How Much Is Enough? Transparency Demands in Trade Negotiations: the case of TTIP

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*Disclaimer: reference section is largely incomplete due to lack of time, but this should (hopefully) not inhibit the reading*

# Abstract

Transparency has been a central issue in the debate about the Transatlantic Trade and Investment Partnership (TTIP), especially at the side of the European Union (EU). The lack of transparency in the negotiating process has been one of the main criticisms of civil society organizations (CSOs). The European Commission has tried to gain support for the negotiations through various ‘transparency initiatives’. Nonetheless, criticism by CSOs with regard to TTIP in general and the lack of transparency in specific still remained prevalent. In this article, we aim to explain this gap between the existence of various transparency initiatives implemented by the European Commission in TTIP on the one hand, and the expectations at the side of European CSOs on the other hand. Theoretically, we rely on literature about the authority, legitimacy and transparency of international governance, including in the trade regime. Methodologically, we perform a content analysis of transparency documents produced by the European Commission and CSOs, mainly in response to a European Ombudsman consultation, complemented by a number of targeted interviews. We find that the gap between the TTIP transparency initiatives and the expectations of CSOs can be explained by fundamentally different world views about accountability in world politics, in which transparency plays a crucial role.

# I – Introduction

The negotiations between the European Union (EU) and the United States (US) on the Transatlantic Trade and Investment Partnership (TTIP) have led to an unprecedented public debate, especially at the European side of the Atlantic. ‘Transparency’ has been central to this debate, in (at least) two respects. It has first of all been one of the main criticisms expressed by civil society organisations (CSOs) towards these negotiations. Early on already, in November 2013, more than 80 organisations from the EU and the US wrote a letter to the then Presidents Barack Obama, José Manuel Barroso and Herman Van Rompuy expressing their ‘opposition to the use of *behind-closed-door trade negotiations* to change and lower public interest measures for the sake of commercial interest’ (Public Citizen et al. 2013, emphasis added). Together with the substantial issues of regulatory cooperation and investment protection, the alleged lack of transparency of the negotiations would be central in the large majority of CSOs’ campaigns.

Secondly, partly in response to these criticisms, increasing transparency has been the main response of the European Commission to (re)gain support for the negotiations. In the mission letter to his future Commissioner for Trade Cecilia Malmström, the current President of the European Commission Jean-Claude Juncker wrote ‘I will ask you to enhance transparency towards citizens and the European Parliament during all steps of the negotiations [of TTIP]’ (Juncker 2014: 4). During her hearing before the European Parliament, the Commissioner-designate Malmström stated that her second principle (the first being ‘trade policy must be driven by the interests of citizens’) would be that ‘trade negotiations must be open and transparent, to allow all interested people and groups to understand what is on the table so that they can express their views’ (European Parliament 2014: 6). Underlining the importance of transparency, in its very first weeks in office, the European Commission launched a ‘transparency initiative’ committing to publishing information on meetings of its Commissioners and senior officials and providing greater access to documents relating to TTIP (European Commission 2014). As a final example, making trade policy more transparent was one of the three pillars[[1]](#footnote-1) in the current Commission’s trade policy strategy “Trade for all”(European Commission, 2015).

Nevertheless, criticism with regard to the (lack of) transparency of the TTIP negotiations, and scepticism about the negotiations in general have not withered away. According to trade union confederations of the EU and the US ‘[t]he transparency we have called for has not been achieved’ (ETUC, 2016). Greenpeace (2016) released leaked documents ‘to bring some much needed transparency to the debate on TTIP’. The German Green MEP Sven Giegold (2015) called the promised transparency around TTIP ‘a sham’, while even The Economist (2016) concluded that ‘[t]ransparency concerns were ignored’.

In this article, we aim to explain why the transparency initiatives of the European Commission in TTIP have not succeeded in reducing criticisms on and increasing support for the negotiations. We question whether the mismatch between the transparency initiatives by the Commission and the demands by CSOs arises due to a mere lack of documents (both in amount and comprehensiveness) that were promised (but not delivered), or because of fundamental differences of what transparency in international negotiations means. Theoretically, we step back and draw upon insights into the relationship between transparency and legitimacy in global governance, of which trade agreements are part. Methodologically, we perform a content analysis of the European Commission’s official documents on transparency in TTIP and – above all – of more than fifty responses by organisations to the European Ombudsman’s public consultation in relation to the transparency of these negotiations. This analysis has been complemented by a number of targeted interviews with key representatives of civil society organisations active in TTIP and of the European Commission.

# II – Authority, Legitimacy and Transparency Claims

To understand why transparency claims towards international organizations are addressed in the first place, we shortly outline the (literature on the) changing nature of international organisations (IOs) since the post-war period – especially in trade policy. This reveals that transparency claims – as part of a broader call for democratic principles in IOs – run in parallel with their increasing political authority[[2]](#footnote-2) and have (also in the past) fuelled the politicization of global governance. In turn, institutions have (shown to have) an incentive to respond to these calls, which has brought transparency to the fore.

## The changing nature of political (trade) authority above the nation state

During the first decades of the post-war period, international institutions[[3]](#footnote-3) were mainly seen as (and established to be) facilitating coordination between states, while still allowing for national policy space to preserve domestic stability (Keohane & Nye, 2001; Zürn, 2004). The fundamental rationale underlying their establishment lies in what John Ruggie (1982) famously dubbed ‘embedded liberalism’: oriented towards liberal multilateralism, but with national political systems still in the driving seat as shock absorbers (see e.g. the establishment of welfare systems as a complement to falling trade barriers, Rodrik, 1999). The mode of governance accompanied with this paradigm has been labelled ‘executive multilateralism’: “*governmental representatives from different countries coordinate their policies internationally, but with little national parliamentary control and away from public scrutiny*” (Zürn, 2004). International organizations hence operated more as ‘clubs’ of negotiators who worked in technically advanced bargaining sessions with each other behind closed doors (Keohane & Nye, 2001; Hocking, 2004).

In response to the changing nature and complexity of societal problems however (see Zürn, 2004), the overall political authority of international institutions – the ability to make legally binding decisions for states – has risen over the years (Cooper et al., 2008; Zürn et al., 2012). Organizations such as the IMF, the World Bank and the WTO increasingly had an impact on so-called behind-the-border issues (Woods & Narlikar, 2001; Zürn, 2004; Young, 2006). The European Union as well has over the years been bestowed with additional competences in different domains.

