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TIMOTHY HOFFMAN

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DR. LARS HÄNSEL

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Talking TTIP at the Atlantic Council

RECENT EVENTS AND THE PROSPECTS OF TTIP

On June 29, 2016, the Atlantic Council hosted an event on the progress of the Transatlantic Trade and Investment Partnership (TTIP) with European Trade Commissioner Cecilia Malmström. Despite widespread uncertainty on the future of the deal in light of Brexit and the upcoming elections in the United States, Malmström strongly reaffirmed the United States' and the European Union's commitment to finishing TTIP negotiations by the end of President Barack Obama's term. In addition to a speech from Malmström, a panel discussion was held featuring President of the AFL-CIO Richard Trumka and President of Global Public Affairs at UPS Laura Lane.

Reaffirmation of European Trade Objectives

Commissioner Malmström cited the commitment of both sides as well as the enduring economic and political rationale as reasons to be optimistic for a deal by the end of 2016. She referenced her recent meeting with United States Trade Representative Michael Froman, in which they both agreed that the political and economic reasons for enacting TTIP remain the same despite Brexit and other circumstances. The two top trade representatives also agreed to continue negotiations with the goal of completing them by January 19, 2017 (the end of the Obama administration's last term).

Due to the timing of the talk (only six days after the United Kingdom decided to leave the European Union in the Brexit referendum), there was much speculation on the future and possibility of TTIP. Malmström addressed these concerns by noting that the referendum has legally changed nothing,

and that the United Kingdom is still part of the European Union. She stated that the European Commission is conducting "business as usual," and that a recent European Council meeting with all 28 heads of state (including England) had agreed to continue the preexisting trade agenda of the European Union. However, she did admit to a degree of uncertainty as to the future of the UK and TTIP, pointing out that the new relationship between Britain and the European Union will have to be decided and defined by the next Prime Minister.

Other challenges ahead

While much progress has been made over the course of thirteen rounds of negotiation in the last three years, Malmström and the panel participants agreed that there is still considerable work to be done.

One of the largest problems facing TTIP is

popular opinion. TTIP has encountered considerable opposition from the European public, and although the United States is more concerned with the Trans-Pacific Partnership (TPP), trade deals are becoming a larger issue in the presidential election. Both major presidential candidates are opposed to the TPP, which could have negative consequences on the future of TTIP. Malmström acknowledged this issue, and outlined the European Commission's plan to engage with the public by changing the approach to negotiating trade deals and highlighting the economic opportunities that TTIP will create. She highlighted the commission's unprecedented transparency in releasing thousands of documents from European proposals online, and the consensus among negotiators that removing regulatory

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practices and undermining national sovereignty is not an objective of the deal. However, during the panel discussion Richard Trumpka pointed out that the United States has not granted the same transparency to its proposals for the deal. He added that this lack of transparency combined with an emerging strong opposition to free trade agreements in the United States could lead to considerable opposition to TTIP among the working and middle class.

In terms of actual negotiations, there are still disagreements between the United States and the European Union on issues concerning market access and global rules. Malmström pointed to public procurement as a particular area of contention within the context of market access. Firms in the United States have the same access to public procurement opportunities as European firms do within the European Union, and the EU is expecting the same treatments for European companies in the United States. The EU wants a "level playing field" for European businesses when competing with American businesses for contracts with the American government (on both federal and state levels). Another issue that is still being worked out is the protection of geographical indications. Furthermore, the United States is reluctant to accept stricter regulation on its use of European geographical indications for marketing purposes, while the EU continues to affirm that these indications should enjoy the same protection as all other forms of intellectual property. In addition to technical points of contention in the deal, many European countries, in particular France, are becoming increasingly frustrated with the American government's slow response and lack of compromise on these issues.

Along with the friction between the United States and the European Union in negotiations, both governments have experienced strong opposition from labor groups and the far left on the home front. One of the most controversial parts of the deal is the ISDS, an international court system that would be set up to protect foreign investment through dispute settlements between governments and businesses. This is a particularly sensitive issue for labor, and has raised concern on both sides of the political spectrum. Commissioner Malmström maintained that the ISDS is vital to the protection of foreign investment, which by nature is more vulnerable than its domestic counterpart. She also pointed out that the EU has proposed serious reforms to the clause

that protect a country's right to regulate. However, Trumpka raised the point that both the US and the EU already have advanced court systems in place that are equipped to deal with these issues, eliminating the need for the ISDS. He also warned that the loose standard of "fair and equitable treatment" would allow major corporations to sue governments for regulations that result in a loss of profit. This could act as a disincentive for regulations that aim to protect public health or the environment, and undermine national sovereignty. Trumpka, who is one of the most prominent voices of labor in America, is joined in opposition to ISDS clauses by many high-profile figures in the United States, from Democratic Senators Bernie Sanders and Elizabeth Warren to economists Joseph Stiglitz and Robert Reich. Malmström responded that there are nearly 1,500 bilateral investment treaties currently affiliated with the EU, and that they are in desperate need of reform and harmonization. An improved ISDS that guarantees protections could address these issues while establishing a better standard for future ISDS clauses. She also added that since ISDS provisions are in the final version of TPP, they must be allowed in TTIP to guarantee European companies and investors the same protections that TPP countries would enjoy.

A final concern for the deal is the timeline. Both sides have expressed their commitment to concluding negotiations by the time President Obama leaves office in Mid-January, leaving negotiators only 7 months to conclude the deal. With negotiation rounds taking place for four days every one to three months, some are concerned that there is not sufficient time to address the great number of challenges facing the deal. If the deadline is not met, experts predict that negotiations may become much more complicated and difficult due to a new administration in the United States and other upcoming elections in Europe.

What to expect in the future

With a rapidly changing geopolitical landscape in both the United States and the European Union, Commissioner Malmström and panel participants discussed at length how quickly changing circumstances could affect the deal.

Throughout multiple questions from panel moderator Joe Schatz (Editor of Politico Pro's Europe Brief) and other members of

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the press on the UK, Malmström repeatedly stated that the world will have to wait before it can fully grasp the consequences of Brexit. While the European Commission is currently maintaining its preexisting trade agenda, she conceded that the results of the upcoming election for a new British Prime Minister and the triggering of Article 50 could potentially impact the trade agenda and negotiation dynamics.

Richard Trumpka noted that the more the US and the EU push for a conclusion of negotiations by January, the more likely it is for TTIP to become an issue of the presidential election, which Trumpka warned "we may not like the results of." Both major presidential candidates have expressed skepticism towards international free trade agreements, and Trumpka suggested that there could be significant increase in anti-free trade rhetoric in the United States if it becomes more of an issue during the election.

In one of the more interesting comments of the day, Malmström and Trumpka responded positively to the suggestion of the NAFTA countries joining TTIP negotiations. After an Atlantic Council board member referenced the discussion among North American Leaders' Summit in Ottawa on potentially joining TTIP, Trumpka stated that he strongly supports any kind of renegotiation or reevaluation of NAFTA, while Malmström suggested that because TTIP is designed as an open platform, it would be a good idea to the include countries like Canada, Mexico, Norway, Turkey, or even the UK should it choose to trigger Article 50.