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## The Transatlantic Trade and Investment Partnership: Implications for Australia and the Asia-Pacific

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# ANUCES Roundtable Summary

# The Transatlantic Trade and Investment Partnership: Implications for Australia and the Asia-Pacific

## Introduction

In 2013 the European Union (EU) and the United States (US) announced the start of negotiations for a Transatlantic Trade and Investment Partnership (TTIP). The announcement – which followed protracted preparations and scoping – signalled the start of a major effort to reduce bilateral barriers to trade and investment between the two largest economies in the world, at a time when both parties were seeking to recover from the economic crisis. If successful, the TTIP is expected to set the rules, standards and expectations for subsequent bilateral trade agreements, and greatly influence the direction of international and multilateral agreements.

In 2013 the Australian National University's Centre for European Studies hosted a public roundtable to discuss the broad implications of the proposed agreement and elaborate the context in which the negotiations take place. The panel covered a diverse range of issues associated with the TTIP. It focused on broad implications for, and lessons from, trade relationships in the Asia-Pacific. Presentations covered the recent history and different approaches of the European and American approaches to free trade agreements; lessons from the comprehensive agreement between the EU and Korea; the state of play in negotiations between the EU and Japan; comparisons between the proposed transatlantic market and the trans-Tasman single market; and implications for an EU-Australia Free Trade Agreement (FTA). Participants approached the prospect of the TTIP with different perspectives and expertise, but were in agreement that the potential implications of a successful transatlantic deal are game-changing, and go well beyond the EU-US partnership. Of all the recent attempts at forging new trade deals, including the so-called 'mega-regionals', the TTIP is among the most ambitious.

This summary paper consists of short contributions submitted by five roundtable participants and notes on two presentations. **Maria Garcia** details the background to the negotiations and identifies the divergent approaches taken by the EU and the US to Geographic Indications as one

potential area for disagreement. **John Ravenhill** compares the recent EU and US trade deals with Korea to provide some insights about where the TTIP negotiators might be coming from. **Jiro Okomoto** outlines Japanese trade strategy over the past decade and why he thinks trade policy in relation to the EU might change. **John Leslie** and **Annmarie Elijah** consider the regulatory ambitions of the TTIP in relation to Australian and New Zealand single market commitments. And finally **Don Kenyon** and **Pierre van der Eng** consider why Australia is not seeking a high-quality agreement with the EU, given the potential gains. The concluding section reflects briefly on recent developments.

## 1. The Transatlantic Trade and Investment Partnership: Divergent Approaches and Geographic Indicators

Maria Garcia, University of Bath

When President Barack Obama highlighted plans to engage in negotiations for a Transatlantic Trade and Investment Partnership (TTIP) with the EU in his State of the Union address in February 2013, and a day later, alongside European Commission President Barroso announced their respective intentions to gain approval for the launch of negotiations, media outlets throughout the world gave high priority to this surprising news. To some extent TTIP represents the culmination, and the most challenging aspect of the trade policies that have been ongoing for a decade.

In the early 2000s with the World Trade Organization (WTO) in disarray after the failure of the Millennium Round, and the increasing difficulties experienced in the Doha Round, the USA administration shifted its trade policy. Former USA Trade Representative (USTR), Robert B. Zoellick (2002), persuaded Congress to grant President George W. Bush the elusive Trade Promotion Authority invoking the discourse that the USA was ‘falling behind’ the rest of the world given its inability to negotiate bilateral Free Trade Agreements (FTAs) – with the exception of the North American Free Trade Agreement (NAFTA) in the 1980s. The number of FTAs negotiated by other parties had increased, however the agreements lacked the depth, scope and integration of NAFTA, or the EU. The USTR aim in opening up avenues for bilateral FTAs was to achieve ‘competition in liberalisation’ by a ‘three-dimensional trade strategy’: multilateral, regional and bilateral. This was to exert latent pressure on recalcitrant liberalisers by concluding FTAs with other states (Schott 2006: 98), and to be able to upload the controversial

'deep' trade issues (competition policy, intellectual property rights, government procurement, and behind-the-borders matters) that had been blocked at the WTO. Zoellick put forward a series of 'tests' to choose FTA partners. Potential FTAs had to help broaden Congress support for US trade initiatives (partially through including countries that in the past Congress has sought to help for economic or political reasons). They also had to promote US economic interests – improve access to growing markets, establish a level playing field and build alliances for WTO. Potential partners have to be willing and able to undertake pertinent domestic reforms to implement the FTA. FTAs had to promote broader US foreign policy objectives by rewarding friends for international support, economic incentives to promote economic and political reform (Schott 2006: 103). Apart from this, partners need to accept the US's 'gold standard' of WTO plus FTAs which incorporate comprehensive coverage of goods, services and investments with only limited exceptions, and rule-making obligations in competition policy, labour, the environment and e-commerce. The USA thus negotiated deep FTAs with Central American states, Peru, Colombia, Singapore, South Korea, Australia, and entered into negotiations with Malaysia, Thailand and then the Trans Pacific Partnership (TPP) countries.[1]

While the US abandoned its prior commitment to multilateral trade negotiations, the EU did the opposite. Under Pascal Lamy's leadership (1999-2004), the European Commission's Directorate-General (DG) for Trade prioritised multilateral liberalisation over the previously more piecemeal approach to regional and bilateral trade agreements. The rationale for this was simplification of complex legal trade networks and negotiating savings from economies of scale. The WTO negotiations became progressively more stilted throughout the 2000s, but once Lamy was succeeded by Peter Mandelson in 2004, the focus turned once again to bilateral agreements, embedded within the 2006 Trade Strategy in a Global World (DG Trade 2006) focusing on European competitiveness and gaining advantages. This was in contrast to the previous trade strategy under Lamy which was characterised by a discourse of development to achieve greater international influence through the WTO Doha Development Round (van den Hoven 2004). By the time the EU began the negotiation of new generation 'deep' trade agreements it was lagging behind the USA. Significantly, many of the first FTA partners it chose, were, in fact states

[1] The TPP negotiations include Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, US, Vietnam, and Japan.

engaged in negotiations with the USA (South Korea, ASEAN, and later Peru, Colombia, Central America).

Both the EU and US aim to incorporate the same regulatory issues, liberalisation of services, procurement markets and intellectual property protection. From this perspective negotiations between the two are not surprising as they seek similar interests. However, their individual approach to some of these issues varies. One such area where the EU and US have often conflicted over their approach, and where they have each sought to internationalise their preferred approach via the WTO and failing that via FTAs, is in the protection of a particular type of intellectual property in agricultural production referred to as Geographic Indications (GIs).

