

OPEX MEMORANDUM N° 190/2014

AUTHOR: JUAN ANTONIO PAVÓN LOSADA*. University degree in labour relations and Master in European Public Affairs by Maastricht University. Management board and outreach coordinator of the platform on EU intelligence www.europeanpublicaffairs.eu. Communication and Public Policy Analyst. Contributor member of Opex, Fundación Alternativas.

TO: OPEX DATE: 11/12/2014

SUBJECT: EUROPEAN PARLIAMENT AND THE TTIP: FINAL STAGE OF THE EU-US NEGOTIATIONS.

PANEL: European Union

www.falternativas.org/opex

*Special thanks to Jennifer Burch and Lora Verheecke for their inestimable aid and support.

Depósito Legal: M-54881-2008

ISSN: 1989-2845

EU LEGAL FRAMEWORK

Seven rounds of talks have taken place. The last, already scheduled for the first week of February 2015, will take place in Brussels. Beyond that point interservice contacts between European and American institutions will take place to draft the texts that the negotiators will propose to their respective legislative representative, who will ultimately approve or reject the agreement. Prior the analysis, a revision of the current legal framework would be needed to understand the entire process.

On the European side of the Atlantic, the EU manages trade and investment relations with non-EU countries through the EU's trade and investment policy. Trade policy, one of the pillars of the European Single Market, is an exclusive competence of the EU, not individual member states, can legislate on trade matters and conclude international trade agreements. The scope of EU's exclusive powers covers not just trade in goods, but also services, commercial aspects of intellectual property and foreign direct investment. Trade policy is set down in Article 207 of the Treaty on the Functioning of the European Union. The Commission must request an authorisation to negotiate a trade agreement with a trading partner from the Council, which sets out the general objectives to be achieved. Whilst the negotiations are going on, the Commission reports regularly to Council and the European Parliament.

Once the Commission has completed the negotiations, it presents the deal to the Council and the European Parliament. They are the ones to formally agree the outcome and prepare the way for signature and ratification of the deal with the trading partner. Since the entry into force of the Lisbon treaty, International agreements of this nature are adopted by the Council, after the Parliament has given its consent. The assent principle is based on a single reading. Parliament may accept or reject a proposal but cannot amend it. If Parliament does not give its assent, the act in question cannot be adopted. In the Anti-Counterfeiting Trade Agreement (ACTA) case, the EP voted against it and it turn stopped. Due to this consent procedure, the European Commission takes much more attention of the European Parliament opinion and that is why the EP position is so important.

STATE OF AFFAIRS

Although negotiators recognise the need to identify economically meaningful outcomes in sectors - since the different approaches in many issues seem to make significant progress difficult – and although civil society is raising the level of opposition as the end of the negotiations gets closer, the seventh round of TTIP negotiations took place in Washington in the last week of September 2014.

At chief negotiator level, both sides reaffirmed in public declarations their similar approach to public services –claiming to reserve policy choices in this area for governments. On technical barriers to trade (TBT), discussions continued to show differences in approach. With respect to tangible developments, EU negotiators stated that there were constructive discussions on the regulation pillar with the heavy involvement of regulators. However, discussions will continue between regulators on data alignment. All negotiating areas in this pillar with the exception of textiles were covered, with remarkable progress on technical work.

Negotiators have been consolidating texts in areas such as State Owned Enterprises, Small and Medium Sized Enterprises and Customs and Trade Facilitation. This means positions are close to an agreement in those areas. Furthermore, the completion of a consolidated text on Telecom Services is about to be announced in the near future. Regarding horizontal disciplines, negotiators claimed to be engaged in discussions based on text proposals. Apparently, an important challenge will be to establish a strong framework for cooperation that would allow EU and US regulators to tackle new regulatory obstacles based on high levels of protection. This is seen by TTIP critics as a threat to the maintenance of the higher level of EU standards in consumer, labour or environmental protection in comparison with the US's ones. Negotiators also reported progress on customs, as in other non-sensitive areas, leaving the most difficult issues open.

After the conclusion of the 7th round of negotiations, it is an open secret that negotiations are not going as steady as expected. Critics of the TTIP have intensified their opposition. In their quest for more transparency, and supported by national governments and parliaments as the German or the French, they forced the EU TTIP negotiators to publish the secret mandate, on behalf the European Council, in which they stated the EU negotiations guidelines.

