Sandler Trade LLC

Could the Transatlantic Trade and Investment Partnership Become the New Engine for Global Development?[1]

The following statement concerning opportunities and challenges arising from negotiations of the U.S.-EU trade and investment partnership agreement (TTIP) is in response to the House Ways and Means Trade Subcommittee's request for public submissions. This statement is submitted by Marideth J. Sandler, CEO of Sandler Trade LLC, a consulting firm in Washington whose purpose is to make international trade *really* happen, especially with emerging economies. Our statement derives from the firm's interest in, and support of, economic development in emerging economies[2] and is not submitted on behalf of a client.

<u>Executive Summary</u>

The TTIP could truly help grow the global economy, reduce global poverty, and create new customers for internationally traded goods by adopting as one of its objectives the removal of obstacles to emerging economy exports. These new customers will be found among U.S., EU, <u>and</u> emerging economy consumers, so it is in the interest of the TTIP negotiating partners to be mindful of the agreement's likely global impact. We recommend that the following steps be considered for integration into the TTIP, and that the following studies be included in the TTIP process to elucidate these issues further.

<u>Within the TTIP</u>:

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, 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.*

<u>In order to identify other changes that should be included in the TTIP, promptly</u>:

6. *Elicit public comments on development aspects of the TTIP.*

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[2] The terms, "emerging economies" and "emerging markets" are used as synonyms for developing countries.

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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, including:*
    a. *Tariff 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.*
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.*

Why Look at the TTIP as a Global Engine for Development

The TTIP and its economic impacts will be with us for many decades to come. The U.S. and EU governments and negotiators should take the time to consider fully these impacts, especially on emerging economies. The TTIP has the opportunity to advance economic development goals in emerging economies, as well as to anticipate and reduce any potential displacement of emerging-economy exports stemming from the TTIP. This statement discusses the following findings:

1. Promoting economic development in emerging economies through the TTIP is in the U.S. (and the EU's) economic interest, as increased trade reduces poverty, creates jobs, and increases regional security.
2. The TTIP negotiating partners represent 50% of the global GDP and 30% of world trade. With the apparent demise of the Doha Development Round, the TTIP offers a near-global forum that can advance global development goals.
3. The TTIP will likely lead to the displacement of some emerging market exports – we recommend steps to avoid economic damage such as mechanisms for extending benefits of TTIP trade liberalization to affected emerging economies.
4. The TTIP does not currently envisage addressing import barriers to emerging economy products in the TTIP markets – we recommend it do so by harmonizing certain U.S. and EU import requirements.
5. The TTIP has the opportunity to and should address several 21st century issues of particular concern to emerging economies - we recommend several to be included in the TTIP.

Why Advancing Development Goals Through the TTIP Is in the U.S. Interest

In November 2001, at the WTO Doha Ministerial Conference, the U.S. and the EU agreed on the need for the WTO to promote a development agenda. There are many tangible benefits linked to economic development. As economies become wealthier, they are more likely to avoid armed conflict, increase 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 businesses. Trade liberalization helps promote trade-led development in emerging economies, and 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 economic growth in 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. 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%. 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%. Since the shares are based on a growing global pie, this is a win-win for all economies.

EU representatives have emphasized that, "…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."[4] A study commissioned by the European Commission[5] 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." Thus, the EU recognizes the importance of using the TTIP to advance global economic development. However, this and other studies did not consider potential adverse impacts on products exported by emerging economies.

<u>The TTIP Could Advance Unfulfilled Doha Round Development Goals</u>

Many Doha Round development goals envisioned in 2001, especially those related to improved market access in the United States and the EU, appear to have largely been abandoned. According to WTO documents, key Doha Round developing country goals related to agriculture included: increased market access, including for tropical agricultural products; reduced tariff escalation; improve administration of tariff-rate quotas (TRQs); disciplines on domestic supports; elimination of trade-distorting cotton subsidies; and elimination of export subsidies.

These obstacles to trade remain a major concern and impediment to emerging economies' export expansion and global competitiveness. Since the Doha Round was launched in 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.[6] The U.S. has undertaken fewer agricultural subsidy reforms and has increased supports. The U.S. share of agricultural subsidies that distort production and trade now account for some

[3] OECD, "Perspectives on Global Development 2010 Shifting Wealth."
[4] Karel De Gucht, European Commissioner for Trade, "The Transatlantic Trade and Investment Partnership: Global Impacts," Institute for International and European Affairs/ Dublin,19 April 2013.
[5] "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
[6] "The development interest in the CAP reform debate," at CAPreform.eu, January 30, 2013.

60% of U.S. producer supports compared to 48% under the EU's CAP.[7] Some reform is anticipated in the pending Farm Bill, but, based on published analyses, many trade-distorting subsidies will likely be retained.

It should be noted that, while many of the developing countries' Doha Round goals were aimed at changes in developed country practices, studies showed that many gains for emerging economies would result from 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 these fronts. The OECD's "Perspectives on Global Development Report"[8] 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.

Less progress has been made with respect to developing countries' goals aimed at developed country practices. Accomplishing most of these still unrealized development-related Doha 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. A key question is whether the TTIP could help accomplish some of these goals and whether U.S. and EU leaders are prepared to establish this as one of the TTIP's goals. To date, they have not done so.

