

Submission by the European Movement in Scotland (EMiS) to the European and External Affairs Committee:

Position on the Transatlantic Trade and Investment Partnership (TTIP) Negotiations

Background

The European Movement in Scotland is Scotland's oldest dedicated pro-European organisation. We believe that in Scotland there is a great reservoir of goodwill towards Europe and we aim to inform and mobilize this goodwill to counter Eurosceptic misinformation by working to make the pro-European voice heard in the media and in government.

We are an independent, not-for-profit, non-governmental organization, funded exclusively by our members and receive no funding from any political party, nor from the UK nor Scottish Governments nor from any institution of the European Union. We welcome members of all political parties as well as those without affiliation.

In November 2014 the European Movement International adopted eight political resolutions, the second of which, on TTIP, forms the basis for our position as outlined below. This followed from two cycles of debates in 2014 which engaged a variety of stakeholders in order to approach the TTIP from different perspectives. They addressed not only the concerns of existing members, but also the potential impact on the European candidate and potential candidate countries and EFTA countries. It gave particular attention to those EU member states that have been hardest hit by the economic crisis.

Our submission retains the core of this resolution, with minor updates to reflect recent Commission responses and incorporates some comment concerning the Scottish context. The original text is to be found here <http://europeanmovement.eu/news/emi-adopts-political-resolutions/>

We believe it will be of value to the committee to hear the principled position of a major pro-EU organisation on this much discussed issue.

Review and Analysis

The negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and United States were launched in July 2013. The negotiations were the outcome of long-term discussions on the desirability of a comprehensive trade agreement between the EU and US. The continuing economic crisis and ongoing impasse in the WTO Doha-round negotiations made the prospect of a boost to economic growth and job creation in the EU and US particularly attractive. Moreover, it was expected that a comprehensive trade and investment agreement between the EU and US would set a world-wide standard for future trade and investment agreements.

However, whilst both the EU and US have high expectations regards the economic benefits these negotiations will bring, public interest in the TTIP means that there has probably been no trade agreement in the history of the European Union that has evoked more discussion. The negotiations have faced an unprecedented level of public and media interest and become subject to huge public scrutiny. The public agitation on, and subsequent failure of, the 2012 Anti-Counterfeiting Trade Agreement has made many citizens, Civil Society Organisations and NGOs suspicious of confidential trade negotiations led by the European Commission. Hence, stakeholders' expectations regarding transparency are higher than ever before.

Objections regarding the confidentiality of negotiations have also arisen from fears on this side of the Atlantic that the EU is not strong enough to negotiate with the US. In particular, NGOs and CSOs fear that an agreement with such a powerful partner could undermine EU standards on environmental

protection, labour rights and minimum wages, intellectual data protection and food safety, as American norms and regulations are in many aspects crucially different from European legislation.

Consumer and labour groups have also urged EU and US officials not to include an investor-state dispute settlement (ISDS) mechanism in the deal, out of concern that this would herald an undemocratic set-up of the tribunals, bypassing national court-proceedings, and the possible impact on the right of states and other levels of government to regulate. The enforcement of new legal rights is in turn dependent on the financial resources and expertise to mount such cases and there are concerns that an ISDS mechanism would extend litigation culture through the relatively high number of large US companies and impact unevenly on smaller countries within the EU. Precedents in Egypt, Australia and Slovakia have proved worrisome.

Further, and with regards to public procurement, there is a concern that in the US it would only relate to federal government procurement, whereas due to EU internal market rules, the provisions would also apply on local and regional authorities, thus leading to an unbalanced situation. This is most evident in the area of public health where delivery models are radically different within the EU but even more so across the Atlantic.

An ISDS mechanism could be of particular relevance to Scotland where we already have experience of how measures to tackle health problems associated with high levels of alcohol consumption can be constrained by international agreements. It would be unfortunate indeed if the extra powers intended to give Scotland greater flexibility achieved the opposite in key areas.

