



# **The Twelfth Round of Negotiations for the Transatlantic Trade and Investment Partnership (TTIP)**

**Public Report – March 2016**

**REPORT OF THE TWELFTH ROUND OF NEGOTIATIONS  
FOR THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP**  
(Brussels, 22-26 February 2016)

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## SUMMARY

Discussions during the 12<sup>th</sup> round of negotiations on the Transatlantic Trade and Investment Partnership (TTIP) took place in Brussels between 22<sup>nd</sup> – 26<sup>th</sup> February and covered all three pillars of the agreement – i. e. market access, the regulatory cluster and rules. As part of the overall intensification of talks, this round stretched into a second week as the US and EU exchanged government procurement offers and continued discussions on rules of origin as well as intellectual property rights.

During this round, two of the three pillars of TTIP were subject to a particular thrust, i.e. regulatory cooperation and rules.

The regulatory pillar saw an exchange of new textual proposals on regulatory cooperation by the EU and US, aimed at refining ideas about how to create a system within TTIP which facilitates current and future regulatory cooperation in both manufacturing and services. Parties also discussed the EU's revised draft chapter on good regulatory practices as well as all other regulatory issues, i.e. technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS) and the nine industry sectors under consideration.

In the rules silo, both sides now have on the table their respective proposals for investment protection. The EU presented its new and reformed approach to investment protection and investment dispute resolution for the first time during this round. Discussions took place in an open and constructive atmosphere. With regard to sustainable development, the US tabled its proposals on labour and environment, in response to the EU's previous proposal for a sustainable development chapter, and negotiators turned the spotlight on a detailed examination of each side's proposal. Parties also had good discussions on other parts of the rules silo, such as competition, customs and trade facilitation, state to state dispute settlement and SMEs, amongst others.

Last but not least, the EU and US discussed market access areas, most notably services, tariffs and public procurement. On procurement, there was an exchange of offers, followed by two and a half days of discussions between the negotiating teams, on both the offers and the text of the chapter

Finally, Parties agreed on accelerating their work between negotiating rounds with a view to picking up the pace of negotiations at large. Two additional fully fledged negotiation rounds are planned between now and the summer break. The pivotal and overarching objective is to negotiate an ambitious, high standard TTIP agreement that

responds to both EU and US interests. The EU reiterated its intention to ensure substantial progress be made in all three pillars of the agreement by the summer break.

## **1. Market access**

### **1.1 Trade in goods: tariffs and market access**

#### ***Non-agricultural goods***

On tariffs, parties discussed products that might be subject to different phase-out timings due to their different nature.

Negotiators also continued their discussion on the **trade in goods** articles of the Agreement, which build upon international trade rules regulating the trade in goods between the parties. Both the EU and the US already share many important principles. Work during the 12<sup>th</sup> round focussed on ensuring compatibility of certain proposed text, i.e. concerning classification of goods for customs purposes, prohibition of import and export restrictions and trade in remanufactured goods, with respective domestic laws.

In a joint meeting with the Customs and Trade Facilitation negotiating group, the negotiation teams discussed possibilities to ensure a similar scope for each party's respective systems for the treatment of goods returned after repair as well as for duty free treatment of temporarily imported goods.

#### **Agricultural goods**

Discussions during this round centred upon three elements: tariffs, text on agriculture and non-tariff issues.

Regarding tariffs, specific export interests were discussed, with requests to reduce proposed staging periods. Products identified as most sensitive were not reviewed. The EU noted that the ambition level on tariffs will eventually depend on that for the agreement as a whole.

On the agricultural chapter, a first substantial review was conducted, which allowed to identify key areas of convergence and divergence. In that context, the EU recalled its intention to include rules on wine and spirits building upon the existing bilateral agreements, and covering *inter alia* the protection of EU and US wine and spirits names (including the exclusive use for EU producers of 17 names considered semi-generics by the US), winemaking practices, labelling rules and certification. In addition, the EU presented a textual proposal on specific regulatory provisions on labelling for spirits drinks.

Finally, the two sides discussed specific non-tariff issues related to agriculture and possible solutions.

