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From: Daniele Basso <[REDACTED]>
Sent: 30 October 2014 14:17
To: Consultation-OI-10-2014
Subject: [EOWEB] ETUC response to Ombdusman's consultation on TTIP
Attachments: ETUC Response - Ombdusman Consultation on TTIP.pdf
Categories: To be registered according to Rosita; submitted to AR on 31.10.2014

Sender

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To Public consultation OI/10/2014
Date Thursday, October 30, 2014 2:17:16 PM CET

Your data

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Language you would like to receive an answer in	en - English
Other language you would accept an answer in (if applicable)	fr - français

Part 2 - Data

To Public consultation OI/10/2014
Subject ETUC response to Ombdusman's consultation on TTIP
Dear Madam, Sir,

Please find attached the European Trade Union Confederation (ETUC) response to the EU Ombdusman's consultation on TTIP.

Content

With kind regards,

Daniele Basso

ETUC Advisor on International Trade

European Ombudsman public consultation in relation to the transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations

The European Trade Union Confederation, representing 85 national trade union organisations in 36 European countries, plus 10 cross-border European Trade Union Federations, is pleased to respond to the public consultation of the Ombudsman on transparency in TTIP and hopes that its views will be taken into account in the set of further suggestions to be presented to the Commission.

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 TTIP negotiations are of a different nature to previous EU trade and investment negotiations in that they are not primarily about tariff reductions (though these are important but do not generally create a problem with regard to transparency) but principally about increasing regulatory coherence between the EU and US. So far as other market access issues are concerned, we would also insist that those touching on public services in the wider sense of the term should be open to public scrutiny.

This argues for a different approach compared to traditional FTA negotiations and for the development of positions to be carried out through existing political and consultative channels including stakeholder participation.

So far as sectoral aspects are concerned, we would encourage DG Trade, in cooperation with DG EMPL, further to introduce discussions on relevant aspects of TTIP in all existing sectoral social dialogue committees and create fora for discussions between social partners where such committees do not exist. For horizontal issues of particular concern to the social partners, such as labour standards, jobs or wages, social dialogue structures should be adapted to involve more in-depth discussions. In all cases, texts should be made available.

Trade unions (and civil society organisations generally) should be afforded the same access as business organisations to all Commission DGs, and notably in regards to DG ENTR with which they appear to have privileged access and which has been leading on deregulation. It will be recalled that it was that DG which handled transatlantic relations until they were

transferred to DG Trade by the last Commission, through the Transatlantic Economic Council to which ENTR strenuously denied Labour the same access as Business.

Generally, there should be a presumption that all positions and offers should be placed in the public domain unless there is a demonstrable need for access to be restricted. Thought might be given to setting up an independent authority to judge that need. We would agree that negotiating tactics should be kept confidential. However, any documents that have been formally tabled and thus available to the other party should be available for stakeholder scrutiny. While we understand that the US refuses the publication by the EU of its offers, that should not prevent transparency on the part of the EU. The ETUC welcomed the creation of the TTIP Advisory Group (AG), which has enabled discussions with stakeholders. However these are mainly based on established positions, rather than on the formulation of those positions. The AG has been developing its work by including experts on specific subjects, and this approach should be extended as it is not possible for the two trade union representatives to cover the swathe of issues, some quite technical, covered by TTIP. Texts should be available for AG members to discuss with their constituencies.

The introduction of a "reading room" where AG members or their nominees have access to certain documents was a step forward. It is nevertheless burdensome – including for Commission staff. It is technically possible for access to be organised on-line (it seems that such a system exists in the US) and this should be introduced.

We welcome the initiation, following an AG recommendation, of the publication after each round of a state-of-play document. However, this should provide a more detailed table setting down the position on each chapter and be provided more swiftly than at present.

Legal opinions on relevant issues provided to the institutions should be made public.

In addition to our concerns about the need for transparency towards unions and civil society groups, we of course believe that our elected EP representatives should be afforded access to documents more widely than at present. The TTIP covers a wide range of issues about which MEPs from Committees other than INTA have an interest and it would also be in the interest of widening democratic oversight to extend access to documents to them.

