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TTIP: Exec confirms De Gucht-Froman stocktaking meeting – in brief

The European Commission confirmed information previously released by EU Trade Insights concerning the holding on 17-18 February of the high-level transatlantic trade and investment partnership (TTIP) meeting between EU Trade Commissioner Karel De Gucht and his American counterpart Michael Froman. The meeting, which will take place in Washington, is aimed at assessing “progress made after the first three rounds of the talks and thereby provide […] political guidance to the chief negotiators from both sides on how best to take forward the negotiations”, the Commission said in a 28 January statement.

The EU also intends to discuss public procurement during the stocktaking meeting, sources have said explaining that so far, the US has seen the EU demands in the area as “too ambitious” and has argued it would be difficult to obtain concessions from the 50 states.

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TTIP: No favourable treatment for TTIP advisory group

The advisory committee set up by the European Commission on the transatlantic trade and investment partnership (TTIP) will have to follow the same rules that apply to any other advisory group previously established, according to the terms of reference published by the EU executive on 27 January. These include “professional secrecy” and the respect of the confidentiality of certain texts and information shared by the Commission when the institution classifies them as “confidential”. Should the selected representatives of the 14 business organisations and civil society groups fail to respect these obligations, the Commission “may take all appropriate measures”.

The 14 will be meeting EU Chief negotiator Ignacio Garcia Bercero on a regular basis, in between TTIP negotiating rounds which are scheduled to take place every two months. Meetings will be convened on his own initiative or at the request of at least five members, and the group will provide the negotiating team with “high quality technical and practical advice on areas under negotiations”. The 14 members are also expected to use their expertise to represent “a common interest shared by stakeholders in a particular area, rather than the interest of any specific organisation or individual”. To assist the Commission in its task, sub-groups could also be set up to examine specific technical questions. However, “expert groups do not take binding decisions”. “The Commission and its departments remain fully independent regarding the way they take into account the expertise and views gathered”, it is noted in the Commission’s communication on the framework for expert groups – C(2010)7649.

Regarding access to documents, the group of “experts” is expected to have only limited access, as the US is keeping a tight lid on who can access their negotiating texts. Member states’ representatives themselves can only access these documents in a Commission “reading room”, sources say. The next meeting of the advisory group is expected to take place end-February, although no specific date has yet been confirmed.

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TTIP: financial cooperation needed for global stability – Exec

The European Commission is playing on the sensitive strings of EU public opinion as it released, on 27 January, its ‘non-paper’ on regulatory cooperation on financial services in the transatlantic trade and investment partnership (TTIP). Not including such regulatory cooperation within the framework of the trade talks could lead “once again to regulatory divergence and opening the door to financial instability”, the EU executive warns in its paper.

Since the launch of the trade talks in July 2013, the United States has openly spoken out against setting up a framework for regulatory coherence in financial services within the TTIP. Washington believes the current Financial Markets Regulatory Dialogue (FMRD) in which both parties already participate is sufficient. The US Treasury fears that putting financial services on the table in the TTIP risks a lowering of safeguards that exist in the 2010 Dodd-Frank law which sets up a resolution regime to respond to financial crises, foresees the consolidation of regulatory agencies, and prohibits – to a certain level – banks from engaging in proprietary trading (Volcker rule). All-in-all, the US believes it has by far better rules in financial services than the EU’s and regulatory cooperation in this specific area would be risky. Other issue for the US: the possibility that the EU would use the inclusion of financial services rules in the TTIP to force the US into introducing the International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB).

The aim of the EU proposal “is not to negotiate within the TTIP on the substance of the international standards, on the on-going implementation of these standards or on other elements of on-going regulatory reforms (eg the

Volcker rule, or rules on foreign banking organisations) that are being currently implemented", the Commission noted. The objective of the EU proposal is instead to set up regulatory cooperation in financial services which would be based on principles such as timely and consistent implementation of internationally-agreed standards for regulation and supervision, mutual consultations in advance of any new financial measures, joint examination of the existing rules, and a commitment to assessing whether the other jurisdiction's rules are equivalent in outcome. Under the EU proposal, "regulators would still have the possibility to take the necessary measures to protect financial stability", the Commission notes in an attempt to reassure Washington. "Regulatory fragmentation weakens the resilience of financial markets and makes it much more difficult for economies to recover", it adds.

