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From: Cecile Toubeau [REDACTED]
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Language you would like to receive an answer in en - English

Part 2 - Data

To Public consultation OI/10/2014
Subject TTIP Public Consultation Transparency
Content Please find Transport & Environment's submission to the Ombudsman TTIP public consultation on transparency.

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

Case: OI/10/2014/RA

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 a Transatlantic Trade and Investment Partnership (TTIP) has been criticised by a large number of civil society groups across the Atlantic¹.

In order to remedy the situation, the Commission should – at minimum – do the following:

- Enter into negotiations with transparency as a corner stone of the mandate, fully in line with its duty “to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible”, according to article 15 (TFEU)². In doing so, the Commission should also request the same level of transparency from its negotiating partners.
- Publish negotiating positions ahead of each negotiation round, as well as any further papers submitted by the EU in relation to its negotiating positions over the course of the negotiations with the other party.
- Publish the various versions of chapters of the negotiations at every step of the negotiations, so that the European and national parliaments as well as civil society organisations can make recommendations on them before the negotiations is closed for comments and the agreement goes to ratification.
- In the context of the analysis of the consultation on investor-state dispute settlement (ISDS), publish all responses received from the public and be fully transparent about its processing of these responses (detailed analysis report, stakeholder dialogue).
- On each aspect of trade that touch on EU/national rule-making – ISDS, Regulatory Cooperation Council, undertake a thorough public consultation to help develop its initial negotiating position. All proposals to the public consultation need to be published online.
- Hold stakeholder conferences ahead of and immediately after each negotiation round, to inform civil society of the negotiation plan and to share concrete negotiation agendas ahead of each round, and to provide an update with the outcome of the round.
- Publish a list of all meetings held by the European Commission with the European Parliament and Member States as well as third parties (including industry and lobby organisations) in relation to the negotiations. The list should make full transparency about the date of the meetings, the participants, and the topics discussed.

¹ <http://www.foeeurope.org/right-to-know>

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

- Publish all written communications related to the negotiations between the European Commission and other European institutional bodies (European Parliament and Member States).
- Publish all written communications between the European Commission and third parties – including industry and lobby organisations – on this issue.

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.

There are several examples of international negotiations' process, which provide a greater degree of openness to civil society than the Commission's negotiations:

- The World Trade Organisation (WTO): Even the WTO, which is regularly the subject of criticisms by civil society and member states, makes submissions made by member states in the negotiations, as well as offers, and reports by committee chairs available on its website³.
- 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 parties⁴.
- The World Intellectual Property Organisation (WIPO): Draft negotiating documents are being released all along the process. Meetings are open to the public, and webcasted⁵.
- 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 parties⁶.

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

The European Commission has acknowledged that the main objective of the negotiations on a Transatlantic Trade and Investment Partnership is to address regulations and standards on both sides of the Atlantic that are seen as “non-tariff barriers to trade,” in an attempt to obtain regulatory convergence. This means that the agreement under negotiations will mainly 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 the 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 for regulators on both sides of the

³ https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx

⁴ http://unfccc.int/parties_and_observers/ngo/items/3667.php

⁵ <http://www.wipo.int/policy/en/index.html#bodies>

⁶ Aarhus Convention Task Force on Public Participation in International Forums, Innovations in Public Participation in International Forums – Advanced Draft, 23 February 2011, (“Innovations draft”), available at <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>

Atlantic to make new domestic policies and implement existing ones. Therefore, citizens have a right to know what is being proposed to negotiate and how it is negotiated on their behalf.

The EU "ordinary legislative procedure" allows for step by step public scrutiny. The procedure also entails full involvement of the European Parliament, as an active decision making partner. Given the particular emphasis of these negotiations on domestic regulations we would call for these to be dealt with and addressed in a similar manner. By allowing full transparency the Commission would be held accountable for the negotiating position that it takes.

Trade by its very nature often has a negative impact on the environment – resources needed for manufacturing, increased transport emissions for goods, etc ⁷. An increased degree of transparency would also reflect the EU's legal obligations under Article 3(7) of the international Aarhus Convention to promote access to information, public participation and access to justice in international environmental decision-making processes – of which the EU is a party⁸. Civil society groups have already pointed out to the European Commission that releasing negotiating documents on TTIP is of particular importance. However, the Commission has refused to provide the groups full access to the documents with relevance for the environment⁹. This sends a very bad signal to the public about the Commission's commitment to negotiate a fair deal, which will defend important rights and protections for citizens in the EU and in the US.

If the Commission is committed to negotiating a fair deal for citizens and the environment, then it must release all the negotiating documents in relation to regulations affecting domestic regulations – in particular when it comes to the environment. The outcome of these negotiations will be critical for rule-making in European and the US in the future, and therefore citizens have the right to know what is negotiated on their behalf and a public debate needs to happen. A failure to commit to such a level of openness will only result in growing public opposition to the TTIP as a whole.

⁷ The following four documents discuss the overall impact of trade on the environment:

<http://www.hks.harvard.edu/fs/jfrankel/Swenvirinlaga31proofs.pdf> http://www.ecologic.eu/download/projekte/1800-1849/1800/1_1800_cate_trade_in_services.pdf

http://www.foeeurope.org/sites/default/files/publications/FoEE_CiEL_climate_world_trade_laws_0909.pdf

[http://www.europarl.europa.eu/RegData/etudes/etudes/etudes/join/2013/507492/IPOL-ENVI_ET\(2013\)507492_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/etudes/join/2013/507492/IPOL-ENVI_ET(2013)507492_EN.pdf)

⁸ <http://www.unece.org/fileadmin/DAM/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf>

⁹ See joint request for access to documents to the European Commission by ClientEarth, Corporate Europe Observatory, European Environmental Bureau, European Federation of Journalists and Friends of the Earth Europe

(<http://www.foeeurope.org/eu-us-trade-people-have-right-to-know-190514>). After partial disclosure, the groups filed a confirmatory application that was rejected by the European Commission (<http://www.foeeurope.org/sites/default/files/reply2-dg-trade-090714.pdf>).