



CIVIL SOCIETY DIALOGUE

TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP) - THIRD NEGOTIATION ROUND

Date: 14/01/2014

Time: 14:30 – 16:30

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 Anders Jessen **(ACJ)**, Head of Unit, Intellectual Property & Public Procurement, Directorate-General for Trade

Mr Fernando Perreau de Pinninck **(FPdP)**, Head of Unit Tariff and Non-Tariff Negotiations, Rules of Origin, Directorate-General for Trade

Mr Denis Redonnet **(DR)**, Head of Unit, Trade Strategy, 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 Colin Brown **(CB)**, Deputy Head of Unit, Dispute Settlement & Legal Aspects of Trade Policy, Directorate-General for Trade

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

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 a brief update on negotiations and next steps, followed by questions and answers.

Commission (DL) updated the room on progress since the last Civil Society Dialogue on the TTIP negotiations held in July 2013. Two more rounds had taken place, one in Brussels from 11-15 November 2013, and the third in Washington from 16-20 December 2013. This was good progress. The third round marked in effect the end of the first phase of negotiations: after three sessions of analysis and explanation of each side's current practices, approaches and in some cases ambitions, we could now move to begin work on text-based negotiations for a number of topics.

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

On market access, tariff offers have not yet been exchanged, but we are preparing to do so in the coming weeks. In the December round we compared our proposed legal texts on market access in goods. We held intensive discussions on services, including cross-border services, electronic, commerce, maritime, air transport and more. A similar exercise took place on investment, comparing approaches and looking at the US model Bilateral Investment Treaty (BIT), which is [available to the public](#). As for public procurement, discussions continued on the approach each side wishes to take, which for the EU would include both state and federal level access.

The regulatory cluster is made up of four elements: regulatory coherence, technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS) and sectors. Discussions on coherence during the third round focused on how dialogue between regulators could be increased and improved prior to new regulatory proposals being made, and how best to involve all relevant stakeholders in this process. Discussions on TBT focused on standard-setting, conformity assessments and transparency. On SPS, negotiators considered what disciplines to develop. Discussions on sectors were intensive, covering pharmaceuticals, medical devices, cosmetics and cars: talks on textiles began during the third round so are at an earlier stage.

Good progress was made on the various topics under rules. On customs and trade facilitation, we discussed ways to go further than we already have done, particularly to benefit Small and Medium-sized Enterprises (SMEs). We are developing a number of other ideas on how to support SMEs via TTIP, including best practices and how to promote the benefits of the eventual deal. Discussions on sustainable development took place throughout the week, comparing the EU integrated approach to labour and environmental provisions within the same chapter, with the US practice of separating the two. Intellectual property discussions continued to analyse a number of areas of specific interest, given that on the whole the level of intellectual property protection is satisfactory on each side. Finally, discussions on competition covered in particular antitrust provisions, State-Owned Enterprises (SOEs) and subsidies.

In terms of next steps, Commissioner De Gucht and his counterpart the US Trade Representative Michael Froman will be meeting in mid-February to review progress. They will also discuss possible initiatives on transparency, especially for the various elements of the regulatory cluster. The fourth round will take place in Brussels, probably in March, although the date is yet to be confirmed.

DL reminded participants of the many resources available on the Commission's [TTIP website](#), including explanatory documents, frequently asked questions and analysis. Most of this is available in several if not all EU languages.

Discussion Highlights / Questions and Replies

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

The **European Generic Medicines Association (EGA)** noted its full support for the TTIP negotiations, which it hoped would result in billions of euros' worth of savings for public health budgets, industry, regulators and patients. A particularly important area for EGA was the biosimilars sector, for which it expected the Commission to maintain a high level of ambition. EGA asked whether this topic was discussed during the December round, and if so what the attitude of the US Food & Drug Administration (FDA) had been.

The **Commission (IK)** responded that pharmaceutical interests had been discussed intensively with the FDA during the December round. The priority for the Commission at present is Good Manufacturing Practices (GMP), but biosimilars are also very important. We have plans for further discussions on this topic. The discussions are still at an early stage, but EGA should be assured that biosimilars and other issues it had flagged during the stakeholder consultation are high on the Commission's agenda.