SENSITIVE TOPICS

So far, the negotiator teams have postponed a number of sensitive discussion points. Foreseeably, such conflicting points will be addressed at the highest political level. Those are the following:

Investor-State Dispute Settlement: Defined as a system to protect investors from the action of governments. This system would allow companies investing in both regions to appeal to private courts in case of action that could harm or discriminate their interests. Dodging national and European courts of justice if government action interfere in their benefit provisions. There is a significant clash of interests even within the EU itself, and will be approved if states find agreement. In this sense, the German Economy Minister Sigmar Gabriel (SPD partner of Angela Merkel's Christian Democrat government) said last September in the Bundestag that he will oppose the signing of the agreement with Canada if the ISDS is not removed from TTIP. Also the French Secretary of State for International trade, Mathias Fekl, stated that France will not sign any agreement in 2015 if ISDS is not removed from the negotiation table.

In any case, detractors of TTIP believe that EU democracy, transparency, environment, labour or consumer-protection, inter alia, may be in danger given that the US has less restrictive legislation on these issues than the EU. In this sense, environmental associations declared recently that "the gates of Europe would open wide to fracking if the Transatlantic Free Trade Agreement between the European Union and the United States (TTIP) came into force." as in the case of the US company Lone Pine Resources. This company used ISDS to sue the province of Quebec in return for compensation for a moratorium approved by the region on hydraulic fracturing. Regardless the process outcome, the bill to be paid by Canadian citizens will be at least 8 million Canadian dollars, which is the average price to hire adequate legal assistance in that country.

Food, farming and Agricultural Markets: Although negotiators have reassurances from both sides that have stated that “food standards will not be lowered”, many stakeholders do not trust them. There is significant resistance between small and medium farmers and consumer organisations that imports that do not meet local standards may enter the market. Farmers are preparing action against what they call “unfair competition”. Consumer organisations are also afraid that standards might be lowered, or undermined during the implementation phase of the agreement. Regulatory convergence may mean the first step to mutual recognition and to fundamentally changing the way politics is done within the agri-food sector in the future.

Again, civil society organisations as Corporate Europe, claim that taken together, TTIP will reveal itself as the ultimate tool of EU and US agribusiness to counter any 'inconvenient' food-related standard which may endanger their expansion in the global market.

Exclusions on financial services and cultural and audiovisual sectors: Both sides have already highlighted their bottom lines. On the EU side, the EU has a legal obligation under the UNESCO convention to protect and promote the diversity of cultural expressions, a principle also enshrined in the EU Treaties. Furthermore, in relation to trade agreements, individual member states have a veto in areas related to culture and the audiovisual sector if an agreement threatens “cultural and linguistic diversity”. The idea of the French Government -main supporter of this decision- is that culture should be treated differently from other commercial products, and that cultural goods and services should be left out of the TTIP. The goal is to protect and promote domestic artists and other elements of domestic culture, against the predominant US audiovisual sector and content. In practice, this will be translated into protectionist measures limiting the diffusion of foreign artistic work or into subventions to the cultural sector.

On financial services, the EU may be paying the price for having insisting on keeping the audiovisual sector off the table with the exclusion of this sector in the negotiations. The offensive interest that the EU has been showing, answers to the need to built up on financial resilience against future financial crises. Michel Barnier, former European Commissioner for Internal Market and Services, said in a speech that, “Co-operating on regulation is the only way to ensure global financial stability while maintaining open markets,” Regardless of whether this is a retributive measure or not, the US are not willing to commit to binding measures to counter the current EU financial instability.

Taking into account the aforementioned, even European business associations are recognising their “disappointment” given the few achievements to date. Emma Marcegaglia, president of the Association BusinessEurope and Eni, stated that the progress were not sufficient. Fact that could provide of authority and legitimacy to the opponents of this treaty.

EP POSITIONS

While the European Parliament has been considered a supporter to the TTIP, there is no broad political consensus on some key issues. There have been reactions to the end of the last round of negotiations.

The chairman of the international Trade Committee in the European Parliament, Bernd Lange, expressed the need of public involvement to counter the rising lack of confidence growing across civil society. Also it would be beneficial to generate a fact-based public debate on Europe to explore the real opportunities and concerns surrounding the TTIP. In this regard he welcomed the publication of the European Council secret mandate.

