

Keeping us in the dark: Transatlantic Trade and Investment Partnership

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The TPP negotiations are being conducted almost in secret, with governments and the European Parliament deliberately denied essential information. However, business lobbyists can access all areas, and do.

“Opaque” best describes the negotiations surrounding the Transatlantic Trade and Investment Partnership (TTIP). EU trade commissioner Karel De Gucht may insist that “there is nothing secret about this EU trade deal” (1), but the EU’s chief negotiator, Ignacio Garcia Bercero, promised the opposite to his US counterpart Daniel Mullaney in a letter last July: “All documents related to the negotiation or development of the TTIP Agreement, including negotiating texts, proposals of each side, accompanying explanatory material, discussion papers, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, are provided and will be held in confidence” (2).

This secrecy is surprising, since it was responsible for the failure of other international treaties when the negotiations were eventually (and inevitably) revealed: the “Dracula effect” (3) helped to kill the Multilateral Agreement on Investment in 1998 and led to the European Parliament’s rejection of the Anti-Counterfeiting Trade Agreement in 2012. Yet the EU Directorate-General for trade (DG Trade) maintains that “for trade negotiations to work and succeed, you need a certain degree of confidentiality, otherwise it would be like showing the other player one’s cards in a card game” (4).

The European Parliament has only limited access to details of the exchanges between Washington and Brussels. The negotiators send information to only one MEP in each political group, within the Parliament’s Committee on International Trade (INTA). They are not allowed to show the documents to colleagues outside the Commission, or have them examined by external experts, despite their highly technical nature.

Member states receive the same information as MEPs, no more. In the context of the Comprehensive Economic and Trade Agreement (CETA) with Canada, which is nearing conclusion, they complain that they have not been able to get hold of the main texts that have been discussed over the past five years, as INTA sends out summaries rather than full texts.

‘A climate of confidence’

INTA is negotiating TTIP within a framework approved by the member states. But now that INTA’s mandate is fixed, it is difficult for member states to amend or even discuss it as the negotiations progress. This makes it necessary for member states to form alliances. INTA will go to any lengths to circumvent member states’ objections — when they are able to formulate them.

The documents on TTIP issued by DG Trade relate only to the EU’s proposals. The US refuses to allow other states or the European Parliament to study its “negotiating positions”. In theory, it only allows the viewing of paper documents, in a dedicated reading room where copying and notetaking are not permitted. Moreover, the only documents the US makes available are negotiating texts — draft agreements, rather than the preliminary documents essential to understanding the issues at stake for each party. These conditions have been enough to dissuade any application to consult documents to date.

INTA claims this secrecy makes it possible to “protect EU interests” and ensure a “climate of confidence” so that the negotiators can “work together to come to the best possible deal” (5). Yet even

in negotiations conducted by the World Trade Organization — not known for its transparency — states are expected to publish their contributions and negotiating texts.

Shouldn't discussions of such important issues be conducted in public, rather than in secret by faceless technocrats? In the interests of equality, couldn't INTA insist on complete and reciprocal transparency in the negotiations? Revelations on the scale of email interception and phoning by the NSA have confirmed the power of the US electronic espionage system, capable of intercepting (almost) all communications, including those of European heads of state. During other negotiations, including those relating to CETA, leaks revealed that DG Trade was capable of serious errors of interpretation. It was only possible to correct these errors after critical examination by outside observers, notably qualified academics.

One group has not complained about the opacity of the negotiations: lobbyists for multinational corporations. They form the majority of contributors to the public consultations on TTIP organised by INTA and get preferential treatment: well-informed union representatives only receive formal thanks for their contributions, but the car component manufacturers' lobby, for example, was invited to a meeting to discuss its contribution in detail. The pesticide makers' lobby got reminders before the submissions deadline and was invited to submit a joint contribution with its US counterpart. In the US, the Obama administration gives lobbies far greater access to the negotiations than it does the general public and the media (6).

INTA's favouring of those representing commercial interests became evident in the preparatory stages of the project. An internal document reveals that out of 130 meetings organised by DG Trade, preparatory to the negotiations (7), 119 were aimed at identifying the preferences of major corporations and their representatives. Legislation giving access to EU administrative documents made it possible to obtain this information, as well as the minutes of a number of these meetings. But the minutes were extensively, sometimes totally, censored. INTA has refused requests for greater transparency, on the grounds that some passages relate to the EU's negotiating positions. It seems to be keeping from the public sensitive information that it is prepared to disclose to the business sector.

The negotiations on TTIP are aiming for "convergence" between existing and future regulations. This principle, which would make it possible to leave the most sensitive issues out of the agreement, the better to deal with them at a later date, was a focus of lobbying well before negotiations began, as shown by a DG Trade internal document sent in error to *The New York Times* (8). The Business Europe association, which represents European employers and the US Chamber of Commerce, wants "new tools and a governing process to guide regulatory cooperation on both a cross-cutting and sector-specific basis, which will help address divergences in both the existing stock of regulations and in future regulatory measures" (9). The employers plan to be involved in the "process".

Another EU document leaked in December 2013 suggests that these proposals were taken seriously, since they were included in the negotiation programme (10). In October 2013 Karel De Gucht recommended that TTIP should include the creation of a "Regulatory Cooperation Council" (11) to enhance "regulatory compatibility" on the basis of an impact assessment "informed by appropriate input from stakeholders concerned" — the business lobbies.