The **European Trade Union Confederation (ETUC)** asked whether the US position on Investor-State Dispute Settlement (ISDS) had shifted during the last round. It also asked whether the Court of Justice of the European Union (CJEU) might have ruled on the matter and how. On sustainable development, the ETUC wished to know what the architecture of the chapter is likely to be: normally they would support the EU integrated approach, but the risk of trade-offs between labour and environmental areas might be lower if the US separated approach was taken.

The **Commission (DL)** responded that to our knowledge, the CJEU had never adopted a position on a Bilateral Investment Treaty (BIT) other than in the context of EU enlargement, and had not been asked to do so by the Commission. **CB** added that the Commission had thought carefully on how to approach ISDS, and that the idea of a role for the CJEU would not be acceptable to third countries since CJEU judges have European nationalities and are selected by Member States only, with no role for the 3rd country. There was no reason to think that the US position had changed on investment protection and ISDS.

On sustainable development, the **Commission (MH)** explained that during the third round, both sides had reviewed in detail the concept of sustainable development as defined in the Lisbon Treaty, as well as in a number of international instruments. There were some concerns raised regarding the broad scope, but we have explained that in the trade context the concept is confined to labour and environmental standards. As for architecture, there is no one template to follow: instead there are several options, for example the EU took different approaches with Korea, with Canada and with Singapore. We would like to aim for a balanced approach between labour and environment, with equally high ambition for each. For example,

the concepts of high level protection and of the right to regulate are equally important in both cases. However, it is too early to confirm what the architecture will be.

Humane Society International said that existing EU directives and regulations provide for the welfare of animals throughout their lives, but the US only has one federal law which applies to welfare at the time of slaughter. How will TTIP make sure that the EU's standards are respected, and how will the US comply?

The **Commission (UW)** confirmed that animal welfare will be included in the negotiations, but we have not yet reached the stage of detailed discussions on this topic.

The **Federation of the European Sporting Goods Industry** asked for more detail on discussions on regulatory coherence in the textiles sector.

The **Commission (IK)** answered that discussions on textiles had only started in the December round. Subjects that have been touched upon so far include labelling information (e.g. fibre composition), consumer protection (e.g. flammability), chemicals in textiles, and the exchange of information on technical textiles regulations such as those for specialised textile/clothing products, including protective wear and floor coverings. Standards, for example test methods, could also be covered in this area. **IK** requested any stakeholders with views on regulations in textiles to put forward ideas to the Commission on issues that might need to be tackled in TTIP.

The **European Chemicals Industry Council** asked whether US negotiators would prefer a detailed horizontal chapter on regulatory coherence to sectoral annexes. It also pointed out that regulation in US states would need to be within scope of any measures on coherence.

The **Commission (DL)** responded that there was a consensus between US and EU negotiators that it would be valuable to work on sectors as well as a horizontal chapter. He agreed that it would be important to address US state regulation, but noted that the US also wants to address EU Member State regulation.

The **European Environmental Bureau (EEB)** asked to what extent the Commission is following EU smart regulation principles in its work on TTIP. For example, has the Commission's Impact Assessment Board given an opinion on the impact assessment for TTIP? When would the Sustainability Impact Assessment (SIA) be finished, and will its conclusions have any effect on the EU's position in negotiations?

The **Commission (DL)** responded that yes, the Impact Assessment Board issued an opinion on the TTIP impact assessment in 2013, which can be found [here](#). A contractor to undertake the Sustainability Impact Assessment (SIA) has been chosen, and the selected organisation Ecorys will produce an interim report by June. The full report is expected to be available in December 2014. The SIA's conclusions will be taken into account in the negotiations.

TechAmerica Europe noted that the recent proposal for Trade Promotion Authority published by the US includes language on data flows. They asked how this would be covered in negotiations.

The **Commission (DL)** explained that we do not comment on the US Trade Promotion Authority proposal. On data flows, **MD** agreed that this is a very important subject which up until now has been included in EU trade agreements in the context of financial services. Given the strengths of the digital sectors in both the EU and US, it would make sense to include provisions in TTIP covering a broader set of economic sectors. It must be clear, though, that while data protection is obviously relevant to any discussion of data flows, the EU will not

negotiate data protection issues in TTIP. This position is set out in detail in the Commission's Communication of November 2013 on Rebuilding Trust in EU-US Data Flows, which can be found [here](#).

The **British Medical Association** asked whether health services would be in scope for the negotiations.

The **Commission (MD)** said that health services had not been discussed.

