



EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

Transport, Energy, Environment and Nuclear Affairs

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**MINUTES OF THE TRADE AND TRANSPORT COUNSELLORS' MEETING
"THE ROLE OF TRANSPORT IN THE TTIP"
25 MARCH 2013**

Hiddo Houben presented the latest *state of play regarding the TTIP*. While the Commission's negotiating mandate is being prepared in the EU, USTR has sent a notification letter to Congress, launching a 90 days period for Congress to deliberate. The objective is to hold the first official round of negotiations during a whole week in the first half of July, probably in Brussels. Both sides agree that negotiations should not last too long; ideally these should be finalised within two years.

The transport sector has a lot of *specificities* when it comes to trade, and broadly speaking it is an area where the EU has more offensive interests, while the US has more defensive interests. Transport could therefore play an important role for the overall outcome of the negotiations. The link between transport liberalisation and trade and growth is obvious. Yet the US usually excludes maritime transport from its FTA negotiations, and both the EU and the US have for the most part negotiated air transport in separate agreements. Objections to opening in the US are linked to labour unions' concerns and the wish to protect certain sectors (eg shipbuilding), as well as national security (ie the requirement to be able to use airlines to transport troops or to maintain the Marine Merchant Fleet under the Jones Act).

Current limitations in transport include the limitations of voting rights in US airline ownership to 49%, and of voting rights to 25% foreign votes. While US airlines are free to offer their services between different MS within the EU, EU airlines are not allowed to fly between US States (ie use cabotage). Other limitations include "Fly America" rules for US civil servants. On the basis of the 1920s Jones Act, maritime transport within the US, including routes to Alaska, Hawaii or Puerto Rico, must take place on US flagged vessels which have been built in the US, are US owned and operated by a US crew. There are no such restrictions in the EU.

While public comments during the 90-days deliberation period for Congress should be avoided, reaching out to the Hill or US Administration is not excluded. It is in the EU's interest to develop a more articulate narrative on the role of the transport sector in TTIP, which should help both the EU and the US economy to strengthen their joint position in the global competition.

Counsellors were invited to contribute concrete experience and examples of areas where their companies encountered market hindrances, and to help with outreach on the importance of liberalising certain transport rules to the broader American public.

COMMENTS & DISCUSSION

The UK supported looking more closely at the Jones Act, even if a MARAD report on its economic costs a couple of years ago had encountered a firm and broad opposition. He wondered whether the TTIP negotiations were going to look into the liner antitrust exemption in the US following the abolition of the liner conferences by the EU in 2008. US regulators had been studying the issue, and this had been coming up periodically on the Hill. While the container industry wanted to preserve the liner conferences, *shippers* tend to favour abolishing them, as in their view this will result in more competitive fares.

On aviation, the UK mentioned that while US airlines might generally support liberalising ownership and control between the US and the EU, few executives would be willing to advocate for it, due to labor concerns. JetBlue (non-unionised company) seemed to be ready to take the issue up with Congress. FedEx too, even though they had a broad range of issues of interest to them in TTIP, and they know this one is more controversial than other areas. While trade unions were generally opposed, Republicans on the Hill seemed to be more open generally. F. Leinemann reported on a recent quote by T&I Chairman Bill Shuster who had reacted carefully to the perspective of liberalising ownership and control, saying that the issue needed further study.

Spain suggested including regulatory cooperation on (high-speed) rail safety standards in the TTIP talks, given that technical rules for trains in the US and the EU were traditionally developed on the basis of very different presumptions (e.g. crashworthiness in the US, crash avoidance in Europe). She noted Spain's interest to address the mass transit exemption for procurement, and "Buy America" requirement for material. They had observed a stronger enforcement than in the past, with 100% requirements for steel notably. The EU Transport Counsellor referred to ongoing technical cooperation between the Federal Railway Administration and the European Railway Agency.

Malta raised a concern about the fact that Malta-flagged yachts are not eligible for maritime coastal cruising licences in the US, which posed a problem for the Maltese superyacht industry. Numerous talks had already been held with the US on this issue. Finland mentioned the shipping and dredging industries, adding that she did not have high hopes but one should look at all possibilities. Explaining the high costs of current limitations in times of budgetary restrictions might help the EU's cause.

She also asked whether the EU Delegation would suggest using common messages in the outreach. A. Hinderer noted common messages would be shared with MS on TTIP; lines to take on specific issues such as maritime and air transport should be developed but may be shared later in the process, taking into account ongoing internal discussions on the negotiating guidelines.

All Counsellors, especially those absent, were invited to provide additional information

- *on areas where they thought their transport industry could benefit from further market opening in the US. On maritime transport, concrete examples encountered regarding interpretation and granting of waivers (e.g. for specialty vessels, dredging or transshipment) would be useful;*
- *on suggestions for outreach on transport in view of their own contacts (Hill, etc.).*

Felix Leinemann with input from
Adeline Hinderer

Cruising Licenses

- Section 94 of the US Code of Federal Regulations (Title 19 Chapter 1 Part 4) provides for the issue of licenses for foreign yachts to sail within US coastal waters. This part of the Regulations in fact stipulates that, by virtue of the license issued by the director of the first US port visited and permits the yacht “for a stated period not to exceed one year, to arrive and depart from the US and to cruise in specified waters of the US without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money”. These licenses are only available to private pleasure vessels and not to those carrying paying passengers or cargo.
- Malta’s flag is not included in the approved list in the Code of Federal Regulations, Title 19. Thus, Malta-flagged yachts are not eligible for the license and which is consequently having an adverse impact on Malta’s super yacht industry.
- It is pertinent to note that while the Code of Federal Regulations, Title 19 contains a reciprocity requirement, Maltese legislation allows US pleasure yachts to enter Maltese ports and thereafter be able to navigate freely to other Maltese ports without entering or clearing at any customhouse and without payment of any Customs related charges, dues, duties, etc. for the privilege of entry. Maltese regulations only oblige yachts, as established in Articles 40 and 41 of the European Council Regulation No. 2913/92 (Community Customs Code) and Articles 3.4, 52 and 57-59 of the Customs Ordinance (Chapter 37 of the Laws of Malta) to present to Customs upon entering the Customs territory of the EU and for the yacht’s Master to inform Customs on the first arrival from a third country and prior to departure from territorial waters.
- Numerous discussions have been held with the US side on this issue, which has informed that this requires an inter-agency decision. Recent indications from the US side are encouraging, also in the light of the fact that it appears that a handful of other countries have also requested to be included in the approved list.