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Content Please find enclosed GMB's response to the European Ombudsman public consultation on the transparency of the TTIP negotiations.



GMB TRADE UNION RESPONSE to

European Ombudsman

Public Consultation on

***the transparency of the Transatlantic Trade and
Investment Partnership (TTIP) negotiations***

October 2014

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Introduction and Background

GMB is the UK's third largest trade union with over 630,000 members across a wide range of sectors, both public and private. We confirm that this response is on behalf of our GMB members.

GMB has long been critical of EU and international trade agreements, driven as they are by corporate interests and often to the detriment of ordinary people and society's most vulnerable. GMB continues actively to campaign for full transparency in their negotiating process, with better trade union involvement and binding provisions on labour standards, human rights, employment rights and protections, trade union freedoms and protection of public services and utilities.

It is because of the nature of what trade agreements currently are that they are steeped in secrecy and lack transparency. If public rather than corporate interests were central to these agreements, the negotiators would have no reason to keep them a secret.

Without full transparency and the full involvement of trade unions, wider civil society and the general public in shaping their content, EU trade agreements will continue to entrench corporate power and their desire for ever more deregulation to boost company profits. Public interest issues including protecting the social, employment and environmental rights of workers and their families are ignored by those influencing the negotiations, and have been 'tagged on' to more recent trade agreements only as an afterthought in a desperate attempt to seek European Parliament and wider public agreement for these essentially corporate deals.

In particular, GMB has major concerns about the EU-US Transatlantic Trade and Investment Partnership (TTIP), the lack of transparency in its negotiations and the threat the agreement poses to our members and the wider UK, EU and global economies on a number of levels. As the biggest ever international trade deal, the stakes could not be higher. Its impact will be huge, and it will act as the blueprint influencing all other future global trade agreements. The TTIP negotiators must therefore lead by example and commit to full transparency and public accountability in every step of the process.

Below is the GMB response to the questions raised in the European Ombudsman's public consultation. GMB urges the Ombudsman to give serious consideration to the issues of concern raised and would be happy to provide additional information or discuss further any of the points made in this submission.

GMB responses to the questions in the European Ombudsman's Public Consultation on the transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations

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?

Although the TTIP negotiations have already been formally underway for over a year now (with an even longer preparatory period before that), GMB believes that there are still many steps which the European Commission could take to ensure full transparency and public accountability in the negotiation process from now on.

However, even if these recommendations were to be taken up by the European Commission tomorrow, the fact remains that for several years now the negotiations have been riven by secrecy with undue and privileged access for corporate stakeholders. This means that from the very beginning, the draft agreement emerging has been flawed and the negotiators will need to undertake a dramatic shift in priorities if the final agreement is to meet with any form of acceptance from trade unions, civil society and European and American workers and their families.

End privileged corporate access

The European Commission has claimed that there has been no imbalance of influence during the TTIP negotiations and that all interested parties, whether corporate or from trade unions and wider civil society, are consulted on an equal footing. But in reality, corporate leaders and lobbyists have been invited to the table from the very conception of the trade deal, influencing and helping to draft negotiating texts, whilst trade unions and NGOs have been systematically ignored.

According to research from the Corporate Europe Observatory (CEO)¹, even before the TTIP negotiations had been formally launched, the European Commission was already meeting with corporations and their lobby groups, who were given privileged and unfettered access to influence the negotiating mandate and were able to shape it to their own priorities, ensuring that, from the very beginning, TTIP would always benefit big business first and foremost, to the detriment of ordinary Europeans and Americans. As soon as the first leaked draft texts were released, it was clear that the demands of BusinessEurope and the

¹ Corporate Europe Observatory, 'European Commission preparing for EU-US trade talks: 119 meetings with industry lobbyists' (4 September 2013) – <http://corporateeurope.org/trade/2013/09/european-commission-preparing-eu-us-trade-talks-119-meetings-industry-lobbyists>

US Chamber of Commerce had been largely accommodated, whilst trade union and civil society concerns were ignored.

Out of 130 meetings the European Commission held with stakeholders as it prepared to launch the negotiations, 119 – over 90% – were with business. These meetings were held behind closed doors and were not disclosed to the public. Further CEO research reveals that for every European Commission encounter with a trade union or consumer group, there were 20 with companies and industry federations.²

Whilst the European Commission actively chases corporations for their input in a variety of TTIP texts, no such invitations or other encouragement to become part of the European Commission's inner-circle of decision-making have been extended to trade unions. This inequality of voice in the process is startling, with trade unions and NGOs clearly not seriously seen as 'interested parties' by the European Commission.

