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Choosing Europe or Choosing TTIP?: The European Union and the Transatlantic Trade and Investment Partnership

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This analysis presents a European view on the Transatlantic Trade and Investment Partnership (TTIP). It argues that the European Union (EU) needs agreement on TTIP more than the United States (US) both for economic and political reasons. Yet, a European anti-TTIP movement has coalesced that argues that the EU must ‘choose Europe or choose TTIP’: the latter threatens to ‘Americanize’ Europe and lead to lower standards of consumer and environmental protection. The choice is a false one but the EU has been late to refute it and it continues to negotiate internally on TTIP even as it negotiates with the US. The TTIP negotiations have also exposed the Union’s ‘strategic partnerships’ as ill-organized and ineffective. Nevertheless, TTIP offers the US and EU a chance to write rules on international economic exchange that could be exported to the global level at a time when a more multipolar international order is emerging.

1 INTRODUCTION

One of the true deans in the study of American foreign policy, James Goldgeier, has observed that United States (US) leaders are always tempted to work with ‘coalitions of the willing’ instead of through institutions such as North Atlantic Treaty Organization or the European Union (EU).¹ After all, working institutional channels means complicated negotiations with both the willing and unwilling, as well as the institution itself. For once, however, the US finds itself in a negotiation with a single, integrated and relatively strong institution – the EU (despite its multiple internal crises) – whose Member States have delegated authority to the EU Commission to negotiate a Transatlantic Trade and Investment Partnership (TTIP).

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¹ J. M. Goldgeier, *The Future of NATO* (Council on Foreign Relations 2010).

Moreover, the Commission is fresh from the most important restatement of EU trade strategy in years in *Trade for All*.² It is highly ambitious in its advocacy of global value chains as spurs to economic transformation, even if one upshot is a shift to European production that depends more on imported (that is, non-EU) inputs.³ More generally, *Trade for All* offers a trenchant defence of the virtues of open markets and bilateral trade deals in the face of an antiglobalization movement in Europe, vitalized not least by TTIP and ‘unprecedented political scepticism of the conduct of multinationals’.⁴

Meanwhile, on the US side, a deal has been struck on a Trans-Pacific Partnership (TPP) with twelve (mostly) Asian states even if Congressional approval was stalled until after the 2016 US election. Thus, the EU Commission’s opposite number – the US Trade Representative (USTR) – has been freed to focus on TTIP. Perhaps, then, the stars are aligned for the US and EU to agree the most ambitious ‘mega-regional’ trade agreement in history?⁵

In fact, the TTIP negotiations remained bogged down well into 2016, long after the putative target for completion (two years) was articulated by USTR Michael Froman as a deal getting done on ‘one tank of gas’ in 2013.⁶ Here, the aim is to offer a European perspective on TTIP: what stakes are involved, how it plays into the EU’s international ambitions, and what are the main factors on the European side that are likely to determine the final outcome. In doing so, four main points of argument are developed.

First, Europe needs TTIP quite a lot more than the US does. That is the case economically but even more so politically. Nevertheless, European leaders are going to have a much harder time than their American counterparts in selling TTIP to their political classes and citizenries because of the head of steam the European anti-TTIP movement has generated.

A second argument flows from the first. The EU may appear to be a relatively robust and single-minded institutional channel through which the Americans can work. That impression was enhanced when the EU’s 2009 Lisbon Treaty gave the Commission the authority to negotiate investment treaties. TTIP could ‘serve as a

² European Commission, *Trade for All – Towards a More Responsible Trade and Investment Strategy* (Publications Office of the EU 2015), http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

³ In fact, such a shift has occurred empirically since the turn of the Millennium. Thus, the Commission’s trade strategy could be viewed as simply an acceptance of what is both inevitable and inexorable, as well as desirable. See Global Counsel, *The New Deals: the 2015 EU Trade Strategy*, Insight, 1 (2015), <http://www.global-counsel.co.uk/publications/new-deals-2015-eu-trade-strategy>.

⁴ Global Counsel, *Trade, Regulation and TTIP’s Political Troubles*, Insight, 4 (2014), http://www.global-counsel.co.uk/system/files/publications/Global_Counsel_ISDS_TTIP_0.pdf.

⁵ D. S. Hamilton, *America’s Mega-Regional Trade Diplomacy: Comparing TPP and TTIP*, 49(1) Intl. Spectator 81–97 (2014).

⁶ See <https://ustr.gov/about-us/policy-offices/press-office/speeches/transcripts/2013/july/amb-fro-man-ttip-opening-plenary>.

model for investment agreements worldwide'.⁷ Still, however, the European debate on TTIP 'gives the (accurate) impression that the EU is negotiating trade policy internally as well as externally', not least because it must negotiate the United Kingdom's (UK) exit from the Union following its June 2016 referendum.⁸

Third, if we think about the existing framework for relations between the US and EU, as well as the EU's aspirations to form 'strategic partnerships' with other major players in global politics,⁹ a successful TTIP agreement has the potential to make the EU's relationship with the US a far more strategic one. Usually, international relations (IR) scholars define 'strategic' as meaning the ability to agree and pursue clear foreign policy objectives using all available instruments of power. Thus far, it is difficult to argue that the EU's strategic partnerships have amounted to much.

Finally, IR in the twenty-first century have seen power shifts that have yielded a more multipolar world. But multipolarity is highly differentiated between different arenas: economic, security, environmental and so on.¹⁰ In particular, economic power has flowed away from the west towards emerging economies, however much that movement seemed reversible amidst emergent market turmoil in early 2016. In any case, there is no question that the US and EU – who together account for more than a third of global gross domestic product (GDP) and two-thirds of all foreign direct investment (FDI), as well as 40% of global purchasing power and trade in services – still retain the economic heft to provoke a revolution in global rules on trade and investment if they can agree an ambitious TTIP agreement.

