



CIVIL SOCIETY DIALOGUE

MEETING ON INTELLECTUAL PROPERTY PROVISIONS IN FORTHCOMING US AND JAPAN NEGOTIATIONS

Date: 17/05/2013

Time: 10:00 – 12:00

Location: Charlemagne Building, room Sicco Mansholt, 170 Rue de la Loi, 1049 Brussels

Key-note Speakers

Mr Pedro Velasco Martins, Deputy Head of Unit, Intellectual Property and Public Procurement, Directorate-General for Trade

Mr Alessandro Tonoli, Policy Officer, Intellectual Property and Public Procurement, Directorate-General for Trade

Moderator

Mr Holger Standertskjold, Head of Unit Information, Communication and Civil Society, Directorate-General for Trade

Panel Presentation

IPR issues in TTIP

DG Trade (PVM) presented the steps taken so far and the future ones in view of the discussion with the US on the IPR chapter. Both the EU and the US protect and enforce IPR according to the highest standards and are the two most successful knowledge based economies. The EU and the US achieve these goals using different instruments and that is reflected in the respective laws and free trade agreements. The EU's objective will not be harmonising for the sake of it. EU's efforts should be focussed in areas that can be improved and that really matter for transatlantic stakeholders. Detailed discussions on every single IPR issue would be very complex and would not achieve a meaningful result without domestic law changes. Both our systems are effective, even if they are different.

DG Trade clarified that this negotiation will not be an attempt to slide ACTA in through the back door. Both the US and the EU have a good level of IPR enforcement.

The EU aims at an IPR chapter as part of an FTA that would address a small but important number of key issues that are of actual interest to transatlantic stakeholders. Consultations with Member States, industry and civil society to establish which could be these issues are underway. The US is engaged in a parallel consultation process.

One issue of offensive interest to the EU is geographical indications (GIs). The EU is looking for a US commitment to make a good faith and serious effort to tackle this issue.

Other issues are still being discussed such as how to make progress in terms of the registration for protection in trademark and patent offices in order to make processes less costly and simpler (particularly for SMEs); trade secrets: the transatlantic industry is very interested in improved enforcement against theft of "trade secrets", mostly in certain third countries; or how the EU and US can cooperate to combat IP infringements globally, and particularly in countries with a high level of counterfeiting.

IPR issues in the EU-Japan FTA

DG Trade (AT) briefly recalled the main steps that have led to the official launch of the negotiations with Japan on 25 March 2013, including the completion of a joint scoping exercise in May 2012 and the adoption of the negotiating Directives by the Council in November 2012. The first round of negotiations was held on 15-19 April 2013 in Brussels.

The first round allowed the EU and Japan to discuss their respective approach to the IPR chapter, to preliminarily raise certain topics of interest to them, as well as to provide clarifications on recent developments in their IP systems. The Parties discussed their respective preferred options regarding the overall architecture of the IPR chapter, with the EU suggesting focussing on a limited number of key issues and Japan referring to the IPR chapter as a possible "model" for other trade partners. The Parties will reflect on such approaches so as to identify the most appropriate structure.

The EU and Japan signalled - without prejudice for any further proposal - a number of items of particular interests to them in the negotiation, notably GIs' high level of protection and certain copyright-related matters for the EU and specific issues related to patents and industrial design for Japan. The Parties provided clarifications on the respective legislative provisions concerning a range of IP rights. They also exchanged information on certain domestic IP developments that may have an impact on the discussion in the FTA negotiation. As agreed in the first round, the Parties have started submitting each other additional information on certain selected IP issues.

Discussion Highlights / Questions and Replies

The meeting was then opened to the floor for general comments and remarks.

European Federation of Origin Wines asked what steps the EU intended to take to address the shortcomings of the wine agreement with the US. There are still major issues on semi-generics and traditional expressions.

DG Trade (PVM) explained that at this stage it was not in a position to confirm what will be in the chapter. However DG Trade - together with DG AGRI - noted the interest raised by the industry in addressing certain issues related to the Wine Agreement.

