



CIVIL SOCIETY DIALOGUE

**TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP) –
FIFTH NEGOTIATION ROUND**

Date: 3/06/2014

Time: 10.00-12.00

Location: Charlemagne Building, room Alcide de Gasperi, Rue de la Loi 170, Brussels

Lead speakers

Mr Damien Levie (DL), EU Deputy Chief Negotiator for the TTIP, Head of Unit USA and Canada, Directorate-General for Trade

Mr John Clarke (JAC), Director, International Bilateral Relations, Directorate-General for Agriculture and Rural Development

Ms Monika Hencsey (MH), Head of Unit, Trade and Sustainable Development, Generalized System of Preferences, Directorate-General for Trade

Mr Leopoldo Rubinacci (LR), Head of Unit Investment, Directorate-General for Trade

Mr Petros Sourmelis (PS), Head of Unit, Market Access, Industry, Energy & Raw Materials

Mr Marco Dueerkop (MD), Deputy Head of Unit Services, Directorate-General for Trade

Mr Pedro Velasco Martins (PVM), Deputy Head of Unit Intellectual Property and Public Procurement, Directorate-General for Trade

Mr Ulrich Weigl (UW), Deputy Head of Unit Agriculture, Fisheries, Sanitary & Phytosanitary Market Access, Biotechnology, Directorate-General for Trade

Ms Ivone Kaizeler (IK), Policy Officer, Technical Barriers to Trade, Directorate-General for Trade

Ms Elina Laurinen (EL), Policy Officer, Public Procurement, Directorate-General for Trade

Mr Carsten Schitteck (CS), Policy Officer, Auto motives, Directorate-General for Trade

Ms Martina Lodrant (ML), Policy Officer, SMEs, Directorate-General for Trade

Moderator

Mr Olivier de Laroussilhe (OdL), Head of Unit, Information, Communication and Civil Society Unit, Directorate-General for Trade

Panel Presentation

Commission (OdL) welcomed participants and explained that the session would consist of an update on negotiations and next steps, followed by questions and answers. He added that hosting a Civil Society Dialogue in Brussels after every two negotiation rounds has become a well-established habit and the Commission intends to schedule another CSD meeting on TTIP after the seventh round of negotiations.

Commission (DL) updated the room on progress since the last Civil Society Dialogue on the TTIP negotiations. Two more rounds had taken place, one in Brussels from 10 to 14 March 2014, and the fifth round in Washington from 19 to 24 May 2014. It achieved good progress. As per previous rounds, the fifth round was qualified as a technical round; this is usually the case for the first phase of negotiations where detailed sessions of analysis and explanation of each side's current practices, approaches and in some cases ambitions are needed. Negotiators are now moving towards the next phase and increasingly beginning work on a number of topics on the basis of legal texts.

DL then gave a more detailed update across each of the three pillars: market access, the regulatory cluster and rules.

On market access, he informed that summary discussions had taken place on tariff liberalization in goods. Both parties had tabled offers in February 2014 and during the fifth round, clarifications were given on these offers. On services, the US had tabled its first offer that was based on the KORUS agreement's architecture. The services sector discussions in the round encompassed topics such as transport (maritime and aviation), mobility of persons, e-commerce, telecom, professional and distribution services. Financial Services, including regulatory cooperation were also discussed. The agricultural discussions focused on wine and spirits, geographical indications (GIs), non-tariff issues and questions were asked on the new US Farming Bill. As for public procurement, discussions were based on the legal texts which both sides had tabled as well as on identifying how to move forward in exchanging market access offers.

