The German Marshall Fund of the United States
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Through the Trans-Atlantic Energy Action Project, The Lugar Center (TLC) and the German Marshall Fund of the United States (GMF) joined with the Center on Global Energy Policy at Columbia University to produce the paper "Considerations for the Treatment of Energy in the US-EU Transatlantic Trade and Investment Partnership" which was launched during the project’s fifth event.

Neil Brown, a founding board member of The Lugar Center, moderated the discussion, held under Chatham House rules, which featured Keith Benes, the paper’s author and a Fellow at the Center on Global Energy Policy; Dan Mullaney, Assistant United States Trade Representative for Europe and the Middle East; and Doug Hengel, Senior Resident Fellow at GMF. Former U.S. Senator Richard G. Lugar joined ambassadors, embassy officials, and Congressional and think tank staff members for this roundtable discussion. Participants discussed security and strategy aspects of TTIP as well as climate opportunities. The discussion centered on understanding how a legally-binding agreement on trade rules could enhance trans-Atlantic energy security.

View pictures from the event here and read the full paper here.

Read the paper’s Executive Summary below:

While the negotiations between the United States and the European Union for the Transatlantic Trade and Investment Partnership (TTIP) have not received as much US press attention as the proposed US-Pacific basin TransPacific Partnership (TTP) has, the two deals are of a similar magnitude and importance in terms of total global GDP and trade potentially at issue.

One key issue that has emerged from the TTIP negotiations is a disagreement over whether to include a separate chapter on energy. The European Union favors such a chapter, in hopes it would help it secure access to increasing production of US oil and natural gas and potentially serve as a set of model trade-in-energy provisions that would help in negotiations with other countries, particularly those to its East. Highly dependent on Russian oil and natural gas, the EU has been looking for ways to diversify its supply base. The United States has not outright opposed such a chapter, but has indicated
skepticism that it is necessary.

The dynamics of the negotiation put both sides in potential unusual positions. The United States, long a champion of removing export barriers in energy goods and of the European Union diversifying its energy supplies, has to wrestle with restrictions on crude oil exports and the potential strong domestic political opposition to relaxing them. The European Union, which supports alternative energy sources and reducing fossil fuel consumption, faces becoming entangled in the environmental controversies around the rapidly expanding oil and gas production in North America – including hydraulic fracturing and the exploitation of the Canadian oil sands.

This paper provides background on how the existing global and regional trade regime applies to energy for policy-makers and TTIP negotiators. In short, it finds:

• There are no energy-specific provisions in the WTO agreements but this does not mean energy is not covered by the WTO. The general WTO provisions apply to trade in energy goods and services. There are a limited number of Free Trade Agreements (FTAs) with energy-specific chapters, and both the United States and the European Union are party to such agreements.

• The EU’s insistence on an energy chapter with an ally that is a potential exporter of oil and natural gas is similar to past United States positions where Washington insisted on separate energy chapters in its FTAs with neighbor countries that are large oil exporters to the United States.

• The EU has identified a list of energy-specific provisions for consideration in TTIP covering issues on which it often shares a common position with the United States. However, that does not mean that all identified issues are appropriate to include in TTIP.

• To determine what energy-specific provisions should be in TTIP, the United States and the European Union should consider whether a provision is necessary to improve the transatlantic trade relationship; how likely it is that a provision will be influential as a model provision; and the potential unintended consequences of including a provision in TTIP.

• Whether to consolidate any energy-specific provisions in a separate chapter on energy can have political or symbolic importance, but does not alter the substance or legal impact of the individual provisions. In the NAFTA negotiations, the United States arguably achieved its biggest negotiating success regarding energy (opening up Mexico’s contracting process for PEMEX and the state electricity provider to foreign companies) in the government procurement chapter.

• The most significant risk is entangling TTIP approval in additional, politically contentious issues, such as crude oil exports, and sensitive environmental issues, such as the exploitation of Canadian oil sands.
• Including provisions in a treaty can help establish model rules or norms for future negotiations, but there are reasons to be cautious about how much influence the proposed EU provisions might have in the future for two reasons. First, some potential future negotiating partners are highly resistant to influence from international norms. Second, provisions included in TTIP that do not have any real impact on the trade relationship are likely to be less influential in the future.

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