2 TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP AND EUROPE'S CRISIS OF CONFIDENCE

When we look at the transatlantic marketplace, or the combined markets of the US and EU in the singular, we find it is highly interpenetrated, especially through FDI. The point is illustrated by affiliate sales: goods or services produced by US investors in Europe or European investors in the US and then sold in the market

⁷ Hamilton, *supra* n. 5, at 92.

⁸ Global Counsel, *supra* n. 3, at 3.

⁹ L. C. Ferreira-Pereira & A. V. G. Vieira, *Introduction: the European Union's Strategic Partnerships: Conceptual Approaches, Debates and Experiences*, Cambridge Rev. Intl. Affairs (2016), <http://www.tandfonline.com/doi/abs/10.1080/09557571.2015.1130341>; T. Renard, *The Treachery of Strategies: a Call for True EU Strategic Partnerships*, Egmont Paper, 45 (2016), http://www.peceacatlan.com/pdf/Mexico_y_la_UE/EUStrategic_Partnerships_EGMONT.pdf.

¹⁰ J. Peterson, R. Alcaro & N. Tocci, *Multipolarity, Multilateralism, and Leadership: The Retreat of the West?*, in *The West and the Global Power Shift: Transatlantic Relations and Global Governance* (J. Peterson, R. Alcaro & E. Greco eds., Palgrave Macmillan 2016).

where foreign investors have produced them. Affiliate sales now are worth around three times more than US-EU trade that actually crosses borders.¹¹

But the transatlantic marketplace falls far short of being an integrated, single market as the EU claims to have. Regulatory agencies on both sides operate with considerable autonomy and generally have little experience of international cooperation. The inevitable result is divergent standards that are costly to firms seeking to sell in both markets. Thus, both the US and Europe could generate a significant amount of economic growth through the increased economic exchange that would result from a comprehensive TTIP, especially one that is ambitious on narrowing differences in regulatory standards.

Numerous studies estimate that around 80% of the potential economic gains from TTIP stem from reducing the costs of divergent regulations, along with liberalizing public procurement and trade in services.¹² In particular, service industries are the ‘sleeping giants’ of the transatlantic economy.¹³ Services account for majority shares of the economies of the US and nearly all EU states. Cross-investment means that many service providers now operate transatlantically, particularly in financial services, utilities, telecommunications, insurance, and computing services. Still, their full potential to create wealth and jobs remains unrealized mostly due to regulatory barriers. The ability of both the US and EU to move ‘up the value chain’ to where they most enjoy comparative advantage over other major trading states – in advanced service industries – could receive a major boost from TTIP. Hamilton and Pelkmans are explicit in arguing that ‘[i]n the current policy environment, freeing the transatlantic services economy through TTIP could be the single-most important external initiative either side could take to spur growth and create jobs on both sides of the Atlantic’.¹⁴

Of course, assessing precisely how much TTIP might be worth is inevitably a guessing game that produces varying estimates.¹⁵ But nearly all project that the EU stands to benefit more than the US. To illustrate, the Commission judges the potential economic stimulus of TTIP to be EUR 120 billion for the EU compared for EUR 90 billion to the US (and, interestingly, around EUR 100 billion to the

¹¹ D. S. Hamilton & J. P. Quinlan, *Transatlantic Economy 2016* (AmCham EU and Transatlantic Business Council 2016), <http://cld.bz/MtP6aa#7/z>.

¹² Hamilton, *supra* n. 5, at 93.

¹³ D. S. Hamilton & J. P. Quinlan, *Sleeping Giant: Reawakening the Transatlantic Services Economy* (Center for Transatlantic Relations 2007).

¹⁴ D. S. Hamilton & J. Pelkmans, *Rule-Maker or Rule-Takers? An Introduction to TTIP*, in *Rule-Maker or Rule-Takers? Exploring the Transatlantic Trade and Investment Partnership* 7 (D. S. Hamilton & J. Pelkmans eds., Rowman and Littlefield 2015).

¹⁵ See L. Nilsson & N. Sousa, *Assessing the Potential Economic Impact of TTIP*, in *The Transatlantic Trade and Investment Partnership (TTIP) Negotiations between the EU and the USA: Caught between Myth and Reality?* (S. Khorana ed., Barcelona Centre for International Affairs – CDOB 2015).

rest of the world).¹⁶ A widely-cited study by the Centre for Economic Policy Research offers a ‘best case scenario’ that (by 2027) TTIP could boost EU GDP by more than EUR 135 billion and American GDP by just over EUR 100 billion.¹⁷

The differential impact of TTIP reflects how the US economy recovered from the post-2008 Great Recession considerably more robustly than Europe’s economies. As such, the EU – with a youth unemployment rate at more than 20% in early 2016¹⁸ – had greater need for economic stimulus even as TTIP offered disproportionate benefits. Nonetheless, it remained possible to argue that the EU needed a successful TTIP politically even more than it needed one economically.

One reason why was that European integration desperately needed a major political and policy success. According to George Soros, the mid-2010s saw the EU facing at least five crises at the same time: a seemingly uncontrollable influx of refugees, Greece, the Euro, Ukraine, and (what became) the UK vote to leave the EU in its 2016 referendum.¹⁹ No system of governance is very good at solving multiple crises simultaneously. Few systems of governance are as convoluted and subject to as many veto points as the EU. And the Union is especially prone – as the Eurozone crisis clearly illustrated – to finding itself unable to get ‘out ahead’ of fast-moving events and take swift action, since negotiating a consensus (or something close to it) amongst twenty-eight (27 post-‘BREXIT’) Member States inevitably takes time.

