



REPORT

OF THE 15th ROUND OF NEGOTIATIONS FOR THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

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**REPORT OF THE 15th ROUND OF NEGOTIATIONS
FOR THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP**

(New York, 3rd -7th October 2016)

INTRODUCTION

The 15th Round of TTIP negotiations, which took place from 3rd to 7th October 2016 in New York, put a strong emphasis on the consolidation of text. Overall, there was good progress, particularly in some of the regulatory chapters.

DETAILS BY NEGOTIATING AREA

1. MARKET ACCESS

1.1 Trade in Goods: Tariffs and Market Access

Industrial Tariffs

The EU and the US have finished the bulk of the negotiations on removal of customs duties on industrial products. The Parties discussed possible improvements to their tariff offers that would increase the number of tariff lines that would be duty free upon entry into force. While no new offer is planned in the immediate future the remaining tariffs to agree upon are well defined and limited in number.

Agricultural goods

The session on agriculture consisted of three parts: the draft chapter on agriculture, tariffs and non-tariff issues.

As regards the consolidated text on agriculture, the Parties discussed their respective positions on outstanding issues further, most notably with regard to wine, spirits and export competition.

On tariffs, the discussion continued to focus on products within the 97% of lines covered by the second offer, with each side flagging specific export interests and requests to reduce proposed staging periods. Products identified as most sensitive were not reviewed.

With regard to specific non-tariff issues raised by the EU, the US was not in a position to present any new element.

Trade in Goods Chapter

The negotiators took stock of the outstanding differences in the Trade in Goods Chapter that have not been finalized and agreed to steps for resolving outstanding issues.

2. Public Procurement

As confirmed since the beginning of the negotiations, public procurement is a key EU offensive interest and priority in TTIP. Accordingly, the EU continued to pursue its work towards the common objective developed in the U.S.-EU High Level Working Group on Jobs and Growth (HLWG) during the 15th negotiation Round. Procurement was discussed over two days. As agreed in the HLWG, the aim is to create “substantially improved access to government procurement opportunities at all levels of government on the basis of national treatment”.

One of the fundamental pillars of the TTIP Procurement Chapter is the set of rules which public entities apply when they procure. Discussions on procurement during the 15th negotiation Round focused on these textual provisions. As set out at the launch of the negotiations, the starting point for textual discussions is the text of the WTO Agreement on Government Procurement (GPA) to which both the EU and the US are signatories. The text defines procedures which public entities apply when they procure, including transparency and non-discrimination which are fundamental principles in all procurement rules.

The discussions in the 15th Round allowed identifying common ground and advancement on drafting for a selection of the provisions. The EU underlined the importance of textual provisions which support transparency, non-discrimination and appropriate reflection of environmental and social considerations as well as labour rights in procurement procedures. As for transparency, the EU stressed that a single electronic access point to information on procurement opportunities and the appropriate use of electronic means for tendering would facilitate the participation of European SMEs in US procurement procedures, also with regard to procurement contracts at sub-federal level (States and cities). In this context the EU also highlighted that requirements for prior supplier registration should not create obstacles for access to information.

Discussions also covered the areas of framework contracts, review mechanisms and Public Private Partnerships, amongst others. In these areas discussions during the 15th Round allowed for further clarification of the legislative frameworks and practices on both sides.

1.3. Trade in Services

Cross-border trade in services

The two sides had a session dedicated to the text on cross-border trade in services. The discussions helped us to make further progress in the consolidation of the text in particular in the area of definitions. In a few other areas a path forward was agreed.

We also had discussions on mutual recognition agreements including the framework for future work on the recognition of qualifications as well as specific discussion of the fields of architects, engineering and auditing. Both Parties confirmed their commitment to achieve further progress in this area.

Financial services

Three full days of discussions led to further consolidation of text for certain provisions. We discussed a number of text provisions, including definitions, exceptions and institutional provisions.

The two sides had also technical exchanges on the respective offers. As a result, we concluded the review of the EU offer and most of the US offer.

1.4. Rules of Origin

The following issues were considered:

(i) 'Origin procedures' (Section B)

On the basis of legal texts presented by both Parties, the EU and US discussed the conditions to claim preferential status, the verification procedures and the requirements to deny the preferences.

(ii) 'General provisions' Part (Section A)

The Parties focused on cumulation scenarios and definitions for value rules.

(iii) Product Specific Rules

The Parties held first discussions on HS Chapters 1 to 24 which were exchanged prior to the Round. The Parties also compared the US thresholds for industrial products submitted before the Round. At this stage both Parties have tabled proposals on nearly all product specific rules.