In particular, we understand that access to consolidated texts (that include US as well as EU language) are made available to certain INTA members. This practice should be extended to other Parliamentary committees, and more widely.

EU Representations in the Member States should have a stronger role in informing national stakeholders.

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.

An often-cited example of transparency best practice is that of the World Intellectual Property Organisation (WIPO) which for example provided during recent negotiations:

- Documents disseminated early;
- Translations in different languages provided;
- Ongoing releases of draft negotiating documents;
- Observers given participation rights and wide access;
- Stakeholders enabled to watch the negotiations via audio feeds and webcasts.

However, even in this case, “a lot of negotiating was done in non-public sessions and continues to be” in “informals”.

See for example: <http://www.freedominfo.org/2014/01/wipo-transparency-wins-praise-gaps-remain/>

While we recognise that WIPO negotiations are on a different scale than those undertaken under the TTIP agenda, some of the approaches could be adopted.

In particular, the fact that all available TTIP documents, except for the mandate, are in English only creates a real problem for many of our members, and citizens generally, and reinforces the sense that only an exclusive club can have access to them. We would ask that consideration be given to providing texts in other languages.

The World Trade Organisation also provides examples of outreach which may be of interest. See: http://wto.org/english/forums_e/ngo_e/ngo_e.htm

In particular, during Ministerial Conferences, NGOs are briefed on a daily basis (compared to the single debrief meeting organised during the TTIP rounds) and can also participate in a public forum. NGOs may provide position papers on particular WTO topics, which the WTO Secretariat distributes to members. Examples of position papers can be found at: http://wto.org/english/forums_e/ngo_e/pospap_e.htm NGO representatives can be accredited to the WTO. They receive regular briefings on WTO issues and have access the WTO building for specific events or meetings without the need for registration. They can also attend public hearings of some [dispute settlement proceedings](#). It may be of interest to note that the AFL-CIO in the US has issued recommendations for transparency (where, for the EU, “the EP” might be substituted for “Congress”):

- Ensure Congress approves trade agreement partners before negotiations begin;
- Create negotiating objectives that are specific to the trade partners involved and advance a trade model that provides balanced, inclusive benefits rather than a corporate-rights agenda;

- Ensure that Congress, not the executive branch, determines whether Congressional trade objectives have been met and whether agreements qualify for expedited consideration;
- Ensure Congress has effective opportunities to strip expedited consideration provisions from trade deals that fail to meet Congressional objectives or to incorporate Congressional and public participation;
- Increase access to U.S. trade policy making, trade proposals, and negotiating text for Congress, congressional staff, and members of the public;
- Be part of a larger trade and competitiveness package that addresses shortcomings in existing trade enforcement and remedies and provides complementary domestic economic policies (like infrastructure investment and education & skills training) that will help ensure that all can benefit from trade, not just a few.

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

We share the view of the AFL-CIO that “When decisions about economic policy are made behind closed doors, those decisions tend to advance the policy preferences of political and economic elites, not the broad interests of populace at large”.

Transparent negotiations would create greater trust among citizens and may help to test the view often expressed by the Commission that criticisms expressed are unfounded or alarmist.

Should that be the case, this would help facilitate the passage of the outcome of the negotiations through the Council and EP.

The ETUC welcomed the decision of the Commission to consult on Investor-State Dispute Settlement (ISDS) as an important move towards openness and we indeed would have encouraged further consultations on other issues, such as the protection of public services. We are now deeply concerned at statements from DG Trade implying that the consultation was about a reform of the ISDS system and was not open to a decisive rejection. Such an approach would lose the credit that had been gained from the initiative and indeed foster further public cynicism.

Finally, we would wish to see more coherence in approaches between different Commission DGs, and also with the EEAS. In parallel to trade agreements, the EU usually conducts talks on Association Agreements or Strategic Partnerships. We note that while the CETA draft text has been published, the Strategic Partnership Agreement with Canada has not. In the case of the US, we are not even informed of whether such an agreement is being negotiated. This opacity will, we believe, reinforce negative sentiments towards TTIP.