The regulatory cluster is made up of both horizontal and sector issues. In the horizontal part we are still in the conceptual phase. Discussions on coherence during the fifth round focused on how dialogue between regulators could be improved, and how best to involve all relevant stakeholders in this process. There was also an exchange of views on the EU's Impact Assessments (IAs) and US' Cost-Benefit analyses and the way they integrate the impact on international trade. Discussions on sectors continued and in some areas intensified, covering areas such as pharmaceuticals, textiles, cosmetics, chemicals and cars. The Commission has published papers in all these sectors, which are [available to the public](#). In the automotive sector, discussions focused on future and existing safety rules. In pharmaceuticals, both sides are ready to explore reliance on each other's inspections and to check compliance with good manufacturing practices. On SPS, negotiators considered what disciplines could be developed

and what institutional framework will be appropriate. Discussions were opened in the engineering sector.

Various topics under rules were also discussed. Intellectual property discussions focussed on identifying joint common interests and GIs. The EU has also continued to stress the importance of an energy and raw materials chapter. During discussions on sustainable development and labour, both sides reaffirmed their commitment to incorporate ambitious provisions in the chapter. More product specific discussions will be broached in the Rules of Origin discussions in July's round. On Customs and Trade Facilitation (CTF), ways to go beyond existing WTO Bali Agreement were discussed. Texts have been tabled in discussions on SMEs and in order to benefit SMEs, the possibilities to develop Export Helpdesk's at both sides are being explored.

In terms of outreach, it was recalled that stakeholder events and Chief Negotiators briefings have been organised during all the rounds. During the stakeholder event of the latest round, 75 presentations were made by EU and US stakeholders and negotiators of both sides and stakeholders had the opportunity to exchange views in a separate event. Moreover, a public consultation on ISDS is ongoing and contributions can be made until 6th July. The Commission will analyse the results of this consultation. Moreover, an Advisory Group has been established that has already met three times and the agendas and minutes of the Group's meetings are publicly available at <http://ec.europa.eu/trade/policy/in-focus/ttip/resources/>.

The exact dates of the next round in July in Brussels have not yet been set, but it will probably take place during the second or third week. The seventh round will be organized in Washington, either by the end of September or beginning of October. After that, Commissioner De Gucht and his counterpart, the US Trade Representative Michael Froman, will be meeting in October to review progress, during the so-called political stocktaking.

Discussion Highlights / Questions and Replies

The meeting was then opened to the floor for general questions and remarks.

Federation of German Industries was especially interested in horizontal cooperation under TTIP and wondered what the state of play of the Regulatory Cooperation Council (RCC) is at the moment and US position in this regard. Moreover, he asked the Commission to elaborate on the content and timeframe of the EU's services offer.

The **Commission (DL)** responded that creating jobs and growth is the underlying ground for TTIP negotiations and an institutional framework is necessary to ensure enhanced cooperation between regulators on both sides. We did not have detailed discussions on the set up of a RCC. A RCC is novel for the EU, but US has already founded RCCs with Canada and Mexico. **MD** added that the Commission is preparing its services offer together with Member States and hopes to table it the coming weeks. The offer will be based on the hybrid TISA model, which uses positive listing on Market Access and negative listing for national treatment.

The **European Generics Association** said to be happy with the progress made in Good Manufacturing Practices and asked whether a similar progress have been made as it relates to biosimilars.

The **Commission (IK)** said that discussions on generics were separated from those on biosimilars.

EuroCommerce asked the Commission to outline how e-commerce is dealt with in TTIP and how much progress can be achieved in this field. Moreover, she asked for an insight in how Trade and Customs Facilitation will go beyond the Bali Agreement.

The **Commission (MD)** explained that e-commerce and distribution are important issues of the services negotiations. During the fifth round, e-commerce, including consumer protection, was extensively discussed. With regard to distribution services, the US explained their general interests in this area, with a focus on classical issues such as product exclusions , nationality restrictions or , economic need tests and new issues such as teleshopping or direct selling. We need to explore how these special areas are currently covered in GATS and how this can be placed in TTIP. We also asked the US a number of questions on their proposal of data flows. **DL** added that CTF discussions involve assessment of mutual risk management, shipping, penalties, appeals on customs decisions and sharing data required by customs on both sides.