There is little question that TTIP offers the EU low-hanging fruit as a policy move with the potential to kick-start its economy back to pre-financial crisis levels of growth. The ability of the EU to show the solidarity successfully to negotiate a comprehensive TTIP that realizes all or (more likely) most of its original ambitions would radically alter both international (especially in Washington) and domestic European perceptions of the EU’s significance and value. It also has the potential to help spur an economic expansion that could make Europe’s other crises easier to bear, if not solve. To illustrate, a shot of economic growth could measurably enhance the EU’s ability to afford to integrate the wave of migration it has already seen, as well as future waves of refugees. A rising economic tide that lifted all or, at least, most boats would make compromises on BREXIT, Greece or the future of the Eurozone easier to strike.

Yet, much to the frustration of the Barack Obama administration, negotiations on TTIP have dragged on well beyond Froman’s ‘single tank of gas’ largely

¹⁶ European Commission, *Impact Assessment Report on the Future of EU-US Trade Relations*, Staff Working Document, SWD (2013) 68 final (12 Mar. 2013).

¹⁷ Centre for Economic Policy Research, *Reducing Transatlantic Barriers to Trade and Investment: An Assessment* (CEPR, 2013), http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf.

¹⁸ <http://www.statista.com/statistics/266228/youth-unemployment-rate-in-eu-countries/>.

¹⁹ G. Soros, *Ukraine and Europe: What Should be Done?*, *The New York Review of Books* (8 Oct. 2015).

because of waning political impetus in high EU places for an agreement. European leaders have often appeared blindsided by the emergence of serious anti-TTIP opposition in European civil society. Any notion that TTIP is a classic bilateral negotiation between a US administration that genuinely wants an agreement and a single-minded European interlocutor that shares the same commitment is illusory above all because of disunity in Europe, of a kind seen frequently amidst the crises of the mid-2010s.

3 EUROPE'S INTERNAL NEGOTIATION OF TTIP

The idea that the EU could be an unwavering negotiator of TTIP, given the clear economic benefits it offers and Europe's desperate need for a policy move to spur economic growth, became a victim of profound political divisions as the EU tried to cope with its multiple crises in the mid-2010s. To illustrate, an EU summit in February 2016 had only two issues on its agenda: negotiating concessions to the UK ahead of its referendum on continued EU membership and the refugee crisis. TTIP was nowhere near the top of the agenda. The EU had other, more urgent fish to fry, including ones that raised questions about whether Europe's post-war regional integration project was even sustainable. TTIP itself became caught up in such debates, with sceptics arguing that 'the crux of the argument against TTIP' was that 'one must choose between Europe and TTIP'.²⁰

The claim was embraced by an anti-TTIP coalition spanning European civil society, and including trade unions and consumer and environmental non-governmental organizations. It was fuelled by outrage with sweetheart tax deals offered by EU Member States to US multinationals such as Google, Amazon and Starbucks, revelations that Volkswagen systematically had cheated on emissions testing, disclosure of US spying on European arms firms, governments and even EU institutions, and general public anger with state bailouts of banks and financial institutions following the economic crash of 2008. The 'Stop TTIP' movement was genuinely pan-European and united around a narrative that an agreement would result in the Americanization, and lowering of, EU standards on health, environmental protection, and so on.

In fact, the actual picture revealed considerably more nuance. Almost every case where European regulation was stricter – based on the 'precautionary principle' used (say) to justify bans of food made with genetically modified organisms – could be countered by cases where US standards turned out to be higher than European ones. The EU Trade Commissioner when TTIP was launched, Karel De Gucht, repeatedly pointed out that US consumers who were harmed by a product they had purchased

²⁰ Quoted in R. Bellera, *The TTIP or Europe?*, in Khorana, *supra* n. 15, at 37.

were likely to be awarded much higher damages than European ones and that many US air and water quality standards were stricter than their European counterparts.²¹ In fact, the precautionary principle often was embraced in practice more on the US than EU side, leading to stricter US regulation of financial services, pharmaceuticals and cosmetics.²² In a statement on TTIP in Brussels in 2014, Obama stressed how he had ‘fought [his] entire political career’ to strengthen consumer and environmental protections, adding that ‘I have no intention of signing legislation that would weaken those protections’.²³

Still, three specific issues permeated the TTIP debate on the European side and became lightning rods that divided the EU. One was a divide in public opinion between (broadly) German-speaking Europe and the rest of the EU. A Eurobarometer poll in mid-2015 confirmed what other surveys had consistently shown. While an overall majority (56%) of Europeans backed TTIP (and it was supported by more than half polled in twenty-five EU Member States), majorities opposed it in Austria, Luxembourg and, crucially, Germany. Fewer than a third (31%) of Germans voiced support for TTIP, while a majority opposed it.²⁴ By spring 2016, one poll showed German support down to 17% (and – alarmingly – US support only on 18%).²⁵ Soon after, one of the EU states keenest on TTIP – the United Kingdom – was on a path to leave the Union.

Those seeking to explain German public opposition to TTIP variously cited a cooling of Germany’s Atlanticism (seen in its strong reaction to the US spying revelations), its ageing population (younger Europeans were more likely to support TTIP), or its declining competitiveness and commitment to economic reform.²⁶ Whatever its causes, German public aversion to TTIP put its Chancellor, Angela Merkel, in an awkward position. Initially the EU’s main booster of TTIP, Merkel turned mostly silent on it when strong public opposition emerged in Germany. At

²¹ Statement by Commissioner Karel De Gucht on TTIP, (15 July 2015), http://europa.eu/rapid/press-release_SPEECH-14-549_en.htm.

²² E. Fabry, *TTIP and the Legitimate Fears of German Public Opinion, Synthesis*, 2 (Notre Europe Jacques Delors Institute, 17 Dec. 2015), <http://www.institutdelors.eu/media/ttipgermanpublicopinion-fabry-jdi-dec15.pdf?pdf=ok>.

²³ *Press conference by President Obama, European Council President Van Rompuy, and European Commission President Barroso* (Brussels 26 Mar. 2014), <https://www.whitehouse.gov/the-press-office/2014/03/26/press-conference-president-obama-european-council-president-van-rompuy-a>.