## 1.2. Public procurement

Public procurement is one of the main areas of offensive interest and priority for the EU in TTIP. It is a unique opportunity to substantially increase market access opportunities both at federal and state level to the US public procurement market and to ensure EU companies are treated on an equal, non-discriminatory footing when bidding for public contracts.

During the 12<sup>th</sup> negotiation round procurement was discussed over two and a half days and the EU continued to pursue the shared EU-US objective developed in the U.S.-EU High Level Working Group on Jobs and Growth (HLWG). The objective in procurement is to create “*substantially improved access to government procurement opportunities at all levels of government on the basis of national treatment*”. The discussions during this round covered both market access as well as the provisions for the procurement chapter text (procedures which public entities apply when they procure). As for market access, the discussions focused in particular on the first offers on Government Procurement which have been exchanged between EU and US.

Apart from first offers on market access, the discussion on market access continued on the basis of the EU's questions on the following topics, in particular: newly introduced restrictions in the US which affect market access for European suppliers (such as the FAST Act in the field of US Department of Transportation), expansion of market access commitments both at Federal and State level as well as legal framework for Federal funding of US infrastructure procurement (which is covered by US domestic preferences).

As for procurement procedures, the text proposal under discussion contains proposals made both by the EU and US. Specific discussion took place on possibilities to facilitate participation by SMEs in procurement opportunities, for example, by improving transparency of procurement opportunities and by exploring mechanisms to assist companies by establishing a "help desk" or contact point for informal complaints. The EU continued to underline the need to improve access to procurement contracts within States. The EU has in place a single electronic point of access for procurement opportunities and has since 15 January 2016 in place also an automatic tool for translations of tender notices in English and all other languages.

In general, discussions on the text proposal allowed to further clarify positions and to identify areas for common ground with a view to next steps. For instance, the EU underlined again the importance of properly reflecting environmental considerations in procurement procedures. The starting basis for textual discussions is the text of the WTO Agreement on Government Procurement (GPA) to which both EU and US are signatories.

### 1.3. Trade in services and investment

During the 12<sup>th</sup> round the EU and the US covered the following areas: cross-border trade in services, liberalization of investment and rules related to: financial services, postal and express delivery services, direct selling, recognition of professional qualifications, domestic regulation, telecoms and e-commerce. There was also a short exchange on follow-up issues related to market access, during which the EU and US acknowledged that certain services, including public services, play a special role for citizens.

As regards **liberalization of investment**, negotiators had one day of discussions centred upon definitions, market access, national treatment, performance requirements and senior management as well as board of directors. Both sides have engaged in an in depth comparison of their respective approaches, with a view to identifying areas that would require further substantive discussion in future rounds.

Moreover, there were further exchanges related to the consolidation of the chapter related to **cross-border trade in services**. The discussions covered movement of natural persons as well as maritime transport and aviation.

As regards **financial services**, the EU and the US agreed on the architecture of the financial services chapter. Furthermore, work on the consolidated text started. Negotiators made progress with respect to definitions, scope, and rules and exceptions related to financial services.

The EU and the US also discussed the approach to **domestic regulation**. The EU aims at tabling the textual proposal before the next TTIP round.

Based on the EU and US proposals tabled for this round, there was a discussion on **delivery services**. Given the EU and US joint interests in this sector, the two texts have many things in common, which should facilitate the consolidation of the two texts.

The US presented its proposal on **direct selling** and stressed its benefits for SMEs. The EU expressed a preliminary interest in including provisions on direct selling in TTIP but stressed the need to further consult on the proposal.

The EU and the US made further progress in the negotiations related to the framework for agreements on **mutual recognition of professional qualifications**. The focus was on finding an adequate mechanism to ensure the agreement is compatible with the EU and US regulatory systems respectively.

The Parties had discussions on all proposals on **telecommunications services** and focussed in particular on obligations for major suppliers and the coverage of the telecommunications chapter (for instance the question of whether and how new telecommunications should be covered).

Discussions on **e-commerce** covered all proposed provisions except data flows and data localisation where the EU has not presented a proposal. This included in particular in-depth discussions on e-signatures, authorisation procedures for online services, non-discrimination of digitally transmitted content, direct marketing communications (spam), customs duties on electronic transmissions and online consumer protection.

