# A little guide through TTIP negotiations

## ABSTRACT

TTIP has been stuck in technical negotiations since those started three years ago. Negotiators hope to reach a deal before the end of 2016. However, political agendas on both sides of the Atlantic and the recent EU referendum in the UK suggest a longer process is most likely. The postponement of negotiations is made even more probable by the recent declarations of the French government, which pledged to call for an end of TTIP talks when EU trade ministers next meet in Bratislava on 23 September.

## INTRODUCTION

On June 14, 2013 the Council of the European Union gave a green light to the European Commission to start the negotiation of a Transatlantic Trade and Investment Partnership (better known under its acronym TTIP) with the United States, the biggest export market for Europe. This trade agreement will potentially reach 850 million of consumers and is said to boost GDP in the EU, open new markets to European businesses and new possibilities for EU consumers as well as to create jobs by removing trade barriers (currently averaging 3%). Back in 2013, the Centre for Economic Policy Research, a think tank, predicted that TTIP could increase the size of the EU economy by €120 billion (or 0.5% of GDP) by 2027. However, other studies have shown different results, and the incomplete picture of the actual effect on jobs has weakened the economic argument.

## HOW DO THE NEGOTIATIONS WORK?

24 joint EU-US working groups are developing the texts, each considering a separate aspect of the agreement. Trade agreements development typically progresses through a number of phases.

1- Broad position papers are first exchanged, introducing each partner's aims and ambitions for each aspect of the treaty.

2- Initial offer – this sets out the extent to which the 2 parties of the agreement are willing to open their markets –to "offer market access" - in goods and/or services to the negotiating partner.

3- consolidated text–it is based on earlier textual proposals, and drafted jointly with the negotiating partner. It generally involves putting each partner's initial textual proposals together.

If partners can't agree on some issues, they put their proposed text alongside that of their partners, in brackets. Negotiators then focus on finding agreements.

4- Text-based discussion / phase - negotiators on both sides discuss either their respective textual proposals, or a consolidated text. At this stage, negotiators can also still come back on some points of the agreement, since not chapter is definitely closed until the end of the negotiations and a final consensus is reached.

The negotiations process is now at this advanced stage.

The 14th round of negotiations ended on 15 July, in Brussels.

## TRANSPARENCY IN THE NEGOTIATIONS

Among the numerous critics made to TTIP and its negotiations, one of the major issues has been the lack of transparency. Indeed no documents had been published during the early stage of the negotiations. The European Commission argued that these documents had to be kept secret to ensure the good development of the negotiation process.

However, under massive public opinion mobilisation, some measures have been taken to enhance transparency. In January 2014 an advisory group (mainly representing businesses) was established with the role of investigating specific

issues that may arise during the process and to provide with feedback to the EU negotiators. Moreover, significant steps such as the publication of the EU position papers have been taken since July 2014 and later with the publication of the EU negotiation mandate in October 2014. In November 2014, as part of the New Commission Transparency initiative, Commissioner Malmström in charge or international trade announced that less documents would be classified "EU restricted" and more MEPs be allowed to access them. She also pledged to publish detailed and extensive reports of the negotiations on its website in all EU official languages.

However, concerns over transparency remain, and in particular worries that the Commission publications' only purpose would be to create a smokescreen for outsiders. Greenpeace's leaked[1] 13 chapters of the agreement so far in May 2016 backed this theory, as the documents indicated human health and environmental protections would be seriously undermined if negotiations continue on the current path. Also leaked was a paper called "Tactical State of Play (March 2016)" which contains the EU views of the results of the 12th negotiation round and shows interesting differences to the "official" version (Public Report) of the paper. A particular point of contention for the cultural sector concerns the leak of a document with a focus on copyright and intellectual property rights (see below for more detail).

## STANDARDS AND ISDS

Overall, the main obstacles to a deal remain European concerns over poorer standards that it could introduce. In Germany, where civic protests have gathered the highest numbers, the concern is that American multinationals would be able to sue European states (through Investor-state dispute settlement, or ISDS) and force them to lower agricultural and environmental standards. A challenge to Geographical Indications for agricultural goods also tops the list of worries, particularly in Italy and France. ISDS is highly unpopular in Europe, although it is a standard in most trade deals passed in the last decades and the US deems it indispensable. In a EU consultation on ISDS, 97% (of 150,000 participants) stated they do not want any investment dispute settlement mechanism in TTIP. On 27

1 Find all Greenpeace's leaks here : https://www.ttip-leaks.org/#faq

June, in a call[2] to halt negotiations and withdraw the Commission's negotiation mandate altogether, an alliance of 240 civic society organisations mentioned that the Commission's revised mechanism did not address the key flaws and dangers of ISDS.

