

**European Ombudsman's public consultation in relation to the transparency of the  
Transatlantic Trade and Investment Partnership (TTIP) negotiations**

Case: OI/10/2014/RA

**Response of the Transatlantic Consumer Dialogue (TACD)<sup>1</sup>**

28 October 2014

Please accept these comments of the Transatlantic Consumer Dialogue (TACD), a network of more than 75 consumer organisations from the EU and the U.S. The TACD was launched in 1998 at the request of the governments on both sides of the Atlantic. Our network's purpose is to provide a formal mechanism for EU and U.S. consumer representatives to input to EU and U.S. negotiations and agreements. In addition, the TACD contributes to the exchange of information, dissemination of knowledge and sharing of best-practices on consumer policies and legislation on both sides of the Atlantic. For more information on our network, we kindly refer you to our website: [www.tacd.org](http://www.tacd.org).

- 1. Please give us your views on what concrete measures the Commission could take to make the TTIP negotiations more transparent. Where, specifically, do you see room for improvement? (We would ask you to be as concrete as possible in your replies and also to consider the feasibility of your suggestions, in light of the timeframe of the negotiations. It would be most helpful if you could prioritise your suggestions.)**

Since the TTIP negotiations started, some positive steps have been made by the Directorate-General for Trade of the European Commission (DG Trade) to improve information transparency and stakeholder input into the TTIP negotiations. The publication of many of the position papers, the eventual official publication of the EU negotiating mandate, the creation of an evenly-balanced Advisory Group and the briefing-cum-input sessions that take place during each negotiating round have all marked good progress. However, these measures have been largely ad-hoc initiatives, prompted by increased pressure from civil society, and some of the parliamentary parties – and not part of a well-thought out overall strategy that should, incidentally, also apply to all such negotiations to which the Commission is a party. Only such a consistent and consistently applied strategy and published procedure will satisfy both the spirit and the letter of article 15 of the Treaty on the Functioning of the European Union (TFEU)<sup>2</sup>. There are good practice examples to use as models from other negotiations and international institutions, and we give some examples in the answer to question 2.

---

<sup>1</sup> TACD would like to thank the European Consumer Organisation (BEUC) for providing its draft response, which forms the basis for the TACD recommendations.

<sup>2</sup> See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

Specifically, we recommend as essential elements of a coherent transparency process the following measures, which build on our previous letters and position papers<sup>3</sup>, as well as the important improvements recently advocated by the European Ombudsman<sup>4</sup>:

1. Public access to the TTIP contents documents: The documents should be posted on a dedicated website in a timely manner and include negotiating directives (mandates)<sup>5</sup>, initial EU position papers on all sectors covered by the mandate, draft EU offer legal text proposals on all non-strictly tariff-related topics, consolidated texts (i.e. EU and U.S. offers combined) prior to each negotiation round, as well as detailed agendas and detailed reports on the outcomes of each round.

We are aware that the U.S. side denies public access to negotiating documents beyond a handful of pre-approved, mostly business, expert committee members and are equally advocating full transparency and similar measures to the U.S. negotiators. In the meantime, the EU side should lead by example.

The single most important transparency reform around the TTIP negotiations would be to make the negotiating text public. This reform is more important than all others combined. We strongly favour release of the entire negotiating text in connection with each negotiating round, with clarity on which parties proposed specific language. However, incremental steps would be much preferable to no release. These might include scrubbing the text so that it is not clear which party made a proposal; more episodic release of the negotiating text; or exclusion of certain elements of text, such as that covering proposed tariff reductions. Transparency and publication is most important in the areas where the negotiations are most novel, and not closely based on other trade agreements, as with the proposed chapter on regulatory coherence.

2. Public access to information on the process: The Commission should publish lists of all meetings held by the negotiators with stakeholders, in order to discourage excessive influence of stakeholders that have large resources in terms of funding and number of lobbyists<sup>6</sup>. Letters sent to negotiators and their Commissioners by stakeholders should also be published, as well as any policy submissions and contributions received by the negotiators. The publication by the Office of the United States Trade Representative (USTR) of all the stakeholder submissions to its original pre-negotiation consultation is

---

<sup>3</sup> See <http://tacd.org/ttip-letters/>. TACD was also one of the signatories to the “civil society right to know letter” concerning the EU-U.S. trade talks, accessible at <http://www.foeeurope.org/right-to-know>.

<sup>4</sup> See <http://www.ombudsman.europa.eu/press/release.faces/en/54636/html.bookmark>.

