

Talking Points for EP Committee on Legal Affairs TTIP Workshop

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- **TTIP: an FTA covering more than just tariff liberalization**
 - Key focus is on **suppressing/reducing regulatory obstacles**. Tariffs between the EU and the US are already very low (except on **agricultural products**, where **progress on tariff liberalization is still needed**). The **biggest economic gains** will come from **reduction of regulatory barriers**.
 - Currently, transatlantic trade works well but could be significantly improved by reducing regulatory hurdles, including a lesser need for government inspections, so **gains for both companies and administrations**.
 - Need to see **tangible results** in TTIP.
- **TTIP is an opportunity for businesses on both sides of the Atlantic**
 - TTIP offers a unique chance to come with **an aligned approach on key regulatory issues** that facilitates business both for European and American companies. Many sectors could benefit: pharmaceuticals, cars, agriculture, cosmetics, medical devices
 - TTIP could provide **momentum to find a practical solution** to technical issues that have a trade-limiting effect that the EU and the US have not to date been able to resolve.
 - TTIP will deliver results only if it can find a way to allow the **EU and US systems to exist side by side**.
- **Both sides have strong rules and strong culture of enforcement**
 - The EU and US **both have strong rules** on health, safety, consumer protection, environment. The US does not want its citizens to fall sick any more than the EU does. Both want good, safe products to be sold.
 - **Neither the US nor the EU is more lenient than the other**. Data on US enforcement of its rules (and the results of testing by US authorities) compare favourably to the EU for a range of products.

¹ These remarks were delivered in a personal capacity and do not necessarily represent the views of the firm or of any of its clients.

- **Risk management and the precautionary principle**
 - There is a difference when it comes to **risk management**. The US applies a scientific-based risk assessment approach. The EU sometimes follows the same route. But other times the EU applies the **precautionary principle based on hazard rather than risk**. In such cases, decisions about whether to ban (or not approve) products are not made based purely on a scientific assessment of the actual risks but can be made based on political considerations in response to reports about potential hazards.
 - There is **inconsistency in when the precautionary principle is invoked in Europe**; it is applied for **some products and not others**.
 - The **microwave** is an example of a product that could have been banned in the 1970s based on the precautionary principle, based on fears that it removed vitamins and nutrition from foods.
 - There is a simple way to bring EU and US closer today. The **Commission's Communication on the Precautionary Principle²** does require **scientific risk assessment**, and notably subsequent review of a decision to ban a product. But this approach has rarely been applied.
- **Need for transparency**
 - Decision-making must be transparent. The **scientific views of expert agencies must prevail** over political decisions. We have seen examples in the EU where the **expert agency says a product is safe, yet the product remains in limbo** for unstated reasons. That is unacceptable in EU law. So why should it be acceptable under TTIP?
- **Mutual recognition as the preferred option**
 - Rather than trying to teach each other how to regulate, the EU and US should **accept that both share the same broad public safety/regulatory goals**. They should try to broadly recognize the safety of each other's products. Then consumers can make the ultimate choice on which products they want to buy.

² http://ec.europa.eu/dgs/health_consumer/library/pub/pub07_en.pdf

- **Mutual recognition works within the EU; it can also work between the EU and US**
 - **Harmonization** of standards sounds good but is **likely to be long process**, mostly after TTIP negotiations, and this will significantly delay concrete economic benefits, the most important goal of TTIP.
 - **Mutual recognition/equivalence** are better approaches, as they can produce **immediate benefits** for businesses and government inspection bodies.
 - Over time we should also see **convergence of regulatory processes based on science**.
 - **The EU's internal market is the best example** of mutual recognition for products for which there has been no harmonization: a product lawfully marketed in one Member State can be sold in all other Member States, with only limited exceptions. Those exceptions are subject to Commission oversight to ensure they are justified.
 - **Mutual recognition/equivalence does not result in a 'race to the bottom'** because the starting point is strong US and EU rules which both guarantee safe products.
 - The key fact is that **there is less difference in regulatory enforcement as between US and EU as a whole than as between individual EU Member States**.
 - We should be inspired by current examples of **market-driven voluntary programmes** under which companies follow higher standards based on consumer demand (e.g. ecolabels). This should be encouraged under TTIP.
- **Mutual recognition: how to make it work?**
 - The EU and the US should make a **mental switch** and start discussions based on the idea that they have **equivalent levels of product safety, even if achieved by different means** (when it comes to e.g. testing or verifications).
 - Example: Pharmaceuticals – a set of common standards through regulatory cooperation, or accepting equivalence would be a huge benefit, including for patients.
 - **International standards and principles should be made an integral part of the Agreement** (e.g. WTO, Codex Alimentarius, UNECE). If a product complies with such standards, the

presumption should be that it should be allowed to be exported to the other Party's territory without further restrictions.

- **Consumers should be given the choice** to decide what they buy. Ensuring adequate consumer information will help ensure TTIP gives meaningful results.

- **Conclusions**

- TTIP = **Tariff liberalization + tackling regulatory barriers**; early tangible results needed on both – we shouldn't forget the need to reduce tariffs where they still exist.
- **Both systems** produce safe products – **mental switch required** so negotiations start from this perspective.
- Adopt regulations **transparently** and based on **scientific** risk assessment.
- **Mutual recognition/equivalence the more realistic route** – harmonization will be too slow.