In the same line, finishing successful negotiations on the TTIP is a key priority of the EPP Group.

Quisthoudt-Rowohl (EPP Group Rapporteur on the TTIP file in the International Trade Committee) considers transatlantic relations as a key pillar in the EU's foreign, political and trade relations, the US being a reliable partner. He underlined the necessity of taking a position as a group on the many substantive issues and also to exchange ideas more regularly about the content of the negotiations. The EPP Group gives its strong support to the ongoing negotiations and believes it will produce a win-win outcome. As spine bone of the agreement, the EPP Group supports a balanced TTIP negotiation result which would promote employment and growth in Europe. Nevertheless, they expressed their will to facilitate the access to the reciprocal market, the minimisation of trade barriers, the increase of mutual investment and the way to designing global norms without the reduction of the social standards

In the same line, ALDE MEP Marietje Schaake also welcomed the Member States openness in response to The European Parliament and stakeholders calls for transparency. In their opinion, it shows that governments are finally realising that more transparency and accessibility was needed in the negotiations on TTIP. ALDE is strongly in favour of the TTIP and proposes to extend it to other major economic regions.

The European Conservatives and Reformists Trade Spokesman holds a similar position with a few reservations.. Emma McClarkin, ECR MEP Emma McClarkin, ECR MEP requested more protection for the European and British public services and a more fact-based discussion to reinforce the support for the TTIP.

Although favorable in principle of the TTIP, Socialists & Democrats are still very sensitive to negotiation developments. S&D believes that the TTIP can bring benefits in terms of economic growth and job creation, including improvement of standards in protecting the rights of workers and the environment if negotiated properly, but they are also considering the risks. The S&D Group wants to study each issue and influence negotiations to decide in a case-by-case scenario whether to support it or not. Their moves seems be aiming for regaining the political support they lost during the last term. Their spokesperson on international trade, MEP David Martin, stated that they ISDS removed from the treaty and EU public would block the agreement if the ISDS would be included in the text and services and standards would not be sufficiently protected. The S&D wanted to include binding and common measures with regard to the regulation of financial markets, to avoid future unregulated transatlantic financial flow that would import financial instability from the USA to the EU.

The Greens oppose the deal in its current form. Lack of transparency and environmental safeguards are their flagship demands. European Green Party trade spokesperson, Yannick Jadot, accused the European Commission of not being transparent enough and requested full access to the negotiating documents, in order to scrutinize the detail and facilitate that those not directly involved in the

negotiations could have more involvement. The green remarked the key role of EU standards and full transparency for the well-being of the European Citizenship.

The European left, in frontal opposition to the center-right parties and approaches-ultimately opposes the agreement and supports immediate suspension of the negotiations. TTIP is their "*casus belli*", and they are putting a strong focus on mobilising civil society and NGOs. Lola Sanchez, Spanish Podemos MEP, warned about the enormous wingspan of the agreement. She underlined that, by spillover, it will affect all areas of the law that is supposed to protect EU population. The GUE/NL group is very concerned about social and environmental dumping. Further, they consider the TTIP an attack to environmental regulation, the sovereignty of states, intellectual property and public services, inter alia. They share views with the Greens, and many environmental associations about the fact that a full deregulation, caused by the TTIP, will allow and encourage US companies to use of dangerous earthquake techniques and chemicals that are banned nowadays in Europe

CONCLUSION

Due to the already proven lack of transparency in the on-going negotiations and the institutional unresponsiveness, to give an opinion on the red lines of the agreements seems a reckless exercise of divination, and thus, reinforcing anti-TTIP stances. Notwithstanding, and regardless the final content of the agreement, a math review of the European Parliament political structure reveals that the TTIP enjoys a favorable position in the European Parliament. As laid down in the art. 231 TFEU and in the Rules of Procedures of the European Parliament, rule 108.7: "Parliament shall give its opinion on, or its consent to, the conclusion, renewal or amendment of an international agreement or a financial protocol concluded by the European Union in a single vote by a majority of the votes cast.". In a business as usual scenario -taking into consideration that at least EPP, ECR and ALDE have declared their unconditional support of the trade agreement- a blocking opposition coalition would require significant support, necessarily including the Social-democrat group to effectively tackle the agreement.