The European Union has established the most comprehensive protection for geographical indications through Regulation (EEC) 2081/92 including designations of origin for agricultural products and foodstuffs, and later, Regulation 510/2006 on agricultural products and foodstuffs, and Regulation 1234/2007 on wines and spirits. These grant protection to products falling within the following three categories:

Protected Designations of Origin (PDOs)

> Qualities or characteristics of a product must be essentially or exclusively due to the particular geographical environment (including natural and human factors such as climate, soil quality, and local know-how) of the place of origin.
>
> Production and processing of the raw materials, up to the stage of the finished product, must take place in the defined geographical area.

Protected Geographical Indications (PGIs)

> At least one stage of the production of the protected product is undertaken within the geographical area (with say, imported materials).
>
> There must be a link between the product and the area. A specific quality or reputation may be sufficient to link the product with the geographical area.

Traditional Specialities Guaranteed (TSGs)

> The product must have distinguishing features that set it apart from other agricultural product or foodstuff in the same category. This could include taste or specific raw materials. However, the special character cannot be a particular geographical origin.
>
> The producer's specific character must be 'traditional' in that it uses traditional raw materials, or is produced or processed in a traditional way. (Josling 2006: 8-9)

Using these categories the European Union has developed an extensive list of protected geographical indications for foods and beverages, which encompasses 1435 food and agricultural products (DG Agriculture 2013) and 3013 wines and spirits (E-Bacchus 2013), including non-EU products that have been incorporated as a result of bilateral agreements.

Producers within the EU can benefit from the protection afforded by the list when trading within the EU. However, third parties are not forced to extend such guarantees within their territories. It has, thus, been a key aim of EU trade negotiators to internationalise it. A first attempt was made in the 1990s under the scope of multilateral negotiations for the Agreement on Trade-Related Intellectual Property Rights and Services (TRIPS). In essence, GIs are a form of intellectual property right (IPR) albeit in reverse. While the more usual IP protection refers to trademarks which are granted to individuals to protect innovation, GI protection operates by an opposite principle; granting exclusivity and protection on the basis of tradition and prior consumer recognition and reputation. A further and crucial difference between IP protection via trademarks and GIs is the indefinite nature of the protection granted by the latter in contrast to the time limits on trademarks.

In the US there is not a separate national scheme for protection of GIs, as such. Rather, GIs come under the protection of the Federal Trademark Act as trade marks, certification marks and/or collective marks. Where a GI has acquired secondary meaning, it may also be registered as a trade mark by any entity that controls the goods and services provided under the mark. The owner of a registered or common law certification mark, collective mark or trade mark may also prevent misleading or deceptive use of similar geographical terms through actions for false advertising and unfair competition under both federal and state laws in the US. Collective and certification marks protecting GIs are not extremely popular in the US and the number of applications for such registrations is relatively small (Managing IP 2008).

Divergent domestic approaches in the USA (trademarks) and the EU (GIs) and intransigence on both parts led to the impossibility of agreement on a multilateral regulatory system for wines and spirits lest it should have led to the complete collapse of TRIPS negotiations. Thus, wines and spirits were excluded from the TRIPS in 1995 although the agreement did mandate the parties to subsequently negotiate such an agreement (Goldberg 2001: 140).

In 1999 the European Union, supported by all the Central and Eastern European states hoping at the time to join the EU as well as Turkey, presented a proposal at the WTO for the compulsory adoption of the list at the WTO level. The EU's proposal also suggested complementing the wines and spirits list with further agricultural products at a later stage. Unwilling to accept this, the world's New World wine producers, Chile, Argentina, Australia, New Zealand, the USA and other allies like Canada, presented a counter-proposal, which established the voluntary and non-binding adoption of the list, and essentially maintained the status quo.

Thus, the matter remained unresolved at the WTO level as the organisation entered a problematic phase with the still unresolved Doha Development Round. With the turn to bilateral FTAs, the EU has sought to include its GI regime in its FTAs, and via sectoral agreements on wines and spirits (with Canada, Australia, Chile), which update prior ones and phase out the use of EU protected names like 'sherry', 'champagne' and others within third country markets, in exchange for the EU simplifying certification for new world wine producers and accepting some of their different oenological practices.

United States and EU FTAs with South Korea, the first of the EU's post-*Global Europe* FTAs implemented, and therefore available for comparison, are markedly different in their approaches to GIs. The EU's agreement is more extensive in GI coverage, and gains protection from Korea for 164 EU wines, spirits, foodstuffs and agricultural products from its GI lists. Korea gains acceptance of 64 of its GIs into the EU's lists. The USA's FTA covers GIs under the Intellectual Property Chapter and deals with these alongside trademarks. Its main concerns are procedural regarding how a claim for protection can be made, and prohibiting the use and grant of trademark or GI protection to products that may cause confusion with already existing trademarks. In particular it proposes refusing protection or cancelling a GI when:

> (i) the geographical indication is likely to cause confusion with a trademark that is the subject of a good faith pending application or registration in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory;
>
> (ii) the geographical indication is likely to cause confusion with a trademark, the rights to which have been acquired in the Party's territory through use in good faith, that has a priority date that predates the protection or recognition of the geographical indication in that territory; and
>
> (iii) the geographical indication is likely to cause confusion with a trademark that has become well known in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory. (USA-Korea FTA 2010: 18-7)

The EU's FTA includes a separate chapter under Intellectual Property devoted exclusively to GIs. It deals with procedures for applying for GI recognition, protection for the GIs, and the establishment of a joint working group on GIs tasked with sharing information on them, GI legislation and policy-making, and with modifying and adding them to the list of those protected under the Agreement in Annexes 10-A and 10-B. This section also prohibits the use of GI-associated terms even when accompanied by 'style', 'method' to any goods not originating in the GI, and bans the granting and use of trademarks to products using names under GIs.

The latter is the element that could conflict with the USA's approach. In fact, it has led to the creation in the US of a Consortium of Common Food Names campaigning against the EU's inclusion of its GIs in bilateral FTAs. The Consortium claims it is not against GIs *per se* but rather their use even in cases where the name has become generic for a type of product (eg cheddar cheese) (*Europolitics* 2012), which lies at the crux of the EU and US divergent approach. Indeed, as negotiations between Korea and the EU and US coincided in time, American dairy producers, concerned with the GIs in reference to cheese, demanded the USA government receive assurances from Korea that the EU FTA would not restrict their ability to sell their product in Korea. As it is the EU FTA only covers a few French and Italian cheeses and not cheddars which the American producers were concerned about. The EU's inability to export its entire GI list to FTA partners reflects the complex battlelines previously drawn at the WTO with regards to this issue.

