



European
Commission

Transatlantic Trade & Investment Partnership Advisory Group

Meeting report, 23 April 2014

1. Adoption of the agenda

The Chair introduced the agenda and noted items to be discussed under any other business.

2. Update and forward look

The Chair set out the approximate timetable of negotiations for the next six months. Following the fifth round in May, there are likely to be two more rounds before the end of October, and a second political stocktaking between Commissioner De Gucht and US Trade Representative Froman. The Chair also briefly explained the current state of play of the negotiations. To assist the group with their advisory role, as agreed in the last meeting, DG TRADE is working on a state of play document that will list the key negotiating topics and their status.

The following points were raised during this part of the discussion:

- Progress and the political timetable: Members were interested in the impact of the European Parliament elections in May and the US congressional elections in November on the negotiations. The Chair felt that the majority of negotiating topics were not likely to be affected by the political timetable, and the goal for 2014 is to make as much progress as possible at technical level. During the next two rounds, this means advancing to text-based negotiations in all areas. It also means working on the exchange of offers and requests in services and public procurement.
- Access to documents: The Chair confirmed that the group would be able to see EU documents in the secure reading room, which would be open soon.

3. Regulatory cooperation: horizontal and sectoral considerations

Geraldine Emberger explained that the EU's overall objective is to avoid or reduce unnecessary regulatory obstacles to trade by moving towards more compatible regulations, where possible, within our existing systems. The US is interested in stakeholder involvement in the regulatory process, particularly the exact timing and subject matter of consultations. Due to the complexity of the subject, negotiators have so far concentrated on achieving a better mutual understanding of each other's systems. For example, impact assessment and ex-post assessment have been identified as areas of common interest, as has the exchange of information between regulators. Overall, first it is important to stress that this is not about one side adopting the other's system. Second, we are ambitious regarding scope (what regulation is covered), but it needs to be balanced on both sides. Third, the EU and US have agreed and repeated often in

public that neither side will allow its levels of environmental, consumer or health and safety protection to be lowered as a result of the TTIP negotiations.

Klaus Berend elaborated on chemicals, emphasising that mutual recognition of general conditions for placing on the market of chemicals is not an option, underlining the fundamental differences in the US and EU systems in this regard. Consequently, the starting point is to assess potential areas for cooperation within the existing respective legal frameworks. One of these is the prioritisation of chemicals for risk assessment and risk management – with the clear understanding that the Parties’ rights to take regulatory action (or not) for appropriate risk management will remain intact. While the EU often adopts regulatory measures (e.g. actions under REACH), this is not the case at US Federal level. However, in the US many regulatory measures concerning different chemicals and different articles take place at state level. A second area for cooperation is classification and labelling, where there is a direct link with trade. The global UN GHS (Globally Harmonised System) standard is already implemented fully in the EU, but only by one agency, OSHA (Occupational Safety and Health Administration) for chemicals used at the workplace in the US. Furthermore, there are some differences how the ‘building blocks’ and the inherent flexibility of the UN GHS have been put into practice, which could be addressed under TTIP. Another possibility would be to create a list of agreed classifications and to work together on classifying substances. A third area would be in the field of new and emerging issues, for example nano-materials, endocrine disruptors, and alternative test methods. Finally, industry has suggested improving ways of exchanging CBI (confidential business information), an interest that is also shared for one specific aspect (i.e. substance identity) by the ECHA (European Chemicals Agency).

The following points were raised in this part of the discussion:

- Previous work under the Transatlantic Economic Council (TEC): The “[Common Understanding on Regulatory Principles and Best Practices](#)” of 2011 was helpful at the time and there are many technical dialogues already. However, there is no overall framework linking these dialogues and no deadlines or other checks. TTIP aims to deliver better coordination and progress than the earlier TEC work.
- Progress in negotiations on chemicals: The Chair explained that the initial paper submitted jointly by CEFIC (European Chemical Industry Council) and ACC (American Chemicals Council) is available on the [DG ENTR website](#). Several industries have submitted similar papers, which are also public. At present, both sides are seeking to set objectives, sector by sector. Mr Berend gave an example on the identification of priority substances for assessment: each side has shared links and documents that explain the respective systems, all of which were already public but not necessarily easy to find. From the EU perspective, while regulators on each side have previously agreed to cooperate, e.g. the US EPA (Environmental Protection Agency) and ECHA have signed a so-called ‘Letter of Intent’ in December 2010, in practice this appears often limited to information

exchange of ongoing or planned activities on either side. The extent to and the manner in which TTIP may lead to changes in this would be made clear in a sector paper that the Commission intends to publish soon.

