

BACKGROUND

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The Transatlantic Trade and Investment Partnership (TTIP): Economic Benefits and Potential Risks

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Abstract

The United States and the European Union are negotiating a trade agreement—the Transatlantic Trade and Investment Partnership (TTIP)—that politicians and commentators on both sides of the Atlantic hail as the answer to the woes of the transatlantic relationship, as a solution to the EU’s economic difficulties, and as heralding the creation of a new institution that will reinvigorate the Western alliance. But no U.S.–EU agreement can do all that has been claimed of the TTIP, and there are reasons to believe that its benefits have been oversold. The U.S. should support all measures that would promote growth and employment by increasing economic freedom, but it should not accept any agreement that could increase government regulation in the name of promoting free trade and create a transnational regulatory body that could infringe on U.S. sovereignty.

In February 2013, President Barack Obama called for a free trade agreement between the United States and the European Union during his State of the Union address. This proposed agreement is now known as the Transatlantic Trade and Investment Partnership (TTIP). The President’s announcement has been taken by politicians and commentators on both sides of the Atlantic as an effort to reinvigorate U.S. trade diplomacy, as the answer to the woes of the transatlantic relationship, as a solution to the EU’s economic difficulties, and as heralding the creation of a new institution that will give renewed purpose to the Western alliance.

Reality is more complex. An agreement that reduces barriers to trade between the U.S. and the EU, thereby empowering individuals on both continents, would be beneficial. No U.S.–EU agreement,

KEY POINTS

- A Transatlantic Trade and Investment Partnership (TTIP) that genuinely promotes economic freedom could bring substantial economic benefits to both the United States and the European Union.
- While all gains from increased economic freedom are valuable, the gains from any TTIP will not be revolutionary on either side of the Atlantic.
- The U.S. should not accept a TTIP that is based on the harmonization of regulations or one that does not respect U.S. sovereignty.
- The U.S. should strongly consider abandoning the idea of a comprehensive TTIP and focus instead on obtaining an agreement limited to high-value sectors.
- A TTIP is, at best, part of a broader strategy of promoting free trade and economic freedom in the U.S., with Europe, and around the world.
- The U.S. and the world have too much to gain from freer trade to accept anything less than an agreement that verifiably makes real and substantial strides toward promoting economic freedom.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2952>

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however, can do all that has been claimed of the TTIP, and there are reasons to believe that the TTIP's economic and broader geopolitical benefits have been oversold by some of its proponents.

This *Backgrounders*—the first of two—will assess the substantial benefits that would flow from a U.S.–EU agreement that genuinely advanced economic freedom while considering the risks that such an agreement would not achieve this objective. The second *Backgrounders* will assess the broader geopolitical case for a TTIP.¹

The United States should look favorably on all measures that would promote growth and employment by genuinely increasing economic freedom, but it should not accept any agreement that could mandate the international harmonization of rules and thereby increase government regulation in the name of promoting free trade. Nor should it accept any agreement that would create a transnational regulatory body that could infringe on U.S. sovereignty.

If the U.S. is to pursue a comprehensive TTIP, the Administration will have to show leadership that has been lacking to date. The history of such comprehensive efforts, and even of more limited U.S.–EU agreements, suggests that it might be wiser to pursue a narrower negotiation that would focus on achievable goals and would not be based on the principle of harmonization.

In any case, if it decides to give trade promotion authority (TPA) to the Administration, Congress will have to ensure that the Administration is clearly committed to the promotion of economic freedom and define the redlines for negotiation of a TTIP with care. Furthermore, the United States should not wait for the conclusion of TTIP negotiations to open negotiations for free trade agreements with European nations that are not burdened by the cumbersome EU bureaucracy, including Norway, Switzerland, Turkey, and Georgia, or any nation that might exit the EU in the coming years, such as the United Kingdom, which will hold a referendum on EU membership in 2017. Finally, the U.S. should

couple these negotiations with a broader emphasis on the promotion of economic freedom, both abroad and at home.

The Case for Economic and Trade Freedom

Economic freedom is the fundamental right of every person to control his or her own labor and property. As such, it is a natural right and is closely associated with other human rights, such as the existence of a free press, freedom of religion, and freedom from arbitrary power. It also has important practical consequences: Increasing levels of economic freedom correlate with greater prosperity and many other desirable social outcomes.

Economic freedom includes having the ability to trade freely, both internationally and domestically; the voluntary exchange of goods is central to the functioning of markets and to the increases in productivity that ultimately bring greater wealth.² After World War II, the U.S. led the developed—and, increasingly, the developing—world to liberalize international trade, which contributed powerfully to making this era the most prosperous in the history of the world.

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Trade becomes freer as it is subject to fewer government controls, restrictions, and barriers. The best-known barrier to freer trade is government imposition of tariffs on imported goods. Tariffs raise the cost of imports, making them more expensive to domestic consumers and manufacturers and thereby reducing American buying power. There also are many other barriers to trade, including government regulations on the goods that are allowed to enter the market, requirements to buy only domestically produced goods for some government-financed proj-

1. See Ted R. Bromund, Nile Gardiner, and Luke Coffey, "The Transatlantic Trade and Investment Partnership (TTIP): The Geopolitical Reality," Heritage Foundation *Backgrounders* No. 2953, September 17, 2014, <http://heritage.org/research/reports/2014/09/the-transatlantic-trade-and-investment-partnership-ttip-the-geopolitical-reality>.

2. For measurements and assessments of economic freedom, including trade freedom, see Terry Miller, Anthony B. Kim, and Kim R. Holmes, *2014 Index of Economic Freedom: Promoting Economic Opportunity and Prosperity* (Washington, DC: The Heritage Foundation and Dow Jones & Company, Inc., 2014), <http://www.heritage.org/index/>.

ects, and the existence of state-owned enterprises that receive government subsidies.

While these barriers work in many ways, they are like tariffs because they both make it harder for consumers to exercise their freedom to choose what to buy and, by reducing competition, make purchases more expensive. The case for freeing U.S. exports from foreign restrictions is widely appreciated, but the case for freeing imports from domestic American restrictions is less well understood—even though those American restrictions are paid for by American consumers and benefit special interests at the expense of the public at large.

To the extent that these barriers exist in the United States, they exist because of the actions of the federal, state, and local governments. Trade agreements can provide a mechanism that encourages the liberalization of U.S. markets by offering the promise of similar actions by U.S. trading partners, but the U.S. also could and should reduce burdensome regulations on its own, without any negotiations.

Nor does calling a trade agreement a contribution to free trade necessarily make it so. Because many barriers to freer trade originate in government regulations, it is possible that an agreement could align rules across international borders in a way that would make international trade easier while simultaneously reducing economic freedom. In other words, the rules under which businesses work could be made more coherent internationally but also more onerous, thus keeping competitors out of the market and increasing the damage that the rules do to the majority of the economy that does not directly engage in international trade.

The first and central test of the acceptability of any trade agreement must be whether it actually increases economic freedom for and in the United States. If it does not, it is unacceptable. In order for a trade agreement to meet this criterion, it must definitely reduce the significance of governmental regulation of and barriers to trade. A trade agreement that merely promises to reduce regulation by establishing international commissions to assess regulations in particular sectors does not meet this criterion, because such commissions will also have the power to promote increased regulation in practice.