#### **1.4. Rules of origin**

The overarching objective in this group is to define the rules on origin of products benefitting from preferential treatment under the agreement. The following issues were discussed:

##### **(i) US proposal on 'Origin procedures' (Section B)**

The US presented their proposal on Section B which was followed by a question/answer session. The Parties discussed the need to find compromises to make the position of the Parties closer and different options were considered.

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

The EU presented some proposals for compromise texts on provisions for which both parties share similar approaches, such as the direct transport rule / non-alteration rule, accessories, spare parts and tools, packing and packaging materials, etc.

##### **(iii) Product Specific Rules (PSR)**

The Parties continued the comparison on the PSR texts exchanged during the previous Round.

##### **(iv) Short discussions followed also on the EU approach to fraud cases.**

#### ***Textiles rules of origin***

Discussions took place on the following issues:

(i) the standard approaches of both Parties to Product Specific Rules of origin (PSRs), and some other horizontal elements of the Parties' respective systems, such as tolerances (maximum value/weight of non-originating materials that may not exceed the product specific rule requirements), origin quota derogations (more relaxed rules of origin applied to specific products under a cap) and cumulation (the possibility to use yarns or fabrics from within the free trade area or from specific third countries).

(ii) provisions on 'anti-circumvention' and 'information sharing' for the textile and clothing sector (cooperation of the Parties on origin verification and mutual assistance against infringements and fraud of legislation on origin issues – preferential and non-preferential origin) .

The Parties will be in touch on the possibility to exchange texts on Product Specific Rules for the next Round.

## **2.1. Regulatory coherence**

Parties discussed both the US textual provisions on regulatory cooperation and the EU revised draft chapters on regulatory cooperation and good regulatory practices, respectively. On regulatory cooperation, the EU considered the proposals an overall good basis for further talks. Each side asked a number of questions, including on objectives and scope of the cooperation, as well as on the involvement of regulators and stakeholders. On good regulatory practices, the EU presented its revised draft chapter explaining its main rationale: Identifying common practices in regulation development to maintain high levels of protection, while facilitating trade and investment. Both sides agreed to intensify inter-sessional work in the run up to the next negotiating round with a view to clarifying outstanding issues, and to consolidate the respective texts.

## **2.2. Technical barriers to trade**

Discussions during this round tackled a set of issues related to: i) transparency of the procedures followed by public authorities when selecting standards for use in support of technical regulations, ii) cooperation between EU and US standards development organisations in order to facilitate participation of technical experts of the other Party, iii) use of standards of the other Party when developing new standards or when considering new standards for incorporation in technical regulations, iv) possibility for any interested persons to submit proposals for the development of common US/EU standards, and v) roles and functions of the Technical Barriers to Trade Committee under TTIP.

### ***Transparency in standards setting***

The EU and the US discussed how to increase transparency in the procedures used to incorporate standards by reference, in the case of the US, and in the procedures to request standardisation organisations to develop a standard in support of regulation, in the case of the EU.

### ***Cooperation between US and EU standards organisations in order to increase stakeholders' participation in standards setting***

The EU presented the idea of encouraging cooperation between EU and US standards development organisations in order to facilitate access of experts of the other Party to the relevant standardisation organisations.



***Consideration of the standards of the other Party in the development of new standards and for incorporation by reference in technical regulations***

The US and the EU share the objective of considering each other's standards: in the case of the EU when requesting European Standards Organisations to develop harmonised standards, and in the case of the US when referencing standards in Agencies' technical regulations.

***Stakeholders' proposals on cooperation on standards***

The EU presented the idea of creating a process by which stakeholders could put forward ideas which, if deemed appropriate by the relevant regulators, would trigger work aiming at developing common standards.

***Role and functions of the TBT Committee, cooperation and resolution of trade concerns***

The US and the EU noted shared interests regarding the role and functions of the TBT Committee under TTIP and also on fostering cooperation among governmental and non-governmental organisations in the field of technical regulations, conformity assessment, accreditation, standards, metrology and conformity assessment.

The most important output of the Round was the agreement of both parties to work on the consolidation of texts on standardisation, cooperation in the field of Technical Barriers to Trade, conformity assessment, and the roles and functions of the Technical Barriers to Trade Committee.