- Services regulatory cooperation: Members suggested that the negotiations on regulatory cooperation seem to exclude services sectors, both from the scope of the process and from the institutional cooperation framework. This is important, notably since many services sectors are regulated at state level in the US. Many barriers to trade with the US faced by EU services sectors are regulatory and it is important that these can be addressed by TTIP. The Chair signalled that the EU's regulatory cooperation proposals would cover both goods and services.
- Impact assessments: Members noted that civil society in the US criticise the US consultation and impact assessment system as the focus is clearly on cost-benefit analysis, whereas the EU also takes into account social and environmental impacts. The Chair underlined that there is no intention to harmonise the two approaches. However, it may for example be possible to each assess the potential impact of new regulations on transatlantic trade. Consultation processes with stakeholders are very important, but prior consultation between regulators themselves is essential otherwise coherence is not possible. Members also raised concerns that too strong a focus on the impact of a regulatory proposal on transatlantic trade would risk shifting the balance away from public interests (such as social, environmental, health and consumer protection). The Chair remarked that this was not the intention and that external trade impacts would be integrated within the existing assessment framework.
- Interplay between sectoral and horizontal discussions: Members were interested in the relationship between sectoral regulatory cooperation and the horizontal part of the negotiations, in particular where progress is being made most swiftly. Members also noted the importance for business of TTIP delivering coherence on existing regulations as well as future regulation. It was agreed to have a discussion on sectoral components at the next meeting of the group.
- Regulatory Cooperation Council (RCC): Members expressed interest in and some concerns about the idea of an RCC, asking how it would be governed and what its status would be in comparison to the existing machinery of the EU. The potential “chilling effect” on the EU's regulatory process is more of a concern than the right to regulate, which is not contested. The Chair underlined that the establishment of an RCC would not change the EU's current democratic decision-making process. Instead, it would be a means to ensure that regulators of both sides are fully involved in the implementation of regulatory commitments under TTIP. Mr Perreau de Pinninck explained that:
 - An RCC would not have a regulatory role, but it would monitor the effective implementation of TTIP regulatory commitments and any

- cooperation on new issues. The point is to help avoid unnecessary and unjustified impacts on transatlantic trade.
- If divergence is necessary and justified, each side would be able to do so just as we can today.
 - Stakeholder involvement would be essential.
 - While the horizontal provisions will provide the framework, work on cooperation will take place on a sectoral basis. The RCC will ensure that regulators know what is happening on each side, what is in the pipeline and how it is progressing.
 - This cooperation will improve the quality of our regulation, not reduce it. Such a strong framework is important to deliver the key benefits of TTIP.
 - Stakeholders are welcome to put their views forward on how this could work.
 - In the past, the US has established RCCs with Canada and Mexico which have proved useful. The EU does not yet have any RCC in place, and one is not envisioned in CETA.
- Cooperation on current and future regulation: Members felt that there could be disadvantages to cooperating when the interests and levels of protection of each side differ considerably, for example on chemicals regulation. This would be especially concerning when it comes to future regulation. A "light governance structure" could still create hurdles for the Commission before publishing proposals, for example by requiring trade impact assessments. This could lead to delays and changes of plan if the impact on transatlantic trade was deemed to be too high. Further questions were asked about the concept of a "living agreement", and whether this would exclude stakeholders, national parliaments and the European Parliament from future developments under an agreed TTIP framework. The Chair stressed that closer cooperation between EU and US regulators should be mutually beneficial. Both the EU and the US already conduct impact assessments and consultation on regulations: the issue is how to better incorporate the transatlantic dimension into existing procedures. The "living agreement" concept recognises that regulation is continually evolving. This implies the need for a governance structure which allows cooperation as regulation is adjusted. This would not undermine the role of stakeholders or the European Parliament, since the TTIP would not incorporate new regulatory commitments without these having been adopted in accordance with both sides' established procedures.

The Chair invited all members to send in any additional comments or questions in writing if they wished.