Unless reduced regulation is assured, a trade agreement that seeks to harmonize domestic regulations across international boundaries is also unac-

ceptable. Harmonization is likely to be driven in practice by international commissions and to harmonize up to higher levels of regulation, not down to lower ones. The approach of mutual recognition—whereby both parties to the agreement accept each other's standards—is superior because it allows continued competition between regulatory approaches and thus penalizes the less efficient and more burdensome approaches.

In short, the goal of U.S. trade policy should be to increase economic freedom both worldwide and, in particular, in the United States. International agreements can make, as they have in the past, a valuable contribution to this goal, but there is no guarantee that an agreement that is billed as promoting freer trade will actually lead to increased economic freedom.

The Economic Benefits of a TTIP

A number of efforts have been made to model the economic benefits of a TTIP agreement. Such estimates are speculative and will remain so until—and, to an extent, even after—an agreement is negotiated and put into effect. Any model of the gains from a TTIP must necessarily make a substantial number of assumptions about the agreement, and while these assumptions can be defensible, they limit the degree of certainty associated with the estimate the model produces.

On one hand, if the TTIP genuinely increases economic freedom, it is likely that existing models are too pessimistic about the gains it will yield. Modern economies are extremely complex, and existing models do not fully capture the gains from freer trade. Over the long run, the most important result of reduced barriers to trade in the U.S. and the EU would be that both economies would have a higher growth potential, though the extent of the increase and the ways it might be realized are difficult to quantify. On the other hand, tariff barriers between the U.S. and the EU economies are already very low. The gains from further trade liberalization between the U.S. and the EU, therefore, will be relatively less significant than the gains that have already been made. The U.S. and the EU have already done the most valuable work by reducing the tariff barriers between their economies through the creation of the General Agreement on Tariffs and Trade (GATT) in 1948 and its successor, the World Trade Organization (WTO), in 1995.

Nonetheless, it is worth examining the possible gains from a TTIP in order to assess the economic significance of an agreement. Assessments of the gains from a TTIP have tended to converge, indicating that a rough measure of consensus exists. For example:

- A study by the Centre for Economic Policy Research (CEPR) for the European Commission in March 2013 concluded that by 2027, an ambitious TTIP would produce gains of approximately \$164 billion for the EU and \$131 billion for the U.S., while a less ambitious agreement that eliminates most tariffs but leaves many non-tariff barriers in place would create EU gains of \$94 billion and U.S. gains of \$69 billion.³ The rest of the world would benefit from small but positive spillover effects.
- Writing in the *Wall Street Journal* ahead of his visit to the United States in May 2013, British Prime Minister David Cameron asserted that “This deal could add as much as £10 billion to the British economy and £63 billion (\$97 billion) to U.S. gross domestic product (GDP). But the rest of the world would benefit too, with gains that could generate €100 billion (\$132 billion) world-wide.”⁴
- A study by the Global Economic Dynamics project of the Bertelsmann Foundation in 2013 concluded that an ambitious TTIP that eliminated tariffs and reduced many regulatory barriers to trade would create almost 1.1 million jobs in the U.S., with most of the gains resulting from the reduction of non-tariff barriers and with the U.S. gaining more than the EU. Most of the rest of the world would suffer trade diversion and a resulting loss of jobs.⁵

- A study by the Atlantic Council, the Bertelsmann Foundation, and the British Embassy in Washington in September 2013 concluded that under a TTIP, the U.S. would see a net employment gain of almost 750,000 jobs.⁶

The difficulties inherent in estimating the gains from a TTIP are obvious. While there is general agreement that a TTIP would result in additional employment and GDP growth for both the U.S. and the EU, the studies disagree on such matters as which trade partner would benefit more and whether a TTIP would divert trade from the rest of the world.

Regardless of these issues, however, the projected gains for the U.S. and the EU are both sizable and larger than projected gains from many previous U.S. free trade agreements with other partners. The projected gains from the TTIP are larger simply because both the U.S. and the EU economies are also large, so even the low tariff barriers between them impose costs that, taken together, are significant. If the projected gains from TTIP are real, they are worth having.

On the other hand, the significance of these gains should not be exaggerated. In context, these large numbers are less impressive. In 2013, a relatively weak year, the U.S. economy added 2.2 million jobs for an average of about 183,000 jobs a month. If the TTIP added 750,000 jobs, this would be the equivalent of just over four months of employment growth in 2013. It would be as if the U.S. job market was as large at the start of September 2013 as it was by the end of December 2013. Similarly, in 2013, the U.S. economy grew by an estimated 1.9 percent of GDP, or about \$300 billion. If the TTIP added \$100 billion to the U.S. economy, it would be the equivalent, again, of about four months of GDP growth. In short, these studies conclude that the TTIP is worth between four to six months of growth in GDP

3. Centre for Economic Policy Research, *Reducing Transatlantic Barriers to Trade and Investment*, Final Project Report, March 2013, p. 47, http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf (accessed April 9, 2014).

4. David Cameron, “A British–American Tax and Trade Agenda,” *The Wall Street Journal*, May 12, 2013, <http://online.wsj.com/article/SB10001424127887324216004578478652537662348.html> (accessed August 15, 2014).

5. Gabriel Felbermayr, Benedikt Heid, and Sybille Lewald, “Transatlantic Trade and Investment Partnership (TTIP): Who Benefits from a Free Trade Deal? Part 1: Macroeconomic Effects,” Global Economic Dynamics, 2013, <http://www.bfn.org/sites/default/files/TTIP-GED%20study%2017June%202013.pdf> (accessed April 11, 2014).

6. British Embassy Washington, Bertelsmann Foundation, and the Atlantic Council, “TTIP and the Fifty States: Jobs and Growth from Coast to Coast,” September 2013, <https://www.gov.uk/government/publications/ttip-and-the-fifty-states-jobs-and-growth-from-coast-to-coast> (accessed April 11, 2014).

and employment at the modest levels that the U.S. achieved in 2013.

To put it another way, if Prime Minister Cameron's estimate is accurate, adding \$97 billion to the U.S. economy is like adding another firm the size of Home Depot to the American economy. Adding £10 billion to the British economy is like giving Britain another BAE Systems, the aerospace giant. While this would be a good thing, it would not be revolutionary on either side of the Atlantic.

Moreover, trade agreements do not work like pay increases: The gains do not come all at once. They arrive slowly as the agreement is implemented and the market adapts to these changes. The gains from freer trade are real, but they are also difficult to discern; in practice, in the case of a TTIP, most Americans and Europeans would barely notice them. If, as the CEPR assumes, the gains from a TTIP would not fully materialize until 2027, the agreement would be like adding an extra 10 days of growth to every year from 2015 onward.