The **Transatlantic Consumer Dialogue** asked how access to medicines and protection of IPR are reflected in TTIP. For example, copyrights and intermediary responsibility would have effect on internet operators. She noted that the CETA addresses the question of implementation certificates and asked whether the EU would propose a similar approach in TTIP? Moreover what is proposed on transparency, clinical trial regulation and trade secrets?

The Commission (PVM) explained that the Commission asked Canada to use implementation certificates, since Canada did not make use of it. However, in US such a system already exists, so we do not see a need to negotiate this supplementary protection in TTIP. Trade secrets are an important issue, both USA and EU are currently addressing this issue via domestic regulation, whereby the US is harmonizing trade secrets at federal level, and we agreed that domestic regulation is the principal way to cope with this issue.

European Chemical Industry Council (CEFIC) proposed, with regard to Rules of Origin, to radically change the way we work with product listing and to adopt a much more flexible approach which could also be used for future FTAs.

The **Centre National de Cooperation au Développement Belgium (CNCD)** asked the Commission to confirm that ISDS provisions are incorporated in the soon to be closed CETA and to what extent the TTIP public consultation will influence negotiations with Canada.

Commission (DL) said that the negotiations on CETA are not yet finished, neither does the Commission expect to conclude this week, although we hope to finish as soon as possible. The ISDS public consultation for TTIP is ongoing and is separated from negotiations with Canada.

Confédération des Syndicats Chrétiens (CSC) expressed its concern that the US seemed interested in opening up EU market for public services, as health and education. Moreover, he asked if there is any ambition from the EU to strive for more than just practical implementation of ratification of ILO conventions by both sides and to aim for further ratifications in the future.

The Commission (MD) said that the Commission is well aware of the sensitivity of public services in free trade negotiations and noted that this specific topic has not yet been discussed. He reassured that we are guided by the Treaty, which gives a special status to public services or the so-called services of general economic interests. We are also guided by our past practices. We have a broad horizontal reservation which safeguards our policy on public services in a wide range of sectors and beyond that; we have specific reservations with regard to sensitive sectors as public health, water, education in other FTAs in force. The US has a similar number of sensitivities in this area and use a similar approach in their FTAs, as happened for example in KORUS. **MH** repeated that both sides are intending to draw an ambitious chapter for sustainable development and labour. During the fifth round, we worked further in areas of common interests and the four core labour standards (freedom of association, right to collective bargaining; the elimination of forced labour and the abolition of

child labour), are part of this. For example, forced labour has always been focused on state actors, but via TTIP we hope to also address corporate responsibility. The EU has ratified all 8 fundamental ILO conventions and is, as member to ILO committed to endeavour further ratification. This will mean that the EU strives for further ratification by the US and meanwhile, it imposes an obligation to ratify more agreements ourselves.

European Economic and Social Committee members (**EESC**) mentioned that the US Republicans have indicated that ILO ratification is a breaking point. He further asked the Commission to elaborate and specify other breaking points and differences between the parties that go beyond the differences in architecture of the chapter.

The **Commission (MH)** responded that examples from the past illustrated the many commonalities, but also the many differences between the parties. The EU aims to go beyond the depth and scope of previous FTAs and therefore, it has for instance used thematic articles on biodiversity, forest and fisheries.

CNCD noted that the US and EU have different approaches when it comes down to enforcement of sustainable development and labour provisions. For example, the US uses trade sanctions and asked what the EU's approach is towards enforcement.

The **Commission (MH)** answered that discussions have so far focused on substantive provisions rather than on enforcement mechanisms. The US has indeed a system in its agreements that extend dispute settlement provisions to SD chapters, but our views diverge as regards the effectiveness of this enforcement tool.

CSC asked whether he had understood correctly that the Commission was striving for the practical implementation of joint ratified core ILO conventions only and thereby, leaving out those non-ratified. He declared that he would regret this lack of ambition if that would be the case.

