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TTIP: the sustainability chapter

KEY MESSAGES

- 1** The main objective of TTIP is to boost trade and investments between the European Union and the United States. TTIP offers an opportunity for the EU and the US to foster sustainability through trade and to go beyond any other FTA concluded by either Party with regard to sustainability objectives.
- 2** The sustainability chapter should encourage effective domestic implementation at central and sub-central level of ILO Conventions and Environmental Agreements that have been ratified by the US or individual EU Member States. Parties should be free to define policies and measures adjusted to labour and environmental standards they deem appropriate.
- 3** Provisions in TTIP should not interfere with voluntary and business-driven approaches by companies such as corporate social responsibility (CSR).
- 4** The sustainability chapter of TTIP should provide for its effective implementation and monitoring and set up a mechanism for civil society engagement in the process.
- 5** BUSINESSEUROPE calls for an effective enforcement of all TTIP provisions, including those in the sustainability area, and supports soft pressure, consultation, transparency and publicity.



1. Introduction

The principle purpose and function of free trade agreements is to liberalize trade and investment thereby creating new economic opportunities by increasing market access for industrial and agricultural goods, services, public procurement and investment, through the elimination of tariffs, the reduction of non-tariff barriers, and the implementation of trade facilitation provisions

One operational objective within the EU Sustainable Development Strategy is to include sustainable development concerns in all EU external policies, and the EU consequently inaugurated a practice to include a chapter on “Trade and Sustainable Development” in the free trade agreements that it concludes. Sustainable development is an explicitly stated goal of the EU within the Treaty of Lisbon. BUSINESSEUROPE supports this goal.

It has become a standard feature of free trade agreements to include labour and environmental aspects, either combined in sustainability chapters or in separate side agreements that require each party to:

- Apply their own laws and uphold their levels of protections (EU FTAs include an obligation not to weaken national standards with a view to fostering trade and investment).
- Comply with certain international principles (ratified ILO core conventions and Multilateral Environmental Agreements - MEAs).

Free trade agreements recognize and ensure the right of each Party to define and regulate the scope and level of environmental and labour protection as they deem necessary domestically, including modifying relevant laws and policies accordingly, while pursuing levels of protection as deemed appropriate.

TTIP provides an opportunity to build on previous FTAs concluded by the EU and the US by developing shared commitments on labour and environmental issues, ensuring that each Party implements its labour and environment laws and policies, whilst committing Parties to continuous improvement.

As laid down in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, labour standards should however not be used for protectionist trade purposes. The same principle should apply to all parts of the sustainability chapter.



2. Objectives and scope



The TTIP sustainability chapter should aim at promoting the social, environmental and labour aspects of trade. The EU and US approaches to sustainability chapters in free trade agreements are different in terms of scope and enforcement, the first privileging a highly developed scope and language but relying on soft pressure, the second remaining vague as to the scope but including stronger provisions on enforceability. Therefore, the challenge will be to find the right balance between the EU and the US approaches.

When it comes to enshrining ILO core labour standards in TTIP, a constructive approach has already been taken in the negotiation mandate with the reference to the 1998 “ILO Declaration on Principles and Rights at Work”. With this Declaration, all ILO Member States – including the US – commit to the principles set out in the core labour standards independent of whether or not the ILO Conventions in question have been formally ratified. Accordingly, the United States has also clearly committed to respect, to promote and to effectively implement vital worker rights such as freedom of association. Therefore, and building on the EU’s existing free trade agreements with third countries, the sustainability chapter in TTIP can promote decent work on both sides of the Atlantic through reference to the 1998 ILO Declaration.

As a consequence we believe it is neither necessary nor appropriate to include in the sustainability chapter a commitment by parties to ratify ILO core Conventions. TTIP should however encourage effective domestic implementation of ratified ILO Conventions at central and sub-central levels.