Caution is also warranted because of a TTIP's potential effects on the portion of the U.S. economy that is not directly involved in trade with the EU. Trade agreements that genuinely increase economic freedom benefit some parts of the economy directly, while the rest of the economy benefits indirectly through imports of lower-cost goods, which allows consumers to invest the money they save or spend it on other goods. In the United States, the value of international trade—imports and exports—is about 30 percent of GDP, a relatively low share compared to the United Kingdom's 65 percent and Germany's 98 percent.⁷

This fact is important to consider, because in modeling the gains from a TTIP, some studies—such as that by the CEPR—assume that the reduction of barriers between the United States and the EU will result in lower costs throughout the entire economy. But this assumption, in turn, is predicated on the studies' assumption that regulations in the U.S. and the EU seek "comparable objectives...through different regulatory means."⁸ If that assumption is incorrect—if EU regulation is more extensive and economically damaging than that of the U.S.—then

it is possible that an agreement could actually raise costs for the majority of the U.S. economy, which is not directly concerned with international trade, and so produce no gains at all—or even losses.

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There is a final consideration about the modest estimated gains from a TTIP. As the Global Economic Dynamics study correctly notes, reducing trade costs is "the ultimate concern of every free-trade agreement." This study thus proceeds by assuming that a TTIP will have roughly the same effect on non-tariff barriers as previous free trade agreements between other trading partners have had.⁹ But if a TTIP merely harmonizes non-tariff barriers to trade between the U.S. and EU instead of eliminating them, it may not reduce those costs as much as previous agreements have done, and the comparison between it and other free trade agreements may therefore be invalid. All rules have costs, and while that is not an argument against having any rules at all, it does mean that it is not possible to assess the gains from a TTIP simply by assuming that it will reduce costs to the same extent as previous agreements.

The Risks of a TTIP

The TTIP would make an important contribution to economic freedom if it cut or, preferably, eliminated U.S. and EU tariffs on transatlantic trade, which would in effect provide a tax cut for consumers on both sides of the Atlantic. Imports from the EU are the second-largest source of U.S. tariff revenue, taking \$4.9 billion out of the pockets of U.S. consumers in 2013. Tariff elimination would benefit U.S. exporters too. For example, the EU imposes a 10 percent tariff on U.S.-made cars, and its average tariff on U.S. agricultural exports is 12.8 percent.

7. World Bank, "Trade (% of GDP)," 2014, <http://data.worldbank.org/indicator/NE.TRD.GNFS.ZS> (accessed June 30, 2014).

8. Centre for Economic Policy Research, *Reducing Transatlantic Barriers to Trade and Investment*, p. 7.

9. Felbermayr, Heid, and Lewald, "Transatlantic Trade and Investment Partnership (TTIP): Who Benefits from a Free Trade Deal?" pp. 5, 9–10.

A survey by the Atlantic Council and the Bertelsmann Foundation of over 300 “stakeholders” who have an interest in the TTIP negotiations found that, of 19 possible options, the most important issue in the talks and also the easiest issue to negotiate is the “elimination of tariffs or significant tariff reductions across most sectors.”¹⁰ The logic behind eliminating all tariffs on trade between the U.S. and the EU is compelling and widely recognized.

However, because tariffs between the U.S. and the EU are already low on average, all studies agree that the majority of the gains from any TTIP will come from reducing what are known as non-tariff barriers (NTBs). There is no universally accepted definition of NTBs, but they are “generally defined as policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both.”¹¹ In the broadest sense, even geography and language can be classified as NTBs—because, for example, Americans may find it more difficult to trade with Greece than with an English-speaking country, such as the United Kingdom—so no trade agreement can eliminate all barriers to trade. Even in a narrower sense, the United Nations defines 16 separate categories of NTBs, ranging from sanitary regulations to restrictions on post-sale services.

Most concerns about a TTIP stem from the fact that if it is to achieve the modest gains claimed by its proponents, it will have to reach deep inside the domestic governance of both the U.S. and the EU. In this connection, the words of Margaret Thatcher are worth remembering.

In 1987, as Britain’s Prime Minister, Thatcher led a successful campaign for the adoption throughout the European Community (the forerunner of the EU) of the Single European Act (SEA), which she believed would be a treaty for “economic liberty” that would remove non-tariff barriers across the community and, in particular, benefit Britain, which, because of its lighter and more transparent regulations, was in a position to benefit as others moved

toward this approach. The SEA involved a range of measures designed to harmonize standards and specifications and was accompanied by a significant increase in majority voting; in other words, the SEA reduced the power of individual member nations of the EU to block measures under the SEA.¹²

In retrospect, Thatcher recognized that she “made two understandable but undeniable mistakes” in negotiating the SEA. First, she failed to recognize that the SEA would give the European Commission—the bureaucratic heart of the European Community—powers that it would continue to use even after the aims of the SEA had been achieved. Second, she believed the promises of the commission and other national members of the community that these powers would be used to promote economic freedom.

These powers, however, were “abused in order to push corporatist and collectivist social legislation upon Britain by the back door.” As Thatcher summed it up:

The aim [of the SEA] was said to be a “level playing field.” This phrase has a reassuring ring to it, but it actually encapsulates a fundamental error about trade. Free trade allows firms in differing nations to compete. But because a “level playing field” stops that part of competition that comes from differing regulative systems it actually reduces the gains from trade. Moreover, as every British schoolboy knows, levelling playing fields does not involve the removal of every minor lump, bump and worm-cast. At some point the reshaping and rolling, the raising and lowering, have to stop so that the game can continue normally.¹³

The precedent set by the SEA should always be in the mind of any conservative contemplating a TTIP. The central risk of a TTIP is that the quest to eliminate non-tariff barriers to trade can turn into a supranational exercise in rolling the lawn, whereby any national difference is treated as something that must be eliminated, even if that difference promotes economic freedom.

10. Atlantic Council and Bertelsmann Foundation, “The Transatlantic Trade and Investment Partnership: On Track but Off Message? 2014 Stakeholder Survey,” March 2014, http://www.atlanticcouncil.org/images/publications/2014_TTIP_Stakeholder_Survey_web.pdf (accessed August 14, 2014).

11. U.N. Conference on Trade and Development, “Classification of Non-Tariff Measures,” February 2012, p. 1, http://unctad.org/en/PublicationsLibrary/ditctab20122_en.pdf (accessed June 30, 2014).

12. Margaret Thatcher, *Statecraft: Strategies for a Changing World* (New York: HarperCollins, 2002), p. 372.

13. *Ibid.*, pp. 374–375.

There is significant evidence that this concern is a serious one. In February 2013, the U.S.–EU High Level Working Group on Jobs and Growth (HLWG), which laid the groundwork for the TTIP negotiations, concluded that:

[The U.S. and EU should] seek to strengthen upstream cooperation by regulators and increase cooperation on standards-related issues...in order to reduce costs associated with regulatory differences by promoting compatibility, including, where appropriate harmonization of future regulations, and to resolve concerns and reduce burdens arising from existing regulations through equivalence, mutual recognition, or other agreed means, as appropriate.

In addition, the HLWG called for “provisions that provide an institutional basis for future progress [on regulatory cooperation.]”¹⁴

In short, the TTIP’s approach appears to be one of applying a variety of mechanisms to reduce the burdens imposed by differing U.S. and EU regulations over the short run while relying on harmonization, led by a U.S.–EU institution, over the long run. In time, the number of harmonized regulations would grow, and the amount of regulatory competition between the U.S. and the EU would decline. This is the approach that Thatcher condemned.