²⁴ European Commission, *Public Opinion in the European Union*, Standard Eurobarometer 83 (2015), http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_first_en.pdf.

²⁵ As a caveat, nearly half of US survey respondents reported themselves not to know enough about TTIP to voice an opinion. See Reuters, *Survey Shows Plunging Support for TTIP in U.S. and Germany* (21 Apr. 2016), www.reuters.com/article/us-europe-usa-trade-idUSKCN0XI0AT (accessed 22 July 2016).

²⁶ Borderlex, *TTIP, Public Opinion and Old Age in Europe*, (22 Sept. 2015), <http://www.borderlex.eu/ttip-public-opinion-old-age-fun-facts/>; I. Dreyer, *The Politics of TTIP in Europe*, CATO Online Forum, (Oct. 2015), <http://www.cato.org/publications/cato-online-forum/politics-ttip-europe-shadow-ageing-german-voter>.

a time when Germany dominated the EU as perhaps never before,²⁷ whether an ambitious TTIP was possible in the face of German public or political opposition became an open question. So, by extension, was the continued durability of the transatlantic alliance. One former minister from Germany's second largest party, the Social Democrats (SPD), reacting to persistent German public scepticism, ominously claimed that '[i]f TTIP collapses, the political backlash could last 10 years'.²⁸

A second problem was the war of words that broke out over EU competition investigations of US multinationals, particularly technology firms. Obama hit out at the Commission's scrutiny of the market dominance and tax deals in specified EU states of Facebook, Apple and Google, claiming 'the European response is more commercially driven than anything else'.²⁹ The charge, repeated by senior US Treasury officials, was that the EU was targeting large US technology groups because European internet companies could not compete with them. A 2014 vote by the European Parliament (EP) for an investigation leading to the possible break up of Google, while purely advisory, set off alarm bells in Washington.

Meanwhile, the EU Commissioner responsible for a new portfolio on the Digital Economy, with ambitions to stitch together twenty-eight different national regimes for copyright and tax and ease cross-border exports for European technology firms, had to fend off charges that EU policy sought to claw back market share from US internet giants.³⁰ Andrus Ansip insisted that the Digital Economy initiative 'isn't about protectionism, it is about opportunities'.³¹ Still, his complaint that Skype had been founded in his home country of Estonia but was now owned by Microsoft did little to mute American concerns about the EU's intentions. Moreover, comments by the leader of Germany's SPD, Sigmar Gabriel, that the internet dominance of US technology firms represented a form of 'brutal information capitalism' and 'either we defend our freedom and change our policies, or we become digitally hypnotized subjects of a digital rulership', did nothing to lower tensions.³² While the digital rows were not directly related to the TTIP negotiations, they hardly inspired confidence that the two sides could settle such a diverse variety of differences and agree a TTIP deal by the time Obama left office. They also showed that the moving parts in EU debates on the digital economy risked undermining one of the main selling points of TTIP: that it would allow digitally innovative European entrepreneurs, especially

²⁷ See U. Beck, *German Europe* (Polity 2013).

²⁸ Quoted in *Financial Times*, 7 Oct. 2014.

²⁹ Quoted in *Financial Times*, 16 Feb. 2015.

³⁰ A. Renda & C. S. Yoo, *Telecommunications and the Internet: TTIP's Digital Dimension*, in Hamilton & Pelkmans, *supra* n. 14, at 416–417.

³¹ Quoted in *Wall Street Journal*, 28 May 2015.

³² Quoted in *Irish Times*, 6 July 2014.

small firms, to scale up quickly and become viable global firms by having immediate access to the large American market.³³

A third issue was Investor State Dispute Settlement (ISDS): a pathway for foreign investors to seek legal redress against states that violated the terms of bilateral investment treaties (BITs), most of which ban discrimination against non-domestic financiers. By one estimate, 93% of BITs (something like 3,200) contained ISDS provisions to guarantee a safe, predictable legal framework and depoliticized settlement of disputes when foreign investors are harmed by changes in public policy.³⁴ Such guarantees are viewed as essential because the World Trade Organization offers no legal framework for foreign investors should disputes arise on market access or investment protection. At first glance, it is hard to see why such an arcane issue should become so politicized in Europe in the context of TTIP.

Yet, the European anti-TTIP movement seized on ISDS as illustrating how any agreement would have a pro-corporate bias. Notorious ISDS settlements included Occidental Petroleum being awarded USD 2.3 billion in a case brought against Ecuador after the latter had ended its contract for exploiting oil, the damages far exceeding Ecuador's annual health budget. Another saw a Swedish power company seek EUR 4.7 billion from Germany after the Merkel government's decision to abandon nuclear power. ISDS thus became a political lightning rod, with TTIP sceptics claiming it would lead to a 'regulatory freeze' in Europe, benefit only large multinationals, and import America's 'culture of litigation' since US firms topped global league tables for filing ISDS claims.³⁵

ISDS prompted a nasty row in 2014 within the new EU Commission under Jean-Claude Juncker, who had pledged to strip it out of any final TTIP agreement in his campaign for the Commission Presidency. After Juncker's appointment, his chief of staff apparently doctored a submission by the incoming trade Commissioner, Cecilia Malmström, to the EP (which she subsequently disavowed) suggesting that ISDS would be absent from any final deal on TTIP. Then, fourteen EU Trade Ministers wrote to Juncker reminding him that ISDS was in the original mandate given to the Commission by EU Member States when the TTIP negotiations began. Finally, Juncker announced that the first-ever 'First Vice-President'

³³ M. Egan & J. Pelkmans, *TTIP's Hard Core: Technical Barriers to Trade and Standards*, in Hamilton & Pelkmans, *supra* n. 14.

