

Client Alert

International Trade

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EU outlines preliminary goals in connection to first TTIP round

Last week, the EU and US met for the first round of negotiations of a Transatlantic Trade and Investment Partnership (TTIP) Agreement. In statements following the closing of this round, chief negotiators for both sides confirmed that general discussions on TTIP architecture and objectives, as well as negotiating group talks on a wide range of areas, had laid the groundwork for future substantive negotiations and confirmed an overall high level of ambition for the agreement.

In preparation for the first round, the importance of TTIP was confirmed by the revelation of stakeholder visions and goals for the agreement. Most importantly, the EU's preliminary negotiating position was revealed through a leaked European Commission note published in the specialised press. This note – which EU sources confirm was intended for public distribution following the first negotiation round in an attempt at improved transparency – is of considerable interest to industry on both sides of the Atlantic, as it contains a set of initial position papers on regulatory convergence (including for the automotive, chemicals and pharmaceuticals sectors), Sanitary and Phytosanitary (SPS) issues, trade and sustainable development matters, Technical Barriers to Trade (TBT), competition rules, trade in raw materials and energy, along with a so-called “non-paper” (*i.e.* discussion draft) on public procurement.

In regard to US stakeholder vision and goals, the Business Coalition for Transatlantic Trade (BCTT), a coalition of large US firms and industry organisations advocating the creation of “an ambitious, comprehensive and high-standard trade and investment agreement between the United States and the European Union,” has recently issued several position papers on key areas for the ongoing TTIP negotiations. While the BCTT position papers do not represent US government official policy toward TTIP, such industry input informs US Office of the United States Trade Representative (USTR) negotiating positions and strategies.

We compare and contrast several highlights of the EU and US BCTT position documents below.

- *Regulatory convergence and TBT solutions*

Based on input from both EU and US industry, the EU sets out ambitious goals for regulatory compatibility, convergence and recognition – while maintaining high safety, health and environmental protection levels – in various identified product sectors, including cars, chemicals and pharmaceuticals.

- For **cars** (including parts, components and tyres), the EU envisions mutual recognition of technical requirements through a staged approach. The first stage would involve recognition of similar technical requirements by the conclusion of TTIP negotiations, with a concrete timeline for deepened regulatory convergence during the post-



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negotiation stage. The EU further wants to aim for strengthened EU-US cooperation not only with respect to future regulations, but also within the UNECE framework to promote adoption of Global Technical Regulations for new technology.

- With respect to **chemicals**, the EU recognises that full harmonisation or mutual recognition will be unfeasible in light of the fundamental differences in existing legal frameworks (REACH in the EU and TSCA in the US), with the result that the objective simply involves increased bilateral cooperation and consultation on various related topics – including risk assessment prioritisation and development, classification and labelling, information exchange, and new and emerging issues.
- On **pharmaceuticals**, the EU foresees bilateral reinforcement of an existing high level of regulatory collaboration; this is specified to involve product authorisations and inspections, information exchange and trade secrets, as well as increased harmonisation for technical requirements, terminology, scientific advice and related assessment.

More generally with respect to issues relating to TBTs and regulatory restrictions cutting across various product sectors, the EU envisions extensive commitments to promote coherence, predictability and transparency in various regulations and standards. The ultimate aim will be to eliminate, reduce or prevent unnecessary “behind the border” barriers to trade and investment, including at sub-regional and sub-federal level, in order to create a more integrated transatlantic market.

With respect to standards, the EU proposes to improve the links between the EU and the US systems by increasing cooperation between their standardisation bodies – albeit while allowing each side to maintain its distinctive character.

In regard to regulations and TBTs, the EU position documents do not appear to conflict with US stakeholders’ aims as contemplated under the corresponding BCTT position paper, although the BCTT paper does not explicitly address regulatory issues in such specific sectors as cars, chemicals and pharmaceuticals. US stakeholders express through the BCTT regulatory cooperation paper that the TTIP should: (i) strengthen existing regulatory frameworks, (ii) seek equivalence in regulations wherever possible, and provide transparent justifications where impossible, (iii) create a governing process to guide regulatory cooperation, (iv) create a framework for TTIP to be a “living agreement”, which will allow both regulatory autonomy and an ongoing process of regulatory cooperation, (v) lead to broader transatlantic and international agreement on regulations and standards, and (vi) develop detailed sector-specific standards whenever possible.

- SPS

For SPS matters, the EU also envisions improved dialogue, transparency and collaboration, all aiming to address market access issues and facilitate resolution of bilateral tensions resulting from each side’s measures intended to protect human, animal or plant life or health. In particular, close regulatory, confidence-building and technical cooperation is foreseen in order to eliminate unnecessary trade barriers in the form of both existing and future SPS measures. At the same time, the EU would reserve the right for each side to assess and manage risk in this context in accordance with the level of protection that each side deems appropriate.

While EU and US stakeholders appear to seek similar goals in regard to dialogue, transparency and collaboration on SPS issues, US stakeholders reject through the relevant BCTT paper the reported EU position supporting the use of the precautionary principle in regard to potential SPS-related threats; rather, US stakeholders urge EU and US negotiators to agree on each party employing purely science-based decision-making when establishing SPS-related regulations. US stakeholders also urge EU and US negotiators to consider agreed-upon WTO SPS principles in seeking regulatory convergence and equivalence systems recognition, particularly in regard to risk assessment and management, notice and comment

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periods, lab testing, transparency, and adoption of international standards. In addition, US stakeholders seek an enforcement mechanism for TTIP's SPS provisions, and a Rapid Response Mechanism (RRM) to provide for shipment-specific trade facilitation where SPS issues arise.

- Competition policy

The EU acknowledges the important role of the EU-US relationship in global competition enforcement – based on a shared belief in the need for open, fair and competitive international markets – and that the TTIP competition provisions should therefore serve as a global benchmark for third countries to follow.

The EU envisions that such provisions would address antitrust and merger disciplines, including providing for increased information sharing between EU and US authorities, while setting up a platform for further international development in this area. In addition, the TTIP would establish standards to address a growing trend of global market distortions (involving subsidisation, discriminatory treatment, etc.) favouring state-owned, -controlled or -influenced companies in not just the EU and the US, but also third countries.

In regard to competition policy, the EU position documents do not appear to conflict with US stakeholders' aims as contemplated under the corresponding BCTT position paper. Both the EU position documents and the relevant BCTT position paper focus on antitrust and merger issues, particularly transparency and the use of international best practices, and the targeting of global market distortion stemming from, *inter alia*, state-owned, -controlled or -influenced companies.

- Raw materials and energy access

In the area of raw materials and energy access, the EU's position is that the multilateral trade system needs stronger rules focusing on export barriers to ensure open and non-discriminatory trade and investment. The EU believes that the TTIP could make a contribution to the development of such rules by establishing specific disciplines with respect to licensing transparency, elimination of export restrictions, non-discriminatory exploration opportunities and restrictions on related government intervention. These rules would then be used to send a signal to other countries engaged in raw materials and energy trade, and applied in subsequent negotiations with third countries.

BCTT does not provide a position paper on raw materials and energy access. However, US negotiators will likely base their position in this area in part on existing WTO jurisprudence (e.g., *China — Measures Related to the Exportation of Various Raw Materials (DS 394)*), the future outcome of an ongoing US-China WTO dispute involving the exportation of rare earths (*China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS 431)*), and the pending applications before the US Department of Energy for the export