

CIVIL SOCIETY MEETING

# THE IMPACT OF THE LISBON TREATY ON TRADE POLICY

**Date:** 27 January 2010

**Time:** 15:00 – 17:00

**Location:** Centre Albert Borschette, room 4B, 36, rue Froissart, 1040 Brussels

## Key-note Speakers

Mr Jean-Francois Brakeland, Head of Services and Investment Unit, DG Trade, European Commission

Mr Brown Brown, Case Handler, Legal Aspects of Trade Policy Unit, DG Trade, European Commission

## Moderator

Ms Ramona Samson, Civil Society Coordinator, Sustainable Development and SPS Issues Unit, DG Trade, European Commission

## Introduction

In their *presentation attached hereunder*, **Mr Brakeland (JFB)** and **Mr Brown** drew attention to the main substantial changes that are brought about by the Treaty of Lisbon (LT). They mentioned the increased role of the European Parliament (EP) as having the biggest effect, linked mainly to its increased powers under the ordinary legislative procedure (OLP). After giving an overview of the old system, they also pointed out to the pending and forthcoming proposals by the Commission that will be adopted under the new system.

## Main Changes in/around trade policy

**JFB** highlighted the importance of the political dimension of any future trade negotiations. Before their initiation, the opinion of the EP will have to be taken into account, even though, technically speaking, it is still only the Council of the European Union (the Council) that gives negotiating mandate. Formally, under the LT, the EP has to be regularly informed about the progress of negotiations. The Commission is currently looking into the options how to further develop the existing practice now imposed by the treaty itself.

**JFB** underlined that the scope of the Common Commercial Policy (CCP) will now extend to Foreign Direct Investment (FDI) and all services and that except for very few commitments, unanimity will no longer be required under the CCP. Nevertheless, for certain agreements dealing with non-harmonized rules on the EU level an approval by the Member States (MS) might still be required. **Mr Brown** also explained the Commission's thinking on FDI, underlying the legal certainty as the guiding principle. **Mr Brown** then continued by explaining the differences between implementing and delegating acts under the LT and the possibility of the EP and the Council to supervise their adoption. **Mr Brown** also charted the practical implementation of the treaty-based obligation to frame the trade-policy into the broader EU foreign policy.

**JFB** concluded the initial presentation by highlighting that the new processes will include more actors, more complexity and longer lead-in times; all in a more politicized environment that leaves many questions opened as to the actual day-to-day implications that the LT might have on the EU's CCP.

### Discussion highlights, questions and replies

**BUSINESSEUROPE** asked about the voting procedure concerning delegated acts and the modalities concerning their revocation by the EP and/or the Council. **EUROCOMMERCE** questioned the impact of the LT to the GSP and anti-dumping regulations and whether there are any plans to open stakeholder consultation on their modifications. **L'Union Européenne du Commerce du Bétail et la Viande (UECBV)** asked how would the LT influence negotiations techniques within the WTO and secondly how is the trade commissioner going to interact with the High Representative Ashton.

In reply, **Mr Brown** underlined that delegated acts will necessitate the consent of both the Council and the EP and that, in practical terms, there remain questions as to how to proceed when one of the two institutions changes its mind after a delegated act was adopted. He pointed out however that any change will have to be explained and the Commission involved. He also explained that there will be legally imposed timeframe for the EP and the Council to react whenever the Commission is going to amend delegated acts. As to the regulations, **JFB** replied that reflections are still going-on and that a more horizontal approach will have to be taken.

With respect to the WTO representation, **JFB** underlined that the parliamentarians are already present in Geneva delegation and as such the LT does not bring about revolutionary changes. The major change is expected in relation between the Council and the EP and that, in case of contradicting guidelines, will require the Commission to find a compromise. In any event, the HR Ashton will have to be consulted and the collegiality within the Commission will apply.

**Danish Bacon and Meat Council** demanded what is the interpretation of "framework" for CCP under the LT. **The Association of World Council of Churches Related Development Organizations in Europe (APRODEV)** asked how the entry into force of LT will influence existing, currently negotiated and future negotiations and what will be the impact of the LT on association agreements. **The European Trade Union Confederation** asked how the LT will impact on trade delegations and their independence in the future EU embassies.

