

Sunday, November 10, 2013

Subject: Lunch with the Chamber on regulatory and standards Dear

all:

Last Friday delegation (Article 4.1 b), [Article 4.1 b] and [Article 4.1 b]) with [Article 4.1 b]

(DG Enterprise) had lunch with a group from the US Chamber ([Article 4.1 b]) and their legal advisor [Article 4.1 b].

[Article 4.1 b] clarified the Chamber position in a number of horizontal regulatory aspects:

- First, he considered that the regulatory discussions embedded six strands of work: (1) TBT (2) SPS (3) policies to improve legislative coherence (4) good regulatory practices (5) cooperation among regulators and (6) sectoral commitments. The first 5 are horizontal in nature.

- On 3 and 4, the Chamber's ask, in terms of the EU system, is that the Commission look into the possibility of opening to public comments draft final texts of legislative proposals (regulations or directives) and the accompanying draft impact assessment. In his view this might be done after interservice consultations are concluded but before texts are adopted by the college. The

Chamber is aware this would imply a significant change in the way the Commission prepares legislative proposals, as it would extend by 3-4 months the timelines of legislative initiatives.

They say it would improve the quality of legislation by enabling stakeholders to give inputs on draft final texts before they are adopted. (In the Chamber's view the US system is equally open to stakeholder input, both regarding Congressional laws and implementing rules of US regulators).

- On how to enhance regulator to regulator cooperation, [Article 4.1 b] suggested there could be an improvement in impact assessments and cost benefit analyses, in order better to take into account the impact on international trade and investment of proposed regulations. [Article 4.1 b] stressed that this was an issue both sides of the Atlantic needed to address. Formally, the obligation to take into account trade impact already existed in both of our regulatory processes, however, this was mostly "lip service"; in reality trade impact were not systematically addressed and there was need for a common

methodology. [Article 4.1 b] said that the 10 principles embedded in John Morral's paper (attached, pages 12-13) could be a good point of departure - the Chamber is not working specifically to put forward a proposal on that basis.

o [Article 4.1 b] reiterated that the EU's primary offensive interest on the horizontal side was how to engage independent agencies in the US. He dismissed once again the argument that a balance outcome would require including the legislative process in the US. In his view, for the most part, that process is very transparent. He stressed that stakeholders, including representatives of European companies in the EU, knew very well how to work the process.

On standards:

- Standards incorporated in US regulations: [Article 4.1 b] said that the US had to put a more conscious effort to take into account EU standards and acknowledged that sometimes it was difficult for the EU to participate in that process because they simply did not know that the process was going on. The agencies should reach out more to EU parties and additional guidance in the revision of OMB circular A 119 would be useful for that.

- EN standards: [Article 4.1 b] said negotiators should try to focus on finding a way to allow more American standards be on the EN list, and vice-versa regarding EU standards in the US. We suggested this should be left to the private SDOs -but [Article 4.1 b] said there had been attempts in the past and CEN/CENELEC had not wanted to cooperate.

- [Article 4.1 b] said CEN/CENELEC can be considered under government influence because they get money from the EU. The Commission should therefore be able to convince them to adopt a more open approach to recognise certain US standards.

- [Article 4.1 b] emphasised that, in his view, many divergences between EU and US standards could be avoided if standardising organisations on both sides would be obliged to consider integrating each other's standard if a standard has already been developed by one of the two sides. They currently do not examine each other's standards at all, before developing their own.

- On the broader question whether the EU standard setting system posed problems for American standard users, [Article 4.1 b] admitted that he did not know. He did not know whether, beyond the big US SDOS and CEN/CENELEC, this was an issue for other US companies.

Best regards,

[Article 4.1 b]