The TTIP Could Displace Key Emerging Economy Exports

The U.S. and the EU have argued that the TTIP will benefit third countries from two perspectives. One, the harmonization of standards will benefit emerging economies by allowing them to more easily export to both the U.S. and EU markets based on a single standard. Second, as U.S.-EU trade expands, third countries will benefit from the expansion by supplying additional inputs through the global supply chain. However, adverse impacts on third countries are also likely.

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 U.S. and the EU envision using the TTIP to harmonize standards for their priority exports to third markets, even when they do not trade these products bilaterally. They will do so with a view to

[7] 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.
[8] 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/

influencing and promoting global standards harmonization for these priority exports that will pave the way for their producers' export growth to third markets. As such growth occurs, third country shipments that would compete with these growing exports may be displaced. Following discusses these concerns in turn.

a. *Trade Displacement*

By definition, when FTAs remove barriers to bilateral trade, they discriminate against third country shipments. For example, vegetable oils 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% average tariff rate in the U.S. and 6.6% 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% to 12.8% on an MFN basis, and up to 8.9% 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.[9]

b. *Mutual Recognition*

If the U.S. and the EU agree to facilitate trade expansion by mutually recognizing each other's regulations based on equivalence, emerging economy competitors will not benefit from this arrangement as their exports would still face two different sets of standards when exporting to the U.S. or EU market. Emerging economies' exports of these or competing products to the U.S. and 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.

Returning to the vegetable oils example, a mutual recognition agreement for certification of soybean products could remove obstacles to U.S. soybean exports to the EU that are now 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% 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

[9] EU Council Regulation No 732/2008.

Biofuel exports to the EU now face additional barriers. Under RED, they require sustainability certifications, which are further depressing U.S. soybean exports and are starting to affect third countries' palm and coconut oil exports.[10]. The sustainability certifications are burdensome and expensive. The EU maintains a list of pre-approved entities that perform and monitor the certifications and implement burdensome, expensive, and intrusive sustainability investigations and audits 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 [11]

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 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. As sustainability certification requirements proliferate, U.S.-EU simplified certification agreements could create a permanent advantage for TTIP traders over emerging country exports.

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.

c. *Harmonization to Promote Global Standards to Facilitate Export Growth to Third Countries*

The U.S. and the EU plan 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[12] 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." The paper notes that, from 2002 through 2011, EU share of agricultural exports to the U.S. fell from 20 to only 13% of its global agriculture exports. The value of U.S. agricultural exports to the EU during the same period fell from 13 to only 8% of its exports to the world.

[10]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

[11] 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.

[12] 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, p.5.

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. While this is a legitimate goal for U.S. and EU interests potential adverse implications for emerging economies should be considered and solutions found.

In sum, our analysis raises the important question of whether indirect benefits to emerging economies from the TTIP will be sufficient to compensate for the costs from trade displacement and increased import competition from U.S. and EU exports. We believe this is unlikely.

<u>Emerging Economy Export Priorities and the NTBs They Face in U.S. and EU Markets</u>

The TTIP agenda does not envisage identifying products that are priority exports for emerging economies and reducing trade impediments they face. This is a regrettable omission. The TTIP provides a unique forum for the U.S. and the EU to harmonize standards and remove NTBs for <u>*products that emerging economies export to the TTIP markets*</u>, even if these are not also traded bilaterally between the U.S. and the EU. This could include, 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.

As an example, 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. 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. 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. Experts have noted that changing weather patterns have shifted the length of the melon harvest in the U.S. and in foreign supplier countries. 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%.[13] 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, among other, complex and divergent rules of origin, labeling, and packaging requirements; sanitary and phytosanitary standards; and, divergent customs requirements and practices.

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 conglomerates have repeatedly stated that they often 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. The U.S. and the EU are pressing developing countries to Through the WTO trade facilitation talks, the U.S. and the EU are pressing developing countries under the WTO trade facilitation talks to simplify and harmonize their customs procedures. The U.S. and EU should undertake to do the same with their complex importation requirements and have the opportunity to do so under the TTIP.

<u>TTIP as a 21st Century Agreement</u>

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. Their focus in this area revolves around their stakeholder interests, such as: intellectual property rights protections; 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. Development goals have not been cited in this context.

However, there are 21st century issues that are a priority for emerging economies. These include food production and food security; biofuel policies; sustainability-related certification requirements; climate change-driven 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.

[13] European Commission Regulation 215/2005

Including some issues in an FTA and omitting others creates long term distortions in global trade patterns. 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.

Would Adding Emerging Economy Issues to the TTIP Agenda Sink It or Help It Swim?

Many will assume that burdening the TTIP agenda with emerging economies' development issues would add another unacceptably high level of complication and undermine prospects for the TTIP's successful negotiation. In the Doha aftermath, U.S. and EU negotiators, disappointed with Brazil's, China's and India's reluctance to further remove import barriers, will argue 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, could give the two negotiating partners a new perspective and help them avoid 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 stakeholders that could 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.

Conclusion

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. 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.

Adoption of the steps recommended in this statement would ensure that the TTIP will fulfill its promise to advance global growth and development.

The TTIP negotiating partners should create a more globally current and impactful agreement by offering emerging economies the opportunity to identify development issues and opportunities within the TTIP. By taking on these challenges, the TTIP partners may become better equipped to leave behind long-held negotiating positions and bruises of the Doha Round and act in enlightened self-interest.

We appreciate the Ways and Means Subcommittee's consideration of these views.

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