Furthermore, using TTIP to force ratification of ILO Conventions by the US or EU Member States who have not done so would be unrealistic. In the US, the political decision-making structure as well as the 1988 Tripartite Agreement stipulating that no ILO convention will be forwarded to the U.S. Senate for ratification if ratification would require any change in U.S. federal or state laws, render ratification of ILO Conventions a highly complicated process. A similar situation applies to the EU, where only individual EU member states can ratify ILO conventions, not the EU itself.

Likewise, the sustainability chapter should encourage effective domestic implementation of ratified Multilateral Environmental Agreements at central and sub-central levels but not include binding commitments by parties to further ratifications.

BUSINESSEUROPE welcomes cooperation on trade-related aspects of the current and future international climate change regime, as well as means to promote low-carbon technologies, renewable energy goods and related services and energy efficiency, however we believe negative impacts on trade by unfairly discriminating between products and sectors should be avoided.



3. Business-driven approaches that promote sustainability



European companies have company-wide ethical standards that they apply globally in their business operations via their corporate social responsibility (CSR) approaches. These already integrate a number of social and environmental standards and best practices that in many cases go beyond existing regulations.

As regards CSR, we support the inclusion in the sustainability chapter of TTIP of explicit references to the OECD guidelines for multinational companies as done in previous EU FTAs, a reference to the UN Global Compact, the ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy (MNE Declaration) and the UN Guiding Principles on Business and Human Rights.

To conclude, CSR can further sustainability objectives but we believe provisions in TTIP should not interfere with voluntary and business-driven approaches by companies. These have the merit of better adjusting to different business models and supply chains structures.

4. Implementation monitoring and Enforceability



Implementation monitoring and enforceability are key aspects of FTAs. These issues are also key to the commitments made by the EU and the U.S. in the chapter on sustainable development. The provisions of the sustainable development chapter of TTIP should be realistic and effectively enforceable in the EU and the US at central as well as sub-central level.

Among others, the sustainability chapter in TTIP should provide for:

- Channels for information exchange between Parties on best practices on issues of common interest and on relevant activities and initiatives;
- An obligation for transparency and cooperation;
- An institutional mechanism by establishing a committee on trade and sustainable development;
- The creation of representative domestic advisory bodies;
- The establishment of a panel of experts at the request of either side, with detailed rules for the selection of experts;
- The possibility to seek the opinion of international organisations, including ILO.

The issue of enforcement is particularly delicate on sustainability matters, since a decision, whether a party to the agreement has breached specific obligations might be less obvious than in other chapters (e.g. on tariff elimination). Specific and effective procedures for the resolution of potential disputes are therefore crucial.

TTIP should set up a mechanism to monitor the implementation of the sustainability chapter and provide for civil society's meaningful engagement in the monitoring exercise. The effectiveness of the implementation monitoring relies on the representativeness and composition of the advisory body and on its working procedures, therefore rules must be laid down to this effect.



Civil society groups, including business, trade unions, consumers, NGOs should be members of a domestic advisory body based on the model of the EU-Korea Domestic Advisory Group. Members should be appointed on the basis of their representativeness and convene on a regular basis; agendas and conclusions of meetings should be publicly available.

The EU's and US' domestic advisory bodies should meet regularly to discuss matters of mutual interest. Meetings could be convened both with and without the presence of Governments' representatives.

Where implementation of the sustainability chapter is deemed insufficient, consultations with the other Party should start and the possibility to set up an independent panel of experts and seek the opinion of international organisations, including ILO, should be foreseen. Both sides should attach particular importance to the final report by the panel of experts and do their utmost to comply with all findings and recommendations. Different levels of consultations should be offered, with the possibility to defer the matter to the political level if warranted.

We believe the mechanism described above is the best way to monitor implementation, and to raise issues of concern as they arise and to bring them to the appropriate level. BUSINESSEUROPE supports the EU's approach to use soft pressure, consultation and transparency, as well as publicity.