not envisage impacts on development. In its March 29, 2013, *Federal Register* Notice (FRN) asking for public comment on the TTIP, USTR listed twenty issues on which it was seeking public input. The TTIP's impact on development or opportunities under the TTIP to promote

development goals, were not among them. A second FRN should be issued, with a public hearing, soliciting such input.

7. *Analyze the impact on key directly or indirectly competing emerging economy exports from the removal of tariffs and NTBs to U.S.-EU trade, along with the steps to be taken to avoid adverse effects on emerging economy exports.* If the analysis shows that substantial displacement is likely, the TTIP should include actions to ensure that emerging economy exports are provided with an equal opportunity to compete. These should include:

    a. Tariff reductions and NTB reductions to be made available on an MFN basis, or to emerging economies through preference programs; and
    b. The opportunity for pertinent emerging economies to enter into agreements with the U.S. and/or the EU to remedy any new problems in their export competitiveness created by the TTIP.

8. *Undertake an independent assessment of opportunities under the TTIP to expand emerging economy trade, while avoiding potential adverse impacts.* USTR has asked the U.S. International Trade Commission (USITC) for an analysis of the TTIP's implications for U.S. economic interests, and the EU has requested a similar domestic analysis. Comparable studies should be commissioned to assess opportunities and potential TTIP impacts on emerging-economy trade. The broad-brush approach adopted by the EU-commissioned Center for Economic Policy Research does not answer these questions.

9. *Undertake an independent assessment of emerging, 21st century, global issues that may inhibit emerging economies' economic development and export growth and how the TTIP could be used to help address these issues*. The study should assess the implications and opportunities under the TTIP to help move forward the development agenda in the coming decades. This is especially important given the unfulfilled promises of Doha.

True, even consideration of these steps may raise expectations that could remain unfulfilled. If so, the TTIP can proceed as originally envisaged. But, we are convinced that emerging economies – as well as the U.S. and the EU - will be the worse off for it.

The U.S. and EU are fully aware of the potential benefits to the global economy of promoting the Doha and other development goals. A key recommendation, however, is that the negotiating partners should create a more globally current and impactful agreement. The U.S. and EU can do so by offering emerging economies the opportunity to identify development issues and opportunities created by the TTIP. By taking on these challenges, the TTIP partners may also become better equipped to leave behind long-held negotiating positions and bruises of the Doha Round and act in enlightened self-interest.

This study seeks to identify, ahead of time, both the opportunities and potential negative impacts to emerging economies under the TTIP. The more of these the TTIP addresses, the stronger will be its positive impact on global economic growth. The results still may not be as far-reaching as the Doha Round might have been, but the TTIP is a live negotiation that provides a new opportunity for committed partners to make trade *really* happen.

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