



European
Commission

Transatlantic Trade & Investment Partnership Advisory Group

Meeting report, 23 June 2016

1. Update and forward look

The Chair updated the Group following the recent political meetings between Commissioner Malmström and USTR Michael Froman. These meetings focused on market access issues, notably procurement and services, and technical barriers to trade (TBT), energy and raw materials. The next round of negotiations is scheduled to take place in Brussels in July.

- **Market access:** A member inquired about the status of the agri-food discussions. The Chair replied that these would continue during the July round, including SPS issues, wines and spirits and GIs. Recent discussions have been constructive but there remain a number of key issues to be resolved. For the moment, discussions on tariffs will be restricted to the offers already exchanged.
- **Rules of origin:** In response to a question on state of play on rules of origin, the Chair noted that the Commission was planning to table all the missing elements of its proposal in the July round. He cautioned however that some fundamental questions would need to be resolved on both sides to be ready to conclude this chapter, and there are links to the tariffs and regulatory cooperation parts of the negotiation.
- **Institutional issues:** One of the members noted that EU trade agreements allow for the accession of new countries to the EU, and felt it relevant that something on secession be also included. The Chair took note.
- **Precautionary principle:** Another member asked about the Commission's position on science and risk. The Chair responded that the science-based principle and precautionary principle are not mutually exclusive, and that the precautionary principle is fully represented in the Commission's proposals. This point was further discussed under AOB (see below).
- **Rules:** A member inquired about enforcement and institutional provisions in the sustainable development chapter. The Chair explained that the Commission continues to reflect on the right way forward, and would like to consult in detail with Member States, the European Parliament and the Advisory Group in due course. Only when this consultation has taken place and it is clearer what the US position may be on the substantive commitments of the chapter, would the EU be ready to table a proposal. For the moment, consolidation work continues on the substance of the chapter where it is possible to agree on architecture.
- **Other issues:** A member asked for an overview of the intersessional work and if there was a legal basis for negotiations to continue in 2017, in case TTIP is not concluded this year. The Chair explained that intersessional meetings were focused on preparing rounds and that information on intersessional activities was already included in the round reports published by the Commission. If TTIP is not concluded in 2016, it is likely that both sides will wish to

continue discussions in 2017, though this may remain at technical level only during the political transition in the US. EU trade ministers will consider next steps at their meeting in Bratislava in September.

2. Institutional arrangements

The Chair presented the draft institutional proposal to the group, explaining that it is a classical institutional chapter in many ways, but with a number of TTIP-specific changes. These include the establishment of the Domestic Advisory Groups and Civil Society Forum as horizontal entities, with oversight of the operation of the whole agreement, rather than just the sustainable development chapter as has been normal practice to date. There is also provision for a Transatlantic Regulators' Forum composed of senior officials, aiming to incorporate regulatory cooperation into the follow-up process. This will give visibility and accountability to regulatory cooperation issues, and help support the Joint Committee (ministerial level) in its work.

The following points were raised in discussion:

- **Cooperation in international fora:** A member asked who would take care of cooperation in international fora. In answer, the Chair invited the group to look at the sectoral annexes as these contain detailed provisions regarding international bodies. Cooperation in multilateral fora is also referred to in the provision on the Transatlantic Regulators' Forum.
- **Costs:** Some members commented on the high number of groups and people whose participation the Commission's proposal seems to call for. They expressed concerns regarding the potential cost of such an institutional system and wondered if an impact assessment had been conducted. One member suggested that the lessons learned from implementing the EU-Korea agreement could help identify possible improvements in this regard. The Chair clarified that committees and groups would not all need to meet annually, or even physically, and added that this would depend on need and urgency.
- **Composition of the Joint Committee:** One of the members asked about the composition of the Joint Committee and the meaning of decisions by mutual consent. The Chair explained that since these committees are of an intergovernmental nature, they will be composed of government officials at relevant levels. The Trade Commissioner and US Trade Representative will sit on the Committee and other representatives at Ministerial level may join when their portfolios are covered by the agenda. As for mutual consent, it is standard language and means that both sides need to agree. Another member asked if Member States would be represented in the Committee. The Chair explained that their involvement would depend on the legal nature of the agreement and that in any case, a position expressed by the

EU in the Committee would follow the same internal procedures as for EU positions at the WTO. Consensus between the Commission and the Member States would be required.