The USA remains the main opponent to the EU's GI approach. Indeed, their differences remain despite a 2005 agreement with the EU, whereby it would limit the use of semi-generic names

(e.g. Chablis, Sherry) in its territory in exchange for EU recognition of USA production practices, including those banned in the EU. A change in wine labelling regulations in the EU in 2009 also caused USA uproar as it would affect the use of words like 'chateau' or 'clos' which had been incorporated into the trademarked names of some American wines (e.g. Clos du Val) (Decanter 2009). Beyond wines, the USA has rejected the extension of GIs to other agricultural and traditional products. Given the difficulties the EU is already experiencing exporting the entirety of its GI regime, it seems unlikely that it will be able to achieve this in the TTIP negotiations.

The High Level Working Group (HLWG) recommendations for TTIP included tackling regulatory divergence via mutual recognition, equivalences and harmonisation in the future. Whilst the HLWG report does not mention GIs its paragraph on intellectual property is one of the vaguest in the report. It encourages both parties to enhance work of IP issues and 'recommends that both sides explore opportunities to address a *limited number* (emphasis added) of significant IPR issues of interest to either side, without prejudice to the outcome' (HLWG 2013: 5). The meaning of limited issues is unclear, but the implication is that the parties are aware of the difficulties in making some of their approaches compatible, and are thus leaving a door open to retaining the status quo on some issues or only making marginal changes.

## 2. Lessons from the 2010 European Union – Korea FTA and Framework Agreement

Summary of presentation: John Ravenhill, Director, Balsillie School of International Affairs, University of Waterloo

South Korea is a rare example of a country where tariffs, quotas and quarantine issues interest the general population and where, at times, domestic debate over trade policy becomes colourful. The EU-South Korea Free Trade Agreement has escaped relatively unscathed compared with some other agreements recently negotiated by the Korean Government. This presentation will place the Agreement in the context of Korean trade policy more broadly before covering some of the interesting dimensions of the content of that agreement. Some contrasts are then drawn with the United States – Korea Free Trade Agreement (KORUS FTA) before canvassing issues which are likely to feature in the forthcoming TTIP negotiations.

South Korea, like other countries in that part of the world, sought to join the FTA bandwagon in the immediate aftermath of the Asian Financial Crisis. South Korea found itself in a difficult situation as it was one of the countries worst affected by the financial crisis, and the government did not have a good reputation for implementing trade agreements or behaving in a transparent manner on trade issues. Initially South Korea negotiated an agreement with Chile, which was not a particularly smart move from a political perspective. The government had sought to choose a smaller partner with whom a successful agreement might be concluded, however given Chile's potential to export agricultural products to South Korea the debate became heated domestically and underlined the potential for trade agreements to become politically sensitive. Since then Korean trade policy has gained some momentum, with a large number of negotiations now underway. Early agreements concluded by South Korea were extremely mixed with some only partially effective, although they were generally more comprehensive than those concluded by ASEAN.

As South Korean governments have started to regard FTAs as instruments to push economic reform, they have sought more comprehensive agreements with more significant trading partners. The first of these was with the United States, which was seen as important for security reasons, but also provided an advantage to Korean companies over their Japanese competitors. With the US negotiations out of the way, the South Korean government has sought to balance its trade policy by diversification. After the advent of the *Global Europe* strategy and the EU identifying Korea as a potential FTA partner, Seoul claims to have instigated negotiations for a successful agreement.

The agreement itself is important in a number of ways. As the first success of the EU's *Global Europe* strategy, and a successful agreement with a significant Asian economy, it was symbolically important for the EU. The agreement created the world's second largest preferential trade arrangement after NAFTA, due in large part to the size of the EU itself. The asymmetry between the two parties is of course worth noting. Compared with other South Korean agreements, this agreement is of a high quality. It has comprehensive coverage of tariffs and is 'WTO plus' in a number of ways. The agreement consists of some 1300 pages, mostly relating to rules of origin.

The parties claim that the agreement covers the vast majority of the current value of bilateral trade. This is not necessarily the best measure of whether an agreement is 'comprehensive', as it does not account for products which are currently excluded by barriers. The statement could therefore be misleading, however it is generally agreed to be a reasonably comprehensive agreement. Exceptions were (predictably) in relation to sensitive agricultural products which are subject to a gradual liberalisation process, and the South Koreans were successful in excluding rice altogether as they did with the US agreement.

Interestingly, there are four annexes to the agreement relating to non-tariff barriers and these reflect issues of importance to the EU: consumer electronics, pharmaceuticals, automobiles, and chemicals. The agreement places regular emphasis on South Korea adopting international and EU standards. Further, it reflects the willingness of both parties to accept safety and other certifications without third party monitoring, and emphasises moves towards transparency in trade policy. In relation to the automobile industry there was a high degree of sensitivity in the EU towards South Korea, and a perception that the Korean industry was highly protected. European industry was particularly concerned at the prospect that South Korean industry could incorporate low-cost parts from China in exports, which made rules of origin a significant feature of the agreement. The agreement includes 'prior surveillance' mechanisms, whereby certain products are deemed 'sensitive', and European importers must report their intention to import a certain quantity of such products to the Commission, presumably so that safeguard mechanisms can be employed before it becomes an issue for European companies.

The agreement has 'WTO plus' commitments in relation to government procurement, mostly at the initiative of the EU. Intellectual property issues include an extension of copyright for seventy years and recognition of certain European geographical indications. The services sector is an important feature of the agreement. According to the EU the agreement included the most comprehensive coverage of services of any EU FTA up to that time. Here the comparison with the US agreement is particularly interesting. Whereas a negative list approach was taken in KORUS, the EU-South Korea agreement uses a positive list approach. In spite of the use of different mechanisms, the actual outcomes in relation to services are not so very different once the detail is considered. The positive list does however result in a rather messy and complex treaty, for example with coverage limited to certain EU member states in some instances. Unlike the US agreement, the EU-South Korea agreement does not include an investment chapter, nor

provision for investor state dispute resolution. (This may reflect the relatively recent change of competence for investment to the EU level in the Treaty of Lisbon.)

The agreement includes a chapter on labour and environment standards, where commitment is made to the International Labour Organization's (ILO) enforced and multilaterally agreed standards and the setting up of advisory groups. Again the agreement contrasts with the KORUS, where provision is made for sanctions. However the EU-South Korea agreement is subject to and governed by the Framework Agreement between the parties, which allows for the FTA to be suspended. While it is far from clear what the different approaches may mean in practice, one conclusion might be that the US agreement allows for sanctions and a range of responses in the event of disagreement, whereas the EU agreement appears to have less conciliatory scope. In terms of how the parties fared in negotiations, it appears that the US obtained better outcomes on agriculture than the EU but worse in relation to automobiles, primarily because of a period of renegotiation. Generally speaking the Americans did better on manufactured exports, whereas the Europeans did better on services.

