

GARCIA LOPEZ BERGES Victor (TRADE)

Subject: Report: Meeting with Cefic - discussion of draft Cefic/ACC proposals for TTIP

Importance: High

From: MUSALL Benjamin (TRADE)

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To: GARCIA BERCERO Ignacio (TRADE); PERREAU DE PINNINCK Fernando (TRADE); LOPIAN Arthur (TRADE); SOURMELIS Petros (TRADE); MARGHERITA Michelangelo (TRADE); LEVIE Damien (TRADE); EMBERGER Geraldine (TRADE); BHASKAR Renita (TRADE); NIETO HERNANDEZ Esther (TRADE); GUEGUEN Catherine (TRADE); WEIGL Ulrich (TRADE); LLORENTE GONZALEZ Eva Maria (TRADE); KAIZELER Ivone (TRADE); BEREND Klaus (ENTR); ROELAND Christophe (ENTR); HANSEN Bjorn (ENV); RAVILLARD Patrick (ENV); PASTOR ARENILLAS Isabel (EEAS-WASHINGTON)

Cc: TRADE TTIP TRANSPARENCY

Subject: Report: Meeting with Cefic - discussion of draft Cefic/ACC proposals for TTIP

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Meeting with Cefic – discussion of new draft joint ACC/Cefic proposals for TTIP – 5 December 2013, 15.00-17.30

Cefic: [ART. 4.1b]; [ART. 4.1b]; [ART. 4.1b]; [ART. 4.1b]; [ART. 4.1b], BASF. [NOT RELEASABLE]

COM: Klaus Berend (KB), HoU DG ENTR F.1; Bjorn Hansen (BH), HoU DG ENV A.3; Patrick Ravillard, DG ENV.E.2; Fernando Perreau de Pinninck (FPP), HoU DG TRADE F.3; Benjamin Musall, DG TRADE G.3.

Very useful meeting with Cefic which allowed for an in-depth discussion of the enclosed new draft Cefic/ACC proposals for "enhancing US-EU chemical regulatory cooperation under TTIP". Contrary to earlier joint ACC/Cefic submissions on TTIP, their new draft proposal puts a strong focus on the horizontal regulatory chapter and advocates the creation of new formal structures such as a "Joint Scientific Advisory Committee" and a specific "Chemical Sector Joint Coordinating Committee", and pleads for mutual recognition of US Pre-Manufacturing notifications and REACH registrations. Cefic and ACC also develop detailed text proposals both for the horizontal regulatory chapter and for the chemicals sectoral annex. [NOT RELEASABLE]. On 11 December 2013, Cefic has presented a revised joint draft paper which is supposed to reflect the discussion at the meeting we had with them on 5 December. We will now look into their revised paper with a view to the 3rd round of TTIP negotiations in Washington D.C. (the chemicals session is scheduled for Friday, 20 December, 9.00-12.30).

- FPP summarized the state of play of the TTIP negotiations and pointed to the political stock-taking envisaged for February 2014. [NOT RELEASABLE].
- ACC's/Cefic's draft proposals aimed at increasing transparency between EU and US regulators seem to be focused on the EU taking over the US "notice and comment" procedure. FPP indicated that respective rules in the horizontal regulatory chapter have to be balanced, with both sides accepting similar levels of commitment. [NOT RELEASABLE].
- The constitutional structures of both sides need to be taken into account: For instance, the EU applies specific legislative procedures on the basis of the Treaties and will thus not be in a position to simply take over the existing US "notice and comment" procedure. [NOT RELEASABLE]. BH added that a revised Cefic/ACC paper should elaborate more on how EU and US regulators could cooperate better in the framework of existing structures (e.g. public consultations, informal bilateral contacts) instead of calling for the creation of additional bodies; it should also be mentioned that the EU already today allows the US to attend a number of important meetings, for instance the CARACAL (competent authorities for REACH and CLP), which prepares the stage for final consultation of the REACH Committee on Commission proposals.