However, it is very unlikely the US will ever agree to the inclusion of financial services regulations within the TTIP. On the other hand, it has agreed to include financial market access issues into the scope of the deal.

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TTIP investor-state consultation: no impact on other trade deals

The European Commission will be holding public consultations on the famous investor-state dispute settlement mechanism (ISDS) that is to be included in the EU-US trade agreement (TTIP), it was announced on 21 January. But whatever the outcome of the consultations, other trade deals are unlikely to change, a diplomatic source told EU Trade Insights.

The consultations will start in March as Trade Commissioner Karel De Gucht publishes the EU's proposal on the investment part of the TTIP, and will last three months. "The decision follows unprecedented public interest in the talks," the Commission said in a statement. The ISDS mechanism foreseen in the TTIP would allow an investor to bring a claim against a state where the state is alleged to have breached an investment protection agreement. But while the Commission announced it would consult on the ISDS in the TTIP, it did not mention the other trade deals it is currently negotiating. Indeed, the Comprehensive Economic and Trade Agreement (CETA) with Canada also includes these ISDS mechanisms, and the deal was agreed in principle in October 2013, meaning that negotiations were officially concluded. Japan, China, Vietnam or Malaysia are other countries with which the EU is negotiating trade deals which could contain ISDS provisions.

Whatever the outcome of the TTIP ISDS consultations, there won't be any changes to concluded trade deals like CETA, an official told EU Trade Insights. And the results are also unlikely to change any on-going trade deals beside the TTIP, the source confirmed.

Response to criticism

The consultation on ISDS comes as a number of NGOs, members of the European Parliament and certain member states have reacted strongly against what they consider would give excessive rights to investors and might have negative impacts on EU standards and regulations.

The Commission has stated many times it had no intention of allowing the lowering of EU standards through ISDS. But this does not seem to be enough, despite the fact that ISDS already exists at the level of member states. "Accepting the ISDS would mean opening the door for big corporations to enforce their interests against EU legislation", a statement from the European Parliament's Socialist and Democrat (S&D) group read on 21 January. "This would deprive states of crucial space in important fields such as health or environment", the statement noted. To this argument, the Commission has always answered it intended to improve the ISDS mechanisms to avoid such detrimental effects. "We don't want the Commission to improve investor-state dispute settlement in the TTIP negotiations, but we request that the Commission drops ISDS within TTIP altogether", the S&D group was adamant.

Old news, new interest

The introduction of an EU-wide ISDS mechanism is not new. In June 2010, following the entry into force of the Lisbon Treaty and the Commission's newly acquired rights on trade and investment, DG Trade launched a public consultation on "a future trade policy". 302 contributions were received, the Commission says, with 48% of them coming from the private sector, 28% from public organisations, and 24% from NGOs. At the time, the Commission submitted a list of 20 questions to the public, including the following: "given that the Lisbon Treaty gives the EU greater competences in international investment policy, how should we contribute to facilitating cross-border direct investment (both outward and inward)? What are the key issues to be addressed in agreements governing investment?" There was relatively little discussion on ISDS by NGOs at the time, a source noted. The British Trade Union Congress (TUC) for example answered in 2010 that the Commission "should ensure that investment disputes are heard by domestic courts in the host state." But the TUC did not as such call for the ISDS to be removed from future EU trade deals. With the launch of the TTIP negotiations, the TUC's position has evolved, as the organisation now calls for the ISDS to be "ruled-out now from the TTIP negotiations". Other organisations and member states have also strengthened their positions against ISDS since 2010.

Impact on TTIP talks

Negotiations on the ISDS provisions to be included into the TTIP are not well-advanced. The issue has been raised during the three rounds of talks that have already taken place, but neither the EU nor the US have yet exchanged a draft proposal on the matter, a source said, explaining that this public consultation won't have much of an impact on the on-going discussions. It will however force the EU negotiators to "pause" any planned discussion on ISDS as they wait for EU stakeholders' contributions.

