



CIVIL SOCIETY DIALOGUE

## **UPDATE ON THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP) - FIRST NEGOTIATION ROUND**

**Date:** 16/07/2013

**Time:** 14:30 – 16:30

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

### **Lead speakers**

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

Mr John Clarke, Director, International Affairs, in particular WTO negotiations, Directorate-General for Agriculture and Rural Development

Mr Jean-Marc Trarieux, Head of Unit Industrialised countries and OECD, Directorate-General for Agriculture and Rural Development

Mr Luis Quevedo Ley, International Relations Officer, Industrialised countries and OECD Unit, Directorate-General for Agriculture and Rural Development

Mr Christophe Roeland, Policy Officer, International Affairs and Missions for Growth Unit, Directorate-General for Enterprise and Industry

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

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

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

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

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

Ms Myrto Zambarta, Case handler, Dispute Settlement and Legal Aspects of Trade Policy, Directorate-General for Trade

Ms Esther Nieto Hernández, Trade Affairs Manager, USA and Canada Unit, Directorate-General for Trade

Mr Benjamin Harrison, Senior Advisor, Trade Section, Delegation of the EU to the United States

### **Moderator**

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

### **Panel Presentation**

**Commission (DL)** provided the context for the first round of TTIP negotiations, which took place in Washington from 8<sup>th</sup> to 12<sup>th</sup> July 2013.

On transparency and communication, the Commission informed that a stakeholder session had been organised by USTR in Washington during the negotiation week. Both EU and US negotiators participated in such event. On its part, the Commission had published a number of documents on the TTIP on DG Trade's website, including its initial position papers for the negotiations that will be published later in the afternoon.

The Commission declared that the first round of negotiations had been productive with substantive discussions in all negotiating groups paving the way for more intensive negotiations during the second round. Both sides pursued a high-level of ambition in the negotiations in line with the report of the EU-US High-Level Working Group on Growth and Jobs. The TTIP will be a fully-fledged international treaty ratified by Congress and by the European Parliament, the EU Council and Member States if decided that the agreement covers mixed competences.

Negotiators had set out their approaches in the different negotiating groups to identify commonalities and differences, as well as the possible ways of bridging the dissimilarities. Three pillars were at this stage the basis of TTIP: 1) market access; 2) regulatory areas; 3) trade rules. On market access, there had been good discussions on goods, services, investment, public procurement and RoO. Negotiators raised issues of architecture, scope of chapters, next steps to take and exchange of information and data. On regulatory areas, negotiators covered cross-cutting disciplines but also TBTs, SPS and several economic sectors – i.e. cars, pharmaceuticals, chemicals, financial services, medical devices and ICT – for which US regulators were present. On trade rules (covering IP and GIs, energy and raw materials, competition, SOEs, customs and trade facilitation and sustainable development), both sides compared approaches and framed what future chapters should contain.

Regarding next steps, the next round will take place in Brussels in October. The date will be confirmed soon.

### **Discussion Highlights / Questions and Replies**

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

**European Trade Union Confederation** asked about the ways in which the Commission envisaged engaging European stakeholders in the negotiating process and if there were concrete ideas on how to ensure greater participation. **ETUC** also asked for more information on the sustainability impact

assessment (SIA) mentioned in the Council negotiating directive. Finally, **ETUC** voiced its concerns in relation to the data on jobs presented in the Commission's Impact Assessment.

**Commission (DL)** replied that meetings such as the Civil Society Dialogue were part of the Commission's on-going transparency efforts. Among other transparency initiatives the Commission discusses its positions with Member States before and after each round and regularly informs the European Parliament. It was also looking into the possibility of setting up a group of expert advisors, who would have access to more detailed information along the line of the current practice in the US. On the impact on jobs, **Commission (DL)** announced that a public call for tender for the preparation of a SIA would be published in July or August and the selection of a contractor should be finalised by November. **Commission (DL)** underlined its interest in receiving stakeholders' views, including on the TTIP impact on jobs.

**Eurogroup for Animals** enquired whether SPS issues and animal welfare and protection were included in the TTIP negotiations... **EfA** also asked about the main areas of convergence and divergence in the EU and US approach to sustainable development. A further question concerned accumulation of origin in the rules of origin chapter and whether the EU would open its markets to products originating in third countries which entered the US and were then traded to the EU.

**Commission (DL)** answered that SPS issues and animal welfare would be discussed in the negotiations. On rules of origin, it remarked that it was too early to comment on the content of the rules of origin chapter and the handling of accumulation in the agreement. As regards sustainable development, the EU included labour and environment in an integrated sustainable development chapter whilst the US practice was to negotiate them separately. We both aim at high levels of protection and effective implementation of our domestic regulations, but our approach to referencing multilateral conventions somewhat differs. Also in US FTAs these areas are subject to the standard dispute settlement procedures, while the EU FTAs have specific dispute settlement mechanisms for this chapter.