### **2.3. Sanitary and phytosanitary issues**

During this round negotiators discussed proposed articles on regionalisation, audits, certification and anti-microbial resistance to map out objectives and possible ways forward. Discussions saw a deepening in analysis for some annexes, most notably on regionalisation, audits, and certification. Parties largely focussed on explaining the text and underlying objectives and concepts of each side. It was agreed to have an inter-sessional discussion before the next round.

### **2.4 Sectors**

Nine sectors have been identified for looking at how we could enhance regulatory compatibility and could represent significant gains for industry, regulators and citizens. Discussions are led by the respective EU and US regulators in these sectors. It is the

declared overall aim to define more concretely what can be achieved in terms of greater regulatory compatibility in each of the nine sectors.

The sectoral discussions are highly technical due to the novelty and complexity of the exercise. Please find a more detailed report on the developments during the 12<sup>th</sup> negotiation round by sector below.

### *Pharmaceuticals*

Regarding **Good Manufacturing Practice (GMP) inspections**, regulators from both sides provided an update on the work carried out by the task force that is in charge of assessing the equivalence of EU and US GMP inspection systems. Discussions identified tasks to be carried out in the coming months and there was agreement to pursue efforts towards the mutual recognition of respective GMP inspections.

The EU presented a proposal for strengthening regulatory collaboration and harmonisation efforts for **generic medicines**<sup>1</sup>, which entails the following objectives: (1) EU and US participation in international regulatory cooperation activities including in the information sharing pilot initiated in the framework of the International Generic Regulatory Program (IGDRP), (2) harmonisation of guidelines allowing to reduce the number of in vivo bioequivalence studies and (3) increased harmonisation requirements of clinical data requirements for complex generics requiring the performance of pre-clinical tests and clinical trials for their authorisation. The opportunities for collaboration identified in the EU proposal are to be further discussed during the next rounds.

Regarding **Common Standards for Unique Identifiers**, the EU provided an update on the EU Delegated Act laying down detailed rules for the safety features appearing on the packaging of medicinal products for human use that was published on 9 February 2016. There was agreement to exchange technical information on this matter before the next round.

On the **exchange of confidential information between regulators**, discussions will continue on the means to establish a legal framework allowing the exchange of confidential information including trade secrets between regulators.

Short updates took place on the following topics: recent developments and future activities in the framework of the International Council for Harmonisation of Technical Requirements for Registration of pharmaceuticals for Human Use (ICH), Parallel

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<sup>1</sup> [http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc\\_154172.pdf](http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154172.pdf)

Scientific Advice by EMA and FDA, biosimilars including the development of FDA guidance on naming and labelling and Pediatrics.

### *Cosmetics*

Experts continued to discuss mutual interest in enhanced cooperation within the "International Cooperation on Cosmetics Regulation (ICCR) process. The EU proposal for a strategy for **strengthened international cooperation** in cosmetics regulation presented at the ICCR) in November 2015 will continue to be discussed during 2016. The US currently holds the ICCR Presidency.

Regarding **cooperation on risk assessment**, in November 2015, the US Food and Drug Administration (FDA) published two draft guidance documents of relevance for EU cosmetic producers 'Over-the-Counter Sunscreens: Safety and Effectiveness Data, Guidance for Industry' and 'Nonprescription Sunscreen Drug Products – Content and Format of Data Submissions to Support a GRASE Determination Under the Sunscreen Innovation Act'. US and EU approaches differ fundamentally but the two Parties are discussing how to continue expert level discussions on EU and US safety assessment methods for cosmetics ingredients.

On **alternatives to animal testing (ATMs)**, the cosmetics text in the Trans-Pacific Partnership (TPP) indicates that the use of ATMs is recommended when those are available. ATMs are though not sufficient to demonstrate safety of sunscreens ingredients in the US (carcinogenic studies are recommended).

There were no detailed discussions on cosmetics labelling (mostly because dual labelling is allowed).

### *Textiles*

The textile regulatory meeting was constructive and areas of common interest were identified (textile labelling, safety aspects and standards).

On **fibre names labelling**, the ultimate objective remains that both administrations coordinate views within respective processes for the designation of new fibres names in order to give, to the extent possible, the same name to the same fibre (to reduce labelling adaptations).

