



European
Commission

Transatlantic Trade & Investment Partnership Advisory Group

Meeting report, 16 January 2015

1. Session with Commissioner Malmström

Commissioner Malmström spent an hour with the Advisory Group. She thanked members for their work over the past year and noted the importance of the group's role, providing expert perspectives on TTIP in a context of unprecedented public interest.

The Commissioner explained that her transparency initiative is about publicly demystifying and explaining the purpose of TTIP, including by setting out the EU's draft legal language. In this vein, the recently published report on the ISDS consultation serves as a basis for a broad, rich public discussion between the Commission, the Member States of the Council, the European Parliament and stakeholders.

The following points were raised in discussion:

- Members asked a number of questions about the ambition and the direction of travel of the agreement. Commissioner Malmström assured them that the negotiations were worth the effort only if comprehensive and genuinely transformative for EU-US trade. She repeated that despite the well-known challenges the Commission is committed to getting the best deal for EU citizens: content is more important than speed. This year offers the prospect of Trade Promotion Authority (TPA) in the US, followed by the conclusion of the Trans-Pacific Partnership (TPP): this forward momentum on the US side bodes well for TTIP.
- Members welcomed the transparency initiative, and invited a more systematic approach from the Commission, for example detailed plans for each round, and explanations to ensure the information is accessible to the public. With regards to public engagement, one member felt more should be done on the subject of regulatory cooperation. Others stressed the need for sight of consolidated texts. The Commissioner explained that she is reviewing the recommendations of the Ombudsman and intends to take further action once this is completed. Unfortunately the question of access to consolidated texts remains up to the US administration, since it is not the EU's prerogative to make public another party's position. At present the US does not share consolidated texts even with its own cleared advisors.
- Some members expressed concerns that EU positions have been painted as a series of "red lines". The Commissioner agreed that this is not the case, as many points (e.g. no lowering of standards, no opening up of public services) are standard practice in EU trade policy and well-known. One member felt that stronger proofs were needed.
- One member explained the important of including financial services regulation in TTIP. Different rules across the Atlantic lead to arbitrage, which creates higher risk, which is harder to supervise and control. The costs of this risk are passed on entirely to consumers and the markets. Greater transparency about these reasons for including financial services regulation in TTIP could only help the cause. The Chair noted that

the EU's position on this was already available online. The Commissioner explained that she had discussed this with her US counterpart and would continue to do so.

- One member noted that trade should not be a goal in itself. Trade is a route to greater welfare and prosperity. The overall objective is a higher standard of living, which includes good health. This type of messaging would be innovative and suited to the ambition of TTIP and the EU's wider trade policy. The Commissioner took note.
- One member encouraged a strong push on the subject of access to information about TTIP for SMEs. The Commissioner took note.
- One member highlighted the crucial importance of TTIP for the EU's agricultural sector. Recent developments on the US side with regards to European beef imports are long overdue. The Commission should be ambitious in this area.
- One member noted the importance of an enforceable chapter on sustainable development, in particular labour rights. The Commissioner took note.

The Commissioner closed by suggesting that she returns to another meeting of the group in the spring, and that she looks forward to hearing further input from members on the substance of TTIP and on the related transparency and communications.

2. Regulatory coherence

The Chair invited members of the group to explain their positions on the draft EU regulatory coherence textual proposal which will be tabled during the next round of negotiations.

