

# Roundtable on labour rights and civil society participation in TTIP

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## *European Commission Issue paper*

### **Introduction**

The Roundtable is an important opportunity for policymakers and relevant stakeholders to share views on how to best address labour-related matters in the TTIP. In particular, it offers the possibility for stakeholders to get a comprehensive overview of the ongoing process, and for policymakers to draw on detailed stakeholders' inputs in the next steps of the negotiations including for developing its future textual proposal.

This paper aims at facilitating the discussions during the Roundtable by (1) presenting the key elements of the EU approach to labour issues in the Trade and Sustainable Development chapters concluded in its recent Free Trade Agreements<sup>1</sup>, (2) highlighting issues of particular relevance in the TTIP context, and (3) proposing key questions for discussions with stakeholders.

### **I. Sustainable development and labour provisions in TTIP<sup>2</sup>**

#### **1. Scope and content**

In its recent Trade and Sustainable Development chapters, the EU has achieved robust commitments to promote mutual supportiveness between trade and labour policies, and to ensure that increased trade does not come at the expenses of workers' protection – but rather supports it.

The EU considers that comprehensive provisions on labour rights<sup>3</sup> of relevance in a trade context shall be part of TTIP, integrated in a framework which advances the contribution of the agreement to sustainable development. In this regard, the EU believes TTIP presents a unique opportunity for an ambitious and innovative coverage for provisions on labour rights<sup>4</sup>.

On this basis, the EU has identified the following topics as key building blocks of its future text proposal on the labour aspects of sustainable development, in which it aims to reiterate and build on the EU and US commitment to high levels of labour protection, and thereby contribute to social progress<sup>5</sup>:

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<sup>1</sup> EU Trade and Sustainable Development chapters also cover environmental aspects, which are not described in this paper.

<sup>2</sup> This section only deals with provisions on substance, not with institutional aspects (some of which are covered by section II of this paper) or procedural issues.

<sup>3</sup> References to "labour rights" in this paper cover the issues under the ILO Decent Work Agenda, including social protection.

<sup>4</sup> The overall EU approach to Trade and Sustainable Development in TTIP is set out in the position paper published at the beginning of the negotiations, and available at: [http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151626.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151626.pdf)

<sup>5</sup> This should be read in conjunction with labour topics addressed in other TTIP chapters, e.g. concerning social services.

*i. Multilateral labour standards, agreements, and frameworks*

- The **Decent Work Agenda** of the International Labour Organisation (ILO): set its 4 pillars - 1) promoting employment, 2) social protection, 3) promoting social dialogue, 4) fundamental principles and rights at work - as the overall objective and framework;
- **ILO core labour standards:** respect of all the ILO core labour standards (i.e. freedom of association and right to collective bargaining; forced or compulsory labour; child labour; non-discrimination in respect of employment and occupation), including with regard to their effective implementation in law and practice; and support to ongoing efforts towards ratification of fundamental ILO Conventions. Commitments to the core labour standards could be detailed in dedicated “**thematic core labour standards articles**”, which, for each standard, would (1) recall relevant international instruments (2) list key principles to which the Parties are committed, (3) define specific commitments on actions to achieve those principles:

*Thematic core labour standards articles: child labour example*

(1) recall relevant international instruments, e.g.:

- ILO Conventions 138 and 182
- UN instruments (Universal Declaration of Human Rights, International Covenant on Economic Social and Cultural Rights, Declaration of the rights of the child, Convention on the Rights of the Child...)
- Brasilia Declaration on Child Labour

(2) list key principles to which the Parties are committed, e.g.:

- the elimination of the worst forms of child labour
- the overarching goal of eradication of all child labour

(3) define specific commitments on actions to achieve those principles, e.g.:

- promote worldwide implementation of the key principles,
- promote adherence to, and ratification of, relevant international instruments,
- exchange information and cooperate, as appropriate, on the elimination of the worst forms of child labour, including at the global level,
- implement effective measures to protect the child from performing hazardous work,
- promote decent working conditions for children in employment (e.g. age, number of hours, no interference with school work).