Regarding **care labelling**, the EU asked for an update on the 2012 Federal Trade Commission (FTC) proposal on care labelling (that would allow manufacturers to be able to use either ASTM care symbols or, as an alternative, ISO care symbols).

On **flammability testing**, the EU asked for an update on CPSC (Consumer Product Safety Commission) advance notice of proposed rulemaking that enquires whether the flammability test method (i.e. sampling conditioning) defined in the US rule (16 CFR part 1610) should be amended. The CPSC work programme 2016 has been approved on 24 February<sup>2</sup> and in that work programme it is scheduled that CPSC staff produces a "briefing package on the Silk Petition". The briefing package normally includes different options to be considered by the CPSC Commission (one of the options could be advancing with the notice of proposed rulemaking).

Discussion on the objective to promote **cooperation on non-regulatory business standards** with a view to achieving a higher level of convergence in this area took place. This could include promoting cooperation between relevant EU and United States standardisation organisations, at the most appropriate level.

Additional areas for future cooperation may still be identified.

### *Cars*

Regarding possible actions to take with regard to **specific regulatory measures**, the EU and US held a constructive and detailed technical discussion based on the EU proposal on equivalence, equivalence plus and/or expedited harmonisation deliverables based on test cases and follow-up discussions (safety aspects of automotive regulation). The parties exchanged detailed information on each of the issues, agreeing that more detailed inter-sessional work on technical details would be needed. In general, there was a certain level of commonality in the evaluation provided, with crashworthiness continuing to be the most complex issue. There was also exchange of points of view regarding the UN 1998 Agreement process, with the EU side open to improve the transparency aspects.

The two sides gave updates on the areas proposed for **expedited bilateral harmonisation**:

- Adaptive front lighting – common work to be developed based on NHTSA research
- Automatic emergency braking system – the process in EU has been launched aiming at a Commission's proposal. There is ground for exchange of information and common work (voluntary agreement in the US)
- Seat-belt interlocks – exchange of information to be pursued.
- Regarding work in the UNECE, the two sides exchanged information on the state of play of the trilateral paper and Geneva process, which will hopefully be

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<sup>2</sup> <http://www.cpsc.gov/Global/About-CPSC/Budget-and-Performance/2016OpPlan.pdf>

approved in the WP29 session in March 2016.. For the implementation process, the sides will prepare an evaluation of the implementation of existing Global Technical Regulations and pending work on Global Technical Regulations and debate priorities for future work (with Japan).

### *Medical devices*

Experts from the European Commission and experts from Member States (UK, Ireland) continue observing the international **Medical Device Single Audit Programme (MDSAP) Pilot**. Poland will also join. A review of the EU experience in the pilot will be made at the end of 2016 to consider further steps. The EU was asked to take further steps to implement the International Medical Device Regulators Forum (IMDRF)<sup>3</sup>, Medical Device Single Audit Programme guidance documents and to implement the single audit<sup>4</sup>.

The EU is envisaging provisions on **Unique Device Identification (UDI)** (traceability system) aligned with the International Medical Device Regulators Forum (IMDRF) UDI Guidance in the framework of the revision of the medical device legislation. Technical exchanges are taking place to ensure compatibility and interoperability of the EU and US UDI databases.

On **regulated product submission (RPS)**, efforts regarding the development of a harmonised model format for data submission are being made at the International Medical Device Regulators Forum (IMDRF). Both Parties are currently implementing a pilot/testing of the Table of Contents agreed at the IMDRF. Depending on the outcome of this testing phase, Parties will decide on further steps.

The EU updated the US on the state of play regarding the revision of EU legislation (draft Medical Devices and draft In Vitro Diagnosis Regulations) and next steps in the legislative process.

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<sup>3</sup> International Medical Device Regulators Forum (IMDRF) is an international forum to discuss future directions in medical device regulatory harmonization

<sup>4</sup> Medical Devices Single Audit Programme (MDSAP) Pilot is intended to allow MDSAP recognized Auditing Organizations to conduct a single audit of a medical device manufacturer that will satisfy the relevant requirements of the medical device regulatory authorities participating in the pilot program.