Over time, awareness of these issues led new players to the global scene. Besides developing countries (with often diametrically opposed agendas), it was above all non-state actors (business associations, trade unions, NGOs) that gradually directed their attention to the global level. Especially NGOs became increasingly aware of the impact these institutions had and the issue linkages between different areas of their concern. Together with the increasing spread of democratic norms, and attempts to implement these at the international level, this evolution has led to ongoing criticism of “undemocratic” global institutions (Keohane & Nye, 2001). In a sense this criticism is a testimony of their importance, resulting in evaluations not only of the policies they produce, but also of the procedural element of policy-making (ibid.). As Zürn (2004: 29) sharply put it: “the more intrusive these institutions become, the more justified and intense the demands will be for their democratization”.

At several periods, these claims have led to the politicization of global governance (issues), which can be defined as “*an increase in polarization of opinions, interests or values and the extent to which they are publicly advanced towards the process of policy formulation”* (De Wilde, 2011)[[4]](#footnote-4). While public criticism may linger throughout the years and have an incremental impact, it is particularly during heavily politicized episodes – evidenced in parliamentary, media, and protest arenas[[5]](#footnote-5) – that questions about the legitimacy of these institutions and the decisions they take are frequently raised and – above all – reach a wider public (De Wilde, 2011; Smythe & Smith, 2006; Statham & Trenz, 2015; Woods & Narlikar, 2001).

The trade policy domain is perhaps the best example to illustrate this increasing behind-the-border nature of governance structures and the subsequent calls for democratization. The establishment of the WTO in 1995, however, was exemplary of both the legalization of trade policy (most notably through the Dispute Settlement Body) and the continued broadening of the scope and depth of international trade regulation (Araujo, 2016; Lamy, 2016; Roederer-Rynning, 2017). On the one hand, new issues have become part of trade negotiations, such as services, investment or intellectual property rights. The breakdown of multilateral talks in Cancun (2003) over the so-called Singapore issues (investment, procurement, trade facilitation and competition) already showed that this evolution was not met enthusiastically by all partners (Narlikar & Wilkinson 2004). On the other hand, and more generally, the notion of what constitutes a ‘trade barrier’ has conceptually been stretched over the years, leading to an expansion of the category of “trade distortions” to be “equated in practice with the existence of a commercially significant institution or regulatory *difference* between countries” (Lang, 2011: 226-227, emphasis added; Winslett, 2016). In that way, domestic regulations that reflect societal preferences in areas such as social, environmental or health protection have increasingly been redefined as “non-tariff barriers” and have thus appeared on the negotiating table.

The traditional opaqueness of the GATT and WTO, which was pervasive throughout the trade regime for a long time, came under increasing strain (Florini, 2003). Awareness of this increased intrusion has gradually led to the involvement of new actors on the international trade scene, such as legislative bodies, trade unions, but above all several civil society – mostly development and environmental – organizations (Young, 2006). Through the latter, so-called ‘transnational advocacy networks’ of civil society activists have actively put themselves forward as representatives of the wider public and started contesting the trade governance structure and negotiations both on substantive and democratic grounds (Keck & Sikkink, 1999; Aaronson, 2002). At several moments around the turn of the century these networks were instrumental for the politicization (and subsequent breakdown) of several pluri- and multilateral trade negotiations, such as the Multilateral Agreement on Investment and the breakdown of the WTO Ministerial talks in Seattle (Smith, 2001; Walter, 2001).

Besides the general resistance against the neoliberal agenda of economic globalization these institutions are claimed to pursue (e.g. Gill 1998), a recurring criticism since the mid-1990s comprises the institutional arrangements of these organizations. Since the chains of accountability linking citizens to the WTO become lengthier and weaker (given that national legislatures became increasingly marginal in these processes, see Jancic, 2016), legitimacy questions started to pop up. This involved demands to open up the trade system (i.e. make it more transparent) and include CSOs and other non-traditional players in the process (Marceau & Hurley, 2012). During the ‘Battle of Seattle’, for example, the lack of transparency of the WTO, and the almost total absence of options to participate and voice concerns, were central claims by the opponents (Smythe & Smith, 2006). The EU itself did not escape this criticism – on the contrary. Trade policy processes in the EU were informal and dominated by a ‘relatively small expert policy community’ (Woolcock, 2000). A combination of politicized episodes of international trade policy, together with the delegation of trade authority to the supranational level has made for a ‘potentially explosive mix’ (Meunier, 2003).

In sum, the evolution of trade governance above the domestic level (both through the WTO, and through EU trade policy) is exemplary of a broader trend in global governance, whereby several international organizations have gained competences that do no longer stop at the border. A gradual awareness that trade policy matters has on several occasions led to politicized episodes, in which the lack of legitimacy and democratic standards has become fully manifest and public. In the next section, we show how and why these organizations have responded to these calls.

## Transparency, participation, accountability & legitimacy

**Opening up to criticism**

An organization’s survival is to a large extent contingent on its environment to garner support and legitimacy (Tallberg, 2014; Bes, 2017). The sociological institutionalism literature argues, for example, that to exercise authority and command compliance, an organization needs legitimacy (Hurd, 1999), hence incentivizing an organization to take measures in the light of public contestation. In an overview of possible effects of the politicization of world politics, Zürn (2014) hypothesized international organizations would respond with measures to increase their legitimacy, especially in terms of *increased formal transparency* and by giving *greater access to transnational non-state actors.* As Tallberg et al. (2013) show, both these evolutions are prevalent for IOs in the last 30 years. As a result, the standard “delegation” *accountability* model in world politics (states entrust international organizations) is shifting to a participation model (those affected by decisions raise demands) (Grant & Keohane, 2005; Zürn, 2014; cfr. infra).

While governmental legitimacy is commonly decomposed into input and output legitimacy (see Scharpf, 1999), several authors do not expect to see a form of ‘democracy writ large’ or global democracy to emerge any time soon (Dahl, 1999; Nanz & Steffek, 2004; ). Rather, a form of ‘throughput legitimacy’ is better suited as a concept to evaluate the legitimacy of global governance. This focuses on the decision-making process itself, on the practices that go on inside the ‘black-box’ of policy-making, and hence has different sources such as transparency, participation and accountability (Meunier, 2003; Schmidt, 2013).

*Transparency* is generally taken to mean public access to information about an organization’s activities and policies (Tallberg, 2014). Definitions are abundant, but they frequently address both (i) access to documents in response to requests, and (ii) an active information policy, whereby information on on-going and future policy is pro-actively disseminated and stored in a public registry (Mas et al., 2013). *Participation* on the other hand refers to “the presence of and activities by non-state actors within institutional mechanisms created by an organization” (Tallberg, 2014). *Accountability*, lastly, implies that “some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine their responsibilities have not been met” (Grant & Keohane, p. X).