European Digital Rights underlined the need for justifying any possible IPR measure in the light of its capacity to contrast trade barriers. EDR also raised concerns about a possible privatisation and shift to self-regulation approaches in addressing beyond the border measures.

DG Trade (PVM) remarked that the Commission will address not only trade barriers but also other matters – e.g. of technical nature – where relevant to stakeholders. As to the concerns expressed vis-à-vis a possible “privatisation”, DG Trade clarified that it has no intention to take that path in the forthcoming discussion with the US. However, it reiterated the importance attached to enhancing cooperation with rightholders in the protection of their rights.

Transatlantic Consumer Dialogue sought clarification about the EU’s intentions regarding data protection in the pharmaceutical sector. In addition, TCD enquired on possible steps to be taken by the EU to address the problem of the lack of availability of content for the Visually impaired in the US (for instance in foreign languages). On the issue of injunctions against infringements of standard essential patents (namely in the area of telecommunications) and its impact in terms of competition rules, TCD wondered what will be the EU’s position in the forthcoming negotiations. Finally, as regards transparency, it was pointed out that a draft IPR chapter of the TTIP should be made public from time to time during the negotiations.

DG Trade (PVM) explained that “injunctions for patents included in standards” are indeed a topical issue at the moment that is analysed in contact with colleagues of DG COMP and that is relevant in the EU, the US, but also in China. It is, however, not certain whether the issue should be addressed in TTIP. Regarding the Visually impaired-related issue, DG Trade stressed that stakeholders can submit their input to the Commission services at any time, but that the issue may be addressed with the conclusion of the WIPO negotiations. The Commission’ efforts towards transparency were then recalled, including this meeting with Civil Society as well as the constant information provided to the European Parliament.

European Farmers noted that the opportunity to discuss any amendment related to the existing US Wine agreement should be considered carefully, given its still incomplete implementation. On the general issue of GIs, EF remarked that any progress with the US on this issue would have a positive impact on the state of GI negotiations at WTO level.

DG Trade (PVM) explained that the protection of GIs has been and will continue to be one of the most challenging issues under discussion with the US. Nevertheless, GIs remain a priority for the EU. A transatlantic solution would contribute greatly to address a source of constant tension in trade relations with the US and in multilateral frameworks.

European Apparel and Textile Confederation-EURATEX referred to certain problems faced in the US by EU SMEs of the clothing industry in regard to copyright protection of designs, especially for those companies in the fashion sector, where their IP has a short business cycle.

DG Trade (PVM) took note of the concerns raised and underlined the importance of stakeholders’ input.

Transatlantic Consumer Dialogue expressed concerns about the treatment of flows of scientific data and asked whether the Commission is considering in particular discussing possible provisions on the transmission of clinical trial data. TDC highlighted the difference of rules on data mining on the two sides of the Atlantic. Moreover, TACD signalled its preference for an IPR chapter bringing together the EU and US exceptions and limitations. They expressed concerns about TTIP becoming a global benchmark in enforcement measures (a “golden standard”).

DG Trade (PVM) invited TCD to submit additional information on specific issues of interest in the area of exceptions and limitations, such as data mining-related issues, but doubted that the TTIP would cumulate EU and US rules in that area. Regarding the flows of clinical trial data,

he noted that the issue was currently being discussed in court and that a judicial decision could bring clarity on the relationship between the different interests at stake, such as transparency and access to documents but also protection of privacy and the international commitments on data protection. DG Trade made it clear that the EU is not interested in making TTIP provisions on enforcement a golden standard model since such bilateral rules would not necessarily have a significant impact in terms of inspiring third countries to adopt the same standards.

Foundation for a Free Information Infrastructure asked whether the EU can provide a legal analysis of investor- to-State dispute resolution provisions in bilateral investments treaties and the competence of the European Court of Justice on this matter. FFII stressed the importance of openness as a human right recognised in the UN International Covenant on Social and Economic Rights and asked whether the Commission has adequately assessed the implications of such principle in terms of the public's participation to policy decisions. FFII also sought information about exception to patentability, especially with regard to software.