Textiles Rules of Origin

Discussions followed on the basis of comparative tables on Product Specific Rules, identifying the degree of difference in substance between both proposals. The Parties also worked on bridging the gap between the different approaches to draft the rules. Finally discussions also focused on the specificities for verification of origin proposed by US and verification of other issues beyond preferences.

2. REGULATORY COMPONENT

2.1. Regulatory Coherence

The Parties continued discussions on Good Regulatory Practices and Regulatory Cooperation in a constructive manner and good progress was made in clarifying texts proposed and the underlying concepts; for GRP these included in particular provisions related to early regulatory planning, impact assessment and ex post evaluations, transparency. For regulatory cooperation these included in particular mechanisms to initiate regulatory cooperation, proposals from stakeholders and provisions governing regulatory cooperation between the Parties. The institutional framework for regulatory cooperation was discussed at Chief Negotiators' level.

2.2. Technical Barriers to Trade (TBT)

The Parties continued to discuss draft provisions of their respective text proposals on: transparency; the resolution of trade concerns; cooperation and institutional provisions, namely the TBT Committee to be created under TTIP; standards and conformity assessment.

On conformity assessment, the Parties continued to discuss how the certification of products done in the exporting Party according to the technical regulations of the importing Party could be accepted by the importing Party. Both sides continued to exchange information on how this system could work. The Parties also continued discussions on EU demands on the improvement of the US third party conformity assessment scheme applicable to electrical equipment, notably regarding double testing of components, the use of accreditation for the designation of conformity assessment bodies and the possibility to have a common mark to identify compliant products.

On standards, the Parties continued to discuss how transparency can be improved when their respective regulators are referencing standards in (support of) technical regulations, notably by making sure that the public is informed well in advance about their intention to use, request or develop a standard for a particular regulatory area. They also discussed the US request that standards developed by standards development organisations located in the US could provide presumption of conformity with the requirements of EU legislation. The EU explained that only harmonised standards developed in accordance with EU legislation can provide presumption of conformity and that, in fact, because in the EU standards are not mandatory, US manufacturers can already use US standards to place products in the EU market as long as they are able to demonstrate, on a case by case basis, that the products they are selling comply with the requirements of the applicable EU legislation.

The Parties also discussed the issue of increased participation of US experts in the development of European standards, as well as how to encourage cooperation between US and EU Standard Development Organisations.

Finally the Parties talked about how to build on the existing notification obligations of technical regulations and conformity assessment procedures established by the World Trade Organisation's Agreement on Technical Barriers to Trade, in order to make the process more effective, in particular by increasing the dialogue between the Parties on the notified proposals in order to address each other's comments and concerns.

2.3. Sanitary and Phytosanitary Issues (SPS)

During this Round negotiators discussed almost all of the proposed articles in the SPS Chapter: i.e. Import Checks, Audits, Equivalence, Certification, Application of SPS Measures, Approval Procedures, Import Checks, Animal Welfare, Anti-Microbial Resistance, Emergency measures, SPS Committee and Technical Working Groups, Transparency, Equivalence, Regionalisation and Science & Risk. Overall, talks were constructive and allowed for a good understanding of the main priorities and issues on both sides. This will lay the foundation for continued intensive engagement. Constructive discussions were held on Import Checks. Discussions on the EU's proposal on the Article on Application of SPS Measures to treat the EU as a single entity for SPS purposes offering a pragmatic way forward will require more discussion. The EU's proposal on approval procedures, aiming at a predictable and timely rapid procedure will also need further exchanges. The EU repeated its position on Animal Welfare. The EU further discussed cross-cutting elements for approval procedures with a view to ensuring that these are predictable, where these exist, and do not become trade-restrictive. US also provided some explanations on how they see Science and Risk being dealt with in the Chapter. The EU repeated its reasoning for the inclusion of the topic on Anti-Microbial Resistance in TTIP.

2.4 Sectors

Pharmaceuticals

Good Manufacturing Practices (GMPs) inspections

The state-of-play and the organisation of the evaluation of the US and the EU GMP inspectorates were discussed. In light of the progress achieved, the conclusion of a mutual recognition agreement of Good Manufacturing Practices (GMPs) inspections, by January 2017, is under consideration. There are however a number of matters still to be agreed/discussed between the Parties, notably as regard the scope of the provisions and operational implementation.