Notwithstanding this rather straightforward description of these concepts, they are notoriously difficult to conceptualize. They are the kind of ideas everyone endorses, while at the same time much confusion and debate persists around them (Heald, 2006; Hood, 2010). Equally important is that they are often in some way perceived as constituting parts of good governance (as in the White Paper on Good Governance, for example, which listed openness, participation, responsibility, effectiveness and coherence as founding elements), seemingly without much reflection if they are actually all equally important or complementary.

Hood (2010) illustrates this tension with respect to transparency and accountability. He argues these can be perceived in three ways. Firstly, as ‘Siamese twins’: “inextricably intertwined to the point where they cannot be meaningfully distinguished as different things”. The frequency with which these terms are often presented together would in this sense make them individually rather meaningless. Secondly, as “matching parts”, meaning that as concepts they can be separated but in reality they often go together. This is a common view, which can be identified with different interpretations of “X contributes to Y”. Mas et al. (2013) argue for example that participation and accountability are “neither attribute nor content of transparency or transparency itself, but rather *the consequence of* transparent policy” (ibid., emphasis added). Smythe & Smith (2006) concur that transparency *is critical to* accountability. This is in line with the observation that transparency is seen as a tool or a means, and not an end in itself. The European Commission itself has made explicit in its follow-up report on the regulation on access to documents (1049/2001 that): “Transparency is not an aim in itself, but *permits* increased participation by the public in the decision-making process […]” (European Commission, 2004). Thirdly, they can be an “awkward couple” as well, meaning that there is inherent tension between them. O’Neil (2006), for example shows that formal transparency requirements often lead to ‘box-ticking’ and one-way communication that replaces real accountability in real dialogues. For defenders of the “delegation model” of accountability (cfr. infra; Grant & Keohane, 2005), limiting transparency is even a condition of effective accountability. Furthermore, full transparency can also involve considerable administrative costs (Bes, 2017), an increase in posturing effects (Tallberg, 2014) or the weakening of a bargaining position (Stasavage, 2004), which means comprehensive transparency is often seen at odds with different desiderata of good governance.

Several contributions argue, however, that underlying these definitions and the link between concepts lie fundamentally different worldviews. Hood (2010) argues for example that “we could hardly expect ideas as fundamental to human conduct as accountability and transparency to look the same across all varieties of political thought, ideology and religious doctrine” (p. 996). Grant & Keohane (2005) as well claim that there are two different models of accountability, “grounded in alternative conceptions of the legitimacy of political authority” (p. 30). Therefore, rather than ‘pure’ definitions or descriptions of what these concepts entail, we should look at how differences at this fundamental level impact (or determine) the ideas about transparency, participation and accountability.

**Delegation and participation models**

In an influential article, Grant & Keohane (2005) take further issue with the pervasive criticism that international organizations such as the WTO, or the European Commission are “unaccountable” for the decisions they take. The main question of accountability, they argue, is ‘who are those actors that have the right to hold someone to account?’ One way of looking at this involves relying on formal strings of delegation – the so-called “delegation model” of accountability. Organizations are accountable to those who have entrusted them that power (e.g. states), and hence power is legitimate “when it is authorized by the legitimizing consent of those who delegate it” (p. X). In the same vein, Smythe & Smith (2006) argue that an organization’s legitimacy is derived from its sovereign member states, and it is the national political executive who in turn is accountable to its own citizens (p. 34). In this sense there is no requirement of participating closely with non-state actors, giving that these have not given the organization its mandate. We see this line of reasoning above all with policy officials themselves, often accompanied with a mistrust of NGOs who they claim are not always that accountable themselves (Grant & Keohane, p. 29).

This approach very much relates to what Hood (2010) describes as a “hierarchist worldview” on accountability and transparency (p. 998). Accountability here is primarily seen as vertical (upwards), and concerned with compliance with rules and standards that have been laid down by a principal. Certainly there will need to be some transparency along these lines, but this by no means implies full transparency to the wider public. As stated above, full transparency may even hamper effective accountability, given that it might “destroy the basis for delicate case-based judgements” (ibid. p. 999). Given that – along this reasoning – transparency can go ‘too far’, it is unlikely that claims for full transparency will follow. Rather, transparency will be seen as an instrumental value (Heald, 2006), that in some situations can improve accountability, but this is the exception rather than the rule.

A second model of accountability stresses that the people who are governed by an institution should be able to influence its direction (Grant & Keohane, 2005; Steffek & Nanz, 2008). If rulings by the WTO impact people’s daily lives – it is argued – they should be able to have a say in the decision-making process. NGOs (who claim to represent the wider public[[6]](#footnote-6)) in this respect make normative claims for holding power-wielders to account to those groups that bear the burden of their policies, or even to principles such as sustainable development or human rights (Keohane, 2005). Accountability in this sense is labelled the “participation model”, given that it relies on full participation of the affected in order to ensure accountability, and hence legitimacy[[7]](#footnote-7).

This model resembles an “egalitarian perspective” (Hood, 2010). Accountability here is a downward process, directed towards the people or the community at large. Such an encompassing presumption is not compatible with strong rules about who should be allowed to get access to what information. Grant & Keohane (2005) concur that transparency is particularly essential for “external accountability mechanisms”, i.e. mechanisms that are built upon the participation model. The ideal is a fully transparent society, hence the presumption or rule will be towards general openness and disclosure. Rather than an instrumental value, transparency here is seen more as a human right (Birkinshaw, 2006).

Grant & Keohane (2005) argue that making these distinctions explicit can explain why it seems that actors are “talking past each other”: since there is no unified vision of what accountability (and hence participation and transparency) entails, different parties to the debate will have different demands. Seem from this point of view, the measures the WTO and the EU have taken to increase legitimacy in the light of opposition towards the acclaimed ‘secrecy’ might be evaluated on a different footing. Some evidence for this can be found in the literature. Woods & Narlikar (2001) analysed the measures by the WTO and concluded that to members or stakeholders in the organization “formal publication of documents cannot substitute for the participation in delivering transparency […] Transparency for members requires either presence at all levels of negotiations, or deep and detailed briefings (as opposed to formal minutes)”. This points not to information deficits, but to a lack of meaningful participatory options (see also Charnovitz, 2004; Cho, 2005). Likewise, the main consultative or participatory mechanisms installed by the EU in the trade domain – the Civil Society Dialogues – have been evaluated predominantly negatively as one-way policy briefings (Hocking, 2004), giving them access but no influence (Dür & De Bièvre, 2007) and dominated by an insider-outsider logic that favours organizations that adapt their lobbying style and content to reigning norms and values (Jarman, 2008). Hence, in these occasions, the ‘secrecy’ and ‘behind closed doors’ criticism does not appear confined to making some documents public, but is rooted in a fundamentally different understanding of accountability, participation and transparency in world politics.

