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The Transatlantic Trade and Investment Partnership

Introduction

The Transatlantic Trade and Investment Partnership ("**TTIP**") is a proposed trade and investment agreement that has been and remains the subject of negotiations between the European Commission and the United States since July 2013. TTIP envisages the creation of a common commercial environment between the two blocs leading to considerable joint economic benefits, as well as reinforcing well-established links between the EU and the US.

TTIP remains a work in progress, having recently concluded its 13th round of negotiations on 29th April, 2016 and it must be noted that it faces considerable opposition from many quarters.

Although we have sought to summarise its main aims below, many of its proposals have faced considerable criticism as has the lack of transparency around the negotiation process. There is a general lack of visibility of what the overall impact of the partnership would be and how it would affect, from a practical perspective, EU citizens, different business sectors and other stakeholders across the EU.

What does TTIP aim to do?

TTIP aims to strengthen the multilateral trading and investment system between the EU and the US through harmonised regulation, the reduction of customs tariffs, the provision of enhanced protection for investors and the opening up of new business opportunities in, for example, the services sector. The European Commission estimates

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that the formulating of a deal on TTIP could boost the economy of the EU by up over €100 billion per year.

Negotiation of TTIP is a large-scale and complex process. If agreed, it would be the most comprehensive trade agreement of its kind; it is estimated that it would affect approximately one quarter of all global trade.

In this note we discuss the key elements of the TTIP discussions, the arguments that are being made for and against TTIP, its potential impact on Irish businesses, and the status and development of negotiations.

Areas of Application

It is expected that TTIP will be broken down into four primary areas, as follows:

(i) Market Access

TTIP aims to facilitate enhanced market access by promoting trade and tackling customs duties and barriers to services exports. In addition, it is hoped that it may open up public procurement markets and help the EU and the US to agree rules of origin to determine the products that will benefit from TTIP.

(ii) Trade Rules To Address Common Global Challenges

It is hoped that an agreement can be reached that would provide an effective and efficient means of resolving any trade disputes between the EU and the US. Further measures contemplated include the promotion of the protection of workers' rights and rules aimed at preventing abuse of market power.

(iii) Investment Protection

Another one of the measures proposed is a framework for foreign investors to bring claims directly against EU Member States and the US by means of a separate arbitration process, rather than using the domestic legal system. It is argued that this would provide investors with greater certainty that their claims would be heard in an impartial manner and this would be supported by the adoption of agreed interpretations of the investment provisions of TTIP which would be binding on arbitration bodies. The proposals also provide for an appeals process to allow for the review of arbitral decisions. However, this proposal has caused controversy as some EU Member States do not have bilateral investment treaties with the US, with the result that they would become subject to claims that they would not have otherwise been exposed to.

(iv) Regulatory Convergence

TTIP envisages greater coordination between the EU and the US, with the aim of streamlining the technical requirements for products and access to information on the regulations pertaining to those products. In addition, there is a push for sector specific initiatives for particular industries, including pharmaceuticals, information and communications technology, agri-business and engineering.

The Benefits of TTIP

A study undertaken by the Centre for Economic Policy Research in London ("**CEPR**"), entitled "*Reducing Transatlantic Barriers to Trade and Investment: an Economic Assessment*"[1], has highlighted potentially significant economic advantages for the EU as a result of TTIP. It forecasts that EU exports to the US could increase by 28% or €187 billion per annum, as a result of the partnership. Currently, EU firms pay over €3.5 billion a year in customs tariffs when exporting to the US - the streamlining of customs rules and controls, as well as eliminating direct additional costs, might avoid unnecessary bureaucracy for exporters.

The CEPR report also concluded that a comprehensive agreement targeting both tariffs and non-tariff barriers could result in annual gains of up to €119 billion for the EU as a whole and up to €95 billion for the US. The introduction of harmonised regulations and standards should, it is hoped, result in substantial savings for businesses, in job creation and overall better value for consumers.