**Friends of the Earth Europe** voiced its expectation to be informed before negotiations, not after. Transparency should also involve making all negotiating documents available for comments. In regard to the environmental impact and possible negative side effects of TTIP, **FOE** asked how the Commission weighed increases in trade against harm to the environment. **FOE** also voiced their concern that TTIP might have an impact on future European legislation and could inhibit Member States from passing stringent labour laws.

**Commission (DL)** replied that negotiations were at an early stage and that all input and comments from stakeholders collected at this stage would be taken into account for the preparation of the second round. As regards the impact of TTIP on the environment, this issue would be thoroughly addressed in the SIA. **Commission (DL)** stressed that the negotiations would not be used to lower labour or environmental protection. The real potential of TTIP would be to lower implementation costs both for regulators and businesses

**Commission (MH)** added that it sought to uphold environmental diversity and sustainability in the negotiations. The EU considers the standards enshrined in core Multilateral Environment Agreements and ILO conventions to be the basic reference point, while recognising the right of each party to go beyond those as appropriate. **Commission (LR)** underlined that the EU's approach to the negotiations was the protection of the right to regulate.

**European Patent Office** asked if patents and the grace period had been discussed in the context of the IPR chapter discussions.

**Commission (PVM)** declared that concerns expressed by EU stakeholders in consultation processes had been presented to the US counterparts and vice versa and that indeed grace period was one of those items.

**European Federation of Origin Wines** enquired whether the issue of Geographical Indicators (GIs) had been raised and if the US showed willingness to protect GIs.

**Commission (JC)** responded there had been a good substantive discussion on GIs and that it had been made clear that GI protection is imperative for the EU. The next rounds will serve to identify shortcomings in the US system of protection and possible solutions. Wine had not yet been discussed in substance.

**Society of Audiovisual Authors** asked for more information on how the USTR worked with Congress and whether they required a formal mandate similar to proceedings in the EU. **SAA** also requested clarification on whether the Commission planned to work on the basis of a negative list approach in TTIP negotiations.

**Commission (DL)** explained that USTR engages intensively with Congress as the Commission works closely with the European Parliament. **Commission (BH)** elaborated that the trade promotion authority (TPA), similar to the EU's negotiating directive, was technically not required before USTR entered into negotiations. An intense exchange between USTR and Congress guided negotiations during which, at a certain point, Congress would pass a formal trade promotion authority. TPA typically sets out a precise timeline for USTR-congressional consultations and provides political assurances that agreements will be considered without amendment by the Congress.

On the negative list approach, **Commission (MD)** explained that the EU had in the past followed a positive list approach on services while the US followed a negative list approach. Moreover, both partners were used to different scheduling techniques. A first exchange of views had taken place on this issue and the discussion would continue in forthcoming rounds. **Commission (LR)** added that in both positive and negative list approaches there were limitations and that exceptions could be foreseen in both.

**European Services Forum** remarked that they would find the work on negative lists disappointing. **ESF** asked if there had been a first exchange of views on financial services during the discussions on the regulatory chapters. **ESF** also enquired whether the list of sectors for negotiations had been closed and if it was still possible to open the discussion on additional sectors. Lastly, **ESF** requested clarification on whether cross-border data flows would be a part of TTIP negotiations.

**Commission (DL)** responded that the list of sectors had not yet been closed, but was expected to be finalised in the coming months. **Commission (MD)** confirmed that data flows would have to be discussed in the context of the services chapter since many services were provided in digital form. This issue would only be addressed in future rounds and had not been discussed so far.

**European Producers Union of Renewable Ethanol-EPURE** enquired whether the ethanol sector had been discussed in preparation for the second round, if it was considered to be a sensitive sector and how this sector would be handled in the negotiations. **EPURE** voiced their concern that an agreement, especially in market access, would entail disadvantages for some sectors and asked about the modalities that were envisaged for these sectors. Lastly, **EPURE** requested further information on the ambitions for the upcoming round and for an approximate date for a first exchange of offers.

**Commission (JC)** responded that it was well aware of the sensitivities of the different agricultural sectors and would take them into consideration when presenting offers. Possible ways to deal with sensitive products typically include for example the use of longer transitional periods, tariff rate quotas (TRQs), etc.

**European Services Strategy Unit** asked how far the public procurement demands of the EU reflected their own offers.

**Commission (DL)** replied that the EU was more interested in having access to public procurement in the US than the US towards the European public procurement market. In addition, it was monitoring closely federal level exclusions such as “Buy American” and departments with certain exclusions. Moreover, the flow of funds from government to federal states was being examined in the run up to the preparation of an offer on public procurement.