# III – Research question, data and methodology

The main empirical puzzle at the outset of this paper is that a large part of civil society is still criticizing the ‘secrecy’ of trade negotiations, while the Commission is wondering why, especially after it made TTIP – in their opinion – ‘the most transparent negotiations ever’ (e.g. Malmström 2015). Based on our literature review, we hypothesize that an important reason might lie with a fundamentally different understanding of what transparency is and how it is connected to the wider issue of accountability in world politics. Two hypotheses to explain the ‘transparency expectations gap’ follow from the literature review.

*H1:* *Claims for more transparency have not withered away because the Commission has not provided the extent (and quality) of documents demanded*

*H2:* *Claims for more transparency have not withered away because the Commission and CSOs have fundamentally different understandings of how transparency, participation and accountability in world politics should look like*

Underlying hypothesis 1 is therefore a presumption that both actors share the same worldview, and hence the demands are a matter of extent and quality. Evidence of this would be demands for more (and more timely) releases of documents, with the recognition that there is a legitimate need to keep some things confidential. Hypothesis 2 on the other hand implies there is a distinct difference in world view, which means transparency changes as such will have difficulties fulfilling demands, given they will always involve some kind of restriction, and, additionally, because this is coupled with far-reaching participatory demands as well. Evidence of this would be the demand that full transparency should be the rule, with a small scope for exceptions. Furthermore, claims for full participation will in this sense accompany the transparency demands, given that only in these circumstances accountability of the Commission’s trade policy can be achieved. Through a detailed content analysis, we will tease out the general and specific transparency and participatory claims.

This basic supply-demand model furthermore needs to be complemented with two additional remarks. For the demand side, claiming that negotiations are ‘taking place behind closed doors’ can be a convenient and attractive way of campaigning and contesting a technical deal towards the public. As such, if we find that the main criticism has been addressed in the last two years, then we could argue that transparency criticism is purely used for ‘strategic motivations’. For the supply side, it is important to stress that the European Commission can be constrained in what it can do, both by the other EU institutions (especially the Council and (to a lesser extent) the Parliament) and by the partner country in negotiations. Hence, that the Commission’s transparency initiatives fall short of CSOs’ expectations should not be an unequivocal sign of its unwillingness to improve transparency, but might as well be the consequence of it being constrained to do so. In our analysis, we have paid specific attention to this kind of referral to other actors that play an additional role in the politics of transparency.

Empirically, we will zoom in on the investigation the European Ombudsman has undertaken to evaluate transparency in the TTIP talks, as a direct response to the public outcry by citizens and civil society organizations. The investigation started on 29 July 2014, for a period running up to the end of October that year. Three specific questions related to transparency were asked.

* Please give us your views on what concrete measures the Commission could take to make the TTIP negotiations more transparent. Where, specifically, do you see room for improvement?
* Please provide examples of best practice that you have encountered in this area (for example, in particular Commission Directorates-General or other international organisations) that you believe could be applied throughout the Commission.
* Please explain how, in your view, greater transparency might affect the outcome of the negotiations.

The Ombudsman’s questions are quite circumscribed in asking for ‘concrete’ measures to improve transparency. She does not mention anything about the policy process in general, nor about a (broader) vision, understanding or definition of transparency. Given this set-up, there could be less incentive to go into other concepts such as participation or accountability. Corporate Europe Observatory’s contribution is typical in this respect: “we have limited our response to the issue of transparency in the TTIP negotiations and have therefore not addressed other process-related problems, for example, the corporate capture of the trade talks”. Given this set-up, if claims are made for more participation, this is strengthened evidence that underlying these claims is a broader world view.

The timeline of events also has to be taken into account. Before the Ombudsman’s inquiry, several measures to improve transparency had already been taken, such as dedicated websites, Twitter accounts, breaks during negotiating rounds to consult with stakeholders and the establishment of a TTIP Advisory Group. The contributions should therefore be read in this light: “Notwithstanding these efforts, some individuals and organizations have expressed dissatisfaction” (ESF). By analyzing the contributions, we will therefore be able to know what was being asked in addition or complementary to these initial efforts. As this consultation dates from the second part of 2014, we are subsequently able to analyze the changes the Commission made in the last 2 years, and hence evaluate whether claims by different civil society organizations were met. In this way, the gap between supply and demand can be laid bare. This latter part is backed up by several interviews with policy officials from the EC and CSO representatives.

Around 50 written contributions were provided by business groups, NGOs, trade unions and some MEPs[[8]](#footnote-8). From these, we distill the demands by different types of groups concerning the transparency deficit at the end of 2014 when Cecilia Malmström assumed office as Trade Commissioner. We have manually analyzed all the contributions (by organization type) with a view on their general remarks on transparency and participation, and the specific demands attached to it. Because contributions by business and NGOs were most numerous, and because the distinction between these two is theoretically most relevant, we have decided to focus on these two groups[[9]](#footnote-9).

*Formal transparency* in practice stills entails a lot of variation in terms of the different documents and tools that can be disseminated. We make a distinction, first of all, between *negotiating* documents (technical texts or inside information about the negotiating process), and *explanatory* documents that can help in understanding or making sense of the technical texts or the process itself. The former category specifically includes the trade-talk-documents such as the negotiation mandate, legal textual proposals or consolidated texts. The latter includes general position papers, agendas of upcoming rounds or the translation of texts in other languages. The list of demands was established inductively: whenever a document or measure was demanded at least twice, we included it in the list. For claims regarding to participation, we do not further introduce any classification a priori. We refer to appendix 2 for more information on the content analysis, and a description of document types.

# IV – Empirical analysis

## Formal transparency

**Business associations**

Almost all business contributions start by *lauding and commending the Commission* for the work on transparency that has already been done (BE, ESF, TABC, FI, IBEC, DI, BDI) and reiterate that the measures already taken are ‘unprecedented’. AmChamEU argues that it is “hard to imagine what more could be done to enhance transparency without undermining the ability of the EU and US officials to discuss and negotiate” while the Swedish Industry Confederation warns that going further “risk[s] compromising the negotiations”. If there is any *reference to other actors* present in all the contributions, then business groups voice this most often. The Commission is urged to demand meaningful position papers or summaries of negotiating positions from the negotiating partner (BE, CC, BDI, ESF). The Member States are singled out as well, with the remark that they should be encouraged to improve on transparency themselves (SWI, ESF) and better explain to their constituencies what trade negotiations are all about (BE).