### *ICT*

Discussions on ICT were positive, and both parties noted progress in several areas. In particular, the parties continued to exchange information on the different ongoing ICT initiatives in the EU and the US in the areas of e-health, encryption, e-labelling, cooperation in market surveillance, Software Defined Radio, Specific Absorption Rates for mobile phones and e-accessibility. On Software Defined Radio, Specific Absorption Rates, and e-labelling the parties discussed steps in order to facilitate a regulatory dialogue that eventually could result in more convergent regulations. On encryption the US explained their objectives in this area, in particular regarding the World Semiconductor Council (WSC) principles and the recently agreed Trans-Pacific Partnership text. On e-Health the parties continued to monitor developments in the implementation of the Roadmap on eHealth/Health IT between the EU Commission and the US Department of Health. On market surveillance they discussed how to step up cooperation in market surveillance activities for ICT products.

### *Engineering*

The EU and the US continued discussing how to identify areas of regulatory cooperation in the machinery sector, in particular taking into account the input received from industry. Both parties agreed that this would need to be in very specific sectors or subsectors in order to avoid overlap with discussions in the general chapters. The EU noted once again the importance of this sector.

### *Chemicals*

As during the previous rounds, progress with the pilot projects on priority chemicals and classification and labelling of substances was reviewed. Several Member States are now actively engaged in exchanges with US technical experts on individual priority chemicals. So far, Member States have indicated that they find these exchanges useful and have confirmed that this has not led to either additional work or to any delays in the planning and execution of their own activities.

It was also agreed to keep under review the potential interest in facilitating data exchange between regulators, including the formats for such exchange, while considering the need for protection of confidential business information.

Since the last round, due to a focus on other priorities, no progress had been made on the pilot project concerning differences in classifications as appearing in safety data sheets.

### *Pesticides*

The EU and US discussed shared objectives for enhanced cooperation and greater regulatory compatibility in this area. An initial discussion tentatively identified common approaches in the application of regulatory provisions – in particular on minor crops - and in the cooperation in international fora such as CODEX or OECD. Discussions were held to consider the sharing of scientific information and data sources.

## **3. Rules**

### **3.1. Sustainable development**

During the 12<sup>th</sup> round of negotiations, the Group working on Trade and Sustainable Development had a full week of constructive discussions, addressing labour, environment and issues identified by the EU as cross-cutting in its proposal on sustainable development. The Group focussed on discussing each side's proposals in detail.

On the EU side, this was the opportunity to further explain the legal text proposal it tabled in the 11th round (October 2015). This EU proposal puts forward comprehensive and ambitious disciplines on substantive labour and environmental issues of relevance in a trade and investment context. Notably, it provides for: the respect of key international principles and rules on workers' rights and environmental governance; the right of each side to set ambitious labour and environmental laws and the obligation to refrain from a race to the bottom; the establishment of high levels of occupational health and safety and decent working conditions in accordance with the ILO Decent Work Agenda; the conservation and sustainable management of biodiversity including key natural resources such as wildlife, forestry, fisheries; the environmentally sound management of chemicals and waste; the promotion of trade and investment in green products and technologies; the uptake of responsible conduct practices by EU and US business; the encouragement of fair and ethical trade schemes; and opportunities for joint initiatives in third countries to further labour rights and environmental protection.

The EU also recalled that it will develop provisions on climate change, institutional and procedural aspects – including dispute settlement – at a later stage. This is because discussions on the implementation and enforcement procedures applicable to labour and environmental obligations require us to know what we commit to implement and enforce. We also want to avoid that discussions on procedural matters shift the attention away from the content of the obligations – that we want to be ambitious. On climate change, the EU is looking at tabling a proposal that takes into account the recently concluded Paris Agreement.

The US, on its side, gave a first presentation of its own text proposals for labour and environment, tabled for this round. It also updated on the results achieved on Labour and Environment in the Trans-Pacific Partnership, as well as on related domestic procedures.

The discussions allowed for a better understanding of similarities and differences between the EU and the US texts, as well as for identifying areas for further exchanges. Work will now proceed to establish a consolidated text.

