European Commission

Transatlantic Trade & Investment Partnership Advisory Group

Meeting report, 18 September 2014

Trade

1. Adoption of the agenda

2. Update and forward look

Mr Houben introduced himself to the group as the Chief Negotiator's new deputy, and set out some perspectives on the TTIP negotiations based on his recent experience at the EU Delegation in Washington DC. He explained that following a recent meeting between Commissioner de Gucht and Ambassador Froman, in combination with the imminent transition to a new College, it had been decided that a formal stocktaking session would not be necessary in October. But there is still opportunity to move ahead on technical aspects of TTIP and this is where work will be concentrated during the seventh round in Washington D.C. from 29 September. For example, there will be intensive negotiating sessions on sectoral regulatory cooperation, services and sanitary and phytosanitary standards (SPS), as well as most other topics not linked to progress on market access (which are agricultural and industrial tariffs, and public procurement). A stakeholder event will be organised by USTR on Wednesday 1 October. As before, a public report of progress will be available after the round.

3. Regulatory coherence

Ms Emberger presented the latest state of play on the horizontal regulatory coherence discussions. The ambition remains to produce innovative results that work for both goods and services, that build bridges between the two sides rather than changing their existing systems, and that provide a strong framework to deliver concrete progress over time. EU and US regulators are fully involved in the negotiations to ensure the protection of both sides' high standards. The Commission intends to publish detailed explanations of its objectives in the near future, including as regards the Regulatory Cooperation Council (RCC).

The following points were raised in discussion:

- **Role of the Advisory Group.** Members emphasised the value of involving the group in the Commission's thinking about regulatory coherence and the RCC, and in particular the importance of commenting on written papers. Ms Emberger and Mr Perreau de Pinninck noted the earlier discussions with the group[1] and agreed to return for a fuller discussion once the Commission's forthcoming papers were available.

- **Better regulation and sector input**. One member asked whether better regulation principles would be taken into account in the regulatory coherence discussions, and to what extent the negotiators were making use of input from the relevant sectors. Ms

[1] See meeting reports of April, May and June 2014 for detail.

Emberger confirmed that better regulation is already part of the discussions, and as set out in the public position papers, input from sectors was valued by the negotiators.

- **Sub-federal and Member State authorities.** One member asked for views on to what extent the important sub-federal level of US regulation could be included in the TTIP negotiations, and also whether Member State authorities were taking part in the negotiations. Ms Emberger confirmed that the Commission intends to involve the sub-federal elements of the US system and that Member State authorities were involved in the preparation of EU positions.

- **Institutional follow-up and "living agreement".** One member asked whether an RCC or similar body would definitely be included in the TTIP agreement, noting hesitations in their constituency and the concerns of a number of stakeholders about regulatory "chill". Ms Emberger explained that the EU's objective is to include an institutional mechanism that fully involves regulators from both sides. She added that such an institution would not itself be a decision-making body, and would depend on the commitment of regulators themselves to make progress on matters of joint interest. Like other committees created by free trade agreements, the institutional body would help to oversee the implementation of what is agreed in TTIP and provide a forum for future cooperation. Mr Perreau de Pinninck explained that the concept of a "living agreement" and the role of the institutional body was not to avoid the normal regulatory processes, but to ensure that we can each regulate as effectively as possible: for example by sharing best practice and research. The Commission is confident that concerns about regulatory "chill" can be addressed and will set out more detail in the forthcoming paper.

- **Practical ways to improve regulatory coherence.** One member expressed strong support for the concept of an RCC and asked how exactly equivalence might be established in given sectors. Ms Emberger noted that this is up to the regulators and cooperation with stakeholders continues to be important. It is not possible for negotiators to dictate objectives to the regulators as they are independent and must retain the right to regulate.

4. Sectors: chemicals

Mr Berend referred to the two papers available in the reading room, one containing an initial draft outline for a possible Sector Annex on chemicals, the second describing how cooperation on a range of technical issues could be put into practice. Both papers stressed the 'right to legislate' on each side and started from the premise of seeking cooperation possibilities strictly

within existing processes and procedures. He informed about the proposal to undertake pilot projects on two specific topics raised in the chemicals sector discussions, in order to test whether ideas for cooperation would work in practice. The proposal was raised during the sixth round and no decisions have yet been taken on details. Topics could include selection of priority chemicals as well as classification and labelling. The EU design of the pilot projects would start from the second paper referred to above and the projects could only start if the US delivered reciprocal proposals. This had recently been done for classification[2], but not yet for the other topic. Member States and the relevant authorities will need to agree and be involved in the design and monitoring of the pilot projects. Input from the group would be welcome.