It is too early, and there are too many intervening factors, to make conclusive comments yet about the implementation and impact of the EU-South Korea agreement. Interestingly, every two months the European Commission reports to relevant industry associations on imports of 'sensitive products' under the agreement. Annually, the Commission reports these figures to the Parliament and the Council. Complaints from the French Government have warranted the figures being presented both for the EU as a whole and specifically for France. However national protests have not necessarily reflected the complexity of global supply chains in the current economy: notwithstanding the sensitivity of the EU auto sector, based on 2012 figures Renault exports more cars from Korea than its two biggest Korean competitors.

Before the agreement was concluded, economic modelling estimated that the GDP of South Korea might rise by 1-2 per cent once the agreement was fully implemented. Projected gains for the EU were minuscule. It is not yet clear what the economic impact of this agreement will be. However it may well be that the agreement is more significant for what it has done for energising other trade talks than for any actual economic gains.

## 3. Developments in Japanese trade policy

Summary of Presentation: Jiro Okamoto, Visiting Fellow, ANU Centre for European Studies

This contribution examines the place of trade agreements in Japanese trade policy. The focus is on recent priorities and achievements, especially since the release of a significant policy document in 2002. Results are compared over the past decade before the paper explores what is next for Japanese policy and how this relates to the TTIP. If it is too early for examining the results of the EU-Korea agreement, it is *much* too early to draw conclusions on the proposed Japan-EU agreement. Negotiations commenced in March 2013 and the fifth round of negotiations took place in April 2014. The Japanese government uses the term 'Economic Partnership Agreement' (EPA) where other governments use FTA. This is intended to show the comprehensive nature of the agreement and to reflect the fact that it does not only relate to trade. Here the terms are used interchangeably.

Japan has thirteen trade agreements already in force. Nine of these are with Asian countries, including eight bilateral deals and a plurilateral deal with ASEAN. The earliest was concluded with Singapore (2002) and the most recent with India (2011). An agreement with Australia was announced in April 2014 with full details yet to be made available. In regions further afield, there are four agreements in force: with Mexico, Chile, Switzerland and Peru.

The Japanese government is actively involved in a raft of other negotiations: with Korea (suspended 2004), Mongolia, the Gulf Cooperation Council, Columbia and Canada. Japan joined the Trans-Pacific Partnership negotiations in July 2013, and announced intentions to participate in negotiations with China and Korea (2012), now underway. Japan has been involved in negotiations for the Regional Comprehensive Economic Partnership (RCEP) with the group known as ASEAN plus Six since 2012 and is also negotiating with the EU (since 2013). There is a joint study being undertaken on the possibility of a Japanese agreement with Turkey.

*Japanese Government Strategy since 2002*

Twelve years ago, detailed goals for trade agreements were set out in detail by the Japanese Government. These were both economic and political. In relation to economic goals, Japan's

trade strategy consisted of: trade creation; avoiding trade diversion relating to other countries' FTAs; promoting competition and restructuring/revitalising the domestic economy; fostering rule-based dispute settlement and harmonising rules or institutions. The political goals included: securing flexibility in economic diplomacy (in relation to the WTO negotiations in particular); strengthening political/diplomatic alignment and expanding diplomatic influence globally. The 2002 strategy prioritised East Asian partners largely due to proximity and the perceived importance of production chains, the idea being that trade agreements could reflect existing networks. The strategy prioritised Korea and ASEAN countries, and also Mexico for reasons related to trade diversion. Medium priority was placed on China, Australia, and New Zealand. Mid to long-term plans included to Chile, MERCOSUR (Common Market of the South), Russia, India, Canada, US and the EU.

Japan has been partially successful in achieving some of the goals set out in the strategy. In relation to trade creation, almost all trade in goods whose tariffs were eliminated or reduced did increase. The trend is the same in services and investment, however it is difficult to single out the impact of trade agreements from other factors, and we cannot be sure that this can be attributed to the agreement. A concern for the Japanese Government is that the ratio of trade with FTA partners to the total remains relatively low. In relation to avoiding trade diversion, the Japanese Government has been successful in relatively small markets but not for major ones such as China, North America and the EU as there are no agreements signed yet. Trade policy has not been especially successful at promoting competition or restructuring the domestic economy. Sensitive sectors remain closed, with a relatively low level of liberalisation in terms of tariff lines, and economic recession has continued. It is widely acknowledged that the Japanese economy has been troubled in the past decade and it is hard to see evidence that trade agreements have been a liberalising force. Neither is it clear that objectives in relation to rules-based settlement or harmonising rules and institutions have been furthered by the pursuit of trade agreements. Efforts to conclude overarching regional agreements (with ASEAN, RCEP and the TPP) may produce some results.

In relation to the political objectives set out in the strategy, embarking on a program of FTAs has given the government some flexibility in economic diplomacy, for example being able to pursue matters which had stalled in WTO negotiations. In some respects the strategy has also succeeded in strengthening political and diplomatic alignment, for example in relation to ASEAN, although

not more generally. The strategy has not done a great deal to expand Japanese diplomatic influence globally. Analysts typically note the rise of China and the relative decline of Japan over the last decade.

*What next for Japan?*

Arguably to advance economic interests and achieve better results the Japanese government needs to realign the strategy. The focus should be on trade creation, especially in relation to China, the US, the EU and Korea. The Government must avoid trade diversion, especially in relation to Korea, which has been pursuing trade agreements with considerable success. Japanese business interests have been vocal about their disadvantageous position in this regard. The Government could seek to promote competition through FTAs with competitive economies such as the US, the EU, China and Korea. Liberalisation in agriculture following the recent agreement with Australia may prove significant over time but the impact remains to be seen. In order to influence the harmonisation of global rules and standards Japan needs to seek agreements with the US and the EU.

To advance political interests, Japan should focus on strengthening political and diplomatic alignment with the US, the EU, Korea and Australia. Relations with China will be significant in any attempt to increase diplomatic influence globally. After a decade of mixed results from trade agreements, the government is now willing to negotiate with major economies. Significantly, the EU has become a priority in the trade strategy whereas it was previously considered 'too hard'. Other than market access issues, the focus of these negotiations will be on rule making and standard setting, addressing the 'behind borders' issues now typical of trade agreements. Energy, environment, competition policy, and intellectual property can be expected to feature.

The first priority of the Japanese Government will be the TPP and the US connection. The concurrent negotiations being undertaken (and the recently concluded agreement with Australia) can be expected to influence the outcomes in each case. It is likely that outcomes of the Japan-Australia agreement and the TPP will set precedents for the Japan-EU trade agreement. In the short term, these are more important than developments in the TTIP, as they will determine how the Japanese Government can deal with the sensitive issues such as agriculture, financial services

and health insurance. Longer term the outcomes of the TTIP will likely impact on Japanese strategy in relation to global rule-making and standard setting.