But this is not the only reason to be cautious about a TTIP. A second is that the U.S. and EU economies are already highly regulated, and these regulations have a substantial effect on how businesses in the U.S. and the EU work. It is therefore not surprising that industry has taken a keen interest in the progress of the TTIP negotiations. As the *New York Times* reported in 2013, negotiations between the U.S. and the EU were taking place amid a “flurry of corporate wish lists.”¹⁵

This sort of industry input into the negotiation process is not illegitimate, and many industry concerns are undoubtedly reasonable, but industries inevitably will seek to ensure that the rules or rule-

making processes created by a TTIP benefit existing firms. Contrary to the belief of the Left, many industries like regulation because it shields them from competition. It is entirely possible for regulation to enable some industries to work more efficiently while at the same time imposing costs on current or future competitors. Instead of building new regulatory barriers, good trade agreements break down barriers that are designed to protect firms from foreign (and domestic) competitors.

Economic freedom is not the same thing as making life easier for large corporations (and unions) at the expense of small ones (and individual workers). Corporatism is not free trade. Confusing the two discredits economic freedom and damages both the case and the support for it.

It is important that a TTIP benefit everyone, not just large firms (or, for that matter, large unions). A TTIP that fails to lower regulatory burdens on today’s smaller firms, tomorrow’s larger ones, or individual workers would be bad for growth and job creation, and an agreement that should be about promoting economic freedom would risk becoming a corporatist deal. Economic freedom is not the same thing as making life easier for large corporations (and unions) at the expense of small ones (and individual workers). Corporatism is not free trade. Confusing the two discredits economic freedom and damages both the case and the support for it.

TTIP advocates appear to be aware of the criticism that any agreement is likely to be shaped in ways that favor large existing firms. The first half of 2014 witnessed a public relations campaign that sought to emphasize TTIP benefits for small and medium-sized businesses and to make the case that exports are good for everyone. On the latter

14. United States–European Union High Level Working Group on Jobs and Growth, “Final Report,” February 11, 2013, pp. 3–4, http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf (accessed June 30, 2014).

15. Danny Hakim and Eric Lipton, “U.S.–European Trade Talks Inch Ahead Amid Flurry of Corporate Wish Lists,” *The New York Times*, September 12, 2013, http://www.nytimes.com/2013/09/13/world/europe/corporate-spin-already-on-us-europe-trade-talks.html?pagewanted=all&_r=3& (accessed June 30, 2014).

point, there is no dispute; but since, as Ambassador Michael Froman, the U.S. Trade Representative, put it in a speech in June 2014, the proclaimed goal of a TTIP is to “take two advanced, industrialized, highly regulated economies and bring them closer together and bridge the differences in how we regulate,” it appears that reducing the level of regulation is not on the TTIP agenda.¹⁶ Small businesses have more to gain from reducing regulations than larger firms have, because they are less able to afford compliance and lobbying departments. Removing such barriers to competition and thereby advancing economic freedom should be a central goal of the TTIP negotiations.

Ambassador Froman’s remarks, taken with the report of the High Level Working Group, also point out a third way in which TTIP negotiations could go awry. It is one thing to state as an objective that U.S. and EU regulations should be harmonized over time, but actually achieving that will require, as the working group recognized, an institutionalized form of cooperation. The EU has proposed the creation of a Regulatory Cooperation Council that would bring together U.S. and EU regulatory agencies to monitor the implementation of commitments, consider new priorities for regulation, and ask for the joint creation of new regulations. This is not a new approach for the EU. Other trade agreements to which the EU is party, such as its free trade area with South Korea, have taken a similar approach of establishing a committee to promote regulatory cooperation.¹⁷

A good model for such a council would be the U.S.–Canada Regulatory Cooperation Council, which works to minimize regulatory barriers to trade in sectors that include agriculture, pharmaceuticals, motor vehicles, and nanotechnology. Among other things, the council is working to remove redundant certification requirements in the two countries and

to make it easier for companies to comply with regulations in Canada and the United States.¹⁸

But the United States should not agree to a council that has a wider purview or to a council that is authorized to consider new regulatory priorities. Since one aim of the TTIP is to ensure that regulations do not establish barriers to trade, such a council would have to scrutinize all federal regulations, not merely those overtly related to international trade. It would also go well beyond the traditional objective of promoting freer trade by eliminating government restrictions to the new objective of promoting new forms of regulation by governments. In practice, such a council could operate as a transnational rule-making body: While the formal creation and implementation of regulations in the U.S. would be left to executive agencies and to Congress, the council would have substantial input into this process. At the least, it would be a gatekeeper; at worst, it would be a guide and guardian.

Such a council could also give additional power to the executive branch, because representation on the council would be dominated by executive agencies. The council could thus serve as a mechanism for translating executive branch (and EU) preferences into rules that would affect every aspect of U.S. society.

Even a weak council would be a powerfully influential body—but the EU does not want a weak council. It has called for a TTIP with “strong institutions” that make “a living agreement that promotes greater compatibility of our regimes and accelerates the development of global approaches.” The United States should not agree to a council that would outsource a substantial portion of U.S. regulatory authority.¹⁹

A superior approach would be a TTIP that reduces the level of U.S. regulation, increases the power of

16. “Remarks by Ambassador Michael Froman at the World Trade Center Denver,” Office of the U.S. Trade Representative, June 23, 2014, <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2014/June/Remarks-by-USTR-Michael-Froman-at-the-World-Trade-Center-Denver> (accessed June 30, 2014).

17. For an overview, see European Commission, “The EU–Korea Free Trade Agreement in Practice,” 2011, http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148303.pdf (accessed June 2014).

18. Jessica Zuckerman, Bryan Riley, and David Inserra, “Beyond the Border: U.S. and Canada Expand Partnership in Trade and Security,” Heritage Foundation *Background* No. 2808, June 17, 2013, <http://www.heritage.org/research/reports/2013/06/beyond-the-border-us-and-canada-expand-partnership-in-trade-and-security>.

19. Karel De Gucht, European Trade Commissioner, “Transatlantic Trade and Investment Partnership (TTIP)—Solving the Regulatory Puzzle,” speech at Aspen Institute Prague Annual Conference, Prague, Czechoslovakia, October 10, 2013, http://europa.eu/rapid/press-release_SPEECH-13-801_en.htm (accessed June 30, 2014).

individuals vis-à-vis the federal government, promotes effective congressional oversight, advances economic freedom, and preserves American sovereignty. It is likely that an approach based on harmonization would be welcomed by some large firms that are burdened by differing regulations in the U.S. and the EU, but harmonization should not be the goal of U.S. negotiators. Conservatives are already justifiably concerned about the burden that regulation imposes on the U.S. economy, by the extent to which federal regulation has damaged the constitutional principle of federalism, and by the Obama Administration's reliance on regulation—and executive orders—to achieve its objectives.²⁰ This is why it is important that negotiations be guided by principles such as mutual recognition and regulation based on sound science, and not by the pursuit of regulatory harmonization through a transnational council.

A TTIP endorsed by the U.S. should reduce the level of U.S. regulation, increase the power of individuals vis-à-vis the federal government, promote effective congressional oversight, advance economic freedom, and preserve American sovereignty.