<sup>5</sup> The TTIP negotiating mandate, leaked soon after its release in June 2013, was published by the Council of the European Union only in October 2014, after repeated requests from civil society, the European Commission and the European Ombudsman. See <http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54634/html.bookmark>. This is a positive sign for a timely publication of the mandate in future negotiations, but one which arrived far too late for the TTIP.

<sup>6</sup> See the European Ombudsman letter to the President of the European Commission, accessible at <http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54633/html.bookmark>.

a good practice in this respect, and has enabled stakeholders to learn each-others positions at an early stage in the negotiations<sup>7</sup>.

3. Meaningful consultations with the public: Providing the documents outlined above are made available, public consultations should take place at key stages of the negotiations: prior to the launch (as happens already); on the draft mandate (negotiating directive) before its final approval by the Council; on the initial policy position papers on the subjects covered by the mandate; and on the final draft consolidated legal text, prior to initialling by the parties. The stakeholder expectations will naturally be that the results of these public consultations are fully reflected in the positions that the negotiators take.
4. Role and input of the DG Trade expert Advisory Group (AG): This group has been set up with a mandate to provide TTIP negotiators with high quality expert advice on subjects being negotiated<sup>8</sup>. However, the scope of the work of the AG has been limited and it only has been able to give pre-negotiation comment on one draft text – the chapter on Sanitary and Phytosanitary (SPS) issues – ahead of the 7<sup>th</sup> round of negotiations. Restricted papers are only available in the reading room located within DG Trade, which puts non-Brussels based members of the AG at a considerable disadvantage. The AG is also being denied access to merged EU-U.S. legal texts, which renders any input it may have increasingly meaningless as negotiations progress, and end up being used as a transparency whitewash.

We therefore propose that: texts being developed for future negotiation rounds must be presented in good time to allow AG members, and their experts, to provide detailed comments before each round; the AG should have access to TTIP merged legal texts; documents should be made available for comment on a secure online platform (this is currently the practice for the USTR approved advisory committee members); and the European Commission must respond to comments and proposals for modification made by the AG.

5. Involvement of the Parliament and the Council: It is of course imperative that both institutions are kept informed and contribute to the negotiations. But the rules of engagement for both are unclear to the public – e.g. list of documents available to them; who within each institution has access to documents; as well as agendas and minutes of meetings held ‘in camera’. We urge that the rules governing engagement in the TTIP of these institutions, and the national authorities involved, be made public as they must be fully accountable to the citizens they represent. Additionally, key directorates and

---

<sup>7</sup> See <http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=USTR-2013-0019>.

<sup>8</sup> See <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=11459&no=1>.

agencies should be involved in developing DG Trade negotiating positions, and in the public consultative process.

It is important to stress that all the proposals listed above need to be adopted and assessed together, as they each contribute to a final, more credible and more widely accepted trade deal.

**2. Please provide examples of best practice that you have encountered in this area (for example, in particular Commission Directorates-General or other international organisations) that you believe could be applied throughout the Commission.**

The Free Trade Area for the Americas (FTAA) was launched in 1994 and came into a stall in the mid-2000s. Despite the failure of reaching a final agreement, and while it fell well short of a transparency ideal, the FTAA negotiations were far more open and subject to public scrutiny along the whole course of the negotiations than TTIP. An FTAA-dedicated website was created and the whole draft agreement text was published there every time negotiators reached consensus on a new version, sharing the progress made and opening it to public scrutiny<sup>9</sup>. The FTAA website contains an impressive array of information ranging from dozens of written submissions by civil society organisations to detailed information on the instructions and timelines received by each negotiation group, to information on the chairmanship of each negotiation group for each negotiation round. The homepage itself includes a section inviting civil society to have its say and presenting its views on every aspect of the agreement via a written contribution<sup>10</sup>.

The World Trade Organisation (WTO)'s website offers a practical example of publicity of discussions, where citizens are able to read documents and get information on the progress of the talks. In fact, it gives the possibility to browse and consult a vast array of negotiation texts – including initial draft proposals, compromise texts, national submissions and minutes of most of the meetings – offering for consultation the texts at different stages, from the version on the table of the negotiators to the final compromise agreed and the comments made by WTO members. WTO negotiations have not always been as they look like today and the urgency for the WTO practices of external transparency became evident only in the late 1990s, following the mass demonstrations at the Seattle Ministerial Conference (1999) and leading to the General Council Decision of 2002 on Procedures for the Circulation and Derestriction of WTO Documents.

The World Intellectual Property Organisation (WIPO)'s negotiations on the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, finalised in June 2013, offers a good model of

---

<sup>9</sup> See [http://www.ftaa-alca.org/ftaadrafts\\_e.asp](http://www.ftaa-alca.org/ftaadrafts_e.asp).