Although so-called civil society dialogue meetings are publicly organised by the European Commission, the civil society actors are only told what the European Commission wants them to know. Regularly, the European Commission responds to probing questions or critical comments with vague and non-committal answers. No new information is given to participants.

The European Commission's corporate bias could not be clearer and this situation is completely unacceptable. If the European Commission is serious about wanting full transparency in the TTIP negotiations, it should introduce, as a matter of urgency, a policy of full transparency when it comes to stakeholder relations, disclosing every meeting held and ensuring without fail that no group is given undue influence over another in the negotiation process.

A mandatory transparency register

Over 30% of the private sector interest groups which have lobbied the European Commission on TTIP (such as Walmart, Walt Disney, General Motors and France Telecom) are not registered on the EU's (voluntary) Transparency Register.³ Obliging companies lobbying the EU to sign up to the register would in and of itself increase transparency in who is involved in the TTIP negotiations.

A change in Commission culture

There is an institutional culture within the European Commission that gives privilege to corporate interests. The European Ombudsman is already aware of this from her investigation into European Commission expert groups, which we welcomed. Nowhere has this trend been more evident than in the TTIP negotiations. There is a pervading sense in the European Commission of seeing

² CEO, 'Who lobbies most on TTIP?' (8 July 2014) – <http://corporateeurope.org/international-trade/2014/07/who-lobbies-most-ttip>

³ Idem

job creation and economic growth as the prerogative of business, ignoring the vital and equally legitimate role trade unions and NGOs have in this area. This is clearly unacceptable and must be remedied.

GMB is particularly dismayed that whilst mounting public pressure against the Investor-State Dispute Settlement (ISDS) mechanism forced the European Commission to launch a public consultation on the issue, it still failed to ensure the process was serious and unbiased. Not only did the European Commission refuse to extend the scope of the consultation to cover not just TTIP but all EU trade deals under negotiation (as requested by GMB⁴), it also skewed the questions to ask only *what kind* of ISDS mechanism should be included in TTIP rather than whether or not one should be included *at all*.

GMB is now also concerned that critical responses to the consultation will not be given equal weight following remarks from the out-going European Trade Commissioner Karel De Gucht that responses from the general public using wording from a trade union campaign will not all be taken into equal consideration.

The fact that so many non-expert people made the effort to submit a response should have been a celebration of democracy and is an indication of the hundreds of thousands of people across the EU who are genuinely and seriously concerned about the implications of this trade agreement. Yet Commissioner De Gucht dismissed their voice because they drew on the expertise of their trade union to help articulate their concerns. It is worrying that the European Commission appears to have adopted the policy system of Animal Farm.

If this turns out to be the case, the European Commission has to accept that the consultation is a sham, which has compromised its integrity, shown utter disrespect for wider public opinion, and proven that no matter how big the opposition, ISDS in TTIP seems already to be a foregone conclusion.

These responses must be given equal and full consideration and the concerns raised in them applied to *all* EU trade agreements, ensuring ISDS clauses are removed from them all, including the EU agreements with Canada and Singapore.

Meanwhile, there is also evidence that whilst trade unions, including GMB, received only a standard confirmation of receipt after responding to the ISDS consultation, business lobbyists were invited for private follow-up meetings to discuss their responses further.⁵

It is also important to note how complex the ISDS public consultation was, making it near to impossible for anyone but those centrally involved in trade policy to get through the legal jargon. This should take nothing away from the fact

⁴ See GMB January 2014 letter to EU Trade Commissioner Karel de Gucht on widening the scope of the ISDS consultation:

<http://www.gmb.org.uk/assets/media/Commissioner%20Karel%20De%20Gucht%20Letter%20on%20ISDS%20in%20EU%20trade%20agreements%20-%2031.1.14.pdf>

And his response: <http://www.gmb.org.uk/assets/media/De%20Gucht%20response%2014.3.14.pdf>

⁵ CEO, 'Who lobbies most on TTIP?'

that those responding did so in full knowledge of the dangerous and undemocratic implications of this mechanism.

Stop the ISDS Trojan horse

GMB has major concerns with how the European Commission has continued to promote ISDS and push its inclusion in other trade deals before the results and conclusions of its public consultation on ISDS in TTIP have even been published. The European Commission has already signed off strong ISDS measures in its trade agreements with both Canada and Singapore – and these will now act as a Trojan horse to push the inclusion of ISDS measures in TTIP too, no matter how much growing opposition there may be from the general public and several Member States, including Germany. This is highly undemocratic.