## THE PLACE OF CULTURE IN TRADE AGREEMENTS AND TTIP

Even if in the mandate given by the Council of the European Union to the European Commission, Culture was to be treated as a sensitive sector, the European Commission did not want to exclude it altogether and considered the established safeguards[3] to be sufficient.

The cultural exception has become a major issue for some EU Member States. On the contrary, the US industry does not see market access in this sector as problematic. France introduced the concept of "cultural exception" (or exemption) in the General Agreement on Tariffs and Trade (GATT) negotiations in 1993. The idea is that culture should be treated differently from other commercial products, and that cultural goods and services such as audiovisual services should be left out of all international treaties and agreements.

Moreover the EU has ratified the 2005 UNESCO Convention (which the US has not signed)[4] to protect and promote the diversity of cultural expressions, a principle also enshrined in the EU Treaties (art. 167 Treaty on the Functioning of the European Union - TFEU).

*The Council shall also act unanimously for the negotiation and conclusion of agreements:*

*(a) In the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;*

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2 See the full statement here: http://bit.ly/290VtIE

3 Safeguards contained in the negotiating mandate plus the unanimity rule of article 207 of the Treaty on the Functioning of the European Union. See here http://bit.ly/1y8fJQz

4 According to the European Commission representative during the CULT Committee meeting of February 26 2015, "of course for somebody who has not signed up the UNESCO Convention like the US, it might not be easy to refer to that convention. Of course, that doesn't necessarily exclude that you could refer to principles enshrined in the UNESCO Convention in such an agreement".

In May 2013 the European Parliament voted the exclusion of culture and the audiovisual sector from the TTIP negotiations and in June 2013 the Council of the European Union agreed that audiovisual services would not be covered in the mandate given to the European Commission.

To recall, subsidies to culture are systematically excluded from trade agreements and national authorities remain free to discriminate between domestic and foreign organisations when giving financial support to cultural activities. If nothing changes, State Investor Dispute Settlement should not apply to cultural sector (for example book industry, cinema etc.).

But an issue that has been the subject of constant critics from the cultural sphere (but not only) is the whole approach chosen for deciding which sector is directly impacted by the deal. The decision to opt for a negative list – meaning that negotiators have to agree on a list of exemptions – as opposed to a positive list – which would have included the sectors impacted – makes the whole process and scope of negotiations unclear. Directly concerning the cultural sector is the fact that originally, the cultural exception principle did not safeguard the exclusion of culture. In fact, the definition of culture can be subject to interpretation, and thus Americans might consider some cultural sub-sectors as not being part of the exemption scheme.

Technicalities that arise from the choice of a negative list system can also create concrete issues. For audio-visual media, for instance, all the Commission had initially committed to defend was the exclusion of this sector from the TTIP chapter on services. As a response, the European Parliament CULT Committee voted for this specific sector to be excluded from all chapters and thus from all negotiations. MEPs also called "on the EU Commission to defend cultural diversity in the negotiations with the United States", and on "EU countries to retain the right to protect and promote theatres, museums and cultural facilities from the open market"[5].

Thus far, as negotiations have stalled, so have the cultural sector's claim to clarify the application of the cultural exception concept in TTIP negotiations. Considering the lack of progress, the French government included the need to protect culture

5 MEPs vote against the liberalization of culture, media and education through TTIP - http://ttip2016.eu/blog/Culture%20Education%20outcome%20TTIP.html

as part of the reasons for its call to end negotiations (along with respect of the rules of reciprocity, transparency and the environment).

Another important issue for the cultural sector in TTIP, though, would be its potential provisions as regards intellectual property rights. According to the documents leaked by Greenpeace, differences subsist on how to approach the issue, for instance considering the slow progress in the US Congress on copyright areas of interest to the EU (broadcasting rights, public performance and resale rights). US negotiators are also trying to take the IPR chapter out of the standard TTIP negotiations, which would leave the whole area subject to specific legal frameworks that are seen to be in favour of US firms.