In general, the large business groups argue that the *role of transparency* is in part to ‘dispel myths, and misperceptions of the TTIP agreement allowing a fact-based public debate and making the deal more accessible and relatable to the people’ (BE). There is therefore a focus on ‘explaining’ what the negotiations are about, and what the possible benefits and risks are (ESF), given that the main problem is a lack of knowledge about trade issues in general (SWI). With this in mind, they stress *the legitimate need to keep things confidential* in order for negotiations to succeed (BE, ESF, DI, BDI). There should be clear and unambiguous rules on the classification of documents (ESF), with the underlying idea that publication should only be allowed if it cannot hurt the negotiating strategy (BDI), and with clear sanctions for breaches of confidentiality (BE).

Of course, these general remarks aside, they do make several recommendations on how the situation could be improved. In line with the general idea of ‘explaining’ trade negotiations more to the public, the bulk of these recommendations concerns *‘making sense’ documents and arrangements*. All non-confidential documents should be put in an online register, for example (FI, DI, ESF, SWI, VDA), and an agenda prior to each round should be published to allow for comments by interested stakeholders (BE, BDI, VDA). There should be more attention for the translation from technical texts to other languages (TABC) or to common language explanations and summaries (FI, BE, DI, SWI, VDA). Some improvement to the website – with the possibility of having ‘webinars’ explain TTIP – are also considered (BDI, TABC).

Recommendations to improve access to *negotiating documents* are scarce. The most common demand is that there should be up-to-date digital access to confidential documents through accredited password systems instead of the reading room practice (BE, ESF, DI). Who should have this access is not always made explicit in the same paragraph, but on other places it is argued that consolidated texts (which are confidential) should be available for a restricted public, meaning the TTIP Advisory Group, Chairs of EP Committees (BE, DI, SWI), and for all INTA, JURI and IMCO members (TABC). BusinessEurope is furthermore the only one claiming a list of meetings with stakeholders should be published online.

In sum, the position by business on formal transparency could be roughly summarized as ‘make sure that what is already public is better disseminated and explained to the public’. This is in line with their general remark that the Commission already did a lot, and going further might harm the effectiveness or outcome of negotiations.

A final remark concerns agricultural organizations that traditionally have a harsh stance on liberalizing trade in agricultural products. The umbrella organization Copa-Cogeca can, however, be seen to be in line with the other business groups described above – some praise for the Commission, and above all reference to the role of US and their transparency politics. The other two contributions (European Milk Board and Irish Creamery Milk Suppliers Association) are much more critical in their position on TTIP in general and hence also on transparency. Both praise and reference to other actors disappear and they ask for much more documents, given that “negotiations are currently influenced predominantly by multinationals and industry groups” (EMB). ICMSA states that they are concerned about the privileged access given to certain external stakeholders, which “in practice can be more damaging than non-disclosure in the first instance”. In terms of specific proposals they tend towards demands by NGOs, which we cover in the next paragraphs.

**NGOs**

NGOs are much more critical in terms of what has been accomplished. Praise for the Commission – with scarce exceptions – is hardly seen, and the improvement to date has been depicted as “[coming] from a very low base, and most of its actions have been neither meaningful nor sufficient” (EDRI), “ad-hoc initiatives […] and not part of a well-thought out overall strategy” (EPHA, TACD), “weak or deceiving” (ACC), “omitting whatever the Commission deems controversial” (CEO) or “[…] does not meet minimum satisfactory level of transparency and engagement with stakeholders” (BEUC). Some NGOs even seem indifferent, given they do not think the Commission is genuinely convinced of the importance of stakeholder consultation (EMI), and measures might thus very well lead to “documents or other means to disguise the pressure wealthy and influential vested interests exert on governments and negotiators” (FW).

With respect to formal transparency claims therefore, the recommendations are broad and very demanding. To make this more accessible, we have put the different demands in a table in the appendix.

The most important thing to note is that NGOs put more emphasis on *negotiating* than on *explanatory* documents, both in number of categories, and the individual number of demands per document. What is asked in particular is broad access to negotiating directives: the mandate, textual proposals by the EU and the consolidated version when the US tabled its position. In addition, and referring more to problems with bias in representation/access, they ask for a list of meetings of trade officials, and all the correspondence by third parties sent to them and vice versa. Explanatory documents focus mostly on the preparation and follow-up of negotiating rounds, evidenced in the demand for detailed agendas and meaningful briefings afterwards. The added adjective ‘meaningful’ refers to – as EDRI put it – substantive documents, not altered in any way when released and no ‘mere summaries, agendas or minutes with no specific information or “propaganda texts”’. With regards to other demands, they also stand up for MEPs and MPs to make sure they have adequate access as well.

In sum, while the focus of business groups with regard to formal transparency was on ‘explaining’ trade negotiations and texts to the public, NGOs rather want access to the official documents of negotiations.

## Participation

For business organizations, claims to increase participation and stakeholder consultation are very scarce. The main demand concerns the TTIP Advisory Group, which is a group of 16 civil society and business representatives that has been established early 2014 and has been lauded in itself. Recommendations in this respect are about expanding the group (BDI, VDA) and about the inner-workings, giving the AG more time to comment on more comprehensive briefings on US positions (BE, DI, SI). Other (singular) requests are about increasing dialogue with SMEs (FI), with issue specific stakeholders (TABC) and in so-called citizen dialogues (VDA).

The scarcity of participatory mentions becomes fully manifest if compared to how NGOs have described transparency and its link to other conditions for legitimacy. First of all, several NGOs have mentioned how *transparency is only a stepping stone towards more participation*:

* ”Enter into negotiations with transparency as a corner stone of the mandate, fully in line with its duty ‘to promote good governance and ensure the participation of civil society’” (FOEE, TE);
* “Transparency must be a sine qua non prerequisite of trade negotiations as it brings wide-ranging benefits by enabling democratic participation and needed scrutiny in the process” (ACC);
* “By disclosing and proactively publishing more information and documentation to citizens and civil society groups, the EU could more effectively open participatory mechanisms and foster healthy public debate” (AI);
* Greater transparency in the negotiations will help ensure that the public can follow the progress of these talks and contribute to shaping their outcome (EDRI); “Regulation 1049/2001 expressly acknowledges that openness enables citizens to participate more closely in the decision-making process” (ClientEarth).
* IGO summarized this complementarity well, by arguing that the task of the European Commission is not only technically providing key documents but also building trust among citizens that this institution actually wants citizens to participate in the debate.

