

MISSION REPORT

Subject: Conference on TTIP Negotiations at Turin University.

Participant: Art. 4.1b, TRADE G.1

1st Panel: "Framework Issues"

Thomas Cottier (Professor, University of Bern, World Trade Institute, Bern) "Toward Transatlantic Regulatory Convergence"

- Debate on this issues shows the importance of education on trade policy since people have been very easily misled.
- Dealing with regulatory issues in trade policy is not new – TBT, SPS & TRIPs (which is by far the most advanced area of regulatory policy making).
- Sources of regulatory divergence include cultural differences and different methods and procedures.
- In some regulatory areas harmonisation is already very advanced e.g. the amount of standardisation required to make international telephone calls possible. In others there is none e.g. plugs and sockets.
- OECD index of types of regulatory cooperation arrangements from 1 (dialogue) to 12 (full integration). Where will TTIP fall?
- CETA not very advanced – optional cooperation.
- EU has more ambition for TTIP – looked at proposals for regulatory cooperation mechanisms. Not clear what the result will be.

August Reinisch (Professor, University of Vienna) "The Continuously Controversial Investment Chapter of TTIP"

- World of investment experts surprised to see itself in the headlines and see changes.
- There are several accusations addressed against investment protection in the debate (which in fact dates back to NAFTA implementation):
 - Tribunals are secret: largely addressed with increased UNCITRAL transparency.
 - Regulatory sovereignty: CETA goes much further on this e.g. defining FET and removing reference to MFN.
- Raised question of compatibility of an investment court with ECJ jurisprudence, in particular on the ECHR.

Marco Ricolfi (Professor, University of Turin) "IPRs and Geographical Indications in TTIP"

- Concern: TRIPs plus elements in bilaterals and regionals (e.g. TPP) involve countries trading greater IP protections for more market access.
- In parallel there is in reality a move away from high IP protection as a tool to foster innovation via e.g. the open software movement ("Third paradigm for creativity and innovation")
- Criticises lack of transparency (Wikileaks' offer of \$100k reward for TTIP IP text.) (I noted later that there wasn't an IP text yet and that we are publishing the vast majority of EU proposals)
- Suggests likely elements that EU would have to accept in TTIP chapter including criminal penalties, in exchange for GI protection.
- IP should not be a bargaining chip but rather a carefully worked out policy balancing interests of today's inventors against future inventors as well as considering questions of

- public health, environment, biodiversity etc.
- As a result, against TTIP.

2nd Panel: “Insights and Updates from Brussels”

I gave an overview of:

- The economic and strategic rationale for the negotiations
- Three pillars and where we stood on key elements (e.g. second tariff offer, upcoming procurement offers)
- The public debate – importance of taking it seriously as future of open markets at stake, changes we have made on transparency, investment, public services; that we are broadening our changes to cover all of trade policy with the new strategy.

Laura Berretta (International Trade Advisor, Grayston) spoke on ROO

- Issues in ROO – impact on LDCs, spaghetti bowl vs. GVCs.
- EU 2011 reform of preferential ROO for GSP positive step. EU now has the most harmonised ROO between various agreements.
- Simplification of Euro-Med ROO also a positive step.
- Problems vis-a-vis US e.g. yarn forward rule.
- Objectives for TTIP:
 - A convergence of approaches for EU and US FTAs would be enormous.
 - Access for Mexico and other 3rd countries would also be enormous.

Davide Rovetta (Partner, Grayston) spoke on legal challenges for TTIP

- Schrems case. US Ambassador has said that if there is no solution it will create problems for TTIP.
- In European Patent Court ruling & advisory ruling on EU accession to the European Court of Human Rights, ECJ reject the idea of courts having jurisdiction to decide on EU law as ECJ sole arbiter of this. This could apply not only to new ICS proposal and multilateral court but also to all investment arbitration tribunals since, unlike WTO dispute settlement, they have direct effect via compensation awards.

Discussion (also with Professor Cottier)

Cottier suggested investment protection should ultimately move to WTO & that for legitimacy the EU should move towards US style TPA system for trade policy.

I mentioned ongoing safe harbour negotiations which seek to solve the problem and argued we have sufficient legitimacy through mandates (which we want to see become transparent) and EP resolutions (see intense debate on TTIP second mandate.)