### **3.2. Trade in energy and raw materials**

Securing more open, diversified, stable and sustainable access to energy and raw materials is one of Europe's main challenges. The EU believes that TTIP is a unique opportunity to create a strong set of rules to facilitate transparent and sustainable access to energy and raw materials as well as to diversify access to raw materials and energy suppliers.

During the 12<sup>th</sup> negotiation round the EU and US exchanged information on several developments in the area of raw materials and energy, focussing on energy first and foremost. The EU presented the state of play of the Energy Union and the both sides compared outcomes of the trade negotiations with Vietnam (EU) and the Trans Pacific Partnership (US) respectively. The US noted the energy-related provisions of the US Omnibus legislation enacted in December 2015, including repeal of the crude oil export ban.

Furthermore, both sides had a constructive discussion on the links between potential EU-supported specific provisions on Energy and Raw Materials and certain provisions that are currently being discussed in the context of the Trade in Goods chapter, such as export pricing and export restrictions.

### **3.3. Small and medium enterprises**

On SMEs the EU and US continued their discussion from the previous round on mainly two issues: i.e. provisions on “information sharing” and the institutional dimension.

On “information sharing”, the EU and US agreed on the need to ensure that comprehensive, up-to-date information is provided by each Party to SMEs of both sides in a user-friendly way, and discussions continue on how the information can be presented.

Furthermore, there were constructive discussions on the SME Committee, where Parties agreed on the roles envisaged for the Committee, but still need to work on the drafting. In particular, it will be important to ensure strong interaction with stakeholders, and cooperative relations between the SME Committee and other future TTIP committees to address SME-specific issues in all areas covered by TTIP.



The session also provided the opportunity to discuss ongoing cooperation on SME support between the two administrations and to plan future joint work (for example EU-U.S. SME Workshop in Tallinn in June).

### **3.4. Customs and trade facilitation**

In the area of Customs and Trade Facilitation the EU is seeking rules that facilitate and accelerate export and import operations between the EU and the US while ensuring that goods exchanged are subject to the necessary customs checks and controls. During the 12th round of negotiations the EU and the US were able to make significant progress on the text of the chapter.

The EU presented several new proposals. These include a proposal relating to activities on topics that would benefit from a process of enhanced customs cooperation between the EU and US (such as data harmonisation, trusted trader programmes, single window systems, binding information or international standards), in order to reach gradual transatlantic convergence in these domains.

Further discussions on temporary admission and return of goods after repair took place in a joint meeting of the Customs and Trade Facilitation and the Trade in goods groups.

### **3.5. Intellectual property rights, including Geographical Indications**

Given the efficiency of the respective systems, the EU's intention in this area of negotiations is not to strive towards harmonisation but to identify issues of common interest where we can address divergences. The latest discussions continued to explore what elements a TTIP IPR chapter could include.

The IPR discussions took place over 2 full days. The US presented two IPR text proposals. One was a reaction to the EU initial text on IP related international agreements, which shares many common points with our text. The other was as a first draft on common provisions, broadly in line with the equivalent text in TPP. The two sides discussed how to increase the pace of IPR negotiations in the next couple of rounds. Other sections where discussions are well advanced are customs enforcement and cooperation.

Regarding copyright and trade secrets the parties exchanged updates on the respective domestic legislative processes. Similarly, on international IPR agreements, both US and EU provided the state of play regarding ratification of the Marrakesh Treaty on Access to Published Works for the Visually Impaired and the Beijing Treaty on Audiovisual Performances.

On civil enforcement and technical protection measures/digital rights' management, the US presented a comparative analysis between the relevant chapters of TPP and recent EU FTAs (CETA and Vietnam) and stressed the similarity of approach between the two sides on most provisions.

On customs enforcement, the US presented a newly adopted Trade Facilitation and Trade Enforcement Act, which contains positive elements allowing for increased cooperation and exchange of information with third countries.

On trade secrets, the EU presented the key elements of the text resulting from the agreement between Council and European Parliament on what should constitute the future Trade Secrets Directive and the US reported on progress on their equivalent draft bill.

For the EU, the future section on cooperation should reflect, to a large extent, what is already being done today, namely by the Transatlantic IPR Working Group.