**industriAll European Trade Union** remarked that it considered the Commission's approach to Investor to State Dispute Settlement (ISDS) rather naïve and argued that domestic remedies were not used sufficiently. **industriAll** also expressed concern about the lack of a chapter on fundamental rights and asked how the Commission would make sure that TTIP would not undermine the European Charter of Fundamental Rights.

**Commission (MZ)** emphasised that the Commission is still considering its approach on investment protection and that this is one of the issues that are being looked at. It was pointed out that there were many conflicting interests in this regard that need to be balanced. **Commission (DL)** clarified that safeguard measures existed to ensure that any agreement negotiated by the Commission was in line with the European Charter of Fundamental Rights. Provisions in the Treaty of Lisbon allow the European Commission, the European Parliament and the Council to approach the European Court of Justice for a ruling on whether or not an agreement is in line with European Charter of Fundamental Rights. The legal service of the Commission was furthermore closely monitoring the negotiations to ensure that no provision conflicting with the Charter would be part of TTIP.

**European Telecommunications Network Operators' Association** enquired whether ICT issues had been discussed and asked for information on the strategy envisaged. It also asked if the US side had shown any preferences on this issue.

**Commission (MD)** replied that cross-border trade played a relevant role in this sector and that both sides agreed on a number of principles, which encompassed regulatory as well as competition areas that should be the basis for discussion. Both partners would work towards convergence and there was a relatively good basis on which to work on this sector. It was still too early to say if the Commission would negotiate separate chapters but ICT was a sector where progress was possible in foreseeable time.

**Heinrich Böll Stiftung** raised awareness to the fact that the US saw the directive Renewable Energy Directive (RED) as a technical barrier to trade and asked whether this would have an impact on the RED.

**Commission (JC)** responded that the US has specific concerns regarding the criteria in the RED for granting tax advantages, etc. for biofuels but that the EU's overall policy and the RED were not in question.

**Transport and Environment** enquired whether attempts to apply the concept of equivalence of regulations in the car sector would not undermine the EU market and our level of environmental

protection. **T&E** also asked if a double set of standards might be developed on the bilateral and the multilateral side.

On cars, **Commission (CR)** replied that the point of departure was that the EU and US cars broadly offer similar levels of protection in terms of safety and environment. This was not a principle that could be taken across the board but rather as a case by case approach by looking at technical regulations and the extent of equivalence in the level of protection. An example would be safety and environment protection where it would be possible for some standards to be shared, although it would be more challenging from the environmental point of view than the safety point of view.

With regard to standards, **Commission (FPdP)** replied that the objective was not to engage in developing bilateral standards but to support the implementation and development of international standards; a way of addressing this issue might be by sectors. Moreover, the EU and US had different views on international standards so this would be a subject for further discussion.

**European Egg, Poultry and Game Association** voiced their concern on existing technical and sanitary barriers and stressed the different approaches of standard setting institutions on both sides of the Atlantic. They further enquired about the link between bilateral and global negotiations.

**European Union of Wholesale with Eggs, Egg Products and Poultry and Game** insisted on the sensitivity of this sector and recommended that negotiations with the US should not be isolated from other on-going negotiations, as for example with the Mercosur countries.

**Commission (JC)** acknowledged that this was a sensitive sector. **Commission (DL)** added that it would also look at US procedures, for example on their length. Furthermore, **Commission (JC)** stated that it would take into account what had been committed in the negotiations with Canada, Mercosur, WTO and other bilateral and multilateral negotiations and their cumulative effects.

**Eurochambers** asked if provisions on small and medium enterprises (SMEs) had been discussed and, if this had been the case, required further elaboration on the topic.

**Commission (CR)** replied that an initial discussion had taken place on SMEs. As a point of departure the US had taken discussions in the framework of other FTA negotiations. There was also an on-going dialogue between the EU and the US within the framework of the Transatlantic Economic Council (TEC). The idea in the TTIP discussions with the US is to build upon this dialogue and to create information mechanisms or structures that will help SMEs to fully benefit from a future agreement.

**European Broadcasting Union** asked whether the issue of culture and audiovisual services had been raised. It further enquired on progress on TISA negotiations and on how the Commission envisaged coordinating negotiations at the plurilateral and bilateral level

On culture and audiovisual services, **Commission (MD)** replied that this issue did not figure on the negotiating agenda and that explanations had been given to the US negotiators on the reasons for this. On coordination between the TISA and TTIP, **Commission (MD)** evoked that both negotiations had different objectives in view. TISA would look at how to reinforce and bring back negotiations on services to the multilateral system and involved a good number of participants. TTIP would bring together the two world leaders in trade in services with a high degree of openness. The aim would be therefore to find issues on which we could cooperate in the future.