TTIP text for the pharmaceutical sector

The [EU](#) and the US proposals have been put side by side in order to identify commonalities. For some provisions, first attempts of common language have been discussed. The EU raised in particular its Article 4 and 5 on collaboration in

international organisations and implementation of international standards and Article 6.1 on medicinal products authorisation. Other issues discussed include the scope and definitions, the exchange of confidential information between regulators and the regulatory cooperation as well as the US proposals not covered in the EU text. As in the previous Round, the EU reiterated the importance of agreeing on solid regulatory cooperation provisions. On its Article 6, the EU stressed the need to maintain clear commitment to work in areas of strategic interest (Article 6.2) and collaboration on anti-microbial resistance (Article 6.3). The EU reiterated its interest to include veterinary products in the scope of the text.

Cosmetics

The EU proposal for an annex on [cosmetics](#) and the US text were discussed. The EU reiterated that in its view the scope of the TTIP provisions on cosmetics should be as comprehensive as possible in order to cover all products falling under the legal definition of cosmetics in the EU (some of those products are classified as over-the-counter (OTC) drugs in the US. On safety assessment of ingredients the EU noted that the EU text could provide for a good avenue for cooperation on cosmetics ingredients without any obligation to achieve any particular joint regulatory action. On alternative methods to animal testing, the EU reiterated its strategic interest to develop and recognise, for regulatory purposes, alternative methods to animal testing. The EU reiterated interest to work on standards of relevance for the sector. Discussions on international and bilateral cooperation took place as well as on the US proposals that are not reflected in the EU text. As in the previous Round, the EU reiterated the importance of agreeing on solid regulatory cooperation provisions and to maintain a clear commitment to work in areas of strategic interest. Discussions will continue at next Round.

Textiles

The US proposal on textiles and apparel regulatory text was tabled ahead of the Round. The EU proposal for an annex on textiles can be found [here](#).

There were detailed discussions on the US and the EU proposals. Issues discussed include exchange of information and possible cooperation on fibre names labelling, cooperation on safety requirements and conformity assessment procedures, and cooperation on standards of relevance for the textiles and apparel sector.

Cars

There was further discussion on safety-related aspects of automotive regulations and, most notably, on the preliminary discussion list on regulatory equivalence and harmonisation. The parties exchanged further detailed information on items pending further input and this work will need to continue before finalisation.

Updates were provided on respective developments on items for expedited bilateral harmonization and on activities to strengthen the effectiveness of the UNECE 1998 Agreement.

Furthermore, there was a first presentation of the draft sectoral Annex by the US, outlining provisions on the scope, regulatory cooperation, research cooperation and bilateral harmonization, as well as cooperation in the context UNECE 1998 Agreement.

Medical Devices

The EU proposal for an annex on [medical devices](#) was discussed in detail, as was the US text proposal. The EU text comprises the main elements discussed with the US during the previous TTIP negotiation Rounds (the unique device identification, the regulated product submission and a place holder on the single audit of quality management systems. The EU text proposal contains additional elements which have not been discussed under the TTIP in the past but the EU considers important from a regulatory perspective, namely cooperation on exchange information on non-compliant medical devices and cooperation on standards.

The EU and the US proposals for an annex on medical devices have been put side by side in order to identify commonalities. For some provisions, notably the unique device identification, the regulated product submission and the single audit first attempts of common language have been discussed. Article 4 and 5 on collaboration in international organisations and implementation of international standards were also discussed in detail. Other issues discussed include the scope and definitions, exchange of confidential information between regulators, cooperation on standards, regulatory cooperation as well as US proposals not covered in the EU text. As in the previous Round, the EU reiterated the importance of agreeing on solid regulatory cooperation provisions and to maintain a clear commitment to work in areas of strategic interest.

In addition, EU provided an update on the state-of-play of its new medical device Regulations, indicating that the two texts were agreed by the co-legislators in mid-June.

An update on the work of the International Medical Devices Regulators Forum was also provided.

ICT

The Parties discussed the textual proposal of the US which includes provisions on e-labelling, e-health – regarding the development of an international patient summary-, cooperation on market surveillance for radio equipment, encryption and e-accessibility. The EU welcomed the proposal, which had been tabled already in July, and posed questions in order to clarify its scope and the set of obligations that it would impose on the Parties. The EU showed its openness to collaborate in areas of mutual interest, such as market surveillance for radio equipment, e-accessibility while noting the challenges present for other areas such encryption or e-health which are under the competence of the Member states and where the EU cannot commit to any regulatory outcomes. On e-labelling the EU noted that it cannot commit to a regulatory outcome but it noted that there are indeed initiatives addressed at facilitating regulatory compliance by electronic means.