Despite the fact that there is solid evidence-based literature stating that deregulation and unfair FTAs, will bring a race-to-the-bottom, and thus dumping, in consumer, environmental and labour protection. Amongst GUE/NL, the Greens, and the support of a few Far-right MEPs, the anti-TTIP coalition might solely accumulate a total of around 110 votes for their cause. In their favour, they count with good relations with civil society. This situation, as a consequence of the current crisis, may help them to indirectly influence the position of the S&G group. Therefore, how civil society would react towards the final agreement will most probably influence S&D's opinion, and therefore the European Parliament.

The final content of the agreement is yet to come. Although timid steps have been taken by the European Commission, it is likely that the unresponsiveness and opacity carried during the negotiations may become self-defeating. There is an increasing social unrest towards the agreement and its future consequences. The current approach points out the democratic deficit which still is not completely overcome. However, the adoption of the final agreement will depend on the European Parliament. In this sense, the way the left-wing parties handle their influence on civil society to confront the agreement or how the Juncker's European Commission is able to integrate the EU citizenship support, seems crucial to set the position of the S&D group, and thus, the EP. With 191 seats in the European Parliament, the S&D group has the key to open -or close- this Pandora's box shaped trade agreement.

Memorandos Opex de reciente publicación

- 189/2014: **Las políticas de austeridad: un balance.** Jorge José Hernández Moreno
- 188/2014: **Tailandia: golpe y marcha atrás.** Juan Manuel López Nadal
- 187/2013: **¿Qué hacer con la ayuda oficial al desarrollo en España? Recomendaciones en un contexto de crisis.** Katty Cascante
- 186/2013: **La periferia del este europeo: Bulgaria.** Larisa Mihalcea
- 185/2013: **Ecuador 2013: Las claves del éxito de la Revolución Ciudadana.** Flavia Freidenberg
- 184/2013: **CELAC y UE: hacia un nuevo enfoque en lucha antinarcóticos y control de armas.** Érika María Rodríguez Pinzón
- 183/2013: **Crisis de Malí: la amenaza islamista y la respuesta de Francia, España y la UE**
- 182/2012: **Obama 2012: de los medios sociales a la estrategia de datos.** Diego Beas
- 181/2012: **El México de Peña Nieto: la hora de las reformas.** María José Martínez Vial
- 180/2012: **El cambio de liderazgo en China y sus implicaciones.** Mario Esteban
- 179/2012: **Venezuela: Chávez decidido a profundizar su revolución.** Sandra Guevara de Molina
- 178/2012: **El Egipto de los hermanos musulmanes: entre la agenda doméstica y la escena regional.** Ignacio Álvarez-Ossorio Alvariño
- 177/2012: **El desarrollo sostenible y la cooperación española.** Maribel Rodríguez
- 176/2012: **El regreso del PRI en México: de nuevo la duda.** María José Martínez Vial
- 175/2012: **Egipto: presidente islamista, tutela militar.** Marcos Suárez Sipmann
- 174/2012: **La ayuda multilateral española en el ámbito humanitario: retos pendientes.** Francisco Rey
- 173/2012: **A binding Food Treaty: a post-MDG proposal worth exploring.** José Luis Vivero Pol
- 172/2012: **Las consecuencias del cambio político en Francia para la Unión Europea y para España.** FUNDACIÓN ALTERNATIVAS - CONSEJO DE ASUNTOS EUROPEOS
- 171/2012: **Efectos de la inversión extranjera en tierras agrícolas: recomendaciones.** Érika Rodríguez Pinzón
- 170/2012: **España y la reforma del sistema Naciones Unidas para el desarrollo: cómo rentabilizar el esfuerzo ante los recortes.** Carmen Sánchez Miranda Gallego
- 169/2012: **La cooperación multilateral española en materia de educación.** Alberto Begué Aguado
- 168/2012: **La política multilateral española para la seguridad alimentaria: aprendizajes, resultados y retos para el futuro.** Pilar Baselga Bayo, Gabriel Ferrero y de Loma-Osorio
- 167/2012: **La encrucijada Siria: militarización o internacionalización.** Ignacio Álvarez-Ossorio Alvariño

Para consultar toda la serie de Memorandos Opex en versión online y visitar nuestra página web: <http://www.falternativas.org/opex>