**Eurocommerce** asked about cross-border payments, in particular with regard to the compatibility of payment systems.

**Commission (MD)** replied that cross-border payments were not discussed as such due to the early stage of negotiations. DG Trade would coordinate positions with the colleagues dealing with the Internal Market who were engaged in on-going internal regulations if certain aspects were taken on the agenda.

**European Association of Dairy Trade** expressed its concern on the treatment given to sensitive products, in particular in the agricultural sector. Furthermore, **EADT** asked what criteria the Commission drew upon to determine the sensitivity of an agricultural sector.

**Commission (JC)** replied that in assessing a sector's sensitivity it looked at a number of factors such as competitiveness, production costs and the change in productivity levels, long term prospects for the sector, etc. as well as monitoring the Farm Bill and consulting Member States and stakeholders on this issue.

**Freshfel Europe - the forum for the European fresh fruits and vegetables chain** enquired about the ambitions on SPS, especially for plant health.

**Commission (DL)** replied that it was looking into how to simplify and speed up procedures.

**European Fertiliser Import Association** noted that shale gas was a game-changer and expressed their concern of the imports of this gas to the EU. They also enquired on what the EU's position would be on policies towards energy-intensive industries.

**Commission (DL)** remarked that this would be a matter to be looked at in the framework of the EU's energy policy rather than in the negotiations with the US. **Commission (MH)** explained that issues related to climate change are being addressed as part of discussions on the protection of the environment. There could be scope for increased cooperation on energy efficiency issues or further liberalisation of climate friendly products.

**Groupe PAC 2013** asked whether the precautionary principle had been discussed.

**Commission (DL)** stated that it has consistently defended the precautionary principle, which is recognised in the WTO SPS Agreement, and will continue to do so.

**Free Software Foundation Europe** asked when the first intermediary negotiating text would be available to the public or the European Parliament. Furthermore, it enquired whether data protection and computer programmes had been discussed.

With regard to an intermediary negotiating text, **Commission (DL)** noted that the negotiating process had just started and that it was not envisaged to produce a draft text yet.

Concerning data protection, **Commission (DL)** recalled that it had proposed more stringent rules but this proposal was still pending of approval. Data protection authorities in the respective Members States would have to take action on this issue.

On computer programmes, **Commission (PVM)** understood that the question concerned software patents. This issue had not been discussed and the EU side had not manifested an interest in including it in the negotiations.

**COPA-COCEGA** stated that it would welcome progress in the multilateral field. It enquired on the state of play of negotiations with Canada and on their potential impact on the negotiations with the US.

**Commission (DL)** affirmed that the negotiations with Canada were progressing and would hopefully be finalised shortly. Both negotiations would be running in parallel and linkages would be taken carefully into account.

**Climate and Environment** asked the Commission to elaborate further on the chemicals chapter. It also enquired on the different approaches to this sector by the EU and the US, in particular from the binding point of view.

**Commission (DL)** stated that there was no agreement at this stage regarding the sectors which would be included in the negotiations. Industry from both sides were analysing the elements that might be discussed. **Commission (CR)** added that chemicals had been brought up in the discussions on sectorial regulatory cooperation. The EU had a high level of protection, which would be maintained. The aim would be to evaluate how and where work could be facilitated for companies and regulators seeking to create synergies as, for example, in the assessments of substances where the burden might be shared within existing regulatory frameworks.

**European Committee for Standardization-CEN** emphasised the importance of conciliating the EU and US standard systems in a consistent manner as the US system was more complex, especially as concerns conformity assessment.

**Commission (FPdP)** underlined that there would be a consistent approach from the EU. During the first discussions information would be exchanged to have a better understanding of the current situation. The legal status of these standards was being analysed at federal and state level.

**Bureau Européen des Unions de Consommateurs-BEUC** asked about plans for future engagement and consultation with stakeholders on TTIP.

**Commission (DL)** replied that the present meeting was the first of a series of meetings on TTIP negotiations of the Civil Society Dialogue. The Commission was currently reflecting on organising an event with stakeholders in October or November in the margins of the next negotiating round that will take place in Brussels.

**European Dairy Association** wondered whether the US voluntary scheme on milk production and subsidies to cheese production, which are WTO-compatible, would also be FTA-compatible.

**Commission (DL)** replied that it was aware of the issue.

**European Generic Medicines Association** asked what topics the US was keen to discuss in the pharmaceutical sector, in particular as regards to generics and biosimilars and whether the FDA was involved in the negotiations.

The **Commission (CR)** informed that the sector was discussed and the FDA present and engaged. One of the aspects that the Commission had suggested as a potential area of discussion was how to bring both systems for the authorisation of biosimilars further together, a discussion that could have an impact on international approaches and that would be pursued.

The **Commission (DL)** thanked civil society organisations for their questions and input.