## 4. The Transatlantic Trade and Investment Partnership through the lens of European and trans-Tasman economic integration

John Leslie, Victoria University of Wellington
Annmarie Elijah, ANU Centre for European Studies

This contribution examines the proposed Transatlantic Trade and Investment Partnership (TTIP) by drawing comparisons with two successful efforts to integrate markets trans-nationally: the Single European Market (SEM) and the Trans-Tasman Single Economic Market (TTSEM). We take this approach because the Final Report of the High Level Working Group on Jobs and Growth (US-EU HLWGJG 2013) that led to the announcement of TTIP negotiations focuses on coordination of European and American regulatory and standard-setting policies. In doing so, it extends the agenda of policy coordination, or integration, to 'deep', 'behind borders' economic policies. As some commentators note, this agenda is different and more ambitious than that of other trade agreements negotiated or planned by the US and EU (Lester 2013: 1). Given these ambitions, we believe it is helpful to examine the proposals outlined by the HLWGJG Final Report and surrounding documents from the perspective of similar European and trans-Tasman efforts. This Briefing Paper has two goals. First, it explains what is 'innovative' or 'advanced' in what the Final Report proposes for the TTIP and how these proposals resemble efforts undertaken within the SEM and TTSEM. Second, it examines impediments and prospects for success with regard to these proposals.

### *'Innovations' in TTIP*

Two innovations distinguish the proposed TTIP. First, the language of the HLWGJG Final Report describes a different kind of relationship than the US and EU have sought in recent trade negotiations with other partners – one that, in some ways, resembles relations *inside* the EU as much as it does more conventional trade agreements. Second, the proposed TTIP focuses narrowly on particular issue areas and on particular economic sectors within those issue areas.

Sections of the Final Report envision TTIP creating a relationship between the US and EU that differs qualitatively from those constructed by more conventional Preferential Trading Agreements (PTAs). In the areas of coordinating regulatory policies, setting standards and reducing non-tariff barriers the Final Report suggests the TTIP will create an agreement 'designed to evolve over time' and one that will 'enable further deepening of economic integration' (Final Report 20: 2). This language evokes a relationship in which the parties accept open-ended and evolving obligations, rather than obligations precisely defined in a treaty text. This is a departure from the legal precision that defines many US trade agreements, including the Canada-United States Free Trade Agreement and the North American Free Trade Agreement.

Instead, the relationship resembles the type of commitment entered into by parties to a 'single market'. Policymakers in Europe, Australia and New Zealand have discovered that constructing 'single markets' is an ambitious, complex and uncertain undertaking. It is impossible to foresee and plan for all contingencies that arise when coordinating policies to minimise administrative barriers to the free movement of goods, services, capital and people between countries. Instead, parties put into place principles, procedures and institutions with which they agree to meet unforeseeable challenges. Transaction-costs economists refer to such relationships as 'relational contracting' (Williamson 1985: 71-2, 75-7).

It is not just the breadth of issue areas involved that makes 'deep' economic integration complex. Even if the 'deep integration' in TTIP remains focused on reducing non-tariff barriers by coordinating regulatory and standard setting policies, this would still be a complex undertaking. The complexity arises from uncertainties that accompany coordination of 'behind borders' issues, like standards and regulatory policy. Policies restricting trade 'at borders', like tariffs and quotas, serve one function: to protect domestic producers against foreign competition. Product and labour standards, as well as other regulations, may fulfil two functions. They can serve public policy interests in protecting consumer, animal, plant and environmental wellbeing. They can also protect domestic producers. Unfortunately, outsiders may not be able to determine easily which motivation underlies a regulation, rendering coordination of these policies difficult. Such uncertainties make 'behind borders' coordination difficult and, therefore, uncommon (Baldwin 2007).

Coordination of regulatory and standard-setting policies played a prominent role in both European and trans-Tasman economic integration. Many observers argue that Lord Cockfield's White Paper *Completing the Internal Market* (European Commission 1985) and its focus on reducing 'technical barriers' were central to the 'relaunch' of European integration in the 1980s. Similarly, coordination of standards and regulatory policy was a central element in the 'deepening' that transformed the broad but conventional market-access provisions of the 1983 Australia and New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) into the Trans-Tasman Single Economic Market of the 2000s. One explanation for these successes in 'deep' integration around standard setting and regulatory policy is that – with some notable exceptions – these are not politically salient issue areas. As a consequence technocrats can advance coordination with relatively little public attention and concern from elected politicians.

In coordinating regulatory and standard-setting policies both European and trans-Tasman policymakers felt a need for supra-national institutional support. To manage the uncertainties arising around such regulations national policymakers in each case delegated authority to supra-national arrangements to: interpret actors' obligations, monitor their compliance, settle disputes and legislate new obligations when necessary. In the EU the Commission, Court of Justice and Parliament perform these functions. In the trans-Tasman relationship a handful of trans-national agencies as well as a large number of ministerial councils and officials meetings under the Council of Australian Governments (COAG) take these roles. The design of supra-national institutional arrangements varies between the SEM and TTSEM, but they perform similar functions. With these precedents in mind, it is striking that the HLWGJG Final Report's section on regulatory issues and Non-Tariff Barriers (NTBs) signals the agreement of the parties to put

> processes and mechanisms in place to reduce costs associated with regulatory differences by promoting greater 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. (Final Report 3-4)

The parties also signal their agreement to build a 'framework for identifying opportunities for and guiding future regulatory cooperation, including provisions that provide an institutional basis for future progress (4).' The Final Report avoids mentioning supra-national institutions, but it is in coordinating regulatory policies that supra-national capacities developed and/or expanded in European and trans-Tasman economic integration.

In addition to focusing attention on coordination of regulatory policy and standard setting, the Final Report also suggests that it promote regulatory compatibility through harmonisation, equivalence, mutual recognition or other agreed means in '*specific, mutually agreed goods and services sectors*' (emphasis added, 4). This focus on building policy coordination capacity in specific, pilot sectors is repeated in documents from members of the High Level Regulatory Cooperation Forum, in which these proposals were developed. For example, John Morrall, former Deputy Director of the Office of Information and Regulatory Affairs in the US Office of Management and Budget, raises the possibility of constructing a 'Trans-Atlantic Regulatory Impact Assessment' (TARIA) process around specific goods sectors in which regulatory coordination seems likely to yield high returns – namely, automobiles, chemicals and pharmaceuticals (Morrall 2012). The structure and goals that Morrall lays out for a TARIA process bear a strong resemblance to the regulatory policy coordination that has taken place within the Trans-Tasman Outcomes Implementation Group (TTOIG) process since 2009 (Australian Treasury 2009). Notably, Morrall's proposal suggests that the impact of proposed regulations be measured in terms of 'net trans-Atlantic impact' (Morrall 2012: 11ff). The TTOIG Terms of Reference mandate that regulatory outcomes 'should seek to optimize net trans-Tasman benefit' (TTOIG 2009).