## TIMELINE OF THE KEY EVENTS

- February 2013: EU-commissioned 'ad-hoc high-level expert group' published a paper, highlighting the need for a free-trade area between the European Union and the United States (taken up by President Obama and President of the Commission Barroso)
- 23 May 2013: European Parliament voted a resolution for the exclusion of Culture and Audio-visual Services from the negotiation mandate.
- 14 June 2013: Council agrees on the exclusion of Audio-visual Services from the mandate in its directives for the negotiation of the TTIP
- 8-11 July 2013: 1st round of negotiations (Washington DC)
- 11-15 November 2013: 2nd round of negotiations (Brussels)
- 16-20 December 2013: 3rd of negotiations (Washington DC)
- January 2014: launch of the EU advisory group
- 10-14 March 2014: 4th round of negotiations (Brussels)
- 19-23 May 2014: 5th round of negotiations (Arlington, Virginia)
- July 2014: publication of the EU position papers
- 14-18 July 2014: 6th round of negotiations (Brussels)
- October 2014: publication of the EU negotiations mandate
- 29 September-3 October 2014: 7th round of negotiations (Chevy Chase, Maryland)

- November 2014: announcement by the EU Commission of further transparency and access to documents for MEPs and the Council
- 2 - 6 February 2015: 8th round of negotiations (Brussels)
- 20-24 April 2015: 9th round of negotiations (Washington DC)
- 13-17 July 2015: 10th round of negotiations (Brussels)
- 19-23 October 2015: 11th round of negotiations (Miami)
- 22-26 February 2016: 12th round of negotiations (Brussels)
- 24 April 2016: US President Obama and German Chancellor Merkel commit to complete talks on TTIP before his term ends in January.
- 25-29 April 2016: 13th round of negotiations (New York)
- 2 May: Greenpeace leaks
- 24 June 2016: Britain votes to leave the European Union, loses part in TTIP talks
- 13-15 July: 14th round of negotiations (Brussels)

## KEY INSTITUTIONAL PLAYERS

The European Parliament, and particularly the International Trade Committee (known as the INTA Committee) are crucial in the debate. This committee is responsible for the "establishment, implementation and monitoring of the Union's common commercial policy and its external economic relations" in the European Parliament. It has therefore been drafting the European Parliament position regarding the TTIP mandate and negotiations.

Cecilia Malmström, Commissioner for Trade (previously Commissioner for Home Affairs) succeeded Karel De Gucht who started the TTIP negotiations for the Commission. If Mr De Gucht was criticized for being too optimistic about the TTIP and ISDS, Ms Malmström has consistently tried to appease opposition on this last controversial point in order to achieve a global agreement. Ms Malmström is the Commissioner for Trade, but the Chief Negotiator is Ignacio Garcia Bercero, Director of Unit for Neighbouring countries, USA and Canada in the DG Trade.

# STATE OF PLAY AND NEXT STEPS

After more than three years and 14 round of negotiations, both Chief Negotiators from the US and the EU recognised that even though "negotiations are advanced, more work needs to be done"[6]. This is a diplomatic way of saying that progress is slow, even though upcoming political agendas on both sides of the Atlantic[7] have prompted Mrs Merkel and Mr Obama to repeatedly assure their commitment to complete the negotiations by the end of the year. Populist surges on both sides also suggest that the momentum for TTIP – should it have ever existed – has now collapsed, and the revival of negotiations will depend on who is in charge in the US, France and Germany.

In the meantime, negotiating teams will keep meeting and negotiating the remaining chapters. But even if both parts actually do reach a deal in the next few months, the recent resolution on the EU's trade partnership with Canada (also know as CETA) suggests that its adoption is tortuous. In fact, the Commission decided to put CETA to votes in national parliaments – a prospect many analysts consider should kill the agreement. The decision echoes the current political momentum in Europe that sees many member states (or influential political parties) call for Brussels to claw back power to national governments. The most visible example of this trend is the recent referendum in the UK on EU membership. In this context, if Brussels and the US reach a deal on TTIP, there will most likely be a push to put the agreement to national parliament's approval, the outcome of which gives little chance for TTIP to be adopted.

Finally, the French government's pledge to call for an end of negotiations during the Bratislava EU trade ministers meeting on 23 September gives little chance for an agreement to be reached in the short run.

Even though all signs point to an end of negotiations, CAE will keep monitoring the discussions. And should negotiations reach a breakthrough or important developments arise, we will keep our members updated and initiate advocacy activities, if necessary.

6 Statement made at a stakeholders meeting on 13 July, where CAE was present

7 Presidential election in the US in November 2016, and general and presidential elections in Germany and France in 2017

In the meantime, Culture and the Arts are staying very active. Culture Action Europe strongly supports all initiatives to ensure culture is not included in this trade agreement. This includes the activities of Kulturrat Austria and Germany, along with Artists against TTIP (in the UK), to name just a few, who actively campaign for the protection of European cultures and cultural richness, including by taking part in mass demonstrations like the one that is planned across Germany on September 17.

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