The following points were raised in discussion:

- Some members emphasised that the proposal as it stands appears to place a high burden not only on the central EU authorities but also on national and potentially regional/local authorities, whenever these are involved in regulation that affects trade. This burden seems disproportionate. For example, one member suggested that the several bodies, working groups and institutionalised processes to deal with requests for information (from the other Party), proposed in the draft text, seemed to imply additional steps. Some members wished to be sure that there would be no "chilling effect" on regulatory proposals, which already take some time to be implemented in the EU. One member noted how problematic this could be for public health initiatives aiming to reduce chronic disease, and suggested that "public health" be clearly referenced in the text. Mr Perreau de Pinninck clarified that the draft chapter does not imply any changes to the EU's current procedures. Member States are being consulted on what they may be able to do. While the chapter establishes a number of procedures, the parties can apply these in the same way that they do now. It does not

imply additional steps, nor a change in the role of stakeholders in the process. This is about transparency for stakeholders and cooperation in pursuit of longer-term regulatory coherence. It is not prescriptive in terms of results. Several members expressed their doubts about the relevance of this analysis and approach. Some referred to potential confusion between Articles 3, 5 and 9, which Mr Perreau de Pinninck noted.

- On the other hand, some members felt that there is not enough in the proposal about cooperation at sub-central level (i.e. for services sectors such as banking, shipping, telecoms). The EU cannot only focus on central level regulatory compatibility. One member stressed the need for strict reciprocity on both sides, for example with regards to primary legislation being in scope. The Chair agreed and noted that it would be important to be clear what we can offer on the EU side at sub-central level.
- Several members pointed out that in general there is a need for more precise language, for example the definition of "significant impact on trade", or the purpose "to promote regulatory convergence". Clarity is also necessary with regards to the regulatory cooperation body (e.g. membership, accountability, responsibility), what concrete outcomes it could deliver, and the opportunities for stakeholders to be involved in its work. It is essential to explain that this body will not have any regulatory powers. Members also stressed the need for transparency and democratic control of the body. The Chair felt that the current draft does offer sufficient detail on the functions of the regulatory cooperation body, which evidently is not about making regulation but about making links and looking ahead. However, more time is needed to work through its composition and rules of procedure. This is a work in progress. It is clear already that the body will work in a transparent way and will consult with stakeholders at least once per year, or more regularly in the case of specific sectoral work. It is important to be clear that it is not a way for some stakeholders to have extra influence, but an opportunity for all stakeholders to have their say. Mr Perreau de Pinninck explained that the language at present is quite vague because it is the first translation of the EU's position into tentative legal provisions.
- Some members expressed strong support in general for the proposals, noting that it is a challenging area and especially important for small companies. One noted that in the past there have been sectoral dialogues, for example under the Transatlantic Economic Council (TEC). It would be useful to know how this is likely to look once TTIP is in force and what routes there will be for future regulatory cooperation in sectors. Another member asked whether both parties must be members of relevant international bodies in order to take cooperation forward on international instruments.
- One member requested more information about the plans for consultation with stakeholders in this area. The Chair recommended a detailed discussion on sectors at the next Advisory Group meeting.

3. Report on the public consultation on investment protection and Investor-to-State dispute settlement in TTIP

Mr Rubinacci introduced the report of the consultation, which had been published on 13 January. As previously discussed with the group, the report is a factual summary of the responses received, and does not include policy recommendations. It highlights four (non-exhaustive) areas for further work. The Commission intends to consult with the Council, Parliament and stakeholders on the appropriate direction to take with regards to investment protection and investor-to-State dispute settlement (ISDS) in TTIP.

The following points were raised in discussion:

- Several members thanked the Commission for the detailed report. One stressed that this is a good opportunity for all involved to sit back and reflect on the issue. It is important to improve the investment system as embodied by the agreements already in force. Taking ISDS off the table in TTIP would only mean that the EU is less likely to achieve the best possible deal with the US. Another member raised concerns that the ISDS debate is overshadowing the benefits of TTIP.
- Some members recommended that the Commission look into the wide range of academic papers published over the past few months on ISDS and possible improvements (e.g. appeal courts). These should at least offer food for thought and help to steer work in the right direction. Another member suggested engagement with UNCTAD.
- One member explained that investment protection is an important insurance policy for investors, and there does not seem to be an alternative way to implement this without ISDS. What's more, it is still part of the mandate. Another queried whether returning to multilateral discussions in Geneva could be envisaged.
- One member requested an assessment of the current correlation between investment protection agreements including ISDS and actual investment flow for EU Member States. The Commission should make a clear case that ISDS can help to increase investment.
- Some members felt that the Commission should start looking into alternatives to ISDS, in particular given the number of negative replies to the consultation. The Chair suggested that the group begin by looking into the four areas of the report, and recommended an open discussion between all points of view on the way forward.