- **Other ILO labour standards:** protect working conditions in additional areas (e.g. health and safety at work), including by implementing relevant ratified ILO Conventions.

*ii. Domestic law*

- **Right to regulate:** recognise and protect each Party's right to set its own levels of labour protection, consistently with internationally recognised standards and agreements;
- **High levels of protection:** work towards continuous improvements of domestic labour policies and laws to ensure continued high level of protection
- **Upholding levels of protection:** prevent a race to the bottom, by ensuring domestic labour laws are not relaxed as a means to attract trade or investment.

### iii. Cross-cutting issues

- **Corporate Social Responsibility (CSR):** in addition to the respect of labour law, promote the uptake of CSR, including – but not only - on labour matters in accordance with internationally recognised principles and guidelines (e.g. instruments of the United Nations, the ILO, the Organisation for Economic Cooperation and Development - OECD), to foster the contribution of trade and investment to sustainable development.

### iv. Cooperation

- **Joint activities through bilateral and multilateral channels, as well as in third countries:** identification of priority areas for joint work to strengthen governance for trade and labour issues and labour protection worldwide.

### Questions for discussion

Against the background outlined above, the EU seeks stakeholders' views on the scope and content of provisions addressing labour aspects of sustainable development. Key questions in this regard include:

1. *What would be the appropriate coverage for labour provisions in TTIP? What areas should be considered as priority? Should provisions focus on specific EU/US labour interests and priorities, or on objectives for negotiations with other partners?*
2. *How to best address core labour standards? In what way would “thematic labour rights articles” bring added-value? If so, what should be their coverage?*
3. *Should TTIP cover more than core labour standards? If so, which other areas under the Decent Work Agenda would be the most pertinent to cover? What should be the main focus (e.g. specific initiatives, normative approach...)?*
4. *Can TTIP contribute to facilitate social dialogue? If so, what would be the best way to promote it? Can the EU structures for social dialogue and information and consultation of workers (e.g. Works Councils) provide for a useful reference point at transatlantic level?*
5. *Can TTIP reinforce cooperation between the EU and the US on trade-related labour matters, notably along the four pillars of the ILO Decent Work Agenda? If so, how should this interact with other existing channels of cooperation?*

### 2. Conflict resolution

The EU believes that provisions on trade and sustainable development, including the labour aspects, must be subject to a transparent and effective mechanism to solve any conflict concerning their implementation.

In its recent Trade and Sustainable Development chapters, the EU has a dedicated dispute settlement mechanism which establishes a clear, mandatory, and time-bound procedure for the resolution of any concerns raised by a Party. It brings together governmental engagement, external assessment by independent experts, civil society involvement, and international

organisations' expertise. This mechanism is geared towards tackling the root causes of the concerns and foresees a continuous follow-up to the issue until it is solved.

This dedicated dispute settlement mechanism is based on the following elements:

- each Party can trigger the dispute settlement process if it has concerns on any issue under the chapter - whether because of its own analysis, of information by stakeholders, of developments in international fora... No provision of the chapter is excluded from the procedures and no additional test needs to be met to start a procedure (e.g. there is no need to prove an impact of alleged violations on trade flows prior to acting upon them);
- consultations among governments, including in the formal set-up of a senior officials committee, as a first step to try and find a solution;
- a panel of experts, composed by independent professionals with specific expertise in the matter, examines the matter and issues a public report making recommendations for its solution. In preparing its report, the panel can request and receive information by the Parties, organisations, individuals, and any other source it deems appropriate;
- follow-up actions: on the basis of the panel's report, the Parties have to decide on actions to solve the issue, e.g. the adoption of an action plan. The follow-up to such actions is subject to institutional monitoring by senior officials and to public scrutiny, through formalised channels, until the issue is solved;
- civil society involvement at all stages of the process: stakeholders may flag issues of concern under the chapter to the Parties, submit their views during governmental consultations and to the panel, access the panel's report and the Parties' decision in this regard, and participate in the monitoring to their follow-up;
- interface with the ILO<sup>6</sup>: the ILO is integrated in the mechanism as an authoritative reference point, which can provide information and advice during both government consultations and panel procedures. This aims at ensuring coherence between the ILO activities and the enforcement of the FTA provisions in related areas.