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TTIP: De Gucht's difficult push for investor-state dispute settlement

After announcing the launch of public consultations on the investment part of the transatlantic trade and investment partnership (TTIP), including on the so-called investor-state dispute settlement (ISDS) mechanism, the EU's Trade

Commissioner Karel De Gucht is continuing his push to convince stakeholders that protecting investors' rights is indispensable.

"I am well aware that there have been problems in the way investment protection agreements have sometimes worked in practice", De Gucht conceded in a speech to the German Atlantikbrücke on 22 January, citing the now famous case Philip Morris vs Australia in which the giant tobacco company challenged the Australian state for laws it introduced banning the use of cigarette companies' logos on packets, replacing them with health warnings. But the "fundamental objective of our international investment policy is to reinforce the legitimacy and transparency of these rules", De Gucht was adamant.

ISDS – which allows one investor to challenge a state if it believes that there has been a breach in the investment treaty that links its country of origin to the responding state – can be necessary, according to the Commissioner who argues that "European companies were behind every second investment case launched globally in 2012". On the total 58 known treaty-based cases launched in 2012, European investors were actually behind 32 of them. But in 20% of these 58 cases, EU member states were challenged by investors.

Critics believe ISDS would lead to a lowering of EU standards because member states would avoid adopting new regulations or remove old ones if there is a risk they might be sued by big companies.

Increase in use of ISDS

2012 was also the year during which the highest number of ISDS claims were filed according to the United Nations Conference on Trade and Development (UNCTAD). This can of course be linked to the increasing number of investment treaties which provide for such a mechanism to be used. It could also mean that the investors' know-how to use the ISDS has increased.

In 2012, investors have challenged a broad range of government measures, and not just changes to domestic regulatory frameworks, the UNCTAD's May 2013 report shows. Investors have also challenged measures related to revocations of licences, alleged breaches of investment contracts, alleged irregularities in public tenders, withdrawal of previously granted subsidies, direct expropriation of investments and tax measures. However, there is a "continuing trend of investors challenging generally applicable public policies". There is also "an increasing number of victories for claimants (70% in 2012)", UNCTAD says as it calls for a multilateral policy dialogue to take place on the issue.

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EU-US Summit end March – sources

A bilateral EU-US Summit will take place in Brussels on 26 March, sources have told EU Trade Insights. The official confirmation will be made in the coming days. The bilateral summit should be attended by US President Barack Obama as he travels to Europe for the 2014 nuclear security summit that is organised in The Hague on 24-25 March. During the high-level meeting, Obama is expected to reassure his European counterparts with regards to the spying allegations that broke out last year. The summit will also be the occasion to reaffirm both sides' commitment to conclude the transatlantic trade and investment partnership as soon as possible. The fourth round of the TTIP talks will take place in Brussels on 10-14 March.

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EXCLUSIVE: TTIP De Gucht-Froman stocktaking meeting on 17-18 February

EU Trade Commissioner Karel De Gucht will be meeting his American counterpart Michael Froman on 17-18 February in Washington for a high-level meeting to discuss the state of play of the transatlantic trade and investment partnership (TTIP), EU Trade Insights has learned. This so-called 'stocktaking meeting' will come after an exchange of EU-US market access offers on goods and services and before the fourth round of trade talks scheduled to take place in Brussels on 10-14 March.

No date has yet been set for the exchange of market access offers, but the EU's offer seems to be almost ready as a draft version of the document will be discussed during an extraordinary meeting of the Trade Policy Committee (TPC) on 20-21 January, sources have confirmed.

Transparency

Criticism over the lack of transparency from the European Commission in the TTIP negotiations is still being voiced in Brussels, and not just by civil society organisations. During last week's meeting of the TPC, France reiterated its concerns, stating transparency was essential for political and technical reasons. The claims were backed by Poland and Germany.

