



#### CIVIL SOCIETY DIALOGUE

## **OUTREACH – UPDATE ON THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP) – NINTH NEGOTIATION ROUND**

**Date:** 18 May

**Time:** 15:00 – 17:30

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

#### **Lead speakers**

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

Mr Fernando Perreau de Pinninck, lead coordinator of the TTIP regulatory cluster, Head of Unit Tariff and Non-Tariff Negotiations, Rules of Origin, Directorate-General for Trade

Mr Christophe Roeland, Policy Officer, International Affairs and Missions for Growth Unit, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW)

Mr Petr Wagner, Policy Officer, Financial services policy, Inter-institutional relations and International affairs Unit, Directorate-general for Financial Stability, Financial Services and Capital Markets Union (DG FISMA)

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

#### **Moderator**

Mr Lutz Guellner, Head of Unit Information, Communication and Civil Society, Directorate-General for Trade

#### **Panel Presentation**

**DG Trade (LG)** opened the meeting by welcoming civil society representatives.

**DG Trade (HH)** gave an overview of the state of play of the 9<sup>th</sup> round of TTIP negotiations that took place in New York City on 20-24 April, 2015. He explained that almost all TTIP areas were covered, except for services, sustainable development, state-owned enterprises and rules of origin. The main focus of work was specifically on consolidating previous work in all three pillars of the negotiations, and pushing for maximum progress in regulatory and rules pillars. On the US side there have been important developments, concerning the introduction of the Trade Promotion Authority (TPA), which gives a mandate to the US

administration for 3 years, renewable once, and may be voted by the summer break. Its adoption could provide momentum to close the Transpacific Partnership (TPP) negotiations, which may precede the conclusion of TTIP. On the EU side, a TTIP resolution will be voted in the European Parliament in May (INTA Committee) and June (plenary session). Technically speaking, in terms of work done we are about halfway: both parties have exchanged proposals for about 13 out of 25 chapters.

**DG Trade (FPdP)** presented the EU textual proposal on regulatory cooperation and its update including provisions on non-central level regulatory cooperation (US States and EU Member States) in addition to the already covered central level (US and EU). The main elements of the proposal are good regulatory practices that contribute to more effective regulations (in particular impact assessment and stakeholder consultations) and enhanced regulatory cooperation. The main objectives of the proposal are to reinforce EU-US regulatory cooperation, including on international level, to prevent or correct unnecessary cost creating divergences but without in any way lowering levels of protection, and to promote good regulatory practices setting example for third countries. The regulatory cooperation would fully respect the right to regulate of each party, and would not prescribe a particular outcome. Provisions on regulatory cooperation would not be subject to dispute settlement. The scope of regulatory cooperation would not cover regulatory acts establishing general framework or principles and areas excluded from TTIP (e.g. audio-visual or services of general interest). The regulatory cooperation would address concrete concerns, not harmonise wide areas or create a transatlantic internal market. The EU proposal provides for an institutional mechanism that would facilitate exchanges between regulators in areas of common interest, a Regulatory Cooperation Body (RCB). It would monitor the implementation of TTIP provisions, ensure transparency and stakeholder involvement, and publish annual regulatory cooperation programmes. It would have no regulatory functions – no power to adopt, amend, review or veto regulations or introduce international obligations. Regulatory cooperation would not compromise or delay the domestic decision-making and legislative processes, either in the EU or in the US.

The third presentation was given by **DG Trade (LR)** and concerned the ISDS and investment proposals presented in the EU concept paper, published on the 6<sup>th</sup> of May. The proposal focuses on four key areas, identified in the process of the public consultation conducted in 2014 on investment protection and ISDS. The areas are the right to regulate, the selection and conduct of arbitrators, an appellate system and the relationship between ISDS and domestic courts. One idea is to progressively transform ISDS into a permanent court, and to have appellate systems at the multilateral level. The paper was presented by Commissioner Cecilia Malmström to the INTA Committee in the European Parliament and to the Member States in the Foreign Affairs Council (FAC-Trade). The next step will be an elaboration of a legal text that will be presented to the EP and the Council before the summer break.

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

The exchange of views was articulated in 3 blocks:

- **TTIP state of play**

**Confederation of Danish Industries** asked about the possibility of introducing a SMEs chapter in TTIP.

**DG Trade (HH)** highlighted that the SMEs chapter is a priority for both partners and that the EU and US are working towards the same objective. The EU made a proposal on establishing a common SMEs informational portal and is willing to work with the US counterpart in this area.

**Deutscher Industrie und Handelskammertag** enquired about how far negotiations had advanced on the SME chapter in TTIP.

**European & International Booksellers Federation** wondered why the publishing and book distribution sector had not been excluded from the TTIP negotiation.

**Both Ends** asked about PPMs (product and production measures) since there are differences in EU and US approaches, e.g. animal welfare issues and cost implications are part of the concerns, and whether this will be dealt with in the regulatory chapter. They would also like to see climate change and CO2 emissions included.

**DG Trade (HH)** explained that proposals relating to animal welfare are located in the sanitary and phytosanitary chapter.

**European Centre of Employers and Enterprises providing Public Services** enquired about the meaning of the joint statement on public services in trade agreements issued by Commissioner Cecilia Malmström and US Trade Representative Michael Froman and its meaning in terms of list approach regarding market access and national treatment in TiSA and TTIP.

**DG Trade (HH)** explained that the EC aims for the same approach in TTIP and TiSA negotiations, which is a so-called hybrid approach with negative listing for national treatment and positive listing for market access.

**Association nationale interprofessionnelle du bétail et des viandes** enquired about the timetable for the exchange of the list of sensitive products.