With regard to implementation of ratified ILO conventions, the **Commission (MH)** affirmed that implementation of those would be the first step, but that a chapter would certainly include language on further ratification. The US has referred to 1995 ILO Agreement in previous FTAs. We do believe that we can come up with commitments, irrespective whether all conventions have been ratified.

The **British Agriculture Bureau** was interested in the differences in standards regarding plant protections, organic foods and asked whether the GMO approval process will be affected by TTIP.

The **Commission (JAC)** said that TTIP does not focus on the discussion on organics, as this already takes place within bilateral discussions.

European Dairy Association noted that the EU made an ambitious tariff offer in goods, whereas the US offer seems to be less ambitious and wondered whether the EU would table a revised offer. Moreover she asked the Commission whether the EU's import quotas will be revised due to TTIP, as the US seems to push for this.

The **Commission (DL)** answered that we expect the US to match our tariff offer. This means that a second offer will eventually be presented, but we are not yet in that stage. **JAC** added that we did not have any discussions yet with US on quotas.

FoodDrinkEurope asked the Commission to give an update on SPS issues and to highlight the relevant SPS issues for the food and drink industry.

The **Commission (UW)** informed that the 5th round of TTIP negotiations with the US continued work that has already started since the 1st round in July 2013, i.e. to exchange detail on the respective ambition for the SPS chapter. This has been done based on the main items that had been identified for the negotiations. For the EU this is broadly starting from its practice like in the negotiations with Singapore, Central America or Peru/Mexico, though the approach will certainly have to reflect the specifics of negotiating with the US. On this general level, considerable convergence appeared to emerge. At the same time it is clear, that there are areas of divergence that will have to be discussed like animal welfare, the recognition of regionalisation decisions, or the isolated focus that the US may wish to put on science-based decision making. The 5th round discussions took this further in starting to look into certain provisions which both sides used in their past bilateral agreements, like scope, definition of SPS measure, and affirmation of rights and obligations. Also, the US gave a detailed description of the kind of institutional arrangements that it would envision. From an EU perspective, this is premature at this stage and only relevant and useful once the substantive content of the chapter was clear. Meanwhile, the EU is urgently waiting for US to open its market for our beef. It is important to stress that the EU has an offensive agenda on SPS. Our position is laid out in our position papers, published in July 2013. We are very conscious of the needs and difficulties.

European Farmers asked the Commission to give an estimation of the timeframe and to elaborate on the discussion in GIs, since the US seemed to be reluctant to discuss this.

The Commission (JAC) reassured that GIs play a central role in the negotiations with the US and it has been discussed during all five rounds of negotiations. As GIs are of utmost importance, the EU made specific proposals on what we would like to see incorporated and submitted a short-list of European GIs.

Central Union of Agricultural Producers and Forest Owners asked the Commission what the new US Farm Bill would entail and whether it would have any effects on transatlantic trade.

The Commission (JAC) said that the US Farm Bill is a domestic US law, so not be dealt with in TTIP framework. Despite that, we spent a session with US Department of Agriculture in order to understand the content of the Farm Bill and its potential trade distortion effects.

International Confederation of European Beet Growers wanted to know if sugar is part of the list of sensitive products and the rules of origin in agriculture.

On sugar and sensitive products, **the Commission (JAC)** said that it was well aware of the sensitivities of the different agricultural sectors and would take them into consideration when discussing offers.

The **Transatlantic Business Council** wished to know which regulatory agencies had participated in the sector discussions.

The Commission (IK) listed the regulatory agencies present in her negotiation groups, which where the Food and Drugs Administration, FTC, Consumer Protection Agency (CPC), regulators from the chemical sector and relevant environmental agencies. CS added that regulators of NITSHA were present, as well as the Department of Transport, Commerce and USTR.

BusinessEurope asked what the state of play was on discussions related to energy and enquired on a possible opening on the US side.

