



European
Commission

Transatlantic Trade & Investment Partnership Advisory Group

Meeting report, 19 May 2016

1. Introduction

The Commission briefed the members of the Advisory Group on the state of play of the negotiations following the 13th round that took place in New York in April. All three pillars were discussed.

2. Leaked documents

The Chair invited the members of the Group to contact the Commission's lead negotiators in case of questions on specific issues following the leak of documents. The following points were then raised in discussion:

- One member noted the confusion created by the absence of the precautionary principle in the leaked texts, to which the Chair replied that the principle was reflected in the EU's proposals available online.
- One member suggested that the Group would be reduced to looking at leaked documents in the future, for lack of better information from the negotiators themselves. But another member wondered if the US might actually change its stance on access to documents following the leak. A question was also raised about the Commission's strategy to prevent future leaks. The Chair reiterated that the EU had to refrain from unilaterally sharing US or consolidated texts if it wanted to remain a serious negotiating partner, not only with regards to TTIP but also in other negotiations.
- One member observed that the purpose of the group was to have a comprehensive view of the negotiations as stakeholders, which is already the case. Some other members stressed that they felt they could not properly fulfil their tasks as advisors without seeing consolidated texts. Various advisors requested that the Commission provide them with a better sense of what it is aiming for at a general level, as well as a clearer analysis of EU and US offensives and defensives interests.

The Chair reminded members of the direct access they have to negotiators, to draft EU proposals, and to detailed oral briefings on the state of play of negotiations (both at strategic level, and very specific) ever since the founding of the group in 2014. He observed that both sides were far from the objective of a consolidated text with a limited number of brackets only, and there is substantial work still to do before that may be achieved. He informed the Group that their advice would be sought on new EU proposals between now and July. After July, advisors will need to strategically decide where they wish to devote their attention and the Commission will work on an oral basis with them to explain where both the EU and the US stand. The Chair expressed willingness to organise a review of the Advisory Group's functioning but foresaw already that their advice would be very useful in the coming months.

3. State of play of the negotiations

The Chair set out the current situation of the negotiations in all three pillars with a view to explaining why the endgame had not yet been reached. Members offered comments and questions.

Market access:

- **Tariffs:** Both sides have more or less identified scope for improvements in non-agricultural market access but not yet on agriculture (which is particularly sensitive). The Chair stressed that this was within the 97% of tariff lines presently under discussion and that the remaining 3% would be discussed only in the end game. Discussions in New York on industrial tariffs were positive, but certain areas remain sensitive there as well. Further progress on tariffs is now unlikely before the end game.
- **Services:** Discussions in New York proved somehow fruitful on texts and mutual recognition of professional qualifications (MRPQ) but market access negotiations remain difficult. The Chair made it clear that reservations protecting public services in the EU would be maintained. One advisor asked about market access barriers at the sub-federal level. The Chair responded that one of the main issues explored in this area is MRPQ, on which the US proposal had been examined in New York. On financial services, the Chair explained that work continues separately between DG FISMA and the US Treasury, including also on insurance, regarding which one member reported concerns of the sector. No market access offer in financial services has yet been tabled by the EU, and it has not yet been decided whether regulatory cooperation in financial services will form part of TTIP. Another advisor asked about Mode 4 (movement of workers). This is a sensitive issue on which the Commission will consult further with the Member States.
- **Procurement:** The Chair noted that market access negotiations remain difficult and will require political efforts to make progress, though some advancement was made on the text in New York. A member asked for details on transparency and SMEs in the context of this chapter. The Chair explained that the objective was to make information about public procurement opportunities in the US easy to obtain. Indeed, at the moment, the US has nothing comparable to the website that is available in Europe in all EU official languages. Another advisor inquired to what extent public health is taken into account in the procurement text: the Chair noted that the language proposed is based on the existing EU directives.
- **Rules of Origin:** Some essential elements, such as product-specific rules in certain areas, still have to be discussed. One advisor emphasised the importance of simple rules, to avoid situations in which companies would not use the preferences because they are too complicated. Members discussed the costs and benefits of cumulation, in particular for

countries with which the EU and US already have other trade agreements. The Chair invited members with particular interests and concerns regarding rules of origin to raise these at an experts' meeting in June on the subject, and to submit ideas for specific points to cover to the Commission in advance.

Regulatory Cooperation:

- **TBT:** Discussions in New York focused on means to move conformity assessment forward. The Chair pointed to the main interest of these discussions, which is to reduce the cost of obtaining a conformity certification in the US for EU companies (especially in the engineering sector). On standards, the Chair emphasized that both sides have an interest in greater cooperation between their standardisers. The main question relates to how to do so taking into account the differences between both systems. One member observed that the US standard system was very decentralised and asked how this could be solved. The Chair replied that neither the EU nor the US would change their system but that they would seek to make it easier to identify opportunities to cooperate. Another member asked for details on what the US had proposed to reduce conformity assessment costs. The Chair clarified that it was an EU request and that no US proposal was yet on the table.
- **SPS:** The Chair reported that the SPS discussions were mostly focusing on those aspects of the chapter which are less sensitive. He mentioned verification and audits, import checks, certification procedures and the SPS committee. He highlighted that the EU would never detract from the principle that there will be no changes to EU food safety law. One member asked if USTR was negotiating on behalf of US agencies such as USDA and the FDA, to which the Chair replied that US regulatory agencies were fully involved. The member also raised the issue of trade irritants such as the ongoing problems for EU apples and pears exports to enter the US market. The Chair explained that specific problems such as these are dealt with separately from the negotiations.
- **Regulatory cooperation and GRP:** The Chair announced that the consolidated texts had been updated on the basis of new proposals made during the round. One text is devoted to good regulatory practices (GRP) while the other relates to regulatory cooperation, without prejudice to whether there will be one or two chapters in the end. EU and US positions are closer on GRP but important differences remain nonetheless regarding the stakeholder consultation process. One advisor asked to what extent the US was expecting to see its system reflected in the final TTIP text. The Chair stated that the EU could not take any commitments inconsistent with the principles underlying the EU regulatory regime. Regarding stakeholder consultation, the Chair emphasised that the EU is not going to be reproducing the US notice and comment system. One member requested further details on EU red lines in regulatory cooperation. The Chair stressed that the Commission would never