Engineering

The US and the EU discussed the EU textual proposal on engineering, notably questions regarding how an Engineering Annex could fit into the overall Agreement and in particular its relation with the TBT Chapter. The US raised concerns regarding the expansive regulatory scope of the EU proposal, noting the multiplicity of US Agencies and regulations covered by the EU proposal, and questioned its relation to separate horizontal TTIP provisions on regulatory cooperation and TBT. The EU noted that the proposed regulatory cooperation activities are well defined and based on the input received during the consultations with different stakeholders.

Chemicals

The major part of the Round was dedicated to discussions on the EU text proposal for a Chemicals Sector Annex. The EU informed that the question of whether this would become an Annex to the Regulatory Cooperation Chapter or a stand-alone Chapter remained open for a final decision to be taken later. Despite not having submitted any comments or questions in writing after the last Round, the US raised a number of questions on the EU text proposal, mainly for clarification, and informed that it was still working on its own proposal.

As during the previous Rounds, progress with the pilot projects on priority chemicals and classification and labelling of substances was reviewed. The US informed that some pending information related to one of the pilot projects on the assessment of priority substances would be published soon.

The technical analysis concerning differences in the classification rules for mixtures in Safety Data Sheets (SDS) was completed and it was agreed to start a broad consultation

with Member States and stakeholders to gather feedback on whether the identified differences lead to problems in practice.

Pesticides

The EU and the US briefly reviewed the possible objectives for sectorial cooperation on pesticides. The EU called on the US to soon present its legal draft. Only then it will be possible to gauge the ambition, feasibility and value-added of regulatory cooperation in this area. The EU identified cooperation on minor uses as particularly promising. Contacts between the EU minor uses office in Paris and the US IR-4 project have already been established. The EU is looking forward to receiving the US legal draft soon.

3. RULES

3.1. Trade and Sustainable Development

The 15th Round saw a full week of constructive discussions on Trade and Sustainable Development (TSD), addressing labour, environment and cross-cutting issues. The negotiating group continued to work towards the integration of the EU and US text proposals.

On labour, this work focused on provisions related to:

- the core labour standards and other instruments of the International Labour Organisation (ILO). In this context, the group also looked closely at the EU proposal concerning the development of "thematic articles" on each of the core labour standards, e.g. with regard to forced and compulsory labour,
- the levels of labour protection in domestic laws and their implementation,
- cooperation on trade-related labour matters, both between the EU and the US and with respect to third countries. Both sides confirmed the importance of building on recent positive experiences, such as the successful cooperation on the preparation of the 2nd stakeholder forum of the Myanmar Labour Rights Initiative (29-30 September 2016).

On environment, the group actively worked towards the integration of text with regard to the provisions concerning domestic levels of protection and the effective enforcement of, and non-derogation from, domestic laws, as well as on the sustainable management of fisheries, including the fight against illegal, unreported and unregulated (IUU) fishing. Detailed exchanges also took place on the EU's proposal on the conservation and sustainable management of wildlife and forests, including on combating illegal trade in wildlife and in timber products. Intensive discussions continued on each side's proposals as regards multilateral environmental agreements (MEAs).

These talks allowed the EU and the US to bring their respective positions closer, and to clearly identify the areas of convergence as well as the points where views differ.

The group agreed to follow-up on various areas inter-sessionally, including on the EU proposals on biodiversity and management of waste and chemicals.

On cross-cutting issues, the group continued exchanges on institutional matters, with regard to both the EU and the US current practice in existing FTAs and to proposals for TTIP, notably with a view to the text tabled by the EU for the institutional chapter. The EU confirmed that it intends to complement this with dedicated provisions on the institutional set-up for the TSD chapter. Both the EU and the US underlined the importance of including in TTIP provisions ensuring effective interaction with civil

society and gave examples of their respective experiences with FTAs that are already in force.

3.2. Trade in Energy and Raw Materials

The EU and the US had 2 days of intensive negotiations.

The EU stressed that without a written text from the US it will not be possible to meet the goal of delivering consolidated texts by the end of the current US administration, where possible.

A separate discussion was focussed on possible horizontal provisions from the Trade in Goods chapter, dealing with import and export monopolies, transit and import and export pricing – all provisions that may be relevant for trade and investment in energy and raw materials. The two sides agreed that further legal work is required by the two sides in fine tuning draft texts in these provisions.

The two Parties continued the discussion that started in July on the EU draft provision dealing with third party access to energy pipelines and grids also involving experts from the US Department of Energy (DOE).

The EU proposals that deal with the cooperation between the US and the EU in the area of energy and raw materials in general and with respect to renewable energy and energy efficiency in particular were also discussed. It was agreed that in the coming weeks, the EU and the US will discuss certain issues further. Both sides aim to develop or refine energy-specific and energy-related provisions, as appropriate, by December, without prejudice to where they may be housed in TTIP.