While there is value in regulatory convergence between jurisdictions—provided that, and only that, it advances economic freedom instead of diminishing it—top-down harmonization through a big-bang agreement like a TTIP may well not be the most effective approach. From institutions like the U.S.–Canada Regulatory Cooperation Council, to the U.N. Economic Commission for Europe's World Forum for Harmonization of Vehicle Regulations, to indus-

try-level bodies, there are many venues through which the U.S. and U.S. firms can achieve results by working on an issue-by-issue basis at a technical level. Such venues break away from the tyranny of the all-or-nothing agreement and allow progress without political posturing, which in turn can facilitate wider trade deals.

A fourth and final consideration is whether a TTIP will stand on its own. The EU likes to couple trade agreements with broader “framework” agreements on explicitly political objectives. In the case of the EU–Korea free trade agreement, the framework agreement “provides a basis for strengthened cooperation, including on major political and global issues such as human rights, non-proliferation of weapons of mass destruction, counter-terrorism, as well as climate change and energy security,” and is legally linked to the EU–Korea free trade agreement.²¹ The United States should not allow TTIP negotiations to be hijacked by such unrelated topics.

The actual EU–Korea framework agreement is a 64-page statement of general commitments, many of which have nothing to do with trade and a number of which (such as support for the International Criminal Court and for “a rapid transition to low-carbon societies”) will be profoundly controversial in the United States.²² The EU, in its promotion of framework agreements, points out that it sees trade agreements through a political lens and seeks to ensure that they will be interpreted and implemented in ways that suit its broader political agenda. While it is possible that the U.S. would be able to negotiate a TTIP that was not accompanied by a framework agreement, it is unlikely that the EU would not view a TTIP through the same lens as it sees its other trade agreements: as a mechanism to promote its political preferences. If so, the United States should resist EU pressures.

20. For one assessment of the cost of regulation, see Clyde Wayne Crews, “Ten Thousand Commandments 2014,” Competitive Enterprise Institute, April 29, 2014, <http://cei.org/studies/ten-thousand-commandments-2014> (accessed June 30, 2014). On the Administration's penchant for unilateral action, see Elizabeth H. Slattery and Andrew Kloster, “An Executive Unbound: The Obama Administration's Unilateral Actions,” Heritage Foundation *Legal Memorandum* No. 108, February 12, 2014, <http://www.heritage.org/research/reports/2014/02/an-executive-unbound-the-obama-administrations-unilateral-actions>.

21. European Commission, “South Korea,” 2014, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/south-korea/> (accessed June 30, 2014).

22. European External Action Service, “Framework Agreement Between the European Union and Its Member States, on the One Part, and the Republic of Korea, on the Other Part,” 2010, http://eeas.europa.eu/korea_south/docs/framework_agreement_final_en.pdf (accessed June 30, 2014).

The Left's Opposition to Free Trade

As of mid-2014, the TTIP has lost momentum. This is largely because of opposition from the Left. In February, the *Huffington Post* reported that Ambassador Froman encountered a deeply hostile reception at a meeting of labor, environmental, consumer, and progressive groups, with one meeting participant quoted as saying that “the only support [for trade agreements] comes from the Chamber of Commerce, multinational corporations, big business. The base of the Democratic Party is in complete opposition.” Another described Ambassador Froman’s appearance as “a charm offensive” but added that “it’s probably not helpful to tell the targets of your seduction a bunch of lies.”²³ President Obama has also gone quiet on the TTIP: In his May 28, 2014, speech at West Point on the case for continued U.S. international leadership, he made no mention of international trade.²⁴

For its part, the AFL–CIO, while offering nominal support for increased trade with the EU, supports a TTIP only if it is “focused on specific efforts to spur the creation and maintenance of *good jobs*.”²⁵ While it has a wide range of demands and redlines, it is particularly opposed to the inclusion of an investor–state dispute settlement (ISDS) mechanism. ISDS mechanisms offer a pathway to arbitration for investors to challenge state actions that violate commitments under various trade and investment agreements.

If such agreements are to have any validity, an enforcement mechanism is essential. This is particularly true when the agreement in question is with a nation that does not fully respect the rule of law, but ISDS provisions are also valuable even when they are used in nations such as the U.S. and Canada. Moreover, arbitration by a mutually agreed tribunal that is strictly limited to pronouncing on the mer-

its of the issue at hand in a case that flows directly from accepted agreement obligations is a well-established procedure.

In the case of disputes between private investors and nations, the alternative to arbitration—after domestic legal remedies have been exhausted—is to ignore violations of the agreement or for the aggrieved investors to appeal to their home nation directly to protect them, which will either escalate the dispute to a political level or see it ignored for political reasons. ISDS provisions do not and cannot prevent a nation from taking a particular action. They are a way to increase the total volume of international investment (and the jobs that result from it) by assuring investors that nations will not be able to break their freely undertaken commitments not to restrict investment from other nations without paying a price.

The irony of the Left’s dislike of the TTIP is that it presupposes that the result of a deal between the U.S. (a highly regulated economy) and the EU (an even more regulated economy) will be fewer regulations.

Like the AFL–CIO, the European Left is also opposed to the inclusion of an ISDS mechanism in a TTIP, claiming to see it as a way for corporations to file legal challenges that will destroy the welfare state.²⁶ In reality, many claims under existing ISDS mechanisms are filed by Western investors or firms against authoritarian or autocratic left-wing regimes (Argentina, Venezuela, and Ecuador are the three most frequent respondents, together compris-

23. Ryan Grim and Zach Carter, “Here’s Why Obama Can’t Get Democrats to Back His Trade Deal,” *The Huffington Post*, February 20, 2014, http://www.huffingtonpost.com/2014/02/20/michael-froman-democrats_n_4820363.html (accessed July 1, 2014).

24. Press release, “Remarks by the President at the United States Military Academy Commencement Ceremony,” The White House, May 28, 2014, <http://www.whitehouse.gov/the-press-office/2014/05/28/remarks-president-united-states-military-academy-commencement-ceremony> (accessed July 1, 2014).

25. AFL–CIO, “U.S.–EU Free Trade Agreement (TTIP),” 2014, <http://www.aflcio.org/Issues/Trade/U.S.-EU-Free-Trade-Agreement-TTIP> (accessed July 1, 2014).

26. For one of many examples, see “Updated: A Transatlantic Corporate Bill of Rights—Investor Privileges in EU–US Trade Deal Threaten Public Interest,” *Corporate Europe Observatory*, October 4, 2013, <http://corporateeurope.org/trade/2013/10/updated-transatlantic-corporate-bill-rights-investor-privileges-eu-us-trade-deal> (accessed July 1, 2014).

ing 109 of the 514 known cases) that expropriate foreign property. Both the U.S. and the EU are already subject to ISDS mechanisms; the North American Free Trade Agreement (with 49 cases) and the EU's Energy Charter Treaty (29 cases) are the most commonly used instruments for ISDS claims.²⁷

In short, and not surprisingly, the trade unions want a regulation-heavy deal that protects today's union workers at the expense of everyone else today and tomorrow, but they are opposed to protections for investors—the very type of protection spelled out in the Fifth Amendment to the U.S. Constitution: “No person shall be...deprived of...property, without due process of law; nor shall private property be taken for public use without just compensation.”²⁸ While any ISDS must be carefully designed and limited to ensure that it does not offer a way to impose new obligation on a nation in a manner that would infringe on its sovereignty, an ISDS can be an effective mechanism for ensuring that a trade agreement works as its negotiators and Congress intended it to work.