The following points were raised in discussion:

- **Differences between EU and US systems.** Mr Berend explained that at federal level there have not been any new restrictions on chemicals in the US since 1991 (when a Federal Court struck down a ban on asbestos). However, there are many activities at state level, and as a result there are many differences between how chemicals are regulated from one state to another. On the other hand, few notifications of state-level measures are made by the US to the World Trade Organisation (WTO) Technical Barriers to Trade (TBT) Committee. The Commission is therefore keen to increase possibilities to work also with sub-federal regulators. On the EU side, Member State authorities work very closely with the European Chemicals Agency (ECHA) and the REACH Regulation sets out clear rules which allow Member States and the Commission (via ECHA) to trigger the process for enacting restrictions. Agencies involved in the US include the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Consumer Product Safety Commission (CPSC), as well as the National Toxicology Program (NTP).

- **REACH[3] / maintaining high standards in the EU**. One member asked what safeguards the Commission would put in place to ensure that no changes to REACH could come about as a result of the TTIP negotiations. Another member explained that despite impressions in the media, US companies are not strongly opposed to the EU's REACH system and it has never been formally challenged in the WTO. Similarly, EU companies have invested heavily to meet REACH standards and do not question it. Mr Perreau de Pinninck repeated once again that REACH is not up for discussion in the TTIP negotiations. However, there are possibilities to increase technical cooperation with the US, as set out in the public position paper on chemicals, which would

[2] Information on the US system available here: http://ntp.niehs.nih.gov/pubhealth/roc/roc12/review/index.html
[3] EU regulation 1907/2006: "Registration, Evaluation, Authorisation and Restriction of Chemicals". Further information available online via the European Chemicals Agency.

ultimately lead to a better knowledge base, while it was clear that deadlines contained in the Regulation would continue to apply. This is what the pilot projects would test. He also clarified that contrary to some reports in the media, there will be no pilot project on endocrine disruptors.

5. Sanitary and phyto-sanitary standards (SPS)

Mr Weigl explained the evolution of the Commission's draft text proposal on SPS, which the group had previously seen and some members had provided comments on in July. The group's input was very helpful and the current draft is on the right track to achieve the EU's ambitious interests in this area. Mr Weigl explained that the main areas of comment were as follows:

(a) The fate of the 1998 EU-US Veterinary Agreement. The draft confirms that SPS provisions agreed in TTIP will fully integrate and therefore replace the older agreement, but the language has been rationalised and made clearer. It will be important to make sure there are no unintended consequences to this, so further legal checks are in progress.

(b) EU as a single entity. The US is one of a number of countries which treats Member States separately in terms of SPS concerns. Although harmonised Single Market rules apply throughout the EU, each Member State has to apply separately for exports of regulated commodities to the US.

(c) Transposition of Codex Alimentarius standards. The EU more regularly transposes Codex standards directly into its legislation than the US does. The EU uses reservations when Codex standards differ from its own, for example as regards ractopamine levels. A number of comments from Member States and group members highlighted the need to avoid unintended consequences in this area, so language has been clarified to ensure that the EU can still use reservations or other specific methods in future.

(d) Equivalence and mutual recognition. Again to avoid unintended consequences, the language now makes clear that the ultimate decision will always rest with the importing country, as it does now.

The following points were raised in discussion:

- **Dealing with comments.** Mr Weigl made clear that comments from the group are dealt with in the same way as those from Member States. All constructive contributions are taken into account, and where for policy reasons this may not be possible, feedback will be offered.

- **Consistency of language.** One member asked why the terms "unnecessary" or "unjustified" sometimes, but do not always, qualify "disruption of trade" in the text. Mr Weigl said that legal work is ongoing and he would check this issue.