On 14 January, the Commission was holding a civil society dialogue to debrief numerous business organisations and non-governmental organisations on the third round of the TTIP talks that took place in Washington on 16-20 December. The transparency issue was high on the agenda of the meeting, and while the Commission reiterated its views that negotiations should remain confidential, they suggested the format of the civil society meetings could be modified and aligned with the existing US model where stakeholders can hold panels on several specific topics during the of the negotiating round and present their positions, instead instead of simply attending Q&A sessions with the Commission.

Issues such as investor-state dispute settlement, labour rights, public procurement or geographical indications were also discussed. But Commission officials didn't go into too many details, some stakeholders have said, as they explained that the first phase – the analytical phase – of the negotiations was over, but both parties to the agreement now needed to go into the second phase to discuss the legal texts of the TTIP. On financial services, the Commission restated the difficulties it was facing as the US side still refuses to include them into the deal. Regarding small and medium-sized enterprises, Commission officials noted this could give rise to a specific chapter in the TTIP.

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Barroso summons 11 Commissioners for TTIP stocktaking meeting

European Commission President Jose Manuel Barroso has called in 11 Commissioners as well as Directors General on the afternoon of 13 January to discuss the state of play of the transatlantic trade and investment partnership (TTIP), EU Trade Insights has learned.

Commissioners present, including Trade Chief Karel De Gucht, Internal Market Commissioner Michel Barnier and Agriculture Commissioner Dacian Ciolos, will also study the next steps to be taken and exchange views on the EU's position on the different sectors covered by the agreement, several sources have confirmed. The gathering of Commissioners comes ahead of a high-level stocktaking meeting between De Gucht and Froman which should take place mid-February in Washington, although no dates have yet been confirmed.

Congress fast track bill

The United States Congress introduced, on 9 January, the Bipartisan Congressional Trade Priorities Act of 2014 which, should it pass, would allow to fast track all US trade deals once finalised, including the transatlantic trade and investment partnership (TTIP) with the European Union. Under this fast track procedure, Congress would approve a trade agreement with an up-or-down vote, without being able to amend it. "The TPA [Trade Promotion Authority] legislation that we are introducing today will make sure that these trade deals get done, and get done right", Senate Finance Committee Chairman Max Baucus said in a statement.

While the European Commission declined to comment on the introduction of the bill, this represents a major step forward for the EU. No congressional fast track authority would mean risking to go through the entire negotiating process without certainty the agreed text would remain intact. Amendments by US lawmakers would force the EU to either accept the changes or reject them entirely, tossing out all previous negotiating efforts. Fast track authority would also put EU and US legislators on a level-playing field.

However, the bill hasn't yet been passed and come critics are already voicing their discontent in Washington. According to Democrat Representative Sander Levin, "the effort by Sen. Baucus, Rep. Camp and Sen. Hatch has fallen short of adequately replacing the failed 2002 TPA model". He will therefore not be supporting the proposal and will be putting forward his own bill in the coming days.

Negotiating objectives

The new TPA bill sets out a number of negotiating objectives that the US Trade Representative's Office would have to follow if it wants Congress to approve a final agreement. Such objectives include the strengthening of rules for agriculture with updated provisions to seek "robust and enforceable rules on sanitary and phytosanitary measures and address improper use of geographical indications"; the protection of intellectual property (IP) with updated provisions addressing cyber theft, protecting trade secrets and ensuring a high standard of IP protection.
One new objective is to address currency manipulation by directing trade partners to avoid manipulating exchange rates such as through cooperative mechanisms, enforceable rules, reporting, monitoring and transparency. Another looks at "strong enforcement" of the trade deals, directing President Barack Obama to "secure strong dispute settlement mechanisms in US trade agreements", including investor-state dispute settlement mechanisms.

Congress to access negotiating rounds

A specific demand in the proposed TPA2014 looks at allowing a number of designated members of Congress to participate in negotiating rounds. In the EU, MEPs are regularly briefed by the Commission on the state of play of the negotiations but have never been authorised to take part directly into the talks.

All members of Congress would also have access to negotiating texts. Here again, they would have more rights than MEPs as only members of the international trade committee (INTa) can access a limited number of documents.

Congress last authorised TPA in 2002. It expired in 2007.

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