Aprodev asked if an offer would be made on agriculture, and whether TTIP would include any provisions on plant variety rights, or intellectual property rights for seeds. They also asked about provisions on genetically modified (GM) animal feed, and whether the Blair House Agreement on Oilseeds would be subject to the negotiations. Finally, they commented that the impact assessment did not include any analysis of whether agricultural markets in the developing world would be adversely affected by the EU and US markets growing more competitive as a result of the TTIP.

The **Commission (JAC)** responded that the EU's initial market access offer on agriculture would be made as part of the overall market access offer. The Blair House Agreement on Oilseeds forms part of the EU's World Trade Organisation (WTO) commitments, and the EU complies with them. Domestic support is not *a priori* part of the TTIP negotiations. It is too early to assess the potential effects of TTIP on agricultural markets in the developing world. **UW** added in regards to the question about GM animal feed that the EU's existing levels of protection would not be changed through TTIP. On intellectual property and seeds, **PVM** explained that some stakeholders have asked negotiators to look at plant variety rights and seeds. Both sides have compared notes on their existing systems. **Aprodev** would be welcome to talk bilaterally with PVM to discuss the details.

The **Transatlantic Consumer Dialogue (TACD)** expressed its concern that consumer groups' views were not being taken into account by the Commission.

The **Commission (DL)** said that the Commission takes all views into account. We have an open-door policy and would be happy to meet the TACD to discuss its concerns.

The **Confédération des Syndicats Chrétiens** asked what the EU's level of ambition with regards to US ratification of core International Labour Organisation (ILO) conventions would be. In general, language on ratification of core international labour conventions in future EU agreements should be strengthened. They commented that the US also needs to move further in this area in order to ensure a level playing field for fair trade.

The **Internationaler Tierschutz-Fonds GmbH** asked how the TTIP would enforce existing obligations and penalties against illegal international trade in wildlife.

The **Commission (MH)** referred to the EU position on the sustainable development chapter [published](#) on the Commission website, and explained that no other country's ambition matches the EU's as regards core ILO conventions. We call for effective implementation of already ratified conventions as well as sustained efforts for further ratifications. As members of the ILO, the US too must report on progress made towards ratification of core conventions and have an internal process in place considering future ratifications. As regards the wildlife trade and the Convention on International Trade in Endangered Species (CITES), she explained that this topic had first been discussed during the third round in December, and it was of mutual interest to both sides. The US is already looking at this issue in the Trans-Pacific Partnership (TPP) negotiations as stated in the USTR Green Paper on Conservation which is

public. However, it is too early to confirm how exactly any commitments will work in TTIP in terms of implementation.

The **Deutscher Gewerkschaftsbund** asked for more detail on the Commission's approach to ILO core labour standards, including whether the conventions would be named in TTIP. They also asked how the sustainable development chapter could be enforced, mentioning challenges in the EU-Andean negotiations. Finally, they asked whether there were currently problems experienced by transatlantic investors which ISDS provisions could solve.

The **Commission (MH)** answered that there should be provisions on core labour standards as this is certainly an area of common interest. There may also be provisions going beyond the core labour standards, for example on decent working conditions including health and safety. On enforcement, so far there have not been discussions on this for sustainable development as the focus for now is on the scope and level of obligations. **LR** added that there are already nine Bilateral Investment Treaties (BITs) between EU Member States and the US. He explained that ISDS is a way to enforce the investment protection provisions in an international agreement and resolve disputes that may arise in this respect, if necessary: it is not a way to resolve current problems.

ARD-Verbindungsbüro Brüssel asked whether the US had tabled a paper on audiovisual services in the negotiations, and if so what it covered, and how the Commission reacted to it.

The **Commission (MD)** replied that the US had indeed tabled a paper on audiovisual services. Its contents were quite general. In response, the EU repeated that the negotiating mandate does not allow for negotiations on audiovisual services.

The **Association Française de la Gestion Financière** asked for an update on financial services.

The **Commission (MD)** explained that the financial services elements come under two of the TTIP pillars: market access, and regulatory. The inclusion of the former issue is not controversial. The discussions are ongoing and constructive, but it is early days. With regard to the latter, the US is currently not willing to consider the inclusion of financial services in the regulatory part, as they prefer to discuss this topic in other fora such as the EU-US Financial Markets Regulatory Dialogue.

The **European Services Forum** asked whether services would be negotiated on a negative list basis, and if so, would the US exchange offers at state level as well as federal level? They also asked about progress on air transport and shipping services.