Focus on coordinating regulatory policy in a few, pilot sectors mirrors the development of both European and trans-Tasman economic integration. The Schuman Plan (1950) for the European Coal and Steel Community (ECSC) created supra-national arrangements to coordinate member states' policies in specific industrial sectors. With important alterations, the ECSC's supra-national arrangements then provided the template for the institutions of the EEC/EU. A similar development took place in the trans-Tasman relationship. Construction of supra-national arrangements began with regulation of a few important, but highly technical, sectors – product standards/accreditation, government procurement and food safety. Institutional forms developed in these areas were then expanded and exported to govern other areas of policy coordination. Rather than bringing many issue areas under the policy competence of bodies like the European Commission and Court of Justice, the trans-Tasman relationship duplicates supra-national arrangements and segregates their policymaking competences into specific issue areas. In the experience of both European and trans-Tasman economic integration, construction of supra-national policymaking arrangements began in narrow issue areas – often coordination of regulatory policies – in specific sectors and then expanded to other sectors and areas of policy

coordination.

Together the HLWGJG Final Report's peculiar language and narrow focus on coordination of regulatory policies in specific sectors points to considerable ambitions for the TTIP. The 'behind borders' nature of regulatory policy coordination raises uncertainties that policymakers in Europe, Australia and New Zealand constructed supra-national institutions to manage. Like policymakers in Europe and the Antipodes, the authors of the Final Report seek to focus their efforts to deepen coordination of trans-Atlantic economic policies in a few, important sectors. The Final Report makes no mention of supra-nationality and mentions 'institutions' obliquely. However, if the precedents of constructing trans-national 'single markets' in Europe and the Antipodes hold any lesson for 'deep' integration of the trans-Atlantic economies, they may be the following. First, coordination of 'behind borders' policies often requires supra-national institutional support. Second, it may be easiest to construct such institutions to regulate specific sectors and then expand successful innovations to other sectors and types of policy coordination. Recognising the ambitions contained in the HLWGJG's Final Report is one task. Evaluating their chances of success is quite another.

*Impediments and Prospects*

The histories of European and trans-Tasman 'deep' economic integration – a relatively rare phenomenon internationally, in spite of numerous recent trade agreements which *aspire* in this direction – give some clues to the likely impediments to and prospects for an ambitious, comprehensive transatlantic agreement.

First, ambitious behind-border trade cooperation appears more likely to proceed when governments are faced with crisis conditions and are therefore obliged to act. The postwar economic and strategic circumstances which prompted increased cooperation among the original Six European Community members are well known. In the trans-Tasman case, changing international trade patterns associated with British accession to the European Community (1973) and economic downturn in New Zealand provided the conditions. Further, there was widespread dissatisfaction with the existing Australian-New Zealand trade agreement. The result was a *comprehensive* trans-Tasman agreement with built-in capacity for deep economic integration, in spite of some domestic opposition. In both Europe and Australasia, considerable political will

was required to forge an open-ended commitment to integration and overcome domestic political constraints.

There is no question that the US and the EU presently face challenging economic circumstances, and that this has provided impetus for the potentially 'game-changing' trade deal (European Commission 2013; Lester 2013; Swieboda 2013). Chairman of the US Senate Finance Committee Max Baucas writes that the deal 'must be done', and 'must be done now' (Baucas 2013) yet it remains unclear whether the US fiscal situation and Europe's sovereign debt crisis are of sufficient magnitude to deliver the required political will. The prospect of a transatlantic free trade deal is not new. Are the prevailing conditions now sufficiently different to allow progress where it has not been made in the past?[2]

Second, European and trans-Tasman experience suggests that economic integration progresses furthest and fastest where there is a degree of ideological convergence among the parties. The EU's forerunners, the European Coal and Steel Community and the European Economic Community, were created in an era of postwar Keynesian agreement on the necessity of government intervention to stabilise economic growth. Common assumptions on the relationship between states and markets underpinned the early steps towards a single market. Trans-Tasman integration, on the other hand, proceeded on the basis of the parties sharing a common commitment to economic liberalisation in the bilateral agreement, while pursuing complementary unilateral and multilateral measures. The implementation of ANZCERTA dovetailed with wide-ranging domestic reforms in Australia and New Zealand, and a newfound joint commitment to the principles of 'open regionalism'. It is impossible to separate the success of trans-Tasman integration from the fact that a common ideological approach prevailed in the major parties in both countries at the same time.

It is not at all clear that there is such ideological compatibility to be found across the Atlantic. Indeed it is not clear that there is ideological coherence *within* the EU or the US; rather both parties will come to the negotiating table with complex internal baggage about the relationship between states and markets and their role in the global economy. Not only is this likely to slow

[2] For a summary of US-EU regulatory dialogues and their limited progress since the mid-1990s, see Morrall, 2012, 33.

negotiations and make a comprehensive agreement less likely, it may be expected to inform the parties' preferences about *how* a transatlantic agreement may work. Trans-Tasman negotiators, for example, have historically preferred the use of mutual recognition as an instrument of integration, because they saw it as a low maintenance, anti-bureaucratic and market-based mechanism. Thus the common ideological approach informed the process itself. It is hard to see a transatlantic consensus resembling this.

The third lesson to take from European and trans-Tasman integration concerns the time required to implement ambitious cooperation of the kind outlined by the HLWG. Numerous analysts consider the originally proposed time frame (conclusion by 2014) to be ambitious. The real question about timing is not how quickly an initial agreement can be put in place, but whether the parties are prepared for the long-haul cooperation which will be required to implement it. Notwithstanding decades of work in both cases, the European and trans-Tasman single markets remain works in progress. In their separate contexts, the EU's Monti Report (2010) and the trans-Tasman Joint Productivity Commission study (2012) identified considerable further work which could be undertaken by governments to progress the single market programs. Significant, time consuming domestic policy work has necessarily accompanied single market commitments in both places.

Fourth, and perhaps most importantly, European and trans-Tasman experience suggests that the TTIP will succeed or fail according to the institutional provisions agreed. The nature of the cooperation being suggested is far-reaching: including 'new and innovative approaches' with the aim of a 'truly transatlantic marketplace'. Yet there is scant detail on what kind of institutions might be tasked with carrying this work forward. The March 2013 draft EU negotiating mandate stipulates only that the institutional structure should ensure 'effective follow-up'; promote 'progressive achievement' of compatible regulatory regimes; and include a dispute settlement mechanism (European Commission, 2013). Lester notes that present transatlantic ambitions appear to 'delve further into domestic regulatory issues than most trade agreements'. Whether a trade agreement proves to the appropriate institutional vehicle for this cooperation remains to be seen (Lester 2013).