Secondly, this is evidenced in how NGOs perceive *measures to go together*. The NGO Access, for example, identifies six areas that need to be addressed *together*: access to documents, advisory groups, stakeholder dialogues, involvement of parliaments, reading rooms and identifying “revolving doors”. The same goes for BEUC and TACD, who listed a whole range of claims both on transparency and participation and state that “The proposals listed below need to be implemented and assessed in combination because they complement each other and only together they would lead as an end-result to a more credible trade deal”. TACD summarizes this point well: “Why ‘transparency’? Meaningful input by those directly affected by the negotiations will result in more balanced provisions of the agreement”.

Thirdly, *existing participatory mechanisms have been a* *concern on its own* as well: “Existing channels of consultation with stakeholders currently feature major shortcomings when it comes to availability of documents and effectiveness of input-feeding means into the process” (BEUC). Concerning the so-called ‘Civil Society Dialogues’, these are still perceived more as briefings from the Commission, where a few questions at the end are raised in a rapid-fire manner with vague answers as a response (EDRI, ACC, FP). In short, “these meetings do not enable the promised “dialogue” to take place” (ACC). Public consultations furthermore offer “a fig leaf of credibility to the policies adopted, they are in fact totally inadequate for gauging the needs or wishes of the citizens affected” (FW). Lastly, members of the Advisory Group itself (BEUC, TE) have pointed out numerous deficiencies in the working of the group, openly questioning “to which extent the AG risks being a tool to white wash non-transparent processes” (BEUC). In general, “Reaching out to all stakeholders and allowing them to voice their concerns at the negotiation table would deliver a more effective deal that safeguards European citizens’ interests, and that will probably gain the support and trust, rather than opposition of, civil society” (EMI); “Participation is a human right. We are still far away from the human right of everyone to take part in an active and informed way, and without discrimination, in any important decision making process” (FFII).

Fourthly, when asked for *best practices of transparency* in other institutions, there were some examples that came back repeatedly, which describe a very far-reaching outlook on the transparency-participation issue. The first is the WIPO negotiation process that led to the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled. This has been considered a hallmark of transparency and participation all along the process, with timely release of (meaningful) documents, open (and webcasted) meetings, and observers given participation rights and wide access (see e.g. McIntosh, 2014)[[10]](#footnote-10). The second is the Aarhus Convention, where meetings of all bodies are as a rule public, and where accredited observers can participate in meetings and even in drafting groups to work together with the parties to develop text. They also have the same speaking rights as parties. Other best practices mentioned were the UNFCCC, the FTAA negotiations and even the WTO was sometimes presented as providing more opportunities for participation and better transparency than the TTIP negotiations. In sum, by referring to these far-reaching best practices, NGOs again propose a different model of transparency and participation than what is currently in place.

Lastly, we take a look at *specific demands with respect to participation*. To some extent these are ‘remedies’ to the deficiencies with current channels outlined above. Most elaborated are the demands to improve the work of the *Advisory Group*. Texts being developed for future rounds (and merged legal texts) should be presented in due time and on a secure online platform, to allow AG members to make sensible contributions, on which the Commission should respond meaningfully (ACC, EMI, BEUC, EPHA, EDRI). The selection process should be made more transparent (ACC, EDRI) and the group should be expanded to more stakeholders (EDRI, FFII). The group should also be included in the negotiations more fully (EMI) and mechanisms should be devised which means this group can receive inputs from third parties. Secondly, the *stakeholder dialogues* should resemble a true ‘dialogue’ between stakeholders and the Commission (ACC, FP, EDRI). The criteria to be involved in the CSD must be clearly spelt out (EDRI) and the meetings would be more meaningful if sector-specific roundtables were established to provide direct input, in which stakeholders have access to technical documents, and this participation has the potential to shape the strategy and positioning of the negotiations (ACC, FP).

Besides the (meaningful) upgrading of existing channels, the demand for public consultations at various stages of the negotiations is a popular additional demand, but heterogeneous in its application. For some, consultations should take place before and after every negotiating round (BUND), where a technical workshop is organized to have a dialogue about the concrete application of certain parts of the text (MPE; PC). For others, consultations should be held on each aspect of trade that touches on EU and national rule-making (such as ISDS or regulatory cooperation), to help develop its negotiating position (FOEE, TE, WECF, AI, FP, CWF). A last option is to hold consultations at key stages of the negotiations: prior to the launch, on the draft mandate, on initial position papers, and on the final draft consolidated legal text (TACD, BEUC, EPHA). Whatever the exact timing or constellation, all contributions ask for the results of these public consultations to be fully reflected in the positions that negotiators take.

## The Ombudsman’s decision and the Commission’s follow-up

Notwithstanding that the questions in her public consultation referred rather to formal aspects of transparency (cfr. supra), in her decision closing the inquiry, the Ombudsman concluded that her ‘public consultation confirm[s] that citizens expect and demand the right to know *and to* *participate* when it comes to TTIP’ (European Ombudsman 2015, emphasis added). Her suggestions were included under three headings, two of which refer to formal transparency and one to participation, respectively: ‘greater public access to negotiating documents’, ‘more proactive disclosure of documents’ and ‘more balanced and transparent public participation’. With regard to the latter, the Ombudsman’s recommendations come down to ensuring that the Commission’s contacts with non-governmental organisations make for a balanced representation and to being ‘transparent about participation’, i.e. publishing details and substantial summaries of its contacts, also at lower levels of the organisation.

In its official response to this decisions, ‘[t]he Commission appreciates the European Ombudsman’s call for a more proactive approach to transparency and welcomes the suggestions made’ (European Commission 2015b: 1). It emphasized that on 7 January 2015, the Commission published, for the first time ever, eight EU textual proposals and a number of new position papers, accompanied by explanatory leaflets to make these more accessible for a wider audience. With regard to the Ombudsman’s suggestion to ask the US to also publish ‘common negotiating texts’ and to justify explicitly if and when this is refused, the Commission stated that ‘in the context of an international negotiation, the Commission’s political commitment to transparency is limited to its own documents’ (ibid.) and that it has discussed transparency with the US repeatedly, but that the latter has explicitly asked the Commission not to publish US documents or consolidated texts. Consolidated documents have, however, been made available to all MEPs as well as Member State national parliamentarians. The Commission also responded negatively to the suggestion of the Ombudsman to as a rule publish proactively all relevant internal documents pertaining to the TTIP negotiations, and justifying the exceptions where it does not, as this would ‘represent a disproportionate burden on the Commission services … a climate of trust is needed to successfully conclude these negotiations in the best interest of EU citizens’ (Ibid.: 3). With regard to public participation, the Commission reiterated its already implemented actions in terms of a ‘TTIP Advisory Group, public consultations and stakeholder involvement’ (Ibid.: 4-8).