Regarding the future section on agreed principles, it could be inspired by recent EU communications and strategy papers, as well as equivalent US documents. It should address different (and opposing interests and sensitivities) in a balanced manner and include SME relevant elements.

On geographical indications, discussions focussed on the preparation of an intersessional discussion prior to the next round.

### **3.6. Competition**

The EU and the US continued their negotiations regarding the Competition Chapter. The negotiations are based on textual proposals from both sides. Following several rounds of negotiations and inter-sessional exchanges, the Parties' positions have moved closer in almost all areas.

During this round, the EU and the US continued to explore further possibilities to find common ground and they identified a number of areas where respective positions have come closer. These areas include: the general principles, reference to the legal framework and anti-competitive conduct, cooperation, the review clause, and dispute settlement. In these areas, the EU and the US have largely reached an agreement in principle on the content of the future provisions and worked on their precise language.

The main area where further work is still needed relates to procedural fairness. This area comprises issues such as transparency of the procedures and rights of defence. Both Parties expressed clear commitment to find language that takes into account their respective concerns and fits their legal and administrative systems, for example language on voluntary resolution of competition concerns. Another area of discussion

relates to the question of exemptions from the application of competition laws when it comes to State-Owned Enterprises.

### **State-owned enterprises (SOEs) and subsidies**

The EU and the US engaged in substantive discussions on their respective SOE text proposals. The talks were constructive and, again, allowed the Parties to further align their positions in terms of several definitions and provisions. The EU reiterated the importance of ensuring that SOE provisions also apply at the subfederal level.

With regard to subsidies, the Parties discussed both the US and the EU text proposals. Discussions allowed both sides to identify and understand in more detail the differences in approaches.

### **3.7. Investment protection**

Following substantial changes in the EU's proposal for investment protection in reaction to a consultation process with civil society stakeholders, Member States and the European Parliament conducted throughout 2014 and most of 2015, the EU put forth in November 2015 a new and reformed approach to investment protection and investment dispute resolution for TTIP, which it presented to the US in detail for the first time during this round.

The EU's proposal aims at safeguarding the right to regulate and create a court-like system with an appeal mechanism based on clearly-defined rules, with qualified judges and transparent proceedings. The proposal also includes additional improvements on access to the new system by small and medium sized companies.

With both sides having textual proposals on the table now, the first discussion took place in an open and constructive atmosphere.

On investment protection, the discussion focussed on definitions as well as the articles on the substantive rules. EU and US engaged in an in-depth comparison of their respective approaches, with a view to identifying areas that will require further substantive discussion in future rounds (notably standards of treatment).

On resolution of investment disputes, the exchange of views on the respective text proposals focussed primarily on understanding the respective approaches and on identifying areas of convergence. The US asked factual and exploratory questions on the EU's intentions and objectives behind the new provisions in the EU proposal. Topics of discussions included the provisions on mediation and consultation, disclosure

requirements in case of third party funding, the applicable law and rules of interpretation, provisions preventing parallel and multiple proceedings, as well as provisions allowing for the early dismissal of unfounded claims. The US also provided explanations on the approach taken in various provisions under the US reformed BIT from 2012 and its experiences of cases under provisions of the NAFTA agreement.

The Parties identified a number of areas of convergence, including on the approach taken with respect to the transparency of and public access to the proceedings, the possibility of control by the Contracting Parties over the interpretation of the Agreement, the prevention of parallel and multiple proceedings, as well as the possibility to allow for early dismissals of unfounded claims.

Overall, good progress was made towards understanding the objectives being pursued by each Party under the provisions that were discussed. The Parties agreed to continue exchanging views in preparation for the next round.

### **3.8. State to state dispute settlement**

This chapter aims at establishing an effective mechanism for resolving any disputes between the Parties on the interpretation and application of the Agreement. With both sides' text proposals being to a certain extent based on the WTO Dispute Settlement Mechanism, there is already quite large convergence in this area. Constructive discussions continued, making good progress towards further consolidation of the respective text proposals into a joint text. This round's discussions focussed again on the compliance phase, the phase after a panel report has been issued in a certain dispute, elaborating on possible elements of compromise on those aspects where both text proposals differ substantially. Good progress was made to consolidate the texts, but some conceptual differences remain.