In response, **JFB** explained that all acts of legislative nature will have to be adopted by OLP with the notable exception of international agreements, where consent will usually apply. As to negotiations and existing agreements, **JFB** underlined that their revision will depend on how the EP and the Council will perceive them. Legally speaking, they remain valid. The example of the Columbian FTA was given as subject to potential further scrutiny by the EP. **JFB** also confirmed that DG Trade wants to make sure that there will be trade specialists at the EU embassies but that they will be subordinate to the ambassador.

**The European Community Shipowner's Associations (ECSA)** asked whether international maritime agreements will be subject to mixed competence and ratification and what will be the voting procedure. **Overseas development institute (ODI)** asked about the impact of the LT on the reciprocity principle. **The European Coalition for Cultural Diversity** questioned who is in charge of the evaluation of the risk associated with commitments in audiovisual sectors under trade agreements and if there is any meeting is scheduled on cultural cooperation. **Both ENDS** asked whether there is a common definition of FDI.

In reply, **JFB** explained that transport does not fall within trade policy and therefore will require mixed agreements although due to legislative activity on the EU level it might become an exclusive one. As to reciprocities, the LT exclusive competence for services opens other possibilities to the Commission in terms of instruments and objectives; an additional GSP for services or potentially waiver from LDC might be envisaged. As to cultural diversity, **JFB** stressed that cultural aspect is evaluated already when mandate is given but that in the extreme of cases the other EU institutions might intervene. As to the definition of FDI, there is not clear full definition. In the view of the Commission, it does not cover portfolio investment, but it does investment protection. As to mixed competence, provisional application of agreements allows the EU to have the overwhelmingly exclusive part of them to become effective as soon as approved on the EU level. **Mr Brown** confirmed that as to transport the complexity of the nature of commitments will have to be scrutinized in detail.

**The Confederation of British Industry** asked about the legality of existing BITs and the future EU action in that respect. The **European Centre for Development Policy Management** asked for more clarifications concerning the link between trade and foreign policy. In follow-up question, **ECSA** asked about the presence of parliamentarians during the negotiations. **The European Services Strategy Unit** was questioning whether the role of the national parliaments will increase or decreased due to the LT.

In responding, **JFB** confirmed the intention of the Commission to avoid any risk related to BITs even though, in the Commission's view, they remain valid under international law. As to the impact on development, **JFB** underlined the complexities of such exercise and the political dimension that trade-policy will take-on due to the involvement of the EP.

As to the physical presence of MEP in negotiations, **JFB** explained that due to the exclusivity of CCP, the MS will no longer be present during trade negotiations, but that both the Council and the EP will have to give instructions and control to the Commission. Therefore, there might be a new inter-institutional agreement between the EP, Council the Commission in order to raise the transparency.

With respect to the role of National Parliaments, **Mr Brown** underlined that the purpose of the LT is to increase the role of the National Parliaments, which will have to be informed about all legislative proposals, including those subject to the exclusive competence of the EU. The only difference will be that the NP will not be able to block legislative proposals under the CCP since the subsidiary principle does not impose here.

In the final questions, **ODI** asked whether non-market economy status is going to be revised under the current EU instruments. In reply, **Mr Brown** confirmed that a horizontal proposal on the conduct of implementing powers in general has to be adopted first and that specific measures concerning the trade-policy will have to be adopted in a separate act through the OLP. They are to be expected late-February, beginning March.

**The American Chamber of Commerce** questioned the possibility of a future BIT with India while **ESF** asked for more clarification on voting procedure with respect to trade-policy under the LT. In its follow-up question **APRODEV** asked whether the institutional agreement is going to be applied only to DG trade or to all Commission services.

In its final reply, **JFB** confirmed that a new negotiating directive will be needed if we want to include investment protection. As to impact on domestic policies, studies will be done depending on the demand and sensibilities of the MS and that new college will have to decide on a new institutional agreement. The new framework agreement will be negotiated by the Secretariat General on behalf of the entire Commission. **Mr Brown** concluded by stressing that with respect to the voting procedure, the mixed nature of agreements might evolve as the Commission legislates.