agree to anything that might weaken the existing level of protection in the EU. He made clear that this applied across the board and added that legislative and regulatory processes in the EU would not be changed either. Two other members raised questions about SME provisions and dispute settlement in the regulatory cooperation discussions.

- **Sectors:** The Chair noted good progress on sectoral discussions, especially concerning cars, pharmaceuticals, medical devices, chemicals and textiles. On engineering, pesticides, ICT and cosmetics, there is greater uncertainty as to the outcome. Both parties are now moving towards text-based discussions and the advisors will see draft proposals shortly.

Rules

- **Sustainable development:** The Chair explained that all aspects of the topic have now been discussed in detail. There is ongoing consolidating work in those areas where the EU and US proposals are fairly similar. The Chair described the discussions in certain areas, such as fisheries or wildlife, as moving forward.
- **Investment protection:** The Chair reported that the EU proposal had generated many detailed questions from the US, particularly on the novel elements. Consolidation would start in the areas where the proposals share common elements. A member asked for a confirmation that the Commission was not negotiating on elements of the previous investment dispute settlement system (ISDS). The Chair made it clear that the EU position was based on the need for reform.
- **Energy:** The Chair explained that the EU continued to argue for a separate chapter in this field, seeing value in rules, cooperation and common principles on energy issues that could translate to future agreements with other partners. One member inquired about possible subsidy disciplines, especially relating to fossil fuels, given that there has not yet been any draft text made available. The Chair clarified the current proposals on subsidies.
- **Competition (antitrust):** The Chair felt that it should be relatively simple to agree on a clean text in the near future but he also acknowledged disagreements on subsidies and state owned enterprises. One member asked if the EU would propose a state aid rule in TTIP and the Commission responded that items on transparency and consultations had been proposed in the negotiations. Solutions are still being explored in this area in order to go beyond WTO rules.
- **GIs:** The Chair noted continued disagreements in this area. Intersessional work might help find a way forward.

The Chair summarised that entering the endgame would not be possible without first bringing brackets in all areas of the negotiations to a limited number. He stressed that the Commission would work as much as possible to reach this goal.

4. Any other business

- **Competition:** Some members of the Group drew attention to a provision of the EU proposal on competition that states that anti-competitive business practices have the potential to distort the proper functioning of markets. They asked why the language did not make it clear that such practices do distort markets. For example, US export cartels might distort EU markets. The Commission replied that TTIP would not modify competition laws on either side of the Atlantic. As a result, EU competition rules would continue to apply against anti-competitive behaviour which affects the EU internal market – capturing, for example, US export cartels. The nuance about "potential" stems from EU competition rules themselves, and the prohibition contained therein was not a *per se* prohibition. Indeed, Article 101(3) of the TFEU provides that the prohibition may be declared inapplicable in case of agreements that meet a list of specific conditions, such as benefiting consumers and not eliminating competition in respect of a substantial part of the products concerned. The members raised a second point, related to the choice of the concept of "state intervention" over that of "state aid" in the EU proposal. The Commission explained that this language too stemmed from the TFEU itself and confirmed that it also covered Member States' measures that would be contrary to EU competition rules. The Commission nonetheless noted the need to avoid misinterpretation of concepts used in the final text and added that it would provide appropriate clarifications where necessary.
- **Meaning of "consolidated text":** The Chair explained that in all areas of the negotiations, when both sides have put forward proposals, they agree on joining them together in one document and this process is called "consolidation". He clarified that this first stage might more properly be called juxtaposition. "Consolidated" texts such as these still have many brackets to be resolved, and do not represent the final agreement.

Attendees

Members of the TTIP Advisory Group

BERGELIN Erik (Manufacturing, alternate for Ivan Hodac)
BOWLES Edward (Services)
BOUCSEIN Dominic (Small business, on behalf of Ilja Nothnagel)
DE POUS Pieter (Environment)
FEDERSPIEL Benedicte (Consumers)
GOYENS Monique (Consumers)
HINZEN Louis (Food and drink, alternate for Mella Frewen)
JENKINS Tom (Labour and trade union)
KERNEIS Pascal (Services)
LOGSTRUP Susanne (Health)
NELISSEN Guido (Labour and trade union)
PETIT Arnaud (Agriculture, alternate for Pekka Pesonen)
QUICK Reinhard (Manufacturing)
RENSHAW Nina (Health)
SANTOS Luisa (Business)
TOUBEAU Cecile (Environment, alternate for Jos Dings)

Commission officials

GARCIA BERCERO Ignacio	Chair, TTIP Chief Negotiator
DAWKINS Miranda	Official
FERLET Guillaume	Trainee
GÜLLNER Lutz	Official
PIETERS Sam	Official
TALKO Wojtek	Official