DG Trade (PVM) offered to refer the question to the DG Trade service dealing with the topic of bilateral investment treaties and ISDS, since this issue was outside of the scope of the meeting. On openness, it was suggested that the general question of trade policy raised by FFII – which was equally outside the scope of IPR discussions - should be addressed at higher political level. Regarding the issue of exceptions to patentability, DG Trade was not in a position to say if it will be put on the negotiation table by the US, but it would not be raised by the EU. In any event, the EU position would be in line with the existing EU legal framework.

European Telecommunications Network Operators' Association enquired about the presence of a chapter on audio-visual in the TTIP, as well as about how such issue could impact the IP chapter.

DG Trade (PVM) remarked that audio-visual related issues are indeed a very sensitive political issue. **DG Trade (HS)** referred to the recent press statement concerning the meeting between President Barroso and President Hollande: the culture issue will not be excluded as such from the discussion; however the culture exception would not be negotiated away. Regarding the link with IPR, **DG Trade (PVM)** noted that no link has been made between the two issues in previous trade negotiations and that – on the contrary – several IP right holders had approached the Commission to clarify that they did not consider their activity to be covered by the “cultural exception”.

European Generic Medicines Association reiterated the view that the TTIP should not be the means to cumulate the very high levels of patent protection already provided by the EU and the US.

DG Trade (PVM) considered that such cumulation of high standards could indeed, modify the balance that each of the systems had in place and was not a realistic concept.

IFPI Representing recording industry stressed that TTIP would not be the most appropriate place for enforcement standard setting and asked for further information on the EU's approach. As regards the EU interest in discussing substantive issues on copyright, IFPI wondered whether the Commission is considering any provisions outside the current norms in WIPO treaties.

DG Trade (PVM) observed that EU rules on enforcement are effective and so far no pressing enforcement issue with the US has been submitted to the Commission, other than an interest for the continued effective cooperation with the US on enforcement in certain third countries.

On copyright issues, DG Trade stressed the importance of ensuring US participation to WIPO treaties and highlighted the *acquis* as the usual fundamental frame for the discussion.

European Digital Rights wondered whether it is actually possible to negotiate a comprehensive IPR chapter without getting down the same road of ACTA.

DG Trade (PVM) stressed that that the IPR chapter in the EU-Japan FTA will not be a new ACTA. The EU has already successfully concluded FTAs comprising detailed IPR chapters without raising concerns similar to those stirred by ACTA.

European Farmers remarked that the involvement of Japan in other international negotiations (TPP) should be taken into account while negotiating a high level protection for GIs.

DG Trade (AT) explained that it monitors developments concerning parallel negotiations and agreed on their importance for the on-going negotiation with Japan on GIs.

European Apparel and Textile Confederation-EURATEX asked for additional information on the discussion concerning design protection in context of the first round.

DG Trade (AT) explained that the preliminary discussion in the first round had not dealt specifically with the sector of interest of EURATEX.

European Federation of Origin Wines enquired whether the Commission would be available to assist Japan at this important stage of its internal work on establishing a GI protection system.

DG Trade (AT) noted that the Commission services have already started providing expertise and clarifications on a number of aspects of the EU GIs *sui generis* system.

European Generic Medicines Association underlined that Japan offers one of the strongest patent protection worldwide and that any attempt to strengthen it by the means of the FTA would create problems rather than solving them.

DG Trade (AT) took note of the position expressed by EGMA.

ICMP music publishing asked for additional information regarding the discussion with Japan on copyright-related matters.

DG Trade (AT) referred to the opportunity to close some gaps between the EU *acquis*/international standards and the Japanese legislation on “related rights”.

Foundation for a Free Information Infrastructure asked whether the IPR chapter will include provisions on criminal sanctions.

DG Trade (AT) explained that the EU has no intention to lay down rules on criminal sanctions in the FTA.