- FPP, KB and BH indicated that the horizontal "Joint Scientific Advisory Committee", as promoted in the draft Cefic/ACC paper, raises questions marks as to its interaction with the existing EU (and maybe also US) decision-making structures. The same goes for the integration of the proposed specific "Chemical Sector Joint Cooperation Committee" into the existing structures. KB explained that it may be preferable if the possible future "Regulatory Cooperation Council" as the over-arching regulatory body under TTIP would call for ad-hoc consultations on specific issues on a sectoral basis, if needed. BH added that the proposed Committees would be too formal – the EU and the US can cooperate, as they have done in the past, in a variety of ways, e.g. conferences, OECD-level activities etc. In any case, such new Committees should not be used as a means to push the EU to abandon its hazard-based decision making where it applies. [NOT RELEASABLE].
- As regards confidential business information (CBI), KB expressed surprise that the new draft paper advocates the exclusion of CBI from any information exchange between regulators, in contradiction to respective proposals put forward in earlier Cefic/ACC submissions. [NOT RELEASABLE]. In the EU, the relevant REACH provisions (notably Article 118 of the REACH Regulation 1907/2006) will not be modified any time soon. Cefic defended its new proposals and stated that in its perception the actual criteria used by ECHA and EPA to recognise CBI under REACH and TSCA, respectively, are actually quite similar – EU and US regulators should thus explore possibilities for formalising a common approach.
- [ART. 4.1b] offered Cefic's support to overcome remaining difficulties to achieve greater coherence on classification and labelling issues. In particular, Cefic could discuss with chemical companies with headquarters in the US and significant business activities in the EU to help – even if full implementation of the UN GHS (Globally Harmonized System) by the US may be unrealistic because of the continuing strong opposition of CropLife America to a GHS implementation in the field of pesticides (which is echoed by EPA). Even without pesticides, GHS implementation by the US in all other areas would result in 70% of all chemical substances being covered which would be a significant step forward compared to today's situation where only OSHA has implemented GHS for chemicals at the workplace. KB and BH welcomed Cefic's support [NOT RELEASABLE]. A further goal within TTIP should be to establish a bilateral list of classified chemicals which could then become the nucleus for a global list – instead of solely promoting the UN global list of classified chemicals (see p. 14 of the draft proposal).
- KB and BH pointed out that the suggestions on "common prioritization principles" (see p. 14/15) need to be clarified. In particular, the reference to substances falling under the scope of Article 57 (f) of the REACH Regulation 1907/2006 is unclear in this context. We have to distinguish between (1) US comments on concrete EU proposals to prioritise substances for either evaluation or risk management (such as restriction or authorisation) under REACH and (2) an agreement between the EU and the US to follow common prioritization principles. [NOT RELEASABLE].
- KB and BH explained that Cefic's/ACC's draft new proposals concerning the "mutual acceptance of notification/registration of new substances" (see p. 15) seem particularly problematic. Mutual acceptance of notifications/registrations under REACH and TSCA would first of all require equivalence of obligations which is doubtful in this case: REACH only requires the registration of substances produced/imported in quantities of 1 ton or more – for amounts below 1 ton, the US would have to waive pre-manufacturing notices, or a voluntary registration scheme would have to be established which might require a change of the REACH Regulation and appropriate structures to be established by ECHA. For substances above 1 ton, the situation would be inverse: the EU would have to waive registration requirements (which is not possible without an amendment of REACH), because the very limited information in pre-manufacturing notifications in the US is not comparable to REACH, which would put EU companies at a disadvantage. [ART. 4.1b] [NOT RELEASABLE].
- In the margins of the meeting, [ART. 4.1b] expressed interest to discuss Cefic's ideas for Rules of Origin in TTIP which are still under development. Cefic is trying to learn from experiences made with other FTAs concluded by the EU and the US and is looking into new and innovative approaches (such as e.g. relying on non-preferential RoO in TTIP). [ART. 4.1b] and FPP agreed to fix a meeting between Cefic and COM (including DG TAXUD and ENTR) RoO experts to discuss this further. Such a meeting could be held in the second or third week of January 2014.