³⁴ E. Fabry & G. Garbasso, 'ISDS' in the TTIP: the Devil is in the Details, Notre Europe Jacques Delors Institute Policy Paper 122, 1–4 (16 Jan. 2015), <http://www.institutdelors.eu/media/ttipids-fabrygarbasso-nejdi-jan15.pdf?pdf=ok>.

³⁵ *Ibid.*, at 10.

of the Commission, Frans Timmermans, ultimately would decide on ISDS in TTIP.³⁶

Malmström appeared to come out on top in the end. Timmermans gave her political cover amongst his own centre-left political family in the EP and – crucially – Berlin, who were most likely to oppose TTIP (Malmström being a Swedish liberal). She pledged to come up with ISDS provisions ‘fit for the 21st century’, and went some way towards this end by sealing agreement on the Comprehensive Economic and Trade Agreement (CETA) with Canada, with its comprehensive, detailed ISDS provisions and commitments to transparency and clear social and environmental clauses. CETA became seen as something of a model for TTIP.

There are legitimate practical and legal as well as political questions about whether it is in the EU’s interest to include ISDS in TTIP.³⁷ Still, ISDS appears something of a red herring. For one thing, if all ISDS cases are considered – including those brought by an EU firm against another EU government – European firms have initiated considerably more than American ones.³⁸ For another, ‘there is no empirical evidence for the theory that investment protection and/or arbitration has caused states to withdraw or refuse to enact regulations aimed at legitimate policy concerns’.³⁹ Perhaps most importantly, Franco-German proposals to create a permanent new court to rule on ISDS claims within TTIP led Malmström to embrace the idea that all previous European ISDS agreements could eventually be subject to rulings by the same court. Such a court might be a first step towards a global multilateral investment court, and ‘[t]hus another brick would ... [be] added to the edifice of multilateralism, regulation and international responsibility’.⁴⁰ Whether such an ambitious project was realistic or not, it was the kind that could unite EU governments behind their stated objective of ‘building effective multilateralism’.⁴¹

In any case, it remained clear long after the originally projected completion of TTIP negotiations that the EU continued to debate internally the desirability of a truly comprehensive agreement. The outcome of that debate surely would shape

³⁶ The saga is detailed in Peter Spiegel’s Brussels Blog, Financial Times, 23 Oct. 2014, <http://blogs.ft.com/brusselsblog/2014/10/23/leaked-letter-14-ministers-take-on-junker-over-trade/>.

³⁷ L. Poulsen, J. Bonnitca & J. Yackee, *Transatlantic Investment Treaty Protection*; and F. Baetens, *Transatlantic Investment Treaty Protection – A Reply to Poulsen, Bonnitca and Yackee*, in Hamilton & Pelkmans, *supra* n. 14.

³⁸ Fabry & Garbasso, *supra* n. 34, at 10.

³⁹ Tietje, *Investor Protection and Investor-State Dispute Settlement in the TTIP*, in Khorana, *supra* n. 15, at 54.

⁴⁰ Fabry, *supra* n. 22, at 8.

⁴¹ *Multilateralism in the 21st Century: Europe’s Quest for Effectiveness* (C. Bouchard, J. Peterson & N. Tocci eds., Routledge 2014).

global perceptions about what kind of global actor the EU had become. Specifically, TTIP became a test of how effectively it was able to offer itself as a strategic partner to other key players.

4 THE EUROPEAN UNION AND ITS STRATEGIC PARTNERS

A large literature now exists on the role the EU plays in IR.⁴² It features lively disputes, particularly on whether the EU is a ‘normative power’⁴³ that finds ways to persuade others to adopt European norms, or rather a more hard-headed ‘market power’⁴⁴ that uses both persuasion and coercion to externalize its internal policies and regulations. In either scenario, the EU is usually viewed as capable of using its economic power to realize its wider foreign policy goals, such as promoting peace, democracy, environmental protection, human rights, and so on.

One reason why is that the EU has become more ambitious over time in seeking ‘strategic partnerships’ with other major players in IR. The designation seeks to boost the diplomatic status of the EU’s partners by establishing annual summits, additional ministerial and expert-level meetings, and seeking to combine all of the Union’s external policy instruments. Yet, the term remains ill defined and thus far has produced partnerships with a variety of states of different hues that are structured in different ways. There is no formal process for deciding whether or not a state qualifies as a strategic partner. As of 2016, there appeared to exist no single list of strategic partners on the European External Action Service’s (EEAS) website.⁴⁵ However, it was generally accepted that ten states had made the grade: the US, China, Russia, India, Japan, Brazil, South Korea, South Africa, Mexico and Canada.⁴⁶

But the story does not end there. The EEAS reported that it also had strategic partnerships with a grab bag of international or regional institutions, such as the International Organization for Migration, the Association of Southeast Asian Nations, and the African Union. Just how vacuous the designation remained was made clear when Catherine Ashton – the EU High Representative for Foreign Affairs and Security Policy – suggested in 2010 that future candidates to become strategic partners included Egypt, Israel, Indonesia, Pakistan and Ukraine. At the time, one EU diplomat remarked that the Union had come up with the idea of

⁴² See e.g. K. E. Smith, *European Union Foreign Policy in a Changing World* (3d ed., Polity 2014); J. Peterson & M. Gottwald, *The EU as a Global Actor*, in *The European Union: How Does it Work?* (4th ed., D. Kenealy, J. Peterson & R. Corbett eds., Oxford University Press 2015); *International Relations and the European Union* (3d ed., C. Hill, M. Smith & S. Vanhoonacker eds., Oxford University Press 2016).

⁴³ I. Manners, *Normative Power Europe: a Contradiction in Terms?*, 40(2) *J. Com. Mkt. Stud.* 235–258 (2002); I. Manners, *Normative Power Europe Reconsidered: Beyond the Crossroads*, 13(2) *J. Eur. Pub. Policy* 182–199 (2006).