- **Powers of the Joint Committee:** One member observed that, based on the language of the proposal, the Joint Committee's purpose was simply to facilitate, guide, coordinate, and consider ways to further enhance trade. The member wondered if there was any margin of manoeuvre for the Committee to ever step beyond these boundaries, recalling concerns among the civil society that it could act undemocratically. The Chair stressed that the language used in the proposal is standard, and reminded the group that there is always a joint ministerial body set up to supervise any international agreement. As such, the Committee will oversee the overall operation of the agreement and its decision-making powers will be very limited.
- **Binding power of interpretation/amendments:** A member requested clarifications on the power of the Joint Committee to issue interpretations on TTIP provisions which would be binding on the Parties. The Commission explained that such a clause is standard in international trade law and referred to the WTO, notably Article IX:2 of the Marrakesh Agreement.. It was also explained that it was seen here as a useful safeguard in case of an panel ruling deemed not to be in line with the views of the Parties on how the agreement should be interpreted. The Commission recalled however that both parties would need to agree for a binding interpretation to be made and stressed that it was likely to be rare. Another member wondered if this power could lead to changes to EU law. The Commission clarified that the Committee's interpretive powers would be limited to interpretation of the text of the agreement and not extend to EU law, the latter being within the jurisdiction of the European Court of Justice. Also, TTIP will have no direct effect in EU or US law. The member argued that this power of interpretation amounts nonetheless to a power of amending the agreement without involving the relevant authorities. The Commission explained that the proposal would entail specific provisions for TTIP amendments which ensures that all internal EU procedures can be respected and that an interpretation cannot be an amendment. Another member followed up by asking if public services could be excluded from the scope of the agreement by using the interpretive powers of the Committee. The Commission explained that only the full treaty change procedure could lead to such an amendment. The Committee will hold limited powers only, allowing it to interpret but not modify the agreement, and such interpretations will require mutual agreement between the Parties. It was also recalled that the Vienna Convention on the law of treaties (with which the EU complies) sets out clear rules regarding treaty interpretation, which prohibit interpretive powers from going against the clear letter of the text. Another member inquired about how many interpretations of this kind have been issued in the WTO to this day, to which the Commission replied that there are none so far.

- **Accession to the agreement:** One member noted that the provision for accession to the agreement looks very broad compared to the WTO accession procedure. The Chair explained that this is a new type of clause that does not exist in other agreements. It stems from the idea that once TTIP is concluded, there should be a possibility for other countries to join and a geographical limitation on who could join was not deemed necessary. Both the EU and the US would need to agree to any accession; also, on the EU side, Council negotiating directives would be required for the Commission to negotiate any third country accession.
- **Parliamentary involvement:** One member expressed the view that there should be greater involvement of the European Parliament, for example via regular reporting. The Chair agreed with the importance of involving legislators in the institutional framework, and explained that each party needs to decide on how this should work in practice, for example owing to constitutional constraints on the US side. Regarding the European Parliament, the Commission will consult with MEPs to define the modalities of their involvement. Reporting would be one option under consideration.
- **Domestic Advisory Groups:** Another member inquired about the composition of the domestic advisory groups (DAGs) and Civil Society Forum (CSF) included in the Commission's proposal. The Chair explained that each side would establish its own DAG and choose the members in accordance with guidelines laid out in the agreement. The CSF would bring the two DAGs together, and participation could also be extended to others. Another member followed up by asking if mutual agreement on the list of participants would be necessary: the Chair felt not, but this would be one item for further reflection, as the details have been left open for the time being. Another member repeated the suggestion of taking into account the lessons drawn from the implementation of the EU-Korea agreement.

3. Energy and Raw Materials

Mr J-G. Westerhof presented the revised EU proposal on energy and raw materials. He noted that the three main objectives in this part of the negotiations have not changed: these are to lift export restrictions in the US, to agree on a set of common principles related to trade in energy and raw materials, in order to inform future bilateral and multilateral agreements, and lastly to promote sustainability. The proposal therefore includes a placeholder to resolve the export restrictions, binding rules on energy and raw materials, and ambitious cooperation provisions (for example via cooperation on standards and conformity assessment) on renewable energy, energy efficiency and raw materials.

In some cases, the binding rules apply horizontally to all sectors and therefore would be located elsewhere in the agreement: for example, the prohibition of export monopolies. Some aspects are part of services and investment: for example, provisions related to getting a mining license would be covered by the domestic regulation chapter. However, core issues such as third party access to infrastructure and transit are in this proposal.

The following points were raised in discussion:

Regulatory issues

- **Standards and conformity assessment:** A member requested the Commission to elaborate further on the cooperation for standards and conformity assessment in the energy sector. Mr Westerhof explained that by encouraging cooperation through TTIP, certain standards could be improved and red tape reduced. Energy efficiency requirements in particular, which differ between the EU and the US, could be improved. The EU and the US could also learn from one another on labelling. How regulators could encourage their standard setters to cooperate more is also being discussed as part of the TBT chapter. Another member wondered if standard and conformity assessment should be dealt with in the energy chapter or in the sustainable development chapter, given diverging practices between the parties. For example, vehicle emissions regulations come from climate change laws in the EU but from energy efficiency laws in the US. Mr Westerhof responded that both chapters were relevant and that there should be a hook for energy and raw materials in the sustainable development chapter.
- **Regulatory cooperation:** A member referred to difficult cooperation in the field of telecoms, and asked if US energy regulators were similarly reluctant to cooperate through a trade agreement. Mr Westerhof acknowledged this, but stressed that the substance of the EU proposal is of interest to both sides. The member also inquired about a regulatory requirement to review market functioning by a regulatory authority. Mr Westerhof confirmed that text on a regulatory authority and regulatory oversight should be incorporated. The Chair added that the chapter had been drafted in such a way as to make it fully compatible with EU and US law. In response to a further question, Mr Westerhof noted that no specific need for cooperation in energy services had yet been identified and therefore this was not covered in the proposal.

