

From: 4.1(b) (TRADE)

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To: SCHLEGELMILCH Rupert (TRADE); TRADE LIST B2; TRADE LIST F2

Subject: Flash report on B2's meeting with the US Chamber of Commerce, 3 September 2015

Flash report:

Participants US Chamber of Commerce: Peter H. Chase (Vice President), 4.1(b) (Policy Officer)

Participants EU: 4.1(b) (B.2), 4.1(b) (B.2)

The courtesy visit took place at request of the US Chamber of Commerce. Purpose of the meeting: exchange of views on the EU's investment policy, and, particularly, TTIP.

Mr. Chase opened the meeting by inquiring the reasons for **Italy's recent withdrawal from the ECT**. He noted that the ECT's sunset clause was 20 years so that the question arose how far the withdrawal reached, taking into account that the EU remained a member to the ECT due to its mixed nature. He wondered whether an Italian company could, after the expiry of the sunset clause, still bring claims under the ECT as a European company.

On **TTIP**, Mr. Chase referred to a meeting with 4.1(b) earlier this year asking whether the COM had prepared a draft text on ISDS in the meantime. In his view, the vast majority of the arguments brought forward in the current public debate were flawed and could be dispelled by merely reading the treaty texts. The ISDS system was an UN-based system which proofed itself since five decades and Art 4.2 first indent and 4.3 first subparagraph

Commenting on **CETA**, Mr. Chase criticized the treaty's wording (for instance, there was no legal reason to demand "manifest arbitrariness" since arbitrary conduct in itself was a very broad concept). As regards indirect expropriation, CETA was very close to the US Model BIT and Mr. Chase advocated for conducting an in-depth-analysis of the implications of the Yukos Case on future investment system.

Coming back to TTIP, Mr. Chase argued that an inclusion of a provision to protect a state's right to regulate in the public interest was not needed.

Art 4.1 (a) third indent

He called the EU's concessions a "solution to a non-existing problem" taking the new permanent roster of arbitrators as example. Such a roster already existed in ICSID, containing qualified individuals chosen by governments. He also argued that, under the new ISDS system, states should retain a say in the composition of the arbitral tribunal since they would always be the defendant in an investment dispute.

The overall message was that the EU should not lose itself in (unfounded) demands of the European public rather than keep in mind the interest of their negotiating partners. Mr. Chase further expressed his desire to keep in constant exchange with the COM regarding future developments in TTIP.