<sup>10</sup> See [http://www.ftaa-alca.org/Alca\\_e.asp](http://www.ftaa-alca.org/Alca_e.asp).

openness and transparency in international negotiations. Agendas of the meetings, lists of participants, draft clauses, decisions on admission of observers and progressive reports on the negotiations, as well as the progressively updated draft text were timely published on the internet<sup>11</sup>, and a webcasting service allowed the general public to watch in streaming the negotiation sessions<sup>12</sup>. Stakeholders' working groups were set up and progress on their activities was made available online<sup>13</sup>. The result has been an agreement judged as balanced by negotiators and civil society representatives<sup>14</sup>, who had the possibility to submit their comments throughout the process and contributed effectively to the final outcome of the process. TACD played a very active role in these negotiations<sup>15</sup>.

Indeed, openness and publication of negotiating texts is the norm in many multilateral negotiations. Other United Nations bodies that are subject to transparency procedures include the Codex Alimentarius Commission, the United Nations Framework for Convention on Climate Change, and the World Health Organization's Framework Convention on Tobacco Control. In all these, observers, including external stakeholders, attend sessions and can provide submissions on request by the parties. For example, in Codex Alimentarius, which sets global food standards, the consumer representatives played an important role in the adoption of a global genetically modified foods labelling standard, after several years of deliberations.

### **3. Please explain how, in your view, greater transparency might affect the outcome of the negotiations**

There are four fundamental reasons why full disclosure of information and process around the TTIP negotiation will have an impact on its outcome:

1. Meaningful input by those directly affected by the negotiations will result in more balanced provisions of the agreement and adoption of highest standards as well as a win-win situation – good for consumers, environment and workers, and also good for business. It will set a benchmark for other negotiations. All this providing the stakeholder input is taken on board.
2. A more open process with more public review and comment of actual negotiating texts will avoid unintended outcomes. We oppose inclusion of any provisions on investor-state dispute settlement (ISDS), but even advocates of ISDS say that more recent proposals are improvements over earlier variants. Many of the problems in those original texts could have been avoided with more public scrutiny. Similarly, the Anti-Counterfeiting Trade Agreement (ACTA) included provisions that would have had

---

<sup>11</sup> See [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=28722](http://www.wipo.int/meetings/en/details.jsp?meeting_id=28722).

<sup>12</sup> See [http://www.wipo.int/webcasting/en/?event=vip\\_dc](http://www.wipo.int/webcasting/en/?event=vip_dc).

<sup>13</sup> See [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=122314](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=122314).

<sup>14</sup> See <http://us.creativecommons.org/archives/852>.

<sup>15</sup> See <http://tacd.org/topics/policy/intellectual-property-policy/>.

unintended consequences and were discovered only upon publication. In the TTIP negotiations, we see many possibilities for such unintended outcomes, especially in the novel text being negotiated in the regulatory coherence chapter.

3. It will ensure that the TTIP negotiation is judged on the merits of its content, rather than have almost full public attention on its lack of transparency. It will ensure public buy-in and any criticism or praise will be based on concrete evidence of what is in the text, rather than guess-work and anxiety of what may be in it, or hidden intentions.
4. It will ensure that TTIP does not become an ACTA II experience which on current evidence is a real possibility: the civil society NO to TTIP movement is growing and street demonstrations took place in mid-October throughout Europe. A proposal for the launch of a European Citizens' Initiative to repeal and renew the existing mandate was submitted to the European Commission, enlisting the support of hundreds of thousands of citizens<sup>16</sup>. The most effective way to address these concerns of EU citizens is through greater transparency, rather than counter-propaganda tours or government assurances of the potential benefits of the agreement. As quantitative research clearly shows, EU citizen trust in their national governments, politicians and the EU stands at very low levels<sup>17</sup>, so mere assurances will not bring results.

Furthermore, the unprecedented interest in TTIP is due also to the fact that this is not a traditional trade agreement, but it is a first that attempts to create a quasi single U.S.-EU market by addressing so-called regulatory barriers, i.e. consumer, environmental and labour protection, but without addressing fundamental social rights at the same time, as is the case with the EU single market. Civil society on both continents is both developed and mature, and has considerable expertise to contribute.

---

<sup>16</sup> See <http://stop-ttip.org/european-citizens-initiative-demands-stop-negotiations-for-ttip-and-ceta/>. The request for registration of the proposed citizens' initiative was refused by the European Commission in September 2014.

<sup>17</sup> See [http://ec.europa.eu/public\\_opinion/archives/eb/eb81/eb81\\_first\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb81/eb81_first_en.pdf).