The irony of the Left's dislike of the TTIP is that it presupposes that the result of a deal between the U.S. (a highly regulated economy) and the EU (an even more regulated economy) will be fewer regulations. It is possible that a TTIP will, in fact, promote increased regulation. As EU Trade Commissioner Karel De Gucht has put it, “the bulk of what we should do [in a TTIP is] regulatory work: harmonizing of standards and norms.”²⁹

The Left's concerns offer a final reason for conservatives to promote market-oriented reforms in a TTIP: The more the Left presses, the more likely it is that a TTIP, if it is negotiated, could be a force for the privileged status quo and not the kind of agreement that would promote economic freedom, job growth, and economic growth.

The Problem of Negotiations

Both the EU and the U.S. have published their negotiating objectives for a TTIP, though the U.S. statement is considerably more detailed.³⁰ On the other hand, the EU's statement, through an accompanying set of questions and answers, offers a clearer sense of the EU's redlines.³¹

From the U.S. point of view, these are not encouraging. The EU defends its “rules to protect Europe's cultural diversity” from “a flood of American films” and asserts that a TTIP will not “be about compromising the health of our consumers” by feeding them “meat from American animals fed with hormones.” The U.S., while emphasizing what it wants to achieve, is far less clear about what it will not accept. This leaves the U.S. with more flexibility, but it also fosters the impression that the U.S. is likely to run up against a stone wall of EU rejections on points that are important to it without having firm convictions of its own to defend.

For now, that is not an urgent problem, for it has become obvious that the initial timetable for the TTIP—late 2014—was unrealistic.

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27. U.N. Conference on Trade and Development, “Recent Developments in Investor-State Dispute Settlement (ISDS),” *IIA Issues Note* No. 1, May 2013, http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf (accessed July 1, 2014).
 28. The Constitution of the United States, Amendment V. Complete text: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”
 29. Gregory Feifer, “Q&A: Can a Transatlantic Trade Deal Help Save the Global Economy?” *Global Post*, March 11, 2013, <http://www.globalpost.com/dispatch/news/regions/europe/130308/DeGucht-transatlantic-trade-deal-global-economy> (accessed August 7, 2013).
 30. Press release, “Member States Endorse EU-US Trade and Investment Negotiations,” European Commission Memo No. 13/564, June 14, 2013, http://europa.eu/rapid/press-release_MEMO-13-564_en.htm (accessed August 18, 2014), and Fact Sheet, “U.S. Objectives, U.S. Benefits in the Transatlantic Trade and Investment Partnership: A Detailed View,” Office of the U.S. Trade Representative, March 2014, <http://www.ustr.gov/about-us/press-office/press-releases/2014/March/US-Objectives-US-Benefits-In-the-TTIP-a-Detailed-View> (accessed July 1, 2014).
 31. European Commission, “Questions and Answers,” December 20, 2013, <http://ec.europa.eu/trade/policy/in-focus/ttip/questions-and-answers/> (accessed July 1, 2014). This document contains notable and revealing internal inconsistencies. Compare its answer to the question on the WTO's Doha Round (“if the EU and US are able to harmonise many of their regulations and standards, this could act as a basis for creating global rules”) to its answer to the question on whether TTIP will lead the EU and the U.S. to harmonize their standards (“No, harmonisation is not on the agenda”).

One of the spurs for the launch of a TTIP—and a Trans-Pacific Partnership (TPP), a trade negotiation that began in 2005 and is now being conducted between the U.S. and 11 other Pacific nations—is that the broader, multilateral “Doha Round” of trade negotiations through the World Trade Organization has been ongoing since 2001, so far without result. The effect of this has been to encourage the emergence of regional and bilateral free trade negotiations and agreements like the TTIP and TPP.

The difficulties that have stymied Doha are complex, but among them are the ambitions with which it was launched after 9/11, when “it was billed by many as a transformative exercise for the global economy.”³² While that was a worthy goal, negotiating a transformative agreement turned out to be complicated, and WTO officials, according to the *Financial Times*, now “speak longingly of a future of smaller, sectoral agreements and a more nimble WTO.”³³

A TTIP risks repeating the WTO’s struggles. The 2013 discussion framed the TTIP as a “comprehensive,” “ambitious” undertaking that would “move forward fast” and “make rapid progress.”³⁴ The only thing that has happened rapidly, however, is that the air has gone out of the balloon. Largely because of opposition from the Left, the Obama Administration’s interest—which was never robust—in promoting the free-trade agenda has waned considerably.³⁵ The slackening of the Administration’s enthusiasm for the TTIP and the precedent of the Doha Round

only emphasize the difficulties inherent in negotiating a comprehensive trade agreement.

Moreover, the Doha Round is not the only piece of relevant U.S.–EU trade history. The U.S. and the EU have made a modest effort to conclude mutual-recognition agreements (MRAs), which are legal instruments that provide the mutual recognition between trading partners of test results and legal certification. They are recognitions of regulatory equivalence and do not imply regulatory convergence.

In theory, MRAs are a promising means to reduce costs associated with the existence of differing but comparable regulatory standards in the U.S. and the EU (and other trading partners). In practice, they have been disappointing. The U.S. and the EU have six MRAs; two are not in operation, one is in operation in name only, and one is in operation but has produced no results. The only two MRAs that have achieved anything are the December 2000 agreements on telecommunications equipment and electromagnetic compatibility, and the latter now exists only to facilitate EU access to the U.S. market. The EU does not expect any new MRAs to come into existence.³⁶

The example of the MRAs points out just how difficult it is to lower non-tariff barriers even by the seemingly simple approach of mutual recognition. Modern regulatory systems are so complex, and there are so many sectors and so many interests at play, that mutual recognition can take an exhaustively long time to achieve. But the troubled history of the MRAs also points out that the TTIP’s empha-

32. Shawn Donnan, “WTO Chief Attempts to Breathe Life into Doha Talks,” *Financial Times*, June 26, 2014,

<http://www.ft.com/intl/cms/s/0/194c8440-fd2a-11e3-8ca9-00144feab7de.html#axzz36FIVR9Bo> (accessed July 1, 2014).

33. *Ibid.*

34. Press release, “Statement by President [José Manuel Durão] Barroso on the EU–US Trade Agreement with U.S. President Barack Obama, the President of the European Council Herman Van Rompuy, and UK Prime Minister David Cameron,” European Commission Speech No. 13/544, June 17, 2013, http://europa.eu/rapid/press-release_SPEECH-13-544_en.htm (accessed July 1, 2014).