**DG Trade (HH)** replied that discussions are ongoing but there was no agreement to exchange new tariff offers at this point in time.

**Central European Energy Partners** wanted to know whether free access to gas and oil was discussed during negotiations and if REACH was on the agenda.

**DG Trade (HH)** replied that the EC has started engaging on energy and raw materials and is aiming to reach free trade flows in this area, without licencing and no import or export duties. Concerning REACH, this is not a subject of TTIP discussions.

- **Regulatory cooperation in TTIP**

The moderator asked whether establishing of the RCB might cause a chilling effect on regulations of both sides to the agreement.

**DG Trade (FPDP)** and **DG Grow (CR)** replied that the RCB could not have such chilling effect, because the review of regulations would not be a part of its tasks. All regulatory cooperation would have to respect timelines required by the EU and US regulatory processes. The RCB would be a place where regulator of both parties would feel free to discuss.

**EuroCommerce** asked why the state level in the US was not included in the discussion on regulatory cooperation.

**DG Trade (FPDP)** replied that the EU proposal aims to create a parallel between the EU and federal level on the one hand, and Member States and US states on the other. The EU considers necessary to keep this symmetry of obligations.

**The Austrian Federal Economic Chamber** asked about the progress in the negotiations concerning financial markets regulations.

**DG FISMA (PW)** replied that while the financial services would need some specific provisions, some of the horizontal provisions on regulatory cooperation should also apply to financial services. Financial services regulations should be part of TTIP agreement.

**European Services Forum** stated that there is imbalance in obligations between the EU and the US in terms of good regulatory practices due to the fact that EU regulates mostly on central level, while many regulations on services are adopted by US States – EU regulations are therefore more opened to comments from the US. Moreover, many services regulators in the US are not central authorities and their regulation would probably fall out of the scope of the regulatory cooperation.

**DG Trade (FPdP)** and **DG Grow (CR)** explained that there would be no imbalance and that both systems would be working together while respecting their institutional differences. The intention of the Commission is to cover regulations issued by all entities that have regulatory power. The EU would rely on US federal government as a contact point concerning non-central level.

**Finance Watch** asked how the stakeholder consultation mechanism would work. In their view there was a big imbalance of interests in the area of financial services, so the measures to balance them were needed, also in order to not lower the protection of social interest and stop harmful activities. They also asked how costs of regulatory divergence for society would be assessed in the agreement and whether increasing the levels of protection would be allowed. They would prefer to exclude financial services from regulatory cooperation.

**DG FISMA (PW) and DG Trade (FPdP)** explained that the Commission always aims at well balanced participation of stakeholders in consultations on regulations with significant impact on society. Regulatory cooperation provisions would not prevent increasing levels of protection, on the contrary, the exchange of information between regulators would help to make regulations more effective and better targeted.

**SOLIDAR** asked about the possibility of reviewing the existing EU legislation (ex-post evaluation and regulatory reviews).

**DG Trade (FPdP)** explained that regulatory cooperation would concern also existing regulations in different ways – for example exchange of scientific information or risk assessment methodologies. Regulatory reviews are good regulatory practise and are regularly conducted by the EU. However, changing existing regulatory frameworks (e.g. REACH), would not be an objective of the EU-US regulatory cooperation.

**Danish Chamber of Commerce** asked about Good Manufacturing Practices (GMP) inspections in medical area in TTIP.

**DG Trade (FPdP)** answered that there is already an ongoing audit of inspection capacities of both sides, which should be done for 8 EU Member States by the end of 2015. There will be a special meeting on TTIP and Health on May 27<sup>th</sup>.

**Bureau Européen des Unions de Consommateurs** enquired about the scope of provisions on regulatory cooperation, in particular whether regulations on the alcohol labelling would be included.

**DG Trade (FPdP)** explained that the alcohol labelling would be subject to WTO TBT disciplines that would be reaffirmed in TTIP (notification and comments of other WTO Members). Depending on the context and in case of common interest,

the issue could also be discussed in the framework of regulatory cooperation. Final decision would be always taken by EU regulators.

- **Reforms of investment dispute resolution in TTIP and beyond**

**Both Ends** asked about links between the ISDS provisions in TTIP and the agreements with Canada, Singapore, Myanmar and Japan and how far there is scope to take stock of lessons learned.

**European Economic and Social Committee** raised the issue of consistency since there might be different investment provisions in different trade agreements (e.g. Japan, Canada and the US) and whether it would not be preferable to have a consistent standard. The need of organizing a meeting concerning the FTA with Japan was also signalled.

**Bundesverband der Deutschen Industrie** wanted to know what will be the steps after the summer break and the influence on the legal scrubbing of CETA.

**European Federation of Public Service Unions** proposed considering wider public consultations on the ISDS concept paper, public services, regulatory cooperation and the new trade policy strategy as well as having more in-depth discussions on the way ahead.

**DG Trade (LR)** replied that the EC is trying to define the EU negotiating position that will be presented to the US and this will be the next step. CETA and Singapore agreements are already concluded and there will be no re-opening. The aim is to define policy in the ongoing negotiations. Negotiating positions in the agreement with Japan are being based on what was agreed with Canada and Singapore. In TTIP the general intention is to have one general position on investment, a consistency in terms of general values and policy, with slight differences on particular countries.

**DG Trade (LG)** explained that all the changes introduced by the EC in both proposals are result of constant dialogues with civil society. He underlined the readiness of the EC to explore new forms of dialogue and consultations, having in mind which forms of consultations are appropriate in particular moments of negotiations.

**DG Trade (LG)** underlined the European Commission's open door policy. He informed about upcoming meetings: meeting on TTIP and Health (May 27<sup>th</sup>), and Trade Policy Day (June 23<sup>rd</sup>).