Arguably, the transparency initiatives since Commissioner Malmström assumed office can be seen as an evolution, rather than a revolution. Several mechanisms were already in place, such as the establishment of the TTIP Advisory Group, stakeholder meetings during negotiating rounds, the publication of the negotiating mandate, while others had been taken early on in the term of the current Commissioner Cecilia Malmström (with the transparency initiative of 25 November 2014, which led to making public more EU negotiating texts, providing access to TTIP texts to all MEPs, classifying less documents as restricted and publishing and regularly updating a public list of TTIP documents shared with the European Parliament and the Council). In the following years, these actions would rather be intensified and streamlined, such as by publishing more textual proposals and enlarging access to negotiating texts to national MPs. Also, the outreach of the Commissioner, her cabinet Members and senior DG Trade officials would be reinforced, without introducing qualitatively new mechanisms. However, as is widely recognized, Commissioner Malmström seems to have given the existing mechanisms more priority and adopts a more open ‘style’ towards CSOs.

With respect to transparency-expectations-gap identified at the outset of this paper, we conclude that many of the demands, especially detailed negotiating documents and meaningful participatory options are not fully realized through the Commission’s initiatives. Regarding formal transparency, the Commission argues they are to some extent constrained in their efforts by other actors (the US and Member States), while at the same time it claims it has done everything in its power. Regarding participation, there has been no fundamental change. CSOs are furthermore still pondering whether the changes undertaken in TTIP will be applied to other negotiations, as promised in the Trade For All strategy (interview 1). This relates to what Grigorescu (2003) calls a distinction between transparency ‘practices’ and ‘institutions’, with the latter referring to e.g. laws on access to information, or strong policy guidelines. Arguably, transparency in EU trade negotiations still has to move to the latter category.

# V – Discussion and conclusion

The empirical puzzle at the outset of this article concerned the question why there is still criticism of ‘secrecy’, negotiating ‘behind closed doors’ and ‘lack of transparency’, while the Commission has initiated several transparency initiatives. To trace the theoretical roots of this argument, we reviewed the literature on the authority and legitimacy of international (trade) governance and showed that (also in the past) international organizations – and the EU as a special case – have an incentive to respond to politicization by improving measures related to transparency, access for non-state actors, and accountability. However, these good governance principles have no unambiguous definition, nor is their mutual relationship set in stone, given that they are informed by by distinct worldviews. More specifically, world views on accountability in world politics differ with respect to the question: who should international organizations answer to? The response to this question has laid bare two fundamentally different models. One emphasized that accountability is mostly vertical, that participation of non-state actors is therefore restricted, and full transparency most likely undesirable. The other stressed that accountability runs downwards to the community, that full participation is an essential requirement, which should be accompanied with full disclosure of documents as a general rule.

Consequently, we analyzed the contributions of CSOs and business organizations to a consultation by the European Ombudsman on transparency in TTIP and contrasted this with the position and actions of the European Commission, in order to see if we could find evidence of these different world views. We found a clear distinction between business organizations that expressed their satisfaction with the formal transparency initiatives by the European Commission (and warned against the negative consequences in terms of effectiveness of further steps), while the non-commercial CSOs asked both for more formal transparency that would go beyond ‘explanatory’ texts as well as – and above all – also more opportunities for equal and meaningful participation. Since then, the European Commission and especially Cecilia Malmström as Commissioner for Trade have implemented the transparency mechanisms with more earnest and more dedication, but little qualitatively new initiatives to increase the participation of CSOs in the talks have been taken.

It seems therefore that the current reform efforts – how commendable they be – might fall into deaf ears with the broader civil society, mainly given a difference in worldview of what transparency should look like in the face of the broader question to whom the European Commission should be held accountable. From the Commission’s point of view, a form of direct democracy with full transparency and participation of NGOs is problematic, not in the least because the transparency of the funding and representativeness of these organizations themselves is doubtful (interview 2). It also argues, together with business representatives, that there is thus a legitimate need to keep things confidential. NGOs on the contrary feel that their core interests (be it the environment, labor rights or global justice) are directly affected by EU trade policy, and therefore demand not only to have insights in all negotiating documents, but also to participate meaningfully with the Commission, who is negotiating on everyone’s behalf. The two are seen as two sides of the same coin (interview 1).

Following the politicization of TTIP in several Western European countries, a widely held question is whether this politicization of trade policy is here to stay *in general*. This question has many components, so we will restrict ourselves to the scope of this article. We would argue that claims about ‘secrecy’ or ‘negotiations behind closed doors’ will not wither away in upcoming trade negotiations, be it with the US or with other partners, because both parties’ worldviews are difficult to reconcile, both on the participatory and transparency front. The Commission’s attempts to include more stakeholders seems restricted to a small group of NGOs in an Advisory Group, of which the workings are still embryonic at the moment. This also resembles the move towards a ‘multi-stakeholder model’, as described by Hocking (2004) of which the primary aim is to establish a group of legitimate partners to build consensus on trade issues, and hence to counter growing opposition to free trade (see also Hannah, 2015). The wider civil society demands a more direct democracy, in which they can significantly steer negotiations by providing meaningful input at different stages of negotiations. The Commission itself does not seem to think such a model is viable, nor is this demand without problems of its own (see e.g. Hanegraaff, Beyers & Braun, 2011).

With regards to transparency, the Commission has put emphasis on ‘transparency and responsibility’, which comes down to making the decision-making process more transparent inter-institutionally, and explain the process better to the wider citizenry (interview 2). The translation of these principles in practice has led above all to more explanatory documents, but also to more negotiating documents (albeit at a different speed), which has brought them – as they argue – at the edge of what they themselves can do. CSOs still think this does not go far enough, and some even go as far as to demand that the EU would not commence negotiations with countries that do not plan to be fully transparent throughout the process (interview 1). In sum, and regarding these two levels, it does not seem that the main criticism is fundamentally addressed, which means this source of politicization is here to stay for the time being. It can even be argued that the enhanced transparency the Commission now provides will – ironically – fuel politicization, given that CSOs have more access to documents (and information on the process), without agreeing that the Commission its mandate is adequate to begin with. Politicization can theoretically lead to democratization, but for that to happen, agreement on fundamental principles seem to be essential.