4. Consultation on investment protection: second discussion

Leopoldo Rubinacci explained that the consultation on investment protection and Investor-State Dispute Settlement (ISDS) in TTIP was now online in all EU official languages, and would run until 6 July (three months from the date all languages were available). The consultation format changed after the group first discussed it in February, in order to make as clear as possible how each of the EU's objectives could be translated into a legal text (with CETA text as the most recent example). A consultation event would be held on 13 May. At the end of the consultation, a report will summarise the responses received. It is difficult to make predictions now about the format of the report, as it depends on the number and detail of responses.

The following points were raised during this part of the discussion:

- Style of the consultation: Several members of the group felt that the consultation was drafted in excessively complicated legal language, which makes it difficult for civil society to respond. This is a pity given the very strong public interest in ISDS, as well as earlier comments highlighting the need for accessibility. Mr Rubinacci and the Chair noted that the subject is complex and legal by nature: an open, detailed consultation must be based on the texts.
- Analysis of responses: Members asked how responses would be analysed. Mr Rubinacci stressed that a mix of quantitative and qualitative assessment would be used, noting that it was important to consider the overall representativeness of responses (e.g. individuals versus large organisations), but equally important to consider the detail of arguments. The analysis will be a resource-intensive exercise taking into account each answer to each question.
- Need for ISDS in TTIP: Members expressed different views on the rationale for ISDS as set out in the consultation document, some questioning it and asking whether the existing systems of protection for investors into the EU could be analysed. In terms of how the rationale could be addressed in responses to the consultation, Mr Rubinacci underlined that the final question allows respondents to offer general comments, and all other questions allow detailed (i.e. not merely yes/no) answers.

5. Any other business

- Additional member: The Chair explained that while the small, focused nature of the group was very important, DG TRADE felt that it would be valuable to invite one additional member to represent the interests of small businesses. Members of the group were broadly content with the idea, although several stressed that they already took small business interests into account. Others stressed that it would be necessary to continue to pay close attention to the balance of interests between business and other civil society members.

- Upcoming meetings: Dates were confirmed as 12 May, 12 June and 24 July. The Chair encouraged members to submit their priorities for topics for discussion. For the meeting in May, sustainable development (labour and environment) and sectoral regulatory cooperation would be on the agenda. SPS, TBT and energy and raw materials were also mentioned as topics of interest. Members suggested that a longer meeting time may be appropriate in future.
- Role of the European Parliament: The Chair explained that all documents shared with Member States also go to the INTA monitoring group, which includes representatives from all other interested committees (in practice, all of them) in the EP. Commission officials have also briefed a number of committees directly. At the moment this level of communication seems to be working well, but it is important to consider how to improve it, particularly for the next Parliament and for when negotiations (and thus implications for policy areas covered by different committees) reach a more advanced stage.

Attendees

Members of the TTIP Advisory Group

BOWLES Edward (Services)
DE POUS Pieter (Environment)
DINGS Jos (Environment)
NELISSEN Guido (Labour and trade union)
FELLER Roxane (Food and drink)
FIELDER Anna (Consumers, alternate for Benedicte Federspiel)
GOYENS Monique (Consumers)
HODAC Ivan (Manufacturing)
JENKINS Tom (Labour and trade union)
KERNEIS Pascal (Services)
LOGSTRUP Susanne (Health, alternate for Monika Kosinska)
PESONEN Pekka (Agriculture)
QUICK Reinhard (Manufacturing)
SANTOS Luisa (Business)

Commission officials

GARCIA-BERCERO Ignacio (TRADE)	Chair, TTIP Chief Negotiator
LEVIE Damien (TRADE)	Deputy TTIP Chief Negotiator
PERREAU DE PINNINCK Fernando (TRADE)	Lead, Regulatory Cooperation
BEREND Klaus (ENTR)	Lead, Chemicals
RUBINACCI Leopoldo (TRADE)	Lead, Investment
EMBERGER Geraldine (TRADE)	Official
CIESELSKA Magdalena (TRADE)	Official
SCHMITZ Jan (TRADE)	Official
NIETO HERNANDEZ Esther (TRADE)	Official
DAWKINS Miranda (TRADE)	Official
OVERDUIN Dorieke (TRADE)	Trainee