⁴⁴ C. Damro, *Market Power Europe*, 19(5) *J. Eur. Pub. Policy* 682–699 (2012).

⁴⁵ Based on a search of, http://eeas.europa.eu/policies/index_en.htm.

⁴⁶ Smith, *supra* n. 42, at 54–55.

strategic partnerships several years previous ‘without anyone ever really defining what it meant and whether, indeed, the others regard us as their strategic partners’.⁴⁷

Moreover, a recent, comprehensive study of EU trade policy in the twenty-first century tests the extent to and frequency with which Europe’s economic power has been purposefully deployed in the service of the Union’s wider foreign policy agenda.⁴⁸ The results found are surprisingly meagre. Far-reaching economic sanctions applied to Iran, as well as the EU’s chairing (via its High Representative) of the P5+1 negotiations on Iran’s nuclear programme, appear as a notable exception. More recent sanctions imposed on Russia following its annexation of Crimea are arguably another. But nearly all other cases of the use of economic policy for foreign policy objectives have targeted international minnows such as Belarus, Sri Lanka or Myanmar. Specifically, the EU has demurred almost entirely from seeking to influence the non-economic policies of its strategic partners via trade agreements.⁴⁹ The more general conclusion is that the EU remains unable or unwilling (perhaps both) to use its economic power strategically. Instead, it overwhelmingly – and perhaps unsurprisingly – uses its trade policy in the pursuit of European economic interests.

Nothing about this conclusion is challenged by a particularly critical analysis of the EU’s strategic partnerships with BRICS countries: Brazil, Russia, India, China and (as it is sometimes included on the list) South Africa. It highlights how environmental policy was discussed at high-level summits with all of the BRICS in the months prior to the 2009 Copenhagen climate summit. Yet, the EU ended up entirely marginalized at Copenhagen, with China, India and Brazil (and the US, after Obama broke into talks between these and other principals) leading ‘negotiations that ran parallel to the official agenda and which led on the last day to the so-called Copenhagen accord’.⁵⁰ The authors go further to suggest:

[T]he proliferation of declaratory ‘strategic partnerships’ conceals the reality that for many EU countries the only genuinely strategic partnership is the one with the USA – with Washington hav[ing] the structural and relational power to assure that the Europeans, even if they intended to do so, do not move into strategic partner-swapping.⁵¹

Clever rhetorical flourishes aside, the US-European partnership remains some distance from being strategic (see below). More generally, the EU’s aspirations to

⁴⁷ Quoted in Euractiv, *Ashton designates six new ‘strategic partners’*, 16 Sept. 2010, <https://euobserver.com/institutional/30828>.

⁴⁸ A. R. Young & J. Peterson, *Parochial Global Europe: 21st Century Trade Politics* 183–207 (Oxford University Press 2014).

⁴⁹ *Ibid.*, at 186.

⁵⁰ S. Keukeleire & H. Bruyninckx, *The European Union, the BRICs, and the Emerging World Order*, in Hill, Smith & Vanhoonaeker, *supra* n. 42, at 390.

⁵¹ *Ibid.*, at 391.

have truly strategic partnerships – with the US or anyone else – remain aspirations. One effect is to heighten the significance of TTIP and make its geopolitical implications as important – perhaps more important – than its economic implications.

5 STRATEGIC PARTNERSHIP AND MULTIPOLARITY

A final point of argument is a one about the nature of the contemporary global order.⁵² But it helps explain why TTIP is a potentially important strategic agreement for the West. Put simply, the rise of multipolarity in the wider international system strengthens incentives for the US and EU to work and act jointly because of the increased importance of shaping the future rules and structures of global governance. Yet, the US-EU relationship remains very far from being a strategic one, in the sense of being capable of agreeing and prioritizing objectives and pursuing them jointly with all available instruments. An important reason why is that the bilateral agreement(s) that govern exchanges between the US and EU date back to a very different, earlier era in IR.

A good place to start is to consider the global order of 1990, when the US and EU agreed the Transatlantic Declaration, a relatively modest agreement to hold annual summits and meetings between (for example) the EU Commission and US cabinet. Modest or not, at the time it marked an important acknowledgement by Washington and the George H. W. Bush administration of the geopolitical magnetism of the (then) European Community and its lead responsibility for aid to former Warsaw Pact states to its east. As Bush's Secretary of State, James Baker, put it: '[w]e want our trans-Atlantic cooperation to keep pace with European integration and institutional reform'.⁵³ In Brussels, the Transatlantic Declaration was celebrated as a signal that Europe's most important ally saw the emergence of a EU – an idea already under incubation that culminated in the 1992 Maastricht Treaty – as its main partner in navigating the post-Cold War World.

It thus became possible (at least at the time) to argue that the Transatlantic Declaration moved the US and EU closer than any other major powers to what rational choice theorists call perfect attention and perfect information.⁵⁴ Perfect attention (potentially) is paid by one partner to another and vice versa when they commit to regularized exchanges. It in turn creates the possibility for information about partners' preferences and intentions to be made 'perfect' each to the other:

⁵² The argument is developed at further length in Peterson et al, *supra* n. 10.

⁵³ Quoted in J. Peterson *Europe and America: the Prospects for Partnership* 46 (2d ed., London and New York: Routledge 1996).

⁵⁴ Peterson & H. Ward, *Coalitional Instability and the New Multidimensional Politics of Security: a Rational Choice Argument for US-EU Cooperation*, 1(3) *Eur. J. Intl. Rel.* 131–156 (1995).

each side knows what the other wants just (or nearly) as well they know what they want. An important reason to attribute such significance to the Transatlantic Declaration was that the new post-Cold War politics of security had become multidimensional, not just unidimensional as during the Cold War. The security agenda had expanded to encompass more than territorial security and become focused on national economic security, environmental protection, and humanitarian or peacekeeping missions in Somalia, Bosnia and elsewhere. The US and EU – increasingly acting as a proxy for Europe – thus were reacting, via the Transatlantic Declaration, to their need to pay attention to and understand each other's preferences in a far wider security space than existed before 1990.

