

European Ombudman's public consultation on transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations

Response of Corporate Europe Observatory
October 30th 2014

1. 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? (We would ask you to be as concrete as possible in your replies and also to consider the feasibility of your suggestions, in light of the timeframe of the negotiations. It would be most helpful if you could prioritise your suggestions.)

The lack of transparency of the European Commission in the negotiations of the Transatlantic Trade and Investment Partnership (TTIP) has been criticised by a large number of civil society groups across the Atlantic¹ and a growing number of MEPs². Concerns which have been raised relate to the non-disclosure of negotiation documents and positions to the public, the limited access to negotiation documents provided to Parliaments and EU member states as well as the excessive secrecy around meetings with lobbyists³ in which TTIP was discussed.

In order to remedy the situation, the Commission should, as a minimum, do the following:

- Publish all negotiating positions, all requests and offers and all consolidated draft negotiation texts prior to each negotiation round, so that the European and national parliaments, as well as civil society organisations and the wider public, can make recommendations on them before the negotiations are closed for comments and the agreement goes to ratification.
- Publish detailed agendas of negotiation rounds prior to the negotiations and detailed reports on the rounds after, to keep the public updated on the progress of the negotiations.
- Publish a list of all meetings held with the European Parliament and member states as well as third parties (including individual companies and industry lobby groups) in relation to the negotiations. The list should include full transparency about the date of the meetings, the participants, and the topics discussed.
- Publish all submissions received by third parties in relation to the negotiations, including via public consultations, and be fully transparent about how they have been processed (via a detailed analysis report), in order for the public to assess which have been taken into account, and to what extent, which might help to reduce the undue influence of certain stakeholders.
- Ensure full transparency of membership and activities of all advisory bodies in the context of the EU's trade negotiations, including the EU's sector-specific market access working groups, which are currently shrouded in secrecy, so that the public can know who guides the Commission in its trade negotiations and in which direction.
- Provide all this information in an easy-to-access public register of documents.
- Respond to access to documents requests relating to TTIP negotiations in a timely manner and by providing the widest possible access, considering that the negotiations will have a significant impact on the lives of millions of citizens.
- Request the European Council, the European Parliament and the negotiation partner (the US) to take similar steps to make negotiations more transparent.

1 <http://www.corporateeurope.org/international-trade/2014/05/civil-society-call-full-transparency-eu-us-trade-negotiations>.

2 <http://ttip2014.eu/video.html>.

3 <http://corporateeurope.org/trade/2014/02/what-are-you-hiding-opacity-eu-us-trade-talks>.

We are aware, of course, that the Commission has published a series of descriptions of its proposals on its own website. However, in our experience, there is a marked difference between the public descriptions of the proposals and the actual texts presented at the negotiations. Typically, the public texts seem to omit whatever the Commission deems controversial. Examples include a proposal on “regulatory coherence and cooperation” and a proposal on “regulatory cooperation” on financial services. In both cases, the public texts are misleading on key points. Consequently, the value of public descriptions is questionable.

(Please note that, taking into account the narrow focus of the question, we have limited our response to the issue of transparency in the TTIP negotiations and have therefore not addressed other process-related problems, for example, the corporate capture⁴ of the trade talks. We would be happy to also make suggestions on how to address other process-related problems in the negotiations. In this context, we would also like to refer to a paper⁵ developed by the Alternative Trade Mandate coalition (of which CEO is a member), which outlines several proposals along these lines.)

2. 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.

- The World Trade Organisation (WTO): Even the WTO, which is regularly the subject of criticisms by civil society and member states, publishes a vast array of negotiation texts on its website, including submissions made by member states as well as offers, draft bracketed text and reports by committee chairs, in different languages.⁶
- The United Nations Framework for Convention on Climate Change (UNFCCC): The negotiating texts and submissions from the parties are circulated before the negotiations start. Observers, including external stakeholders, attend the sessions, and can provide submissions on request by the parties.⁷
- The World Intellectual Property Organisation (WIPO): Draft negotiating documents have been released along the process. Meetings are open to the public, and webcast.⁸
- The Aarhus Convention: Meetings of the governing body and its subsidiary bodies are as a rule public. Accredited observers can participate in meetings of parties and in drafting groups working in collaboration with parties to develop text during the negotiations. They have the same speaking rights as parties.⁹
- For several years the UK Government has been making available lists of ministerial meetings with lobbyists per government department, updated quarterly.¹⁰ Several MEPs also follow this practice, including Conservative MEPs from the UK.¹¹
- The new European Trade Commissioner, Cecilia Malmström, on her website, publishes letters and emails “sent to or received from organisations, companies, ministries and individuals acting in an official capacity” and promises to publish “as much correspondence as possible”.¹²

4 <http://corporateeurope.org/international-trade/2014/07/who-lobbies-most-ttip>.

5 <http://www.alternativetrademandate.org/wp-content/uploads/2013/05/democracy-paper-FINAL.pdf>.

6 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx.

7 http://unfccc.int/parties_and_observers/ngo/items/3667.php.

8 <http://www.wipo.int/policy/en/index.html#bodies>.

9 <http://www.unece.org/env/pp/ppif/6meeting/Innovations%20in%20public%20participation%20in%20international%20forums%20-%20draft%20for%20consideration%20by%20PPIF%20Task%20Force%20v.1%20.doc>.

10 <https://www.gov.uk/government/collections/ministerial-gifts-hospitality-travel-and-meetings-2013>.

11 <http://conservativeeurope.com/transparency>.

12 http://ec.europa.eu/commission_2010-2014/malmstrom/my-work/my-correspondence/index_en.htm.

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

TTIP will impact domestic regulations, standards and safeguards that exist on both sides of the Atlantic, and the way these will be made in the future (in particular through proposals for permanent regulatory cooperation). In other words, the shape of TTIP will have concrete effects on pretty much every aspect of the life of European and US citizens alike, and it will also shape the ability of regulators on both sides of the Atlantic to make new domestic policies and implement existing ones. As a complex treaty which will be near-impossible to reverse, the effects of TTIP will be long-lasting. Therefore citizens have a right to know what is being proposed to negotiate and how it is negotiated on their behalf.

But openness is not only a right of citizens. It will also lead to better results because:

- Secrecy plays into the hands of the more resourceful and well-connected actors, most notably private corporations and their lobby groups, who will more easily find a way to access information that is not available to other actors in a society, allowing them to better influence the negotiations; this creates a real risk that negotiations will lead to biased results.
- Transparency allows experts like academics to stay informed about the negotiations and provide essential analysis, improving the quality of the substance of the agreement and addressing substantive concerns. This could be seen in the CETA negotiations, where the Commission admitted that it only became aware of, and tried to address, a significant problem in the text after NGOs had criticised the respective provisions in a leaked version of the agreement. In secret negotiations, there is a high risk that such drafting errors are not noticed.
- Openness decreases the public distrust in the negotiations and enables negotiators to be held to account, leading to more legitimate results.

A failure to commit to more openness in TTIP negotiations will not only result in growing public opposition to TTIP as a whole, but also creates a real risk of a biased and flawed agreement.