



Submission to European Ombudsman consultation on TTIP and transparency

Trades Union Congress submission to the European Ombudsman public consultation in relation to the transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations

31 October 2014

Introduction

The Trades Union Congress (TUC) is the national centre of British trade unions representing almost 6 million members with 55 affiliated unions from a range of sectors. The TUC is a member of the European Trade Union Confederation (ETUC). The TUC is pleased to respond to the public consultation of the Ombudsman on transparency in the Transatlantic Trade and Investment Partnership (TTIP).

"Trade unions in Britain have significant concerns with the current form of TTIP that led the TUC to adopt a position of outright opposition to the deal at our Congress in September.¹ One of the concerns expressed was the perception that TTIP 'negotiations lack transparency and proper democratic oversight'. Other concerns include the potential impact of TTIP on the ability of the state to regulate public services, labour and environmental standards and jobs. The TUC resolution stated 'that all pending and future trade agreements entered into by the EU should be subject to a vigorous and transparent regime of scrutiny and consultation, ensuring that they are of benefit and acceptable to the millions of people affected by their content, in all countries covered by the agreement.'

The TUC hopes that its comments laid out below will be taken account in the recommendations the Ombudsman makes to the European Commission and encourage such a regime of transparency in TTIP.

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?

The TTIP negotiations go far beyond traditional tariff reductions, covering public policy issues such as regulatory convergence. This argues for the development of positions to be carried out through existing political and consultative channels, including stakeholder participation.

So far as sectoral aspects are concerned, we would encourage DG Trade, in cooperation with DG EMPL, to hold discussions on relevant aspects of TTIP in all existing sectoral social dialogue committees and create fora for discussions between social partners where such committees do not exist. For horizontal issues of particular concern to the social partners, such as labour standards, jobs or wages, social dialogue structures should be adapted to involve more in-depth discussions. In all cases, the negotiating texts should be made available.

Trade unions (and civil society organisations generally) should be afforded the same access as business organisations to all Commission DGs, and notably in regards to DG ENTR with which they appear to have privileged access and which has been leading on deregulation. It will be recalled that it was that DG which handled transatlantic relations until they were transferred to DG Trade by the last Commission, through the Transatlantic Economic Council to which ENTR strenuously denied Labour the same access as Business.

¹ See <http://www.tuc.org.uk/international-issues/trade/congress-2014-composite-resolution-transatlantic-trade-and-investment>

Generally, there should be a presumption that all positions and offers should be placed in the public domain unless there is a demonstrable need for access to be restricted. Thought might be given to setting up an independent authority to judge that need. We would agree that negotiating tactics (for example landing zones, which were leaked in the CETA negotiations) should be kept confidential. However, any documents that have been formally tabled and thus available to the other party should be available for stakeholder scrutiny. While we understand that the US refuses the publication by the EU of its offers that should not prevent transparency on the part of the EU. The TUC welcomed the creation of the TTIP Advisory Group (AG), which has enabled discussions with stakeholders. However these are mainly based on established positions, rather than on the formulation of those positions. The AG has been developing its work by including experts on specific subjects, and this approach should be extended as it is not possible for the two trade union representatives to cover the swathe of issues, some quite technical, covered by TTIP. Texts should be available for AG members to discuss with their constituencies.

The introduction of a “reading room” where AG members or their nominees have access to certain documents was a step forward. It is nevertheless burdensome – including for Commission staff. It is technically possible for access to be organised on-line (it seems that such a system exists in the US) and this should be introduced.

We welcome the initiation, following an AG recommendation, of the publication after each round of a state-of-play document. However, this should provide a more detailed table setting down the position on each chapter and be provided more swiftly than at present.

Legal opinions on relevant issues provided to the institutions should be made public.

In addition to our concerns about the need for transparency towards unions and civil society groups, elected EP representatives should be afforded access to documents more widely than at present. The TTIP covers a wide range of issues about which MEPs from Committees other than INTA have an interest and it would also be in the interest of widening democratic oversight to extend access to documents to them. EU Representations in the Member States should have a stronger role in engaging with trade unions and other stakeholders on the state of play of negotiations.

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.

Transparency good practice is provided by the negotiation process for the World Intellectual Property Organisation (WIPO).² While these negotiations were still partly conducted in informal, non-public sessions, negotiations involved:

² See also: www.freedominfo.org/2014/01/wipo-transparency-wins-praise-gaps-remain/

- Ongoing releases of draft negotiating documents translated into different languages;
- Observers given participation rights and wide access;
- Stakeholders enabled to watch the negotiations via audio feeds and webcasts.

Good practice is also suggested by WTO negotiations where NGO representatives can be accredited to the WTO, receive regular briefings on WTO issues and have access the WTO building for specific events or meetings without the need for registration. They can also attend public hearings of some dispute settlement proceedings. NGOs may also provide position papers on particular WTO topics, which the WTO Secretariat distributes to members.³

Finally, good practice for the European Parliament in TTIP is also suggested by the following recommendations the AFL-CIO, the trade union federation in the USA, has issued to the US Trade Representative:

- Ensure Congress approves trade agreement partners before negotiations begin;
- Create negotiating objectives that are specific to the trade partners involved and advance a trade model that provides balanced, inclusive benefits rather than a corporate-rights agenda;
- Ensure that Congress, not the executive branch, determines whether Congressional trade objectives have been met and whether agreements qualify for expedited consideration;
- Ensure Congress has effective opportunities to strip expedited consideration provisions from trade deals that fail to meet Congressional objectives or to incorporate Congressional and public participation;
- Increase access to U.S. trade policy making, trade proposals, and negotiating text for Congress, congressional staff, and members of the public;
- Be part of a larger trade and competitiveness package that addresses shortcomings in existing trade enforcement and remedies and provides complementary domestic economic policies (like infrastructure investment and education and skills training) that will help ensure that all can benefit from trade, not just a few.

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

We share the view of the AFL-CIO that “When decisions about economic policy are made behind closed doors, those decisions tend to advance the policy preferences of political and economic elites, not the broad interests of populace at large”.

Transparent negotiations would create greater trust among citizens and may help to test the view often expressed by the Commission that criticisms expressed are unfounded or alarmist. Should that be the case, this would help facilitate the

³ Examples of position papers can be found at: http://wto.org/english/forums_e/ngo_e/pospap_e.htm

passage of the outcome of the negotiations through the Council and European Parliament.

The TUC welcomed the decision of the Commission to consult on Investor-State Dispute Settlement (ISDS) as an important move towards openness and consulting civil society on issues of that have public policy implications. We are, however, concerned by statements from DG Trade implying that the consultation was about a reform of ISDS rather than allowing for the possibility that it could be rejected. The overwhelming majority of submissions to the consultation opposed any form of ISDS being included in TTIP. If the Commission's consultation is to have any credibility it must take such views into account.

We would encourage the Commission to open other parts of TTIP that are likely to have an impact on public policy – such as TTIP Services commitments and the Sustainable Development chapter – to public consultation.

Finally, we would wish to see more coherence in approaches between different Commission DGs, and also with the European External Access Service. In parallel to trade agreements, the EU usually conducts talks on Association Agreements or Strategic Partnerships. We note that while the CETA draft text has been published, the Strategic Partnership Agreement with Canada has not. In the case of the US, we are not even informed of whether such an agreement is being negotiated. This opacity will, we believe, reinforce negative sentiments towards TTIP.