It is clear that the European Union member states will benefit overall from the TTIP in terms of economic growth and job creation. Studies suggest that the size of Europe's economy would increase by €120 billion or 0.5% of GDP, and that an average European household would benefit by €500 annually.¹ The implementation of the TTIP will also have a profound impact on the economy of the EU, the US and the world, since it will function as a world-wide standard for future trade and investment agreements. These are both beneficial outcomes.

Given this expectation, the European Movement emphasises the need to recognise and address all of the concerns expressed by various stakeholders in these negotiations.

The first key to achieving this goal is transparency. At first glance, the European Commission seems to recognise the importance of involving stakeholders in the negotiations, and has released a strategy for public consultation including online consultations, regular publication of documents and debriefings at the European Parliament, which "goes beyond that required by EU law."² The European Movement recognises the efforts made so far by the European Commission in terms of increasing the transparency and openness of the negotiations.

Despite this, the European Commission maintains that trade negotiations need to be accompanied by a certain degree of confidentiality in order to succeed.³ Disagreement with NGOs, CSOs and MEPs on this particular aspect has led to a negative spiral and increasing clashes. We welcome the strengthened role of the TTIP Advisory Group, which was created to confirm "the Commission's commitment to close dialogue and exchange with all stakeholders in the TTIP talks, in order to achieve the best result for European citizens"⁴, inasmuch as it is now able when necessary to share EU negotiating documents in a manner that ensures confidentiality through its chairmanship by the EU Chief Negotiator.

However, it is not yet clear whether this partial measure will adequately satisfy the expectations of civil society.

¹ http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151787.pdf#world

² <http://www.euractiv.com/sections/health-consumers/ttip-will-sacrifice-food-safety-faster-trade-warn-ngos-308025>

³ <http://ec.europa.eu/trade/policy/in-focus/ttip/questions-and-answers/>

⁴ http://europa.eu/rapid/press-release_IP-14-79_en.htm

The second issue which needs to be asked is “Who benefits?” This is particularly relevant given the recent history (in the US especially) of productivity gains being translated into improved incomes for primarily the richest in society. A trade-off between GDP growth and consumer/individual rights would make it particularly important to ensure that material improvements accrue across society and not just to the few. Even if, as ideally would be the case, standards should be raised on each side of the Atlantic to match the higher existing standard, there remains a need to ensure that material benefits are spread widely.

Business interests are overrepresented both on the side of the US negotiation team (clearly visible in the US official trade advisory committees⁵), and the EU negotiation team (evident in lists of stakeholder meetings and consultations⁶). Therefore, it seems that the European Commission still has room to improve its understanding of the concept of stakeholders and the need for a truly transparent discussion.

Particularly in Europe, these two questions have a combined potency which exceeds the sum of their parts. A perceived lack of transparency breeds distrust and the climate post-2008 in Europe has already seen levels of trust plummet as austerity measures have heightened inequality. Absence of information leaves the field open to selective leaking, speculation and rumour. That is not a healthy background against which to conduct negotiations nor even conduct normal social discourse. It will therefore be important that information is made available in a form which allows it to be more easily accessed by ordinary citizens.

Recommendations

1. The European Movement calls upon the European Commission to continue with the positive steps already taken in the area of transparency and citizens’ involvement, by further engaging in civil dialogue and open consultations at every stage of the negotiation talks. Greater citizens’ involvement can be achieved through regular consultations with civil society organisations as well as full involvement of the TTIP Advisory Group in the negotiations, giving them unrestricted access to the documents and publishing their advice.
2. The European Movement also encourages the European Parliament to further pursue its involvement in the TTIP negotiations and contribute to its watchdog’s role, supervising the process of recognising concerns and incorporating relevant amendments. To enable this role, the European Movement calls upon the European Commission to live up to its promise and give all MEPs access to the negotiation documents.
3. With regards to the upcoming negotiation rounds, the European Movement calls upon the negotiation teams to take into consideration the concerns that repeatedly arise in debates amongst NGOs, CSOs, consumer groups and labour organisations, and to ensure that they are well represented at the negotiation table. These include fears about compromises on environmental standards; banking, product and food standards; labour standards, wages and consumer protection; data flows and data protection; regulation of emerging technologies; public procurement and the reference to international standards, as well as concern that an ISDS mechanism might impede the right of states to regulate and potentially force states to pay large compensations to foreign investors. The European Movement calls upon the European Commission to secure that the agreement safeguards the highest environmental and consumer standards already in place (and no matter on which side of the Atlantic).
4. Some EU countries and a number of CSO’s/NGO’s have National Wellbeing Frameworks in development. Scotland, with its National Performance Framework, is in the vanguard. Assessing impact against the 50 national indicators would offer a visibly comprehensive