A balanced advisory group

In an attempt to address public concerns that not all stakeholders were being given the same access to influencing the negotiating process, the European Commission earlier this year set up an expert advisory group on TTIP to enable “close dialogue and exchange with all stakeholders”, who would all be given access to more privileged information. However, with corporations still outnumbering trade union members four to one, this group could be judged as little more than window-dressing. With strict Chatham House rules imposed on all its meetings, and access to negotiating texts granted only through a private ‘reading room’ with no scope to take copies or notes (see below), there is still no possibility for genuine public debate – the negotiations remain very much behind closed doors.

Equal access for EU and US stakeholders

GMB is concerned at how extensively EU trade unions have been side-lined from the TTIP negotiation process. US negotiators have from the beginning been more open than the EU, with Congress allowing US trade unions and NGOs to intervene in hearings and consideration of the agreement and to have access to the negotiating texts with the power to influence them, whilst European trade unionists have been kept in the dark as to the negotiation mandate and proceedings. Whilst we know that US trade unions would like still further transparency, and that their system is not perfect, it offers access we do not have in the EU.

Furthermore, the trade union movement both in Europe and the US must not only be kept fully and continually informed of the negotiations, but must be allowed to play an active and central role at all stages of the negotiations towards the final agreement – and beyond, in monitoring its impact and implementation too. We cannot just be left to react to corporate-biased texts and conclusions that are all

but written in stone, but must be allowed to become an integral and proactive part of the process.

The European Commission's attempt to try to correct this imbalance by opening a private 'reading room' for certain EU stakeholders to be able to consult the negotiation texts has been an utter failure – access to the room is unacceptably arbitrary, and security measures so high (no pens, paper, phones or cameras allowed) that the only way to take out any meaningful and useful information is to commit the long and technical texts to memory. Given the complexity of the texts, it is impossible to make any assessment or analysis of them under such conditions. This is unacceptable.

Until the European Commission publishes all texts and developments at each stage of the negotiation process and in full transparency, trade unions will have to rely on leaked versions as and when we receive them. Although GMB welcomes the European Commission's recent decision to declassify TTIP's negotiating mandate, this is rather too late in the day as any scope to influence it is long gone.

A more honest presentation of the facts

The European Commission has launched an offensive campaign in favour of TTIP – responding to genuine concerns of trade unions and wider civil society with aggressively dismissive rebuttals.

When concerns were raised by British trade unions, including GMB, on the implications of the deal on the UK's National Health Service (NHS), the European Commission circulated a rebuttal claiming the NHS was safe, but its very argumentation in favour of ISDS makes these assertions baseless.

No answers have been given by the European Commission to questions raised by GMB and other trade unions on why the EU has even entered into negotiations with a country that does not (and will not) ratify core ILO conventions on freedom of association and collective bargaining and other labour rights and standards, which the EU demanded from Colombia and all other developing countries. These double standards completely undermine the EU's integrity.

The European Commission also uses totally unsubstantiated evidence to try to uphold the supposed benefits of TTIP. For example, it has claimed that every EU household will be €545 a year better off due to cheaper goods and services offered by TTIP. Yet this figure is divisive as it tries to suggest that each citizen will be allotted equal amounts of the extra €119bn from which studies claim the EU's GDP will benefit each year.⁶ The reality however is that any financial benefits will not go to the workers or households but rather into the pockets of

⁶ Ecorys, 'Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis (2009) – http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145613.pdf

CEPR, 'Reducing Transatlantic Barriers to Trade and Investment – An Economic Assessment (2013) – http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf

companies and their shareholders. There needs to be more honesty about such figures being bandied about.

These figures are also based on a supposedly ‘best-case scenario’, which even the studies themselves admit is highly unrealistic. The figures are further misleading in that they are based on 2027 projections, a less than solid base for calculations (many would judge this as little more than speculation), so any suggested benefits would in any case not be seen for another 13 years (or in most cases not at all).

There is also a real lack of transparency and legal clarity with many of the technical terms used in the draft TTIP agreement, and in the chapter on ISDS in particular. For example, the European Commission has refused to state whether public services will be part of a negative or positive list approach, what attacks on public policy interests it would deem “frivolous”, or which public policies it considers “non-legitimate” or “disproportionate”. GMB already finds it indicative that the European Commission does not list social or employment legislation in its examples of a legitimate public policy.

This lack of legal clarity leaves the door wide open for investors to abuse the system, as countless past and current cases have shown (such as: Veolia v. Egypt for government-mandated increases to the minimum wage, Lone Pine v. Canada for Quebec's moratorium on ‘fracking’, Philip Morris v. Uruguay and Australia over the countries’ anti-smoking laws, Achmea v. the Slovak Republic for the government reversal of health privatisation, Nobel Ventures v. Romania for failing to stop workers from going on strike). The European Commission should be honest about how difficult it will be to curb corporate power in TTIP even under a modified ISDS system.

