

From: Art. 4.1(b) (TRADE)
Sent: 06 June 2016 10:50
To: SCHLEGELMILCH Rupert (TRADE); Art. 4.1(b) (TRADE);
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Cc: Art. 4.1(b) (TRADE); Art. 4.1(b) (TRADE)
Subject: minutes from a presentation to CEEP on public services in TTIP 3/06/16

-----for ARES registration -----

Art. 4.1(b) (B1) and Art. 4.1(b) (B2) presented to the European Centre of Employers and Enterprises (CEEP) the EU approach to public services and to investment in the context of TISA, CETA and TTIP

Overall, the discussion was constructive and fact based. CEEP seemed to be largely convinced of our arguments and expressed support for the TTIP negotiations. There was a clear interest from CEEP to have a similar discussion with respect to GP in TTIP.

Details:

After our presentations, members of CEEP asked the following questions or made the following comments:

- What is the value of ratchet, - *reply: it captures future autonomous level of liberalization and thus supports liberalization; the EU agrees to apply it to commercial (but not to sensitive) sectors.*
- The EU approach to public services, needs to be adjusted to the current reality (introduction of concept of SG(E)I in the EU Treaties) – *reply: the EU approach has never been challenged, we are ready to discuss concrete examples of problems or legal loopholes in the EU approach; Art. 4.1(a) third indent*
- Definitions used with respect to public services are not clear and not based on EU Treaties: *the definition of public utilities comes from the beginning of the GATS, which predates the concepts of SGI and SG(E)I mentioned in the EU treaties; the issue not relevant anyway because the EU reservation on public utilities give our governments the right to define activities considered to be public utilities.*
- Will the US accept the EU proposal on ICS related to courts? – *reply: will not speculate what the US will agree to in the end. The EU is putting forward its new approach to investment, including the ICS, in all ongoing and future negotiations. Also started work on a multilateral investment court.*
- What is indirect expropriation? Any risk related to disproportionate measures could be challenged as a breach of the expropriation article? – *reply: the annex on expropriation provides detailed guidance inspired by the Charter of Fundamental Rights and ECHR; need to prove first that there is a substantial deprivation of the fundamental attributes of property; §3 of Annex refers to "rare circumstance" in which a legitimate measure may be manifestly excessive; proportionality is also a general principle of EU law.*

- Why concessions are listed among categories of investment. This may lead to a potential challenge. Foreign investors are increasingly active in concessions (e.g. infrastructure) in the EU – *reply: if have the characteristics of an investment (commitment of capital, assumption of risk, certain duration), it deserves to be protected; investment protection only applies at the post-establishment stage; EU legislation continues to apply for access to concessions.*
- The Commission has a problem with communication on TTIP: *reply: we need to see more engagement of member states (multiplayers) to explain TTIP; the subject is very technical and not easy to follow for the general audience.*
- Does ICS apply to procurement? – *reply: under the EU approach, ICS only applies at the post-establishment stage.*
- Are concessions covered by GP chapter in TTIP? – *reply: let's discuss with GP experts at another occasion*