



CIVIL SOCIETY DIALOGUE

## **MEETING ON SERVICES PROVISIONS IN FORTHCOMING US AND JAPAN NEGOTIATIONS**

**Date:** 24/06/2013

**Time:** 15:30 – 17:30

**Location:** Centre Albert Borschette, room AB-3B, 36, rue Froissart, 1040 Brussels

### **Key-note Speakers**

Mr Marco Dueerkop, Deputy Head of Unit, Trade in Services, DG Trade

Mr Piet Chalmet, Trade Negotiator, Trade in Services, DG Trade

### **Moderator**

Mr Olivier de Laroussilhe, Head of Unit, Information, Communication and Civil Society, DG Trade

### **Panel Presentation**

The **Commission (MD)** presented the TTIP negotiation with the **United States** on services. The importance of transatlantic economic relations was underlined and it was underscored how a significant untapped potential remained for EU service providers, noting also that the EU currently has a trade deficit with the US for trade in services. The EU had a number of key interests in the upcoming negotiations, and a general priority related to transparency – including not least on the regulation pertaining to the sub-federal level in the US. Other interests include specific sectors where EU service providers are strong and competitive, but currently may find themselves in a disadvantaged position, such as in sectors like transport - where the US maintains certain restrictions on ownership and on access to vital segments of the market - and other areas such as ICT.

Reference was also made to sectors where the regulatory environment differed, such as for financial services, and how it would benefit both sides to explore a common regulatory approach. This in particular applied to areas where the EU and US would set new standards for services that were currently being developed and further shaped in the coming years, as for example cloud computing. Finally EU services providers would benefit from access in areas such as professional services and – in general – from a smoothing of the regulations related to movement of personnel (Mode 4) including not least for highly skilled intra-corporate transferees.

On its side, the US had flagged interests so far in the area of audiovisual services and transfer of data. On the latter, the EU did not consider the negotiations to relate to data protection as such, but issues of data transfer are indeed important in the global economy and TTIP may play a useful role as standard setter in this regard. The US had also made reference to labour standards. The first round of negotiations was scheduled to take place in Washington in the week of 8 July, and two succeeding rounds of talks were planned for the rest of 2013. The EU had high ambitions for this negotiation which by its nature will be complex. Linkages with other on-going negotiations like TPP and TiSA will also need to be taken into account.

On the negotiations with **Japan** the **Commission (PC)** presented the main features of the 2<sup>nd</sup> round of negotiations that would take place in Tokyo in the following week. The negotiations were launched on 25 March 2013 after substantial preparations. The EU had outlined its key interests and these covered a broad range of the services activities. The potential benefits from a FTA were considered to be very significant, while it was also recognized that many of the barriers met by EU services providers in Japan had to do more with local specificities, difference in regulation and others issues like language than with explicit market restrictions. EU had also pointed to regulatory issues, such as the independence of the regulator in the area of telecommunications services. Nevertheless, in some areas, market access restrictions would clearly have to be addressed directly.

On its side, Japan had pointed to a few specific interests, such as solving issues relating to perceived barriers for intra-corporate transfer (Mode 4) and improved mutual recognition in relation to professional services.

The first round had indicated significant common ground and interest on both sides for progressing talks. As regards the structure of the agreement an outstanding question included whether to separate the provisions in a range of dedicated chapters, or - representing a clear preference of Japan - to use the so-called "negative listing" approach.

A third round of negotiations was foreseen to take place in Brussels later in 2013.

### **Discussion Highlights / Questions and Replies**

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

**European Broadcasting Union** asked, with reference to the announced exclusion of audiovisual services, which procedural steps were required if the Commission would ask for revised negotiation directives from the Council on this.

**Consortium of German public broadcasting ARD** followed up with a question on whether the audiovisual sector was fully excluded from the agreement/negotiations, and noted that a major concern in this context was how new services relating to audiovisual services would be covered. The **Confederation of British Industry** supplemented by asking how this issue had been covered in similar agreements, such as the EU Korea FTA, and if a parallel could be made.