Less speed, more quality

GMB has fundamental concerns with the unrealistic timeframe within which the TTIP negotiations are to be completed and the speed with which the negotiators are trying to finalise the deal. Rather than trying to push through a fundamentally flawed and increasingly unpopular deal as quickly as possible, the European Commission should go back to the drawing board, avoid making rash decisions and instead ensure that, if there is to be an agreement, it will be a good agreement – and accept that the one currently on the table is definitely not ‘it’.

Given the secrecy under which the negotiations have currently been taking place, GMB also senses that the speedier the process, the less transparent it will be and the harder it will become for trade unions and other civil society organisations to monitor and influence it. Trade unions are persistently calling for the process to be made more transparent, open and accessible, and for the negotiators to embrace trade unions’ views more fully than they have done in previous international trade agreements. This is a crucial issue and one that will have to be met for the agreement to receive any trade union support, even if the

time-frame for reaching agreement will have to be extended to accommodate this.

A genuine dialogue

GMB continues to raise the many concerns listed above about the lack of transparency in the TTIP negotiations. If the European Commission is serious in continuing the negotiations in a fully transparent and consultative manner, it must be ready to fully involve trade unions, civil society and all other concerned parties – not just big business, which has been given undue power and influence in the process so far. Trade unions must be invited to the negotiating table and given full access to the TTIP texts and papers, with opportunities to influence and contribute to them so as to ensure that our concerns are dealt with and that trade deals put people and their interests before those of big business.

The European Commission must acknowledge the growing public concerns and opposition to TTIP and international trade agreements more widely and find a better way to engage with the European public as a whole on this. The lack of transparency and influence in TTIP is just another example of how alienated people feel by the European project and if the EU continues to try to push a deal through that is so publically unpopular, it will hit a brick wall of opposition and be putting itself in a very difficult position.

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.

It saddens us to say that best practice is in short supply in terms of GMB concerns and priorities relating to trade deals. By their very nature, these deals are driven by corporate greed and power, often to the detriment of people across the EU and the world.

The sustainability chapters contained in recent trade agreements are too weak to have any real and long-lasting impact, and without the introduction of binding provisions on effective sanctions, full enforcement remains impossible to achieve.

Furthermore, the Domestic Advisory Groups (DAGs) structures set up to oversee these chapters lack any support from the European Commission in terms of capacity building and funding participants' travel (with insufficient advance warning when a meeting is convened being a frequent occurrence). These groups should be a positive element but instead, in GMB's experience, end up operating in chaos without any real structure or coordination. The European Commission has done so little to address these fundamental issues that one could be mistaken for thinking there is an internal conspiracy for them to fail.

As outlined in our answer to Question 1 above, GMB has also been dismayed at how EU trade unions have been side-lined from the TTIP negotiating process, and would recommend the European Commission moves towards the better access enjoyed by our partners in the US. Although not perfect, it has at least allowed trade unions to intervene in hearings and consideration of the agreement and ensured they receive more information from the US negotiating team than EU trade unions have from their European Commission counterparts.

Similar access as ‘privileged stakeholders’ for European trade unions must be made a prerequisite at European Commission and Member State government level from the earliest stages of consultation on planned future trade agreements for the negotiations to be considered truly transparent and receive any approval from the EU trade union movement.

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

Greater transparency will not be achieved until the whole focus of why trade agreements are negotiated is changed. Until the culture and focus of trade deals is turned around to put people, jobs, the environment and sustainable economic development first – to benefit the many rather than the few – there will always be a lack of transparency in trade deals because corporate interests prefer to operate in the shadows. They claim this is because of commercial “confidentiality” – but we all know it is about greed, power and dominance instead.

If the EU and US negotiators truly believe, as they claim, that with more jobs, growth and even an extra €545 each a year, everyone in Europe and the United States will benefit from TTIP, they should have had no qualms about making the negotiation process as open and transparent as possible from the very beginning, and should use the opportunity provided by the EU Ombudsman’s inquiry to do so now as a matter of urgency.

The European Commission must understand that until it actively makes stakeholders and all European citizens part of the process from start to finish, they will never accept trade deals that are driven by the demands of big business rather than promoting fair and equal trade in the interests of the many – especially such a major deal like TTIP, which will have a serious impact on all of our lives, both at work and at home.

Greater transparency in TTIP and other trade negotiations would make them more publically accountable and acceptable – and this crucially could have a major influence on the outcome of the agreements. A more open and transparent process with all views and interests taken into account would lead to very different kinds of trade deals, far more representative and socially responsible and sustainable than the one currently on the table.