Additionally, TTIP's advocates indicate that it is expected to result in an expansion of trade between the EU other third countries as a result of increased demand for example, for raw materials and other goods. Exports of metal products to the rest of the world are predicted to increase by 12%, chemical exports by 9%, exports of processed foods by 9% and exports of other manufactured goods and transport equipment by 6%. TTIP is also projected to benefit SMEs, in increased exports as well as more demand from larger companies for their goods and services.

TTIPing Point?

Many stakeholders have however expressed criticism at several elements of the draft agreement and the lack of transparency around the negotiation process. Certain opponents say that there is no evidence that TTIP will actually cut the cost of products and that as such, it is impossible to quantify the likely financial benefit of the deal, if any.

The concept of regulatory co-operation is also the subject of much criticism, with opponents arguing that an international trade deal is not the appropriate forum for binding regulatory rules to be agreed as they are not subject to national democratic scrutiny.

It must also be noted that concerns have been raised by various groups as to what they see as consequences of TTIP, such as the weakening of food quality standards and consumer protection

[1] http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf

legislation, the erosion of employee rights, increased pressure on countries to allow high-risk technologies such as fracking or GM technology and the privatisation of important public utilities.

Potential Implications for Ireland

Ireland is a very open economy with significant trade with the US, the UK and EU (ex UK).

A report by Copenhagen Economics[2] predicted that that TTIP would have an "*overall very positive impact on the Irish economy*"; improving our trade balance by circa €2.4 billion and resulting in investment increasing to a level 1.5% above what it would be without the agreement. According to certain projections, if Ireland benefited in proportion to the size of our economy, TTIP should provide us in the region of €800 million per annum in increased GDP, as well as potentially adding thousands of new jobs to the economy.

The report by Copenhagen Economics also found that although TTIP would lead to growth across a range of industries; the main sectors that would benefit would be pharmaceuticals and chemicals, electrical and other machinery, agri-food (notably dairy and processed food) and insurance.

Conclusion

The original TTIP timeframe envisaged agreement being reached by the end of 2014. Currently, it appears unlikely that a deal will be reached this year and a recent leak of confidential documentation[3] in respect of the negotiations has caused somewhat of an outcry from particular quarters, with critics alleging that the deal poses risks for EU environmental protections, consumer rights, internet privacy and public health. In addition, over the course of the last week, it has been reported that TTIP has faced further increased pressure, with German Agriculture Minister Christian Schmidt contending that the US is failing to make *'any serious concessions'*[4] in the negotiation process.

Therefore, despite extensive talks, given the ambitious objectives and the multiple sectors affected, there is still much ground to be covered before the political momentum generated by the rounds of negotiations is actually translated into a practical, workable outcome that is acceptable to both sides. In addition, if or when the negotiations are concluded, agreement on the final text of the partnership could take up to a year. TTIP would thereafter need to be ratified by the national parliaments of all 28 Member States of the EU (or 27 Member States in the case of a Brexit; see Dillon Eustace's recent article "Brexit – an Irish Perspective") before coming into force. Given the level of concern expressed to date by many EU commentators in relation to certain of the proposed terms of the partnership, it is likely that securing approval in each individual Member State would prove a challenging exercise in diplomacy.

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[2] "*TTIP impact in Ireland*" – report by Copenhagen Economics for the Irish Department of Jobs, Enterprise and Innovation, February 2015.
[3] http://www.greenpeace.org/international/en/press/releases/2016/Greenpeace-Netherlands-releases-TTIP-documents/
4 http://www.independent.co.uk/news/world/europe/ttip-trade-deal-under-threat-due-after-germany-claims-us-not-making-any-serious-concessions-a7019291.html

How can Dillon Eustace Help?

TTIP, if agreed, would likely require adjustments across all industry sectors and particularly for those businesses that are most exposed to international competition.

Please contact the authors of this briefing note or your usual Dillon Eustace contact if you have any queries on or concerns in respect of TTIP, or if you would like more information on the potential implications that it may have for your business and the sector in which you operate.

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