⁵ <http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees>⁶<http://ec.europa.eu/yourvoice/ipm/forms/dispatch?userstate=DisplayPublishedResults&form=ustradefinal3>

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<http://www.asktheeu.org/en/request/473/response/2049/attach/4/List%20of%20meetings%20with%20stakeholders.pdf>

structure against which reassurances can be provided to citizens and we urge the Scottish Government to explore this vehicle more fully.

5. The impact of TTIP on those outside of the European Union should also be taken into account. It can be expected that TTIP will have a profound impact on the economies of the European candidate and potential candidate countries, as well as of the EFTA countries: either negatively through trade diversion, or positively, as they are or become part of the European internal market. As these countries are absent from the negotiation table, the European Movement calls upon the European Union negotiation team to pay particular attention to the effects of TTIP on these countries and to include their opinions in the EU position.
6. Similarly, as it comes to terms with increased responsibilities post-Smith, the Scottish Government should review its engagement with the TTIP negotiations both as part of the United Kingdom, where it should ask UK Ministers to maintain a high level of updating information (including attendance as appropriate at the European and External Affairs Committee) and directly via the Advisory Group at a minimum. Preferably Scottish Government should have a direct input, most especially in those areas where the Scottish interest is disproportionately high (Agriculture, Fisheries, Energy and Environment).
7. We recommend that Scottish Government should also request that the provisions of the forthcoming Scotland Act be drafted to anticipate the differential effect of TTIP agreement on sub-national entities so as to ensure that change intended to enhance constitutional representation does not instead become a means of subverting it. This could include application of the rationale for enhanced scrutiny powers (advocated in our evidence on Smith to the Committee) to the particular context of TTIP negotiation.
8. Furthermore, the European Movement calls upon the European Commission to carefully assess the effect of certain TTIP provisions, in particular the ISDS mechanism, on the crisis-ridden European member states that are already embroiled in an increasing number of investor-state lawsuits.
9. The European Movement is convinced that achieving a satisfactory compromise on both sides of the Atlantic is both possible and desirable. As the European Union has already successfully established an internal market amongst its 28 member states, bridging the US and EU by adapting common rules and standards, while maintaining the highest levels of regulatory protection, is a challenge, but not an impossible task. The European Movement welcomes the TTIP for the positive impacts it will bring to both the European economy and job market, but not at any cost: only if the concerns of all stakeholders are thoroughly and openly addressed, does the TTIP have a chance, and deserve, to succeed. The Scottish Government should play a proactive role in enabling this to happen to widest effect within Scottish society.

For completeness, EMI offered one further recommendation:

“Furthermore, the regular publication of documents on the state of negotiations should include more detailed information on the content of the TTIP, as current information is predominantly based on leaked, rather than, officially released documents. In order to increase the transparency of the negotiations, the European Commission should also publish regularly updated lists of stakeholder meetings and the negotiation documents which circulate, stating who has been granted access to these documents.” Action on this has already taken place (see <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1205&title=Opening-the-windows-Commission-commits-to-enhanced-transparency-in-TTIP>). We welcome this as a progressive step which should help enable fuller and wider engagement on this important agreement.