
From: 4.1(b) (TRADE)
Sent: 10 December 2015 18:07
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Subject: Report: debate in Danish PermRep Health Series 2014: IP aspects of the TTIP, 16 December 2014

On 16 December 2014 I participated in a multi-stakeholder **Debate on IP aspects of the TTIP (Health Series)**, an event organized by the Permanent Representation of Denmark to the European Union. I was replacing TTIP IPR lead 4.1(b) and was speaking during the session "The Opportunities and Challenges of IP in TTIP" together with 4.1(b), TTIP IPR lead on the US side.

My intervention covered the following points:

- Since the scoping stages and the High Level Working Group conclusions, both sides agree that detailed discussions on every single IPR issue would be very complex and would not achieve a meaningful result without domestic law changes – and there is no real demand for that from stakeholders. Both models are ambitious and of high standard, but they contain numerous differences, because our laws are different. Furthermore, in general right-holders consider that IP regimes on both sides of the Atlantic are effective, with some exceptions (GIs, copyright for performance in public places).
- In other words, we base our policies on broadly similar principles, and the transatlantic IP landscape is relatively predictable. There is however room for improvement.
- This is why our preference is for an IPR chapter as part of an FTA that would address improved cooperation in areas of common interest, as well as a small but important number of key issues. This may be a unique occasion to focus on a limited number of priority areas that have been pending for too many years.
- So far in TTIP IPR discussion we have a preliminary agreement on the structure of the Chapter: a list of international IPR agreements to which both sides are bound; general principles based on common existing rules and practices in the EU and the U.S., stressing the importance of IPR as a tool for innovation, growth and jobs, as well as a number of high-standard agreed principles on key topics; binding commitments on a limited number of significant IP issues (offensives); cooperation between authorities and with stakeholders on areas of common interest.
- "Strengthening cooperation" is an ask that has been frequently expressed by a great number of stakeholders. Right now in negotiation both parties are equally interested to find language that captures and builds upon the existing cooperation and considerable work achieved in the last 10 years bilaterally and in international fora (Transatlantic IPR Working Group, G8, OECD, WTO, etc.). How to formalize the work already being done – this was the leading and recurring theme throughout the IP discussions in the last round and will likely constitute the main priority for the immediate next sessions.
- The sections on general principles and cooperation should, to a large extent, reflect initiatives (IP attaches in 3rd countries; capacity building; training; contacts between embassies; customs cooperation; SME support) and engagements (importance of IP protection; link between IP and innovation; "inventors' trail"; negative impact of infringements; public-private cooperation; best practices; depriving infringers of revenue streams; securing supply chains including in public procurement) that have already been undertaken by the two Parties in the last 8-10 years.

- The challenge is to reflect this cooperation in meaningful provisions but inspiration could possibly be drawn from the Commission documents released this year, namely DG TRADE's Strategy on IPR protection and enforcement in 3rd countries and DG MARKT's Action plan on IPR enforcement in the internal market, but also from G8, OECD and TRIPS work.
- We have received a number of contributions of the pharmaceutical sector concerning Intellectual Property Rights.
- At this stage of the negotiations with the US, it is premature to enter into details. Nevertheless I can assure that at both sides of the Atlantic, there is a clear interest in strengthening our cooperation to enforce Intellectual Property Rights towards third countries. This is a request that we have received of a number of stakeholders, not only from the pharmaceutical industry.
- On the other hand, I note that some proposals, if introduced as suggested by the pharmaceutical industry, would call for considerable changes in the current EU legal framework. This is a sensitive issue since such changes would require a broad consensus from a great number of stakeholders.
- We are consulting and thoroughly assessing the potential issues and for the moment no issue is taken off the table, but – considering the current situation in Europe – where Member States struggle to keep their health budgets under control, one needs to be particularly attentive to any proposals that may lead to an increase of pharmaceutical prices.

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