The **Commission (MD)** replied that the question of a negative list was not the priority issue. We have experience with both techniques and think that we can achieve both a given level of ambition and the necessary protection in either way. There is a need to clarify the US approach with regard to state level measures. At present, the date for exchange of offers has not been decided. Looking at the wider picture in the services negotiations, in three rounds, we have covered all sectors including air and maritime transport.

Heinrich Böll Stiftung mentioned the 2013 G8 commitment to phasing out fossil fuel subsidies among G8 member countries. Will we take the golden opportunity of TTIP to make this a reality in the US and the EU?

The **Commission (PS)** explained that discussions have been taking place on energy and raw materials since the first round of negotiations, but the question of subsidies has not yet been

discussed in detail as this is a topic examined horizontally in other parts of the negotiations – notably the competition chapter. We need to wait for these discussions to make progress.

The **Aerospace and Defence Industries Association of Europe** noted that the US has recently made proposals to tackle currency manipulation, and asked whether the EU and US could look at this topic together as part of TTIP.

The **Commission (DR)** answered that the topic of currency manipulation has not been raised by either side. Neither the EU nor the US has tackled this issue in free trade agreements in the past. However, it is something that may be worth reviewing once Trade Promotion Authority has been adopted.

The **European Dairy Association** asked whether the two year timeline was still achievable.

The **Commission (DL)** said that both sides are still aiming to meet the "one tank of gas" principle, but substance will need to prevail over time.

The **Platform of European Social NGOs** asked whether social services were in scope for the negotiations, and what the EU's ambition was on public procurement. They asked for assurance that the package of three new public procurement directives, replacing the Public Sector Directive (Directive 2004/18/EC) and the Utilities Directive (Directive 2004/17/EC) and introducing a directive on concessions, to be adopted by the European Parliament on 15 January 2014, would not be undermined in any way by the TTIP.

The **Commission (MD)** explained that social services (which fit under the category of "public services" in the negotiation) have not yet been raised. The EU already maintains a broad horizontal reservation in this area in the WTO General Agreement on Trade in Services (GATS), which allows us to comply with the EU treaties. There are no plans to change this line via TTIP, and the US has not yet made known its position. On public procurement, **ACJ** answered that the ambition begins with the recent WTO General Procurement Agreement (GPA). The Commission would like to build on this to cover all US states. However, of course we need to remain within the limits of our own system, including the directive.

The **Confederation of British Industry** asked whether the US has agreed to including detailed sectoral annexes as part of the regulatory cluster. They also asked whether the US was likely to meet the EU's ambition and show willing on public procurement.

The **Commission (FPdP)** responded that while there was already a high level of agreement on what sort of issues to address in the sectoral annexes, the architecture of these has not yet been discussed. **ACJ** added that the US is aware of the EU's expectations on public procurement.

Eurochambres said that they were pleased to hear about the focus on SMEs, and asked for more detail on what this would mean in practice.

The **Commission (DR)** explained that there were two components to the SME discussions. The first is the regulatory part, in which several of the issues under negotiation could benefit SMEs in particular. These provisions could usefully be brought together in a single SME chapter. Other parts of this chapter could focus, for example, on information sharing. The second component would be to embed existing EU-US cooperation on SMEs and trade into the TTIP agreement. TTIP could also set up structures to ensure that SMEs continue to benefit from it in the longer term, for example a monitoring mechanism and a way to resolve problems.

The **European Services Strategy Unit** noted the recent calls in some European press for ISDS to be excluded from the TTIP negotiations, and asked if this would mean the negotiations could not make further progress.

The **Commission (LR)** answered that it is early stages in the negotiations on ISDS, and it is not possible to predict to what extent both sides will agree.

Central Europe Energy Partners asked what was the scope of negotiations on energy and raw materials.

The **Commission (PS)** replied that there are two aspects to negotiations on energy and raw materials. The first relates to the global rules part of the agreement. Trade in energy and raw materials is an area in which international rules are not yet comprehensive, so contributing to the development of such energy and raw materials specific rules is a first objective. There are some examples in our [public position paper on energy](#) such as dual pricing, transit or access to transport networks. The second aspect falls under the market access pillar of the agreement and relates to the removal of US export restrictions on gas and crude oil.

The **European Patent Office** asked what progress had been made on patents in the negotiations.