In the EU and trans-Tasman cases, long-term cooperation on regulatory compatibility has been institutionalised supranationally. Within the EU the Commission in particular has monitored – and indeed championed – regulatory cooperation among member states. In Australia and New Zealand the work has been delegated to sector-specific joint agencies with considerable autonomy and overseen by portfolio-based ministerial councils. A key strength of the trans-Tasman single market has been regular – often independent – reviews of progress and implementation. Trans-Tasman institutional arrangements lend themselves to ministers and officials identifying further opportunities for cooperation and regulatory compatibility in the course of regular meetings. Importantly, the framework also allows for policy makers to avoid regulatory *incompatibilities* before they occur.

While it is clear that institutions are necessary to a program of regulatory cooperation, and that the mechanisms for review and ongoing consultation will matter greatly, it is not clear what these institutions might look like in a transatlantic context. Within the US there seems to be ample scope for argument over who has the right to create or delegate power to such institutions. Domestic stalemate over the terms is at least a possibility. For the EU the institutional proposition is a complex one: will the transatlantic marketplace require yet another layer of governance? Further, if the trans-Tasman relationship is any guide, attempts at international regulatory cooperation will expose any internal regulatory divergences. Within the EU this may become a useful internal bargaining tool for the Commission, which can oblige member states to get their regulatory houses in order to meet transatlantic requirements. On the other hand, internal divergences may make progress and implementation of the TTIP painfully slow.

*Conclusions*

From the detail presently available, it is apparent that the proposed transatlantic partnership aims to go well beyond a conventional trade agreement. It is innovative in that it seeks deep economic integration and a level of regulatory compatibility generally associated with single market programs. By approaching policy coordination in specific, pilot sectors, the TTIP may resemble successful models of integration employed in both Europe and Australasia. If the negotiations should succeed on the terms envisaged the implications of the agreement – for the parties and for third countries – would be significant.

Comparison with longstanding attempts at regulatory cooperation, however, indicate that that the agreements' prospects are mixed, and the impediments are formidable. Domestic political objections will only be overcome with considerable political will, which may or may not prevail in the present crisis conditions. Disparities in ideological approach among (and within) the parties may complicate both the outcomes of the negotiations and the process and mechanisms employed. In the sectors where agreement can be reached, policy coordination will require years of work on all sides. Finally, the agreement will need institutional capacity. The fine print on the institutional framework – including provisions enabling review and refinement, ongoing close consultation and dispute resolution – will determine the prospects for genuine progress.

## 5. Why isn't Australia negotiating an FTA with the EU?

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Australia is already negotiating a bilateral agreement in which to anchor its relationship with the EU. In the light of the following however, it seems curious that Australia is negotiating a 'Framework Treaty' with the EU which focuses on enhanced consultation on a host of 'soft power' foreign and security policy goals, rather than an agreement that would liberalise trade.

The medium term prospects for further multilateral trade liberalisation cannot be considered very bright after more than ten years of failed negotiations to conclude the Doha round of negotiations in Geneva. The EU of 28 member states is Australia's second most important trading partner, following China, in two-way trade, goods and services terms. With 18 per cent of the total, the EU constitutes Australia's largest source of imports ahead of both China (15 per cent) and the US (13 per cent). With 9 per cent of the total, the EU ranks third as an export market for Australia, behind China (25 per cent) and Japan (17 per cent) (DFAT 2012). The EU is also Australia's largest two-way trade partner in services, accounting for 19.4 per cent of the total (DFAT 2013a) and Australia's largest source of inwards investment accounting for around 28 per cent of the total stock of Foreign Direct Investment (FDI). Over the past decade, Australia has been moving with increasing speed along a second track of trade policy seeking bilateral and regional FTAs. Beginning with an FTA with Singapore in 2003, Australia has subsequently concluded FTAs with, Thailand, Malaysia, the US, Chile and ASEAN (together with NZ) and is now deeply engaged with the TPP and RCEP regional processes, which aim at substantially

realising Australia's long term objective of an Asia-Pacific Economic Cooperation (APEC) wide regional FTA (DFAT 2013b).

With its 2006 *Global Europe* strategy, the EU has also now embarked on a program of negotiating 'new generation' FTAs. Perhaps the most important aspect of this new initiative is the stated intention of the EU to focus on 'behind the border' regulatory NTBs (especially regulatory divergences on services and standards) which could push trade liberalisation beyond that possible under the current rules of the WTO as well as on classic border measures such as tariffs and quotas (EC 2006). The other interesting thing about the EU's program of 'new generation' FTAs is that while the initial focus was on Asian trading partners, the Union now seems to have departed from its long standing policy of relying on the WTO for the conduct of its trade relations with its Organization for Economic Cooperation and Development (OECD) partners and is now negotiating or has committed itself to negotiate 'new generation' FTAs with many of Australia's major Asian and OECD trading partners.

Beginning with an FTA with Korea in 2010, the EU is now in the final stages of negotiations for a Comprehensive Economic and Trade Agreement (CETA) with Canada. It has also completed FTA negotiations with Singapore and is negotiating with Malaysia and India. In November 2012 agreement was reached to begin FTA negotiations with Japan and in February 2013 with the United States. It also needs to be recalled that the supra-national integration achievements of the EU over the past 50 years have focused on trade and monetary integration. As a consequence, the EU exerts international influence today primarily as a trade power rather than as a foreign and security policy power. So, given these facts and developments, why isn't Australia negotiating an FTA with the EU?

What might the major negatives be? It is often said that agriculture would be a major obstacle to Australia doing an FTA with the EU – that the continuing existence of the Common Agricultural Policy (CAP) would exclude agriculture being on the negotiating agenda. This is an outdated view. The major trade flashpoint between Australia and the EU over the 20 years that followed the accession of the UK to the then European Economic Community (EEC) was the agriculture export policy of the EU – the subsidised export of the so-called, beef, butter, sugar, and grains

'mountains' onto the world market which depressed global food prices and adversely affected Australia's rural exports around the world.

However, this problem between Australia and the EU has now largely been resolved – first, through the initial CAP reform package of 1992 and the agreement it led to on agriculture in the Uruguay Round of multilateral trade negotiations which encompassed reductions on the use of export subsidies into the future and – second, through the subsequent CAP reform packages from 1993 to 2003, which continued the process of replacing high support prices to farmers in the EU with direct income supports. These successive CAP reform packages reduced production in the EU, reduced further the need for export subsidies in the EU and led ultimately to the offer of the EU in the Doha negotiations to eliminate export subsidies altogether (WTO 2008).

Access to the EU market for the temperate agricultural products that Australia continues to export to the world, however, remains a problem. This is so largely as a result of the high levels of 'tariff equivalents'(TEs) against agricultural imports that the EU was permitted to maintain at the end of the Uruguay Round negotiations in 1994.[3] These have operated ever since as effective barriers against increased market access in the EU. The Doha negotiating process has however also opened up opportunities for solutions to this problem. Under the negotiating framework established in the WTO in 2008, increased market access through expanded tariff quotas (TQs) at low import duty rates would be provided for all 'sensitive products' on which high levels of TE's continued to apply (WTO 2008).