Five years later, the commitment to transatlantic consultation and cooperation was significantly upgraded via the New Transatlantic Agenda (NTA).⁵⁵ The NTA might have made the relationship more strategic, especially given a Joint Action Plan of policy objectives that was agreed at the same time. After all, if common goals were already established, political time and attention could be focused on how they could be realized.

Yet, in retrospect, the two sides clearly had very different expectations of what the NTA might achieve. For the Bill Clinton administration, the NTA was a way to try to get the EU not to neglect Central and Eastern Europe, and to ensure emerging post-communist democracies were not ignored as debates pitted advocates of 'widening' the EU's membership against those who prioritized 'deepening' existing integration. US concern was not unwarranted, as the EU focused (mostly) internally on negotiating another new, Amsterdam Treaty (agreed 1997) and launching the Euro. Meanwhile, on the EU side, overexcited claims were made that the NTA had moved Europe and America towards a 'partnership of equals'.

That the NTA was considerably more policy and results oriented (because of the Joint Action Plan) than the Transatlantic Declaration was a blessing as well as a curse. It led to significantly more low-level, low-profile but still quite extensive policy cooperation. The cooperation the NTA facilitated – in diverse areas stretching from homeland security to competition policy to Afghanistan – was important amidst the political noise that followed the US-led (with support from selected states that gravely split the EU) invasion of Iraq in 2003.

Even given such useful (if mostly technocratic) policy cooperation, the idea of a partnership of equals remains a fantasy largely because the EU's profile remains so low in the US. No opinion poll has ever shown that a majority of Americans has even heard of the EU. The reasons why can be debated: a lack of political investment by EU Member States? The failure of successive US administrations

⁵⁵ See A. Luzzatto Gardner, *Guest Editorial – a Vital Partnership: US-EU Relations are Increasingly Significant in Global Affairs*, 20(3) *Eur. For. Affairs Rev.* 311–314 (2015).

to highlight the growing importance of the EU? The basic American suspicion of international organizations?

Perhaps in large part because of the EU's invisibility in America, the Commission tasked a team of academics, think tank analysts, and representatives of Deloitte (the management consultant) to do a study of how well the NTA worked after a decade of its existence.⁵⁶ It yielded findings from around 175 interviews with Americans and Europeans who had worked within the NTA framework, as well as analysis of documents in the Commission's own NTA archives. The team was tasked with judging which side was the driving force in exchanges on specific issues, what the nature of such exchanges was, and how often (and how much) objectives set out in the Joint Action Plan or agreed in the subsequent ten years had been realized (see Table 1).

Table 1 *The NTA: Results 1995–2005*

<i>'Driving Force' (by Issue)</i>	<i>Nature of Discussions</i>	<i>Achievement of Objectives</i>
US = 39	Promising = 106	Achieved = 76
EU = 32	Conflictual = 62	Partially achieved = 61
Joint = 99	Discontinued = 9	

Source: Peterson et al, *supra* n. 56, 19.

By no means could the NTA be deemed a failure. Its policy agenda was not dominated by either side, conflict was not avoided but most discussions were 'promising', and goals were met – wholly or at least partially – the vast majority of time. Still, the study unearthed clear evidence that the US and EU remained a very long way short of having achieved perfect information or perfect attention. The NTA was exposed as mostly a bureaucratic exercise to which very little political impetus was given. What happened at bilateral summits was that the summiteers deigned to adopt so-called 'deliverables', or laundry lists of achievements. Most tended to be low-profile and/or technical, with some (certainly not all) pretty unimportant. The crux of the problem was revealed in 2010 when the Spanish Prime Minister set to host an NTA summit learned via media reports that Obama did not plan to attend the summit as

⁵⁶ The present author led the team that delivered this report. See J. Peterson, F. Burwell, R. Doherty, R. Epstein, M. A. Pollack, J. P. Quinlan, M. Van Custem, A. Young & H. Wallace, *Review of the Framework for Relations Between the European Union and United States* (European Commission 2005).

(according to the US President's advisors) he had not found previous NTA summits to be useful.⁵⁷

As such, the authors of the Commission study were asked for recommendations based on 'blue sky thinking' about how US-EU relations could be reinvigorated and given a higher public profile. One suggestion was that a public awareness campaign could be run in the US with the theme 'We are the European Union', stressing how the EU brought together a diverse set of states and peoples and languages, with particular emphasis placed on European states with large US émigré communities such as Italy, Ireland and Poland.⁵⁸ One specific suggested theme in such a campaign was the EU's claim to the world's only directly elected multinational parliament (something of which surely a vast majority of Americans were unaware). And that the EU was active on multiple fronts that mattered to the US, including climate change, counterterrorism, peacekeeping, and so on.

Another suggestion was to revive an idea associated with US President John F. Kennedy. Symbolically, on US Independence Day (4 July 1962), Kennedy travelled to Philadelphia to propose that a Declaration of Interdependence be agreed and signed with what was then the European Economic Community. Of course, at the time, the Community remained a very long way away from being able to have any genuinely bilateral relationship with the US. Now, however, with the 45th anniversary of Kennedy's initiative approaching, a relaunch of the proposal and rechristening of the NTA as a Transatlantic Strategic Dialogue, could both catch headlines and highlight the enhanced and still-emerging maturity of the EU.

Why these suggestions were summarily ignored (again) could be debated. Perhaps the Commission remained too weak to push for them? Or EU Member States – particularly its largest ones – were far more concerned with their national public profiles in the US? Or could it simply be that 'blue skies thinking' rarely leads to practical results? Far less prone to dispute were two essential facts about the US-EU relationship. First, awareness of the Union, what it does and why it matters was far too low in the US (and possibly in Europe itself) for the relationship to be one between 'equal partners'. Second, the NTA was by no estimation a truly strategic dialogue, or one that prioritized political time and space at the highest levels to seek agreement on common goals and actions on major global issues, such as Syria, counterterrorism, human development, Russia or China.