3. Ombudsman recommendations

The Chair noted that the Ombudsman report on transparency and the TTIP negotiations included a number of suggestions to improve the working methods of the Advisory Group.

Most of these have already been implemented. Three ideas that have not been addressed: sharing documents electronically, sharing consolidated texts, and publishing advice.

With regards to the first item, the Commission has been working on options. Unfortunately there is no solution available at present that allows sharing of restricted EU documents with external stakeholders, owing to security rules. While the Commission intends to work as far as possible without classifying information, it is essential that documents which have not yet been transmitted to the US remain restricted. Therefore it is unlikely that an electronic solution would be helpful for now.

The Commissioner had explained the situation with regards to consolidated texts: this remains up to the US administration, and the Commission continues to put the case for greater transparency.

The following points were raised in discussion:

- Some members were keen that their written advice should be made public, or at a minimum shared with the group. Other members felt that it would be inappropriate to publish advice. The Chair agreed to take time to consider this point, but noted it should be up to each member.
- One member stressed that now more information is available to the European Parliament and the public, it is important that the role of the group is clear. Permitting sight of market access offers would be a significant step forward to help the group understand and advise on progress. Additional commitments on confidentiality could be taken to facilitate this. The Chair agreed to reflect further.
- One member asked to what extent the Commission's transparency initiative for TTIP could be emulated for other negotiations. The Chair noted that currently most attention is directed at TTIP so that is where the Commission's resources are going; however, there may be lessons learned for other areas in future, and this would be up to the Commissioner.

4. Forward look

The Chair explained the preparations for the next round, which are focused on the regulatory and market access pillars. Details of stakeholder events would be published next week.

Work on sustainable development continues, with a new draft text foreseen for the following round: the group will have an opportunity to review this well in advance. Given the breadth of the topic, some members recommended the creation of a sub-group on sustainable development, which could be organised sometime in February. The Chair agreed to set up a specific meeting before the next round and to decide then on next steps.

Attendees

Members of the TTIP Advisory Group

BOWLES Edward (Financial services)
DE POUS Pieter (Environment)
FELLER Roxane (Food and drink)
FEDERSPIEL Benedicte (Consumers)
GOYENS Monique (Consumers)
HINZEN Louis (Food and drink, alternate for Roxane Feller)
HODAC Ivan (Manufacturing)
JENKINS Tom (Labour and trade union)
KERNEIS Pascal (Services)
LØGSTRUP Susanne (Health)
MASSAY-KOSUBEK Zoltan (Health, alternate for Emma Woodford)
NELISSEN Guido (Labour and trade union)
NEUGART Felix (Small business)
PESONEN Pekka (Agriculture)
PETIT Arnaud (Agriculture, alternate for Pekka Pesonen)
QUICK Reinhard (Manufacturing)
SANTOS Luisa (Business)
TOUBEAU Cécile (Environment, alternate for Jos Dings)

Commission officials

GARCIA BERCERO Ignacio	Chair, TTIP Chief Negotiator
Houben Hidde (TRADE)	TTIP Deputy Chief Negotiator
ALEXANDRU Gabriela	Official
DAWKINS Miranda (TRADE)	Official
DAVANNE Claire (TRADE)	Trainee
GUELLNER Lutz (TRADE)	Official
KRESTYNOVA Jana (TRADE)	Official
NIETO HERNANDEZ Esther (TRADE)	Official
RUBINACCI Leopoldo (TRADE)	Official