The **Commission (PS)** explained that discussions took place based on the EU's position paper presented after the first round and the Non-Paper with illustrative examples of possible provisions submitted in the second round. During the last rounds, we explained the rationale for a separate chapter and clarified the ideas contained in these papers. The US has acknowledged the importance of the energy topic and is carefully deliberating on the EU proposals although it is not clear when the US will be ready with its position.

Finance Watch asked whether Financial Services were in or out of TTIP, and in what way the financial services could be affected by ISDS provisions.

The **Commission (MD)** clarified that the discussion on Financial Services consists of two pillars; the classical market access pillar that is included in all FTAs and a novel pillar on regulatory cooperation. The first pillar, on market access, is covered in TTIP and not put into question. The second pillar however, is more complex. The EU has put forward proposals to include regulatory cooperation on financial services as we want to set up a process that may lead to equivalence for certain aspects.

In addition, **CNCD** understood that there is a difference in procedure between CETA and TTIP, but wondered how the credibility of an ISDS chapter in CETA would be affected if many people oppose incorporation of ISDS provisions in TTIP. He thanked the Commission for the exerted transparency in TTIP, but stressed the importance to exert this in other FTAs as well.

The Commission (LR) said that he could not answer questions regarding ISDS as long as the public consultation is running. We will take policy decisions that are in line with the outcome of the consultation. ISDS provisions will only apply to standards of investment protection, the EU does not have a practice of excluding specific economic sectors from ISDS. The public consultation is about the approach to be followed on investment and ISDS in the TTIP.

With regard to CETA, the **Commission (DL)** explained that once CETA is concluded, Member States have the opportunity to review it. After that, a process of legal scrubbing will start and this can take 3-6 months. Once the official text is ready, the text will be translated and be considered by the Council and Parliament.

Eurochambres asked the Commission to elaborate on the issue of mobility of persons. Furthermore, he expressed his approval for the establishment of Export Helpdesks in the SME chapter and was interested in the state of play in this chapter.

The Commission (ML) set out that the SME discussions are based on texts from both sides and the chapter will consist of three main components; various activities to support trading, information sharing and establishment of a dynamic SME Committee. EU and US positions are close in terms of positions and we are confident to reach an agreement soon. One of our objectives is the establishment of a mirroring Export Helpdesk in the US. On mobility, **MD** added that the EU is of the view that this agreement is a unique chance to go beyond classical Mode 4 provisions and potentially cover other issues of relevance to the movement of high skilled professionals, such as e.g. frequent traveller programs or other facilitation measures.

UNIFE showed interest in the state of play in public procurement, to the level of involvement of states, discussions on NTBs and several sectors.

The **Commission (EL)** answered that the ambition begins with the recently revised WTO General Procurement Agreement. The principal goal is to achieve improved market access at all levels of government, including state-level. Within this framework, the discussions do indeed cover also sub-central level procurement. We are also looking at procurement which is funded at federal level, but concretely carried out at state level. When we discuss

procurement at the same time at central as well as sub-central levels, we need to navigate through a broad range of legislation. The Federal level and States have their own legislation in procurement. All public procurement elements are discussed in parallel, but it is a complex process. In line with the objectives set by the High Level Working Group , we insist that relevant state entities must be covered in this process. The US is aware of the EU's expectations on public procurement.

IFPI asked whether the discussions in the services area as well as other elements included in sub-chapters, would be incorporated or subjected to overriding principles in the rules pillar. Moreover, she wanted to verify if data flows are only covered within the services sector or would also covered by other sectors. In relation to this issue, she enquired whether there was an agreement on what the notion of 'data flows' meant to each of the parties.

The **Commission (MD)** responded that it is early to indicate the exact relationship between the services chapter and other chapters, as this is dependent on the overall architecture of the Agreement. Data flows can in principal be covered in the services chapter. The issue of data flows is however a complex and sensitive topic and comprises many facets. So far, we have exchanged views on the topic and the discussions are still evolving. We will develop these ideas further in the coming months.