Reasonable people might disagree on the extent to which the US and EU, even acting jointly, are powerful enough to effect positive change on these and other international problems. By one view, the West's power in IR – together or alone –

⁵⁷ M. Smith & R. Steffenson, *The EU and the United States*, in *International Relations and the European Union* in Hill, Smith, Vanhoonaeker, *supra* n.42.

⁵⁸ Peterson et al, *supra* n. 56, at 68–69.

has diminished since the 1990s, to the point where the US and Europe now must often partner beyond their instinctive, cosy pairing with each other. But there are considerably more shades of grey to the new, multipolar international order of the mid-2010s than is often acknowledged. And there is no question that TTIP offers an opportunity to shift the US and EU towards truly strategic thinking and action.

The nuance that is missing from most accounts that insist (with justification) that we now live in a more multipolar world is that polarity is highly differentiated between different policy arenas. To illustrate, unassailable American military power means that in the security/defence arena, the world could be viewed as essentially unipolar (leaving aside, perhaps, the South China sea or post-Soviet space). In the environmental arena, we find a hyper-multipolarity: there is little hope of tackling global warming without efforts from increasingly large polluters such as India and China. In the economic arena, one can accept that emerging powers represent new poles of power but still conclude that the US and EU retain the bipolar heft to write global rules. First, working drafts of those rules can be written in the TTIP negotiations.

Of course, the clock is ticking. The privileged position of the West is probably eroding. But TTIP has the potential to make the US-European relationship far more strategic – capable of defining and pursuing goals collectively – and in an area of IR where they have far more common or at least overlapping interests than either side shares with any other major power. An ambitious agreement on TTIP, once agreed, could be ‘exported’ to the multilateral level in such a way that it not only disseminates rules but also values such as the rule of law (for example in intellectual property), cybersecurity, workers’ rights, and environmental protection. In particular, if Europe is serious about being a normative power, it has an opportunity to become one that is recognized as such via TTIP, especially if it can then coax the US towards acting jointly and strategically in global economic policy in ways that could spill over into other areas where future global governance arrangements are yet to be constructed. Europe’s best chance of being a truly global power is to embrace the US strategically in the economic sphere via TTIP, and to do so via the EU. It is hard to see such an opportunity coming again anytime soon.

6 CONCLUSION

So many fundamental questions were still to be resolved in the TTIP negotiations three years after they were launched as to put the stated intention to sign a draft agreement before Obama left office in early 2017 into serious doubt. It also seemed that any final agreement ‘would probably be less detailed’ than hoped for by TTIP supporters,⁵⁹ especially given that the benefits of regulatory cooperation could be

⁵⁹ Fabry, *supra* n. 22.

realized only after exchanges between US and EU regulators over the course of years. In this context, it remained unclear whether negotiators in Washington appreciated how likely it was that designating key parts of a TTIP deal as ‘living agreements’ to continue discussions after the pact was signed would lead to discussions that dragged on unremittingly. For the process-addicted EU, simply to agree to more process frequently was seen as a good in itself. Yet, it was also possible to identify three broad effects that TTIP had already had on Europe.

One is that the EU, characteristically, was caught almost entirely off guard by the strength and depth of the European anti-TTIP movement. Still, the Commission (eventually) responded with a new commitment to transparency in its trade negotiations generally and the creation of an advisory group to share confidential information with European stakeholders on TTIP specifically.⁶⁰ Here, Malmström’s own imprint was visible, which contrasted with De Gucht’s typically blunt, (Belgian) Flemish political messaging to the effect that ‘TTIP will create a lot of jobs and growth. What else do you need to know?’ Clearly, the EU has been late to appreciate its need to rebut the argument that it must ‘choose Europe’ or become Americanized by choosing TTIP. But, of all the possible candidates, Malmström appeared something close to the EU’s best choice as a political figure who could sell TTIP in the face of such deep-rooted hostility.

Second, the EU has been forced to confront how little has come of its ambitions to be a strategic partner to other major players in IR. In fairness, this result can largely be put down to how much more complicated international politics have become since the EU’s days in the sun just after the Cold War ended. At that point, its magnetism and ‘soft power’ became widely appreciated and admired, including in Washington. Since then, it has lost much of its sheen in the eyes of the world, especially given multiple crises that have sapped political time and attention and which – in several cases (including BREXIT) – appeared to be of the EU’s own making.

In this political context, TTIP offers the chance for the EU to embrace a ‘history-making’ decision⁶¹ that could alter both international and European perceptions of its value. Moreover, TTIP has the potential to change much about the way the EU operates internally – especially how it regulates its internal market – as well as how it relates to the rest of the world. But whether the Union has the ability to unite all of its very disparate internal factions to embrace a truly ambitious deal with the US remains in doubt.

Finally, TTIP has forced EU states to decide what value they place on their alliance with America. The rise of emerging powers such as China and India, and

⁶⁰ Schweinfurth, *The TTIP as the Engine of Growth*, in Khorana, *supra* n. 15, at 34.

⁶¹ See J. Peterson & E. Bomberg, *Decision-Making in the European Union* (Palgrave Macmillan 1999).

the aggressive militarism of Russia, create new incentives to embrace transatlantic solidarity. But a multipolar world also makes it tempting to seek alliances on an issue-by-issue, ad hoc basis. TTIP offers a once-in-a-lifetime opportunity to choose transatlantic solidarity, yet in a way that deepens Europe's own cohesion in pursuit of desperately needed (especially for European youths) economic gains. The choice between TTIP and Europe is a false one. For the EU, proving as much will mean overcoming numerous and daunting obstacles. If it fails, it will just add another crisis to its already long list.