Other issues

- **Export monopolies:** One member asked if there were any export monopolies in the EU, as it could prevent moving certain commitments from the energy chapter to the trade in goods chapter. The Commission replied that there were none.

- **Local content:** The member also raised a question about local content requirements for renewables. The Commission said that such requirements should be avoided as they do not fit in EU trade policy. Provisions on local content are covered by the GATT and by the services and investment chapter of TTIP.
- **Subsidies:** A member asked if fossil fuel subsidies would be covered in the subsidies chapter or in the energy one, to which the Chair replied that no specific provisions for energy subsidies are envisaged at the moment. The horizontal subsidies chapter is limited to transparency and consultation.
- **Exchange of data:** Another member inquired about the nature and objective of the exchange of data included in the Commission's proposal. The Commission explained that further developing these exchanges could help foster understanding of the market.
- **List of raw materials:** Some members sought clarifications on the selection of the raw materials listed in the annex, to which Mr Westerhof replied that it was an indicative list and that raw materials were included on the basis of their use in industrial processes.
- **Emergency situations:** A member asked what was covered by the words "emergency situations" in annex 2. The Commission explained that annex 2 was originally drafted in relation to countries that are relevant to the EU from an energy perspective, such as Ukraine or Georgia. The annex therefore functions mainly as a template, but could also prove bilaterally relevant in the future, for example in respect of US exports of liquefied natural gas to the EU.
- **OECD guidelines:** One member expressed support to the Commission for mentioning the OECD guidelines in the chapter, while cautioning however that these are weak in terms of sustainable development.
- **Working Group:** The Commission invited the group to look at the provisions on the energy and raw materials working group, as this group will monitor the issues covered by the chapter and decide which priorities to pursue. One member asked with regard to this group if trade unions come under the public interest heading.

4. Any other business

- **FoodWatch's paper on the precautionary principle:** One member raised the recent paper by FoodWatch about the precautionary principle. The Chair underlined that the paper acknowledges the precautionary principle is explicitly referenced in the regulatory cooperation provisions of TTIP and CETA as well as in the sustainable development

chapter. The reminded members that WTO case law is fully consistent with, and respectful of, the precautionary principle; it lets countries regulate on the basis of precaution. It was recalled that even the European Court of Justice had interpreted the precautionary principle as requiring a risk assessment.

- **Proposal on Exceptions:** Ms S. Baule briefly explained the forthcoming proposal on exceptions, explaining what it covers and comparing it with CETA. Some members inquired about the scope of the security exception, especially in relation to Art 14bis of the GATS. The Commission commented that the EU security exception was modelled along the lines of the GATS. Another member requested more details on the taxation exception in relation to international fora.

Attendees

Members of the TTIP Advisory Group

BASSO Daniele (Labour and Trade Union, alternate for Guido Nelissen)
BOUCSEIN Dominic (Small business, on behalf of Ilja Nothnagel)
CATELLA Eleonora (Business, alternate for Luisa Santos)
FEDERSPIEL Benedicte (Consumers)
GOYENS Monique (Consumers)
HINZEN Louis (Food and drink, alternate for Mella Frewen)
HODAC Ivan (Manufacturing)
JENKINS Tom (Labour and trade union)
KUPFER Tilmann (Services, alternate for Pascal Kerneis)
MASSAY-KOSUBEK Zoltán (Health, alternate for Nina Renshaw)
PETIT Arnaud (Agriculture, alternate for Pekka Pesonen)
QUICK Reinhard (Manufacturing)
TOUBEAU Cecile (Environment, alternate for Jos Dings)

Commission officials

GARCIA BERCERO Ignacio	Chair, TTIP Chief Negotiator
DAWKINS Miranda	Official
BAULE Sylvia	Official
FERLET Guillaume	Trainee
GÜLLNER Lutz	Official
IRUARRIZAGA DIEZ Ignacio	Official
HOUBEN Hidde	Official
MARGHERITA Michelangelo	Official
TALKO Wojtek	Official
TELEA Florina	Official
VANDENBERGHE Jan	Official
WESTERHOF Jan-Gerrit	Official