35. See, for example, Bryan Riley and Terry Miller, “Congress Should Get Smart and Cut Tariffs to Boost Trade Freedom,” Heritage Foundation *Special Report* No. 146, October 23, 2013, <http://www.heritage.org/research/reports/2013/10/congress-should-get-smart-and-cut-tariffs-to-boost-trade-freedom>; Michael McAuliff, Sam Stein, and Sabrina Siddiqui, “Joe Biden Admits Vast Obama Trade Deals Are On Hold,” *The Huffington Post*, February 14, 2014, http://www.huffingtonpost.com/2014/02/14/white-house-trade-deal_n_4790338.html (accessed August 19, 2014); and Daniel R. Pearson, “The Obama Administration’s Trade Agenda Is Crumbling,” *Cato Institute Free Trade Bulletin*, March 19, 2014, <http://www.cato.org/publications/free-trade-bulletin/obama-administrations-trade-agenda-crumbling> (accessed July 1, 2014). Note also the EU’s condemnation of the U.S.’s weak initial offer in the TTIP negotiations. While this weakness is, of course, partly a matter of negotiating tactics, it is also true that an Administration that was genuinely interested in freer trade would aim high. See Krista Hughes, “EU Trade Chief Says U.S. Tariffs Offer Falls Short in Talks,” *Reuters*, February 18, 2014, <http://www.reuters.com/article/2014/02/18/us-usa-trade-ttip-idUSBREA1H22B20140218> (accessed July 9, 2014).

36. For a helpful summary of issues associated with MRAs, see European Commission, “Trade Issues...Technical Barriers to Trade: Mutual Recognition Agreements and Agreements on Conformity Assessment and Acceptance of Industrial Products,” *MRA Newsletter* No. 8, April 2014, http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc_152342.pdf (accessed July 9, 2014).

sis on mutual recognition and equivalence in the short run and harmonization in the long run will be even harder to fulfill in practice. The U.S. and the EU have not been able to bring even a supposedly simple MRA on recreational boats into actual operation, even though it has been in effect in theory since June 2000. This evidence suggests that while U.S. negotiators should aim to promote mutual recognition in a TTIP, such an approach will be challenging to negotiate and even more challenging to implement.

No matter how significant its economic benefits, a TTIP is at best just one part of a much broader strategy to advance economic freedom at home and abroad.

A second and even more difficult problem stems from the U.S. procedure for negotiating trade agreements. In theory, it would be possible for the executive branch to negotiate a trade agreement with one or more foreign nations and to submit this agreement to the Senate for its advice and consent in the normal way. In practice, however, foreign nations are reluctant to negotiate trade concessions that benefit the U.S. in exchange for U.S. concessions that the Senate might later decide to withhold.

Thus, in the 1974 Trade Act, Congress created the “fast track” procedure, which became known as trade-promotion authority in 2002. Under this procedure, Congress enacts TPA legislation to give its guidance on trade priorities and negotiating objectives; to establish requirements for notification and consultation with Congress, the private sector, and other stakeholders; and to define the terms under which the U.S. should enter into an agreement. When an agreement is reached, Con-

gress has 90 days to give it an up or down vote. It cannot change the agreement as negotiated by the executive branch.

The last TPA expired in July 2007, and Congress has not granted it for a TTIP (or the TPP). In February 2012, then-U.S. Trade Representative Ron Kirk told the House Ways and Means Committee that “we’ve got to have it”—referring to TPA—in order, as he told reporters later, “to address both TPP and then any other ambitions we might have.”³⁷ On January 9, 2014, then-Senate Finance Committee Chairman Max Baucus (D-MT) and House Ways and Means Committee Chairman Dave Camp (R-MI) introduced the Bipartisan Congressional Trade Priorities Act of 2014, but the Administration’s request for TPA authority was rapidly rejected by Senate Majority Leader Harry Reid (D-NV), and incoming Senate Finance Chairman Ron Wyden (D-OR) declined to take up the bipartisan Baucus–Camp bill.

Senate Finance Committee member Sherrod Brown (D-OH) voiced the criticism that the bill was too similar to the TPA authority granted in 2002 and stated that a new TPA bill would have to be “fundamentally different” to win approval in the Senate.³⁸ In a statement in January, five Democratic Senators—including Brown—explained that by this they meant that the TPA should give the U.S. Trade Representative “greater authority to negotiate basic standards on good governance and human rights.”³⁹ This is code language for a TPA that, by claiming to be standing up for American values, incorporates union-friendly, protectionist opt-outs that keep foreign goods out of the U.S. market, thereby sheltering vested interests and preventing the TTIP (or the TPP) from advancing economic freedom and promoting jobs and growth.

Many believe that, as a practical matter, it is unlikely that the TTIP (or the TPP) can be concluded successfully without a grant of TPA authority. So far,

37. Doug Palmer, “White House Wants Trade Promotion Authority: Kirk,” Reuters, February 29, 2012, <http://www.reuters.com/article/2012/02/29/us-usa-trade-kirk-idUSTRE81S1FF20120229> (accessed July 1, 2014).

38. Vicki Needham, “How Wyden Is Slowing Obama on Trade,” *The Hill*, February 6, 2014, <http://thehill.com/policy/finance/197610-sen-wyden-says-not-so-fast-on-trade> (accessed August 19, 2014), and Alexander Bolton and Vicki Needham, “Reid Shunts TPA Onto Slow Track,” *The Hill*, January 29, 2014, <http://thehill.com/homenews/senate/196853-reid-rejects-obamas-plea-for-trade-power> (accessed July 1, 2014).

39. Press release, “Sens. Brown, Casey, Cardin, Stabenow, and Menendez Call on U.S. Trade Rep. to Better Consult Congress on Proposed ‘Fast Track,’” Office of Senator Sherrod Brown, January 9, 2014, <http://www.brown.senate.gov/newsroom/press/release/sens-brown-casey-cardin-stabenow-and-menendez-call-on-us-trade-rep-to-better-consult-congress-on-proposed-fast-track> (accessed July 1, 2014).

the Administration, while nominally in favor of both, has not exerted any effort to obtain TPA.

It is not reasonable to expect others to support its trade agenda if the Administration is not willing to expend any of its own capital to advance it. If and when the Administration does decide to push for TPA, it will have to be more specific about its own redlines than its current general statement of TTIP negotiating objectives. Moreover, since the U.S. is already negotiating a TPP with the EU and 11 other partners, the Administration has put the U.S. in the awkward position of making proposals without full negotiating authority.

Finally, while the kind of TPA demanded by Senator Brown would not be in the U.S.'s interests, it would be a mistake to focus only on the contents of the TPA. An Administration push to obtain TPA would likely result in concessions to progressive groups on other fronts, and from a conservative perspective, the better the TPA, the more damaging to U.S. economic freedom those concessions are likely to be.

In short, the timing, course, and authority of the TTIP negotiations are confused, and the approach of the 2014 elections makes it unlikely that TPA authority will be granted this year. That by itself makes it unlikely that a TTIP will be concluded close to the original time frame. In retrospect, the Administration has made three serious errors in pursuing TTIP:

1. It opened negotiations abroad before it secured a domestic bipartisan base of support;
2. It pushed for a rapid and comprehensive agreement without recognizing that no comprehensive agreement was likely to be rapid; and
3. Having launched its trade initiative with a wave of publicity in 2013, it has proved unwilling to challenge the progressive lobby that provides its core domestic support but which also bitterly opposes free trade.

Even one of these errors would be serious; collectively, they have made and will continue to make the course of the TTIP negotiations extremely difficult.