3.3. Small and Medium-Sized Enterprises

Discussions are based on a full consolidated text.

Most of the text has already been agreed, notably preamble, provisions on cooperation, provisions on information sharing, and institutional set up. However, issues that relate to other areas of TTIP negotiations which are still ongoing remain in brackets also in the SME chapter.

We made good progress on a new article that refers to other areas of TTIP which are particularly important for SMEs.

We also discussed our ongoing cooperation activities.

3.4. Customs and Trade Facilitation

During the 15th Round of negotiations the EU and the US were able to make further progress in several areas of the text of the chapter, on topics such as the use of information technology and electronic payment for import, export and transit operations, the documentation and data requirements for such operations, rules governing the release of goods and the development of single window systems for the electronic submission of documentation and data by exporters or importers.

Discussions also touched upon topics proposed by the EU which would benefit from deeper transatlantic customs cooperation, such the joint development of authorised operators programmes, efforts to harmonise data requirements from the EU and the US, and work on the development of single windows on both sides of the Atlantic.

The Customs and Trade Facilitation and the Trade in Goods groups also made further progress on issues such as procedures for temporary admission of goods and the customs treatment of goods returned after repair.

3.5. Intellectual Property Rights, including Geographical Indications

The 15th Round saw 2.5 days of discussions on IPRk, focussing on the areas with text proposals. There was good progress towards consolidated text, with considerable areas of common interest.

During the Round discussion the Parties were able to eliminate a number of brackets in the previously-discussed texts on International Agreements, General Provisions, Cooperation and Plant Varieties. The parties are preparing technical updates of these texts reflecting what has been agreed during the Round.

The most advanced and closest to agreement (very few brackets) are texts on International Agreements and on Cooperation. The remaining text that is already on the table, on IPR Border Enforcement, should be available in “consolidated” form by end-October. IPR Border measures were not discussed during the Round but the Parties have agreed to schedule an intersessional DVC on this topic with the relevant experts present.

At the beginning of the Round the US also tabled its text proposals on Trade Secrets, on SMEs and on Designs. The EU gave some preliminary reactions but will need to consult internally and provide reactions in writing intersessionally. All these texts tabled by the U.S. appear, on a first assessment, to be broadly compatible with EU acquis and practice and prima facie it seems that the EU could potentially accept to work on the basis of these texts, proposing necessary adaptations where appropriate.

Geographical indications were briefly discussed at the level of Chief Negotiators and Leads with both sides reiterating their positions.

3.6. Investment Protection

On investment rules, the discussions focused on common provisions (definitions; performance requirements; compensation for losses; expropriation; transfers; senior management and board of directors; denial of benefits) with the aim of further clarifying the respective drafting choices and policy objectives, and identifying further areas of conceptual convergence. Discussions also covered a few other provisions, such as subrogation and observance of written commitments/investment agreements.

On investment dispute resolution, some progress was made in those parts of the respective text proposals on which both sides have similar conceptual and textual approaches, or in identifying shared objectives and possible future drafting solutions. The discussions focused, inter alia, on scope and definitions, provisions relating to the amicable resolution of disputes, mediation, procedures for consolidating multiple claims, provisions for the early dismissal of unfounded claims, the role of the non-disputing Party to the Agreement, the appointment of experts to report on environmental, health, safety or other matters, the interrelationship between the investment dispute resolution rules and state-to-state dispute settlement proceedings, the applicable law provisions, available remedies, parallel claims, transparency, and ethic requirements for adjudicators.

3.7. State to State Dispute Settlement

The negotiations concerning the state-to-state dispute settlement chapter are at an advanced stage with roughly one third of the provisions agreed and a significant number of provisions in which only smaller issues still need to be solved. Thus, the centre of discussion shifts towards the outstanding points in which the EU and the US have, in some cases, opposite positions, partially reflecting the discussions in the WTO negotiations concerning the review of the Dispute Settlement Understanding.

During Round 15, the discussion on some technical issues were progressing, though none of the more sensitive issues could however be solved so far. There was also a short discussion on specific provisions concerning dispute settlement in the area of financial services and on the EU proposal concerning mediation. Both sides agreed on further inter-sessional work.

3.8 Legal and Institutional Issues

The EU and US side had good discussions on a number of horizontal legal issues, such as definitions, the initial, administrative/institutional and final provisions of TTIP and exceptions. The discussions centred on definitions and institutional provisions regarding the administration of the Agreement. Both sides agreed to start consolidation of textual

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proposals on administrative/institutional provisions and expressed their desire to see solid provisions on exceptions in TTIP. The EU will strive to table exceptions later this year.