The **European Trade Union Committee for Education** wanted to know if there were any new developments with regard to education. She reminded the Commission of the earlier submitted suggestion to leave education entirely out of TTIP.

The **Commission (MD)** referred to his previous answer given in relation to the status of public services in TTIP and stressed being aware of the sensitivities of the sector. We do not think that carving out the entire education sector is either warranted or necessary and we are confident that we can safeguard the relevant elements of the education sector with existing means.

Performing Arts Employers' Associations League Europe (Pearle) was concerned with regard to the possible effect of TTIP on preserving cultural activities as, for example, funding of activities via subsidies. Moreover, she wanted to know whether audio visuals were definitely excluded from TTIP. With regard to mobility, she asked the Commission to clarify the revision of the Visa Code, as she understood that this would not be discussed within TTIP.

The **Commission (MD)** said that no discussions on cultural services have taken place so far. We know that for the US audio-visuals are an important topic in TTIP. The Commission is acting in accordance with the mandate received, which excludes audiovisual. However, we cannot prevent the US from asking questions. With regard to subsidies, **MD** stressed that the EU's traditional view on subsidies will remain unaffected by TTIP. He explained that the proposal to renew the Visa Code is proposal from the Commission to the Council and EP. Some elements of that proposal relate to the facilitation of certain procedures which are relevant for the discussions on mobility. The US is closely following developments in this area and asked the EU to explain the proposal.

The **AeroSpace and Defence Industries Association of Europe** asked the Commission to elaborate on the negotiations in Aviation with the US. In addition, the **European Community Shipowners' Associations** asked the Commission to give an insight on discussions on maritime services.

The **Commission (MD)** explained that although aviation is a difficult issue for the US since it is closely linked to questions of national safety, it is an important one for the EU, especially with regard to the ownership and control restrictions in the US. Maritime transport is also a

sensitive issue for the US side. The Jones Act is an old law with very constraining impact for European companies, incl. dredgers. These sectors come also up in the discussions on public procurement. We are in the process of getting a better understanding to see what is possible in this area.

The **European Magazine Media Association** raised concerns on the possible influence TTIP could have on issues such as copyright and fixed prices. She asked the Commission to guarantee that the printing sector would not be negatively affected. Moreover, she enquired on the options to ensure data protection.

The **Commission (MD)** explained that the negotiations did not include discussions on fixed prices and VAT rates. Our assessment is that these issues do not constitute problems under trade agreements.

Aqua Publica Europea asked the Commission to explain whether the discussions on public procurement focus on both works and services concessions. She also wished to follow-up on the previous question and wondered if the US had indicated how sub-federal level would be involved and if this would be comparable to what had been discussed in CETA.

The **Commission (EL)** responded that the discussions with respect to the area of concessions are still in the preliminary phase, but we have clearly stated that we are focussing on commonalities in legislation and practices. As in the EU we have a new Directive which has recently been adopted on concessions, we take this Directive as our legal framework. The Directive covers both works and service concessions with certain limitations. We need to remain within the limits of our system. Regarding the involvement of US federal states, it is clear that the US approach differs from the one the Canadians used. Principally, it is the USTR that engages with the states. Commitments by States and sub-central entities are indeed needed. USTR has had regular phone calls, in order to update the states on the trade agreements they are conducting and to raise awareness. The US is very well aware of the expected commitments at sub-federal level.

The **Quaker Council for European Affairs** asked if a Buy America-waiver will be imposed for TTIP. He mentioned a press release in which the US House of Representatives mentioned to be opposed to such a waiver.

The **Commission (DL)** answered that it is not sure if this standpoint is taken by the House of Representatives or just a related Committee. However, the EU has expressed its concerns towards the revision of this proposed law and wants to make sure that USTR is allowed to include Buy America in the negotiations.