- **Complexities of the US system / import checks and fees.** One member noted that the large number of authorities in the US that play a role in importing food and drink products makes it complicated to work through problems, and changes to policy are not always notified to trading partners. Another member agreed and asked whether operators were already involved in discussing obligations around import checks and fees, as time delays can be a very serious problem for traders in perishable goods. Mr Weigl agreed and explained that the draft text seeks to address these issues via an obligation to inform.

- **Changes in the future.** One member asked for clarification over what would happen if the EU decided to implement different control measures in the future. Mr Weigl explained that all SPS chapters in free trade agreements affirm the WTO's SPS Agreement, which itself specifies that all countries can set their own levels of protection provided these are justified. The EU and the US will retain the right to regulate as they wish on SPS matters. As regards the precise interaction of the articles in the draft text designed to ensure this, further comments from the group would be welcome.

- **Precautionary principle.** One member asked why, in spite of the draft text's reaffirmation of rights and obligations under the WTO SPS agreement, the recent Parliament-commissioned report on risks/opportunities for the EU agri-food sector under TTIP warns that regulatory convergence may lead to downward harmonisation, and in particular lead to changes in EU legislation that may undermine the EU precaution and risk management policy underpinning the current regulatory framework. Mr Weigl disagreed, explained that the reaffirmation of the WTO SPS agreement was a basic principle of the text, and noted that the US also wishes to protect its own precautionary attitudes. Another member pointed out that Article 5.7 of the WTO SPS agreement is a safeguard in itself.

- **Competent committees.** As recommended by one member prior to the meeting, the question was asked whether other advisory committees in relevant DGs should also discuss the detailed provisions of TTIP, in particular the SPS chapter in DG AGRI advisory groups. Mr Houben mentioned that it would be necessary to take confidentiality requirements into account, but any relevant committee should already be up to speed on the policy aspects of the negotiations. Other members felt that the group should be competent to discuss all aspects of the TTIP negotiations, and pointed out that the terms of reference allow for sub-groups or for additional experts to attend meetings and to go to the reading room. Mr Houben agreed to reflect on the options as regards SPS.

6. Any other business

Mr Houben asked the group for views and ideas on what **new transparency initiatives** might be considered to support the TTIP negotiating process. A number of concrete suggestions were made:

- More positive engagement with civil society and citizens in general, including by greater access to documents;
- Pro-active engagement in the public debate by selling the benefits of TTIP, rather than only tackling the myths which can come across as defensive;
- Scrapping the reading room in favour of a secure electronic system for use by the advisory group, similar to that used in the US for cleared advisors;
- Ensuring greater access to documents for all Members of the European Parliament.

In view of the interest expressed by members, it was agreed to return to this subject at the next meeting and that members may submit further proposals to Mr Houben in writing.

Attendees

Members of the TTIP Advisory Group

BASSO Daniele (Labour and trade union, alternate for Tom Jenkins)
BOWLES Edward (Services)
DEFOSSEZ Faustine (Environment, alternate for Pieter de Pous)
FEDERSPIEL Benedicte (Consumers)
GOYENS Monique (Consumers)
HODAC Ivan (Manufacturing)
HINZEN Louis (Food and drink, alternate for Roxane Feller)
KERNEIS Pascal (Services)
LØGSTRUP Susanne (Health)
MITCHELL Dominique (Labour and trade union, alternate for Guido Nelissen)
NEUGART Felix (Small business)
PALUMBO Leonardo (Health, alternate for Emma Woodford)
PETIT Arnaud (Agriculture, alternate for Pekka Pesonen)
QUICK Reinhard (Manufacturing)
SANTOS Luisa (Business)
TOUBEAU Cécile (Environment, alternate for Jos Dings)

Commission officials

HOUBEN Hiddo (TRADE)	Chair, TTIP Deputy Chief Negotiator
BEREND Klaus (ENTR)	Official
DAWKINS Miranda (TRADE)	Official
EMBERGER Geraldine (TRADE)	Official
GUEGUEN Catherine (TRADE)	Official
NIETO-HERNANDEZ Esther (TRADE)	Official
PERREAU DE PINNINCK Fernando (TRADE)	Official
WALFORD Alexander (TRADE)	Official
WEIGL Ulrich (TRADE)	Official