**The Commission** explained - while noting that the mandate remained a confidential document - that the normal procedure under the Lisbon Treaty would apply in the case the Commission would ask for further considerations on the sector. The mandate had explicitly excluded the sector from the chapter on Trade in Services and Establishment, not from other chapters. It was also noted that the audiovisual sector was indeed very dynamic, which is one of the reasons behind the Commission's recent Green Paper on audiovisual media in the digital environment. The Commission noted that the solution in the EU Korea FTA had been a specific cultural co-operation protocol, but that such approach had not been considered for the present negotiations with the US.

**European Services Forum** noted that labour regulations was traditionally an EU concern, and sought information on what could be behind the US reference to this.

**The Commission** responded that reference had been made to certain budget airlines operating in Europe, and followed up by explaining how airlines in the US in some cases had a high degree of "union" representation. The EU position was that developing a competitive sector was important given the pressure from other global operators. Labour issues needed to be taken seriously and the Commission was in contact with unions to understand better the issues at stake.

**EuroCommerce** underlined its members have strong interests in both negotiations, and - in the case of Japan - referred in particular to barriers in the distribution sector.

**The Commission** confirmed that it had received similar information on barriers in the distribution sector, pertaining mainly to areas such as zoning restrictions, lengthy application procedures and general difficulties with transparency of the local regulatory regimes for the sector. The Commission encouraged EuroCommerce to present examples of such barriers in the US, including at sub-federal level.

**International Federation of the Phonographic Industry** specified that its interest in Mode 4 extended beyond the issues of intra corporate transferees, noting that services providers like musicians were often meeting disturbing barriers. It also referred to the importance of addressing barriers in the area of distribution and to issues relating to cloud computing and digital products.

**The Commission** encouraged industry to provide more details on the practical details experienced.

**European Services Forum (ESF)** highlighted the importance of services as evidenced by the work on value added and supply chains. It expressed a preference for negative listing, in particular in relation to the US, as it would provide the best way to get improved transparency of existing regulations and restrictions including at sub-federal level. It also agreed with the priorities set out by the Commission, and specified how for example European express delivery operators currently faced restrictions in the air transport sector. On another transport related issue, it expressed the hope that there could be some mutual interest to open the US dredging market. Expanding public procurements obligations in the area of services would also be of interest.

**ESF** also suggested looking at the APEC model for business visa and similar practical features like waivers, to facilitate improved Mode 4. The regulatory co-operation should be expanded with the participation of regulators, not least in financial services. Data transfer also needed to be addressed.

**European Banking Federation** underlined that mutual recognition of rules/regimes was essential and noted the requirements for solid regulatory dialogues. It suggested considering ways to expand such regulatory cooperation significantly. It also questioned whether regulatory cooperation could be made subject to dispute settlement provisions.

**The Commission** commented on the two interventions by noting that services and manufacturing are increasingly interlinked and that appropriate conclusions in terms of policy implications would need to be drawn. Similarly, the linkages to areas like public procurement commitments as markets and regulatory convergence was increasingly vital for an effective services market, in particular in relations between mature economies. It repeated the notion that data transfer was a prerequisite for the global economy and should be given a practical and focussed place in the negotiations. But this needed to be distinguished from data protection issues. It also confirmed that negative listing has some benefits in providing transparency, but it also was a challenge for federal systems in the EU and the jury is still out whether negative listing really produces more liberal end results. It took note of the suggestions to integrate regulatory cooperation fully in the negotiations.

**European Services Strategy Unit** questioned if any exemptions were made for public health services in the EU-US negotiations, and if this could imply that certain forms of commercial presence (Mode 3) would be left out or limited. It also inquired which categories of movement of personal would be covered by the negotiations with Japan, noting that EU already had GATS commitments.

**The Commission** referred to the Treaty obligation to continue to guarantee a high level of public services and to past practice in FTAs. On Mode 4 the Commission reported that Japan had pointed to intra corporate transfers as its main concern, and in particular to related implications of diverging practices inside the EU.

**The Commission** concluded the meeting by thanking the participants for their interest and active participation, and undertook to come back to the matters of the two FTA negotiations at a later point when the talks had developed further.