The **Commission (PVM)** said that the EU and US patent systems were different but on the whole equally functional, so the discussions in this area were looking at a number of very specific issues of interest to stakeholders on both sides. Negotiators are working out what it may be possible to address in TTIP within a reasonable period of time, and what is better left to existing mechanisms.

The **European Federation of Origin Wines** asked what progress had been made on geographical indications (GIs). The **Comité Européen des Entreprises des Vins** supported this question and asked whether or not the EU-US Wines Agreement of 2006 would be incorporated into TTIP, allowing use of the TTIP dispute settlement provisions.

The **Commission (JAC)** agreed that enhanced protection of EU GIs is a must-have in this agreement. EU agriculture is less competitive than the US on many products, but GIs correspond to a key EU offensive interest. He confirmed that during the last round, the Commission had outlined the EU's substantial objectives to the US, in particular on level of protection, type of enforcement and co-existence with trademarks. The US has different views, but the dialogue is happening and it is still early stages. As regards the 2006 EU-US Wine Agreement, the Commission is indeed proposing that it be incorporated into TTIP as it is in both sides' interests.

The **Committee for European Construction Equipment** asked what the format would be for the stocktaking exercise in February. They also noted the number of events and debates happening in some Member States on TTIP, and asked whether the Commission is assisting with information and other resources to support these.

The **Commission (DL)** explained that the stocktaking would be a meeting between Commissioner De Gucht and USTR Michael Froman, and it had not yet been decided how to communicate its outcome. He confirmed that the Commission is indeed providing support to Member States organising events on TTIP, and continues to work very closely with Member States as usual, in particular on the technical aspects of the regulatory part of the negotiations.

Friends of the Earth Europe asked whether the Commission could confirm the calendar of negotiations for 2014. They also asked whether the advisory group previously announced had yet been set up, and if it would comply fully with the Commission rules on expert groups.

The **Commission (DL)** regretted that the calendar could not be provided as it had not yet been confirmed. Preparations are ongoing for the advisory group, which will indeed comply fully with the Commission rules on expert groups.

The **European Man-made Fibres Association** asked whether rules of origin had yet been discussed in the textiles sector, and whether these would be covered via an annex.

The **Commission (DL)** said that product-specific rules of origin had not yet been discussed at all. It is too early to say yet whether annexes will be used.

EuroCommerce asked whether it would be possible to look at compatibility of payment systems as part of the cross-border payments discussions.

The **Commission (MD)** answered that detailed discussions on cross-border payments had not yet started, but it would certainly be interesting to have the views of stakeholders to find out what might be done.

Digital Europe asked what progress had been made on the ICT sector, and whether the US had proposed a specific chapter.

The **Commission (MD)** replied that ICT services are a particularly important sector for both sides in the negotiations. The starting point is the [2011 joint principles on ICT services](#), and the Commission is currently working on the basis of existing templates. We are not convinced that the US approach is sufficient and we intend to hold detailed discussions to scope out what we can do in this area. **FPdP** added that ICT hardware is another key aspect, for example as regards product manufacturing. The US has a number of ideas on this which appear to be in line with Digital Europe's proposals and those of its US counterpart organisation.

Participants' views on civil society engagement during negotiating rounds

The **Commission (DL)** invited participants in the session to comment on the US practice during both Washington-based negotiating rounds of holding a civil society presentations event. This event comprises around 50 very short (7 minute) presentations from civil society organisations, held concurrently in several different rooms, with a brief opportunity (3 minutes) for questions and answers from the floor. Negotiators are present in the rooms and so are members of the press. **DL** asked if this would be a useful exercise for the EU to run also during negotiating rounds based in Brussels.

Humane Society International explained that they had given one of these presentations during the third round, and while it was good to be involved, the high speed nature of the event meant significant pressure on participants. Without knowing who was in the room, it was hard to feel that the presentation would necessarily influence negotiators, and the level of interaction was also compromised by the high speed. An event with a panel of negotiators, for example, could be more useful.

Eurogroup for Animals asked whether this kind of session would be a substitute for the existing civil society dialogue. **DL** confirmed that it would not.

TechAmerica Europe asked whether the presentations would influence negotiators on both sides: the opportunity to meet both at once is useful to organisations based only on one side of the Atlantic. **DL** said that negotiators from both sides should be present.

DL asked for a show of hands in favour of running a similar exercise in Brussels: approximately 30 participants raised their hands.

The **Commission (OdL)** thanked participants for their time, reminded them to return evaluation forms should they wish, and closed the session.