### **Questions for discussion**

Against the background outlined above, the EU seeks stakeholders' views on how to address in an effective manner concerns related to the respect of provisions addressing labour aspects of sustainable development in TTIP. Key questions in this regard include:

1. *How to ensure that a conflict resolution mechanism results in a solution that makes a real difference on the ground on improving the labour conditions raising concerns in the TTIP context? Which lessons have been learnt so far from existing FTAs?*
2. *What should be the scope and trigger for action? Is a trade impact test justified in terms of labour rights?*
3. *Who should be the main actors in conflict resolution procedures for labour-related matters? How can relevant ILO expertise and jurisprudence be taken into account?*

## **II. The role of civil society: participative mechanisms in TTIP**

The EU believes that civil society can bring a key contribution to the implementation of provisions on trade and sustainable development, including the labour aspects. For TTIP, there already is a very active civil society on both sides of the Atlantic. The EU wants to build on this and pursues a strong role for civil society in implementing relevant TTIP provisions.

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<sup>6</sup> For labour matters; a similar approach applies to environmental matters concerning the interface with relevant international environmental bodies.

Strong involvement of civil society in both the EU and its partners is a core element to the EU's approach to Trade and Sustainable Development chapters in its recent FTAs. These establish dedicated channels for the regular participation of civil society, integrate its views and advice in the institutional functioning of the chapter, and ensure that a broad range of interests are brought together (e.g. labour unions, businesses, NGOs) and represented on an equal footing, both at domestic level and jointly.

The EU approach is based on the following elements:

- the use of domestic mechanisms by each Party to request and receive inputs from representatives of its domestic civil society (“domestic advisory groups”), providing for a balanced representation of economic, social, and environmental interests, following the three-pillar concept of sustainable development. EU domestic advisory groups work independently from the public administration, e.g. they call their own meetings, elect their chair, draw their agenda, invite EU officials for dialogue sessions, formally transmit their views to the administration. The administration can ask for their advice on a specific topic as well, thereby creating a two-way interaction process;
- the establishment of a dedicated platform for joint dialogue (“civil society forum”) with a balanced representation of economic, social, and environmental interests from all Parties' civil society, to allow for exchanges both among stakeholders and between them and the Parties. This platform meets yearly, and members of all domestic advisory groups are an integral part of it, ensuring information flows between the work done by civil society on a continuous basis at domestic level and the joint discussions;
- both at domestic and at joint level, there is no limitation on civil society's inputs, either in terms of which provisions of the chapter they can refer to or concerning their nature. Civil society can advise the Parties on any issue related to the implementation labour-related provisions: it can be a suggestion for organising cooperation activities, a request for an item to be put on the agenda of the committee overseeing the chapter, a submission on possible violations of labour rights in a partner country, a call for action by its own government to boost the benefits of the agreement for domestic social partners, information on issues on which a dispute resolution procedure is ongoing...;
- while it plays an important role, civil society cannot bear responsibility for the implementation of the provisions. Governments remain liable for their commitments and have the primary responsibility to ensure they are met – a task which can be strongly supported by civil society's active participation in the implementation.

### **Questions for discussion**

Against the background outlined above, the EU seeks stakeholders' views on how to ensure civil society's participation in TTIP implementation. Key questions in this regard include:

1. *Would civil society involvement mechanisms bringing together different interest groups (e.g. labour, environment) strengthen or undermine civil society participation in TTIP implementation?*
2. *Can the creation under TTIP of formal domestic and/or joint civil society involvement mechanisms interfere with civil society independency? Which degree of institutionalisation should be sought?*
3. *Would a formalised mechanism for civil society involvement in the implementation of TTIP provisions beyond trade and sustainable development reinforce or dilute the role of civil society? What should be its scope to achieve its maximum effectiveness?*