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# Appendix

**Appendix 1: Explanation of different transparency documents**

* Negotiating documents
  + The negotiation mandate includes the official guidelines given by the Council to the Commission to negotiate an FTA
  + Textual proposals are the EU’s initial proposals for legal text on a specific chapter, which are tabled for discussion in negotiating rounds
  + Consolidated texts show EU and US positions side-by-side
  + Non-papers are designed to stimulate discussion without representing the official position
  + List of meetings the Commission or its negotiators had with third parties includes dates and time, but also content of what was being discussed
  + Correspondence/submissions by third parties includes all mails, letters or position papers the Commission received from business organizations, trade unions or NGOs
  + Correspondence between Commission and Council and/or European Parliament
  + ‘Access to documents’ requests relate to all demands voiced over the problems encountered with the request of documents: timely release, unredacted versions etc.
* Informative documents/demands
  + Position papers set out the EU’s general approach on several subject areas
  + The translation of informative (and technical) documents
  + A list of which people are dealing with TTIP within the organizations
  + A comprehensive list of all the documents that are circulating and information on who can access and read them
  + Agendas show date, place, participants and subjects of negotiating rounds
  + Briefings, reports and state of play documents after negotiating rounds with meaningful information on what was being discussed
  + The request to make all public documents easily accessible online in a public registry
* General formal transparency demands
  + Request the Council and/or the US to take similar steps to improve transparency
  + Request to extend the measures taken in TTIP to cover other trade agreements as well
  + Request that MEPs and/or MPs are fully able to play their scrutinizing and legislative role by providing them as much access and information as possible

**Appendix 2: Transparency demands per NGO, and some methodological considerations**

We have only included demands that have been voiced at least three times and have listed the demands in terms of the number of organizations that asked for it. There were 26 NGO contributions in total, even though percentages do not make much sense here. Some organizations, for example, may – when asked – respond positively to the question if a certain negotiating document should be provided, even though they have not made this claim specific in their position paper. The number is therefore indicative of the importance attached to it, rather than an absolute value/percentage of how many organizations demand it.

We have also acted cautiously when coding different categories. The demand, for example, to know the position of the EU has without additional information been coded as ‘position paper’ in the explanatory category. However, if mention was made, for example, that the position of the EU has to be made public before each negotiating round, this no longer points to one general paper at the beginning of negotiations, but to textual proposals about what the EU is asking every round. Hence, such statement was coded as ‘textual proposal’. Statements such as these that could not be coded in a straight fashion, were discussed separately between the two authors.

Some organizations have joined efforts and contributed the exact same position paper, meaning a certain demand could be immediately tripled, for example. We don’t see this as a problem, because this is arguably proof of the common message on transparency that holds NGO opposition together and business organizations have done the same thing, by copy-pasting the Business Europe position, or parts thereof. If we lower this threshold to two, only two additional explanatory documents would be added to the list (translation of documents and a list of who deals with TTIP in the different institutions).

|  |  |  |
| --- | --- | --- |
| Document / demand | # | Asked by |
| **Negotiating documents** | | |
| Textual proposal | 20 | CEO, FOEE, TACD, TE, AI, FI, MPE, PC, BEUC, ACC, EDRI, EPHA, FFII, BUND, CE, CWF, VB, WECF, FP, UM |
| List of meetings (and minutes) of EC officials with third parties | 19 | CEO, FOEE, TACD, TE, AI, FW, FI, IGO, BEUC, ACC, EDRI, EMI, EPHA, BUND, CE, CWF, VB, WECF, FO |
| Consolidated texts | 17 | CEO, FOEE, TACD, TE, AI, FI, BEUC, ACC, EDRI, EPHA, FFII, BUND, CE, VB, WECF, FP, UM |
| Correspondence / submissions by third parties | 16 | CEO, FOEE, TACD, TE, AI, FI, BEUC, ACC, EDRI, EMI, EPHA, BUND, CE, CWF, VB, WECF |
| Negotiating mandate | 14 | CEO, TACD, AI, PC, BEUC, ACC, EDRI, EPHA, FFII, BUND, CE, VB, FP, UM |
| Correspondence between EC and other institutional bodies | 12 | FOEE, TE, AI, FI, BEUC, ACC, EDRI, BUND, CE, CWF, VB, WECF |
| Drafts, non-papers | 7 | CEO, FOEE, TE, AI, FI, EDRI, WECF |
| Respond to ‘Access to documents’ requests in timely fashion | 5 | CEO, AI, FW, EDRI, FFII |
| **Explanatory documents** | | |
| Meaningful briefings and state of play documents | 17 | CEO, FOEE, TACD, TE, AI, FI, MPE, PC, BEUC, EMI, EPHA, BUND, CE, CWF, VB, WECF, FP |
| Agendas of (content of) negotiating rounds | 15 | CEO, FOEE, TACD, TE, AI, FI, MPE, PC, BEUC, ACC, EPHA, BUND, CE, VB, WECF |
| Position papers | 13 | FOEE, TACD, TE, AI, FI, BEUC, ACC, BUND, CE, CWF, VB, WECF, UM |
| Make documents easily accessible in an online register | 9 | CEO, TACD, FW, MPE, EDRI, EPHA, EMI, FFII, CE |
| List of which documents are available and who has access to them | 4 | BEUC, EMI, EPHA, VB |
| **Other demands** | | |
| Adequate access to documents for MEPs and MPs | 14 | TACD, EDA, PC, BEUC, ACC, EDRI, EMI, EPHA, BUND, CE, CWF, VB, FP, UM |
| Apply measures to other agreements | 5 | TACD, BEUC, EDRI, EPHA, VB |
| Request Council and US to take same steps | 5 | CEO, FOEE, TE, FI, WECF |

1. The other two were making trade more effective and using it not only to project the EU’s interests but also its values [↑](#footnote-ref-1)
2. The concepts ‘authority’, ‘politicization’ and ‘legitimacy’ will be defined below. [↑](#footnote-ref-2)
3. The EU can be seen as a special institution, given its far-reaching supranational features [↑](#footnote-ref-3)
4. This definition was established in the context of the ‘politicization of European integration’, but is equally applicable to global governance issues, of which the EU can even be seen as an inherent part. [↑](#footnote-ref-4)
5. For a detailed conceptualization into the different interpretations of the politicization of global governance, see Gheyle (2017). [↑](#footnote-ref-5)
6. The claim that NGOs representative of the public has evoked a literature branch on its own, see e.g. Kohler-Koch (XX). [↑](#footnote-ref-6)
7. This view is therefore closely connected to direct rather than representative forms of democracy [↑](#footnote-ref-7)
8. There were also about 290 individual citizen contributions, but these were to some extent nonsensical and duplicative, hence were excluded from analysis. [↑](#footnote-ref-8)
9. We have also analyzed trade unions and public service contributions, but found it difficult to make general remarks based on 3-4 contributions. [↑](#footnote-ref-9)
10. Several NGOs have pointed out though that the extremely transparent and inclusive nature of the WIPO talks have increased a practice of informal decision-making towards the end of negotiations (McIntosh, 2014). [↑](#footnote-ref-10)