What the U.S. Should Do

If the U.S. continues to pursue the TTIP in any form, the executive branch will very likely have to secure a new grant of trade promotion author-

ity from Congress at some point. As it considers a request for this authority for the purposes of negotiating the TTIP, Congress should:

- **Assess the Administration's commitment to free trade and economic freedom.** The purpose of TPA is to allow the executive branch to conduct and conclude trade negotiations that will increase the volume of trade by reducing both foreign and U.S. restrictions on it. It is neither sensible nor possible to advocate the granting of TPA absent a clear and sustained commitment by the executive branch to use it for its intended purpose.
- **Ensure that new TPA does not reverse economic freedom.** At a minimum, any new TPA should impose no more protectionist restrictions on trade agreements negotiated under it than were imposed in the TPA passed by Congress in 2002. Preferably, new TPA would contain explicit negotiating objectives that are designed to promote economic freedom more effectively than the 2002 TPA did.

If Congress decides in principle to grant new TPA for the purposes of negotiating the TTIP, it should ensure that TPA contains clear redlines that will guarantee that the TTIP is a high-quality agreement that advances economic freedom and respects U.S. sovereignty. The TPA redlines should be as follows:

- Any agreement should aim to completely eliminate all foreign quotas, tariffs, and other duties and charges, in exchange for the complete elimination of U.S. quotas and tariffs.
- Any agreement should be based on mutual recognition, not harmonization, of regulations.
- Any agreement should contain strong provisions on the protection of intellectual property; the promotion of transparency, anti-corruption efforts, and competition; the establishment of efficient customs operations; and the removal of support for state-owned enterprises.
- Any agreement should eliminate artificial barriers to the establishment and operation of U.S. investment abroad and contain ISDS provisions

that are based on the precedence of domestic courts and are limited to the arbitration of disputes based on accepted commitments.

- No trade agreement should contain, be accompanied by, or otherwise be paired with any express or implied political framework agreement.
- Because Article 50 of the Lisbon Treaty, the framework for the EU, contains a provision allowing member nations to withdraw from the union, any agreement with the EU should protect U.S. interests by stating that the agreement will continue to apply fully to any nation that exercises its rights under Article 50.
- Any agreement should promote rapid and open dispute settlement.
- No agreement should allow the EU to hide behind claims that food safety requirements justify discrimination against any U.S. agricultural exports.
- No agreement should require the U.S. to recognize EU claims to “geographical indicators,” which seek to defend EU producers of agricultural items (such as “cheddar” or “feta” cheese) from competitors.⁴⁰
- Any agreement should specify that governments are not allowed to restrict the freedom of their citizens to choose which movies to watch, which music to purchase, or to impose any other restrictions on freedom for so-called cultural reasons.
- Pro-consumer principles should be adopted for agricultural trade. No consumer in any participating country should be required to purchase genetically modified foods or meat and dairy products from animals that were treated with hormones or antibiotics. Similarly, consumers

should not be deprived of the freedom to purchase such products unless there is a sound scientific reason to restrict such imports.

A limited TTIP agreement that does not touch on all areas of trade, and so does not require the U.S. to incorporate all of the above redlines into the final agreement, could certainly be beneficial. The example of both the Doha Round and the existing U.S.–EU MRAs suggests that the goal of negotiating a comprehensive TTIP is very challenging. At a minimum, it is likely to take years.

But the perfect agreement should not be allowed to be the enemy of a good agreement, and negotiators should be willing to consider a limited agreement that would produce real gains and a sense of achievement, even if it does not achieve everything that could be asked of it. The U.S. would therefore be wise to:

- **Abandon** the effort to negotiate a comprehensive TTIP unless there is mutual agreement on completing such an agreement in a set and reasonable time frame;
- **Obtain** TPA designed, in the context of the TTIP negotiations, to increase economic freedom by securing agreement to (a) setting all tariffs and quotas for trade between the U.S. and the EU to zero and (b) selecting a few high-value sectors—such as pharmaceuticals and automobiles⁴¹—in which both the U.S. and the EU have high standards and declaring that both parties will recognize each other’s standards as mutually acceptable; and
- **Conduct** a careful and transparent joint analysis with the EU, with regular reports, of other sectors that might also be suitable for a mutual recognition approach under a future grant of TPA.

40. For an expression of concern by a bipartisan majority of Senators on this subject, see press release, “Toomey & Schumer Spearhead Bipartisan Effort to Protect U.S. Dairy Farmers & Producers,” Office of Senator Pat Toomey, March 11, 2014, http://www.toomey.senate.gov/?p=press_release&id=1297 (accessed July 8, 2014).

41. For an analysis of the automotive sector, see Samuel Benka and Bill Krist, “The Auto Industry Has a Lot at Stake in TPP and TTIP,” Woodrow Wilson Center, March 28, 2014, <http://americatradepolicy.com/the-auto-industry-has-a-lot-at-stake-in-tp-and-ttip/#.U71chLGmUs1> (accessed July 7, 2014).

No matter how significant its economic benefits, a TTIP is at best just one part of a much broader strategy to advance economic freedom at home and abroad.⁴² In the context of its relations with Europe—which comprises a number of nations that are not part of the European Union—and the rest of the world, the U.S. should:

- **Rapidly open free trade area (FTA) negotiations with any willing European nation outside the EU.** These nations include Norway, Switzerland, Turkey, and Georgia. The U.S. should act equally rapidly to open negotiations with any nation or nations that exit the EU, such as the United Kingdom. The U.S. should not wait for the conclusion of the TTIP negotiations, which will be slowed down by the EU's cumbersome bureaucracy, to negotiate with nations outside the EU.
- **Couple the TTIP and TPP negotiations with an emphasis on promoting economic freedom in general.** The negotiation of further FTAs outside Europe and the Pacific is, in a practical sense, an indispensable part of advancing economic freedom at home and around the world, but in the last analysis, the U.S. does not need FTAs to advance economic freedom at home: The U.S. has the power to reduce burdensome governmental restrictions on trade, investment, labor, and business on its own. The economic case for free trade is widely accepted, but free trade is not just good abroad. Freer trade within the U.S. is also good for the prosperity of the United States.

Conclusion

If the TTIP is an agreement that genuinely promotes economic freedom, it could bring substantial

economic benefits to both the U.S. and the EU. Negotiating a comprehensive TTIP that achieves this aim will be challenging, and the quest for a perfect agreement should not be the enemy of a useful if partial one.

Even a high-quality TTIP cannot on its own rescue the economies of the EU, and the TTIP must be part of a broader U.S. strategy to promote free trade and economic freedom. Additionally, the TTIP's benefits and risks cannot be assessed fully and fairly without considering the geopolitical arguments for and against the agreement, which are analyzed in the second *Background* on the TTIP.

Within these limits, a TTIP can be judged on its merits only if and when an agreement is concluded. If a TTIP genuinely advances economic freedom by reducing government restrictions on and barriers to trade and finance without creating undesirable transnational institutions or political side commitments, it will have met its first and most important test. The U.S. and the world have too much to gain from freer trade to accept anything less than an agreement that verifiably makes real and substantial strides toward promoting economic freedom.

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42. For a comprehensive description of the elements of this strategy, see The Heritage Foundation Economic Freedom Task Force and James M. Roberts, "2014 Global Agenda for Economic Freedom," Heritage Foundation *Special Report* No. 153, May 2, 2014, <http://www.heritage.org/research/reports/2014/05/2014-global-agenda-for-economic-freedom>.