While the Doha negotiations remain uncompleted, there appears no compelling reason why expanded TQs at low rates of import duty could not also provide improved access for Australia's agriculture exports to the EU market in FTA negotiations. The EU has already signalled its readiness in Geneva to negotiate on improved TQ access. No doubt, agriculture related trade interests of the EU, such as treatment accorded to genetically modified products (GMOs), recognition of an expanded list of geographic indications (GI's) and phytosanitary and veterinary regulations would also be on the negotiating agenda. Agriculture therefore while both an

[3] During the Uruguay Round of Multilateral trade negotiations, agreement was reached to convert all non-tariff border restrictions, including variable import levies in the EU, to tariff equivalents (TEs). As the high level of these TEs remained a significant barrier to imports, negotiated access to highly protected agricultural markets such as the EU, was provided through tariff quotas (TQs) at low or zero rates of duty.

essential and sensitive subject for both sides in a 'new generation' FTA negotiation between Australia and the EU, need not be the 'deal blocker' earlier anticipated.

So, where would the major benefits of a 'new generation' FTA between Australia and the EU lie? Improved market access for Australia's beef, grains, sugar, dairy products and lamb to the EU, would be a big positive for Australia. It would do much to defuse an issue that has dogged the relationship since the 1960s. More broadly, a 'new generation' FTA could go a long way towards liberalising 'behind the border' regulatory NTBs across the broad spectrum of agriculture, services and manufactures trade between the EU and Australia. Two factors in particular could be important in realising such an objective in negotiations. Both Australia and the EU have high regulatory standards and enjoy high equivalence of regulatory intent. This could open the way for 'mutual recognition' (MR) of technically different, but broadly equivalent standards impacting on trade across a wide range of products and services. The EU and Australia also have extensive internal experience in 'mutual recognition' as a trade liberalising mechanism – the EU in building the 'single European market' (SEM) and Australia through its own Council of Australian Governments (COAG) process (Hussey and Kenyon 2011).

The importance of bilateral services trade between the EU and Australia has already been alluded to. The EU is both Australia's largest export market for services with 16.4 per cent of the total and the largest source of imports of services into Australia with 22 per cent of the total (DFAT 2013a). In its current CETA negotiations with Canada, the EU has agreed to the liberalisation of services trade according to the 'negative listing' approach – which automatically liberalises all services in bilateral trade, apart from those inscribed on a specific 'exceptions list'. This is the first time in any trade negotiation that the EU has conceded the 'negative listing' approach to services liberalisation.[4] It is however, the approach typically taken by Australia in its FTA negotiations. Now that the EU has taken the 'negative listing' approach with Canada, it is difficult to imagine the EU taking a less liberalising approach in future FTA negotiations, at least with its other OECD trading partners. The application of the 'negative listing' approach to services trade liberalisation in an FTA negotiation between Australia and the EU would be an

[4] In all previous FTA negotiations, including those with Korea, the EU has taken the less liberal 'positive listing' approach to services negotiations under which liberalisation commitments are taken only on those services and services sectors included on a specific list.

important win for both sides, opening up the opportunity for the further expansion of trade in what is already the fastest growing area of bilateral trade between the EU and Australia.

In important specific areas of bilateral services trade between Australia and the EU, such as business and professional services, 'mutual recognition' could play an important trade creating role in a 'new generation' FTA between Australia and the EU. Minimising the trade impact of broadly equivalent but technically divergent licensing and certification regulations through MR could play a role. Even more important benefits would come from the 'mutual recognition' of divergent but broadly equivalent professional qualifications requirements. Again important steps towards liberalisation on this basis have been taken in the context of the CETA negotiations which could provide a basis for comparable negotiations between Australia and the EU.

Average industrial tariffs in both Australia and the EU are now very low, at around 4 per cent in both cases. So, there would appear to be little danger of serious trade diversion from differential tariff rates in an Australia-EU FTA (Rollo 2011). On the other hand MR and/or harmonisation of standards would be trade creating by neutralising the trade impact of regulatory divergences impacting on an expanding range goods traded bilaterally between Australia and the EU. Current examples include: food standards, packaging and labelling standards, sustainable production and environmental standards and differing product standards on an increasingly wide range of industrial components involved in 'intra-industry' trade between Australia and the EU (Rollo 2011).

There would also be practical trade benefits to both sides from reducing the negative trade and investment impact of divergent regulations affecting; public procurement policies (especially at a sub-member state level in the EU and sub-federal level in Australia), competition policies, and investment restriction and protection policies. Negotiations on these issues have also been taking place in the EU-Canada CETA negotiations.

In conclusion therefore, in circumstances where the medium to longer term prospects for further successful multilateral trade liberalisation are far from bright, a 'new generation' FTA between Australia and the EU which included agriculture and focused on liberalising 'behind the border'

regulatory NTBs adversely impacting on services, agriculture and manufactures trade, could be of significant trade creating benefit to both Australia and the EU.

## Conclusions

Three rounds of TTIP negotiations were held in the course of 2013 and a further two in March and May 2014. So far the focus of negotiations has been market access, regulatory aspects and rules. The agenda for the latest round was lengthy: trade in goods and services, investment, regulatory issues, sanitary and phytosanitary measures, government procurement, intellectual property rights, electronic commerce and telecommunications, environment, labour, small and medium-sized enterprises, and energy and raw materials.

Some progress appears to have been made. Yet as the talks progress, fractures and obstacles become more obvious. EU and US negotiators have accused each other of failing to be sufficiently ambitious. Basic market access issues are unresolved and there has been a public difference of opinion over whether financial services ought to be included in the agreement. The stated objective of completing the TTIP by the end of 2014 – getting it done 'on one tank of gas' as US negotiators originally suggested – has largely disappeared from official documents. An early conclusion to the talks now seems unlikely, and as the EU Trade Commissioner recently pointed out, 'the going will inevitably get tougher' (De Gucht 2014). Further, despite considerable efforts to consult and communicate publicly about the negotiations, there remains vocal opposition on some issues.

While the economic hurdles to the deal make themselves more apparent, current events bring the geopolitical context of the talks into focus. Recent events in the Ukraine prompted calls from the US for the agreement to be urgently progressed and to include an energy chapter, for example (Emmott 2014). In early 2013 the TTIP negotiations were launched with high expectations. As the ANU CES Round Table participants identified, these negotiations are exposing divergences in EU and US trade policy and proving just how difficult it is to achieve 'high quality' trade agreements. Progress of the TTIP is being keenly observed by other governments seeking to protect market share and influence global trade rules. Many of these governments are currently involved in highly complex bilateral deals themselves. Finally, the TTIP negotiations remind us that trade agreements are rarely limited to *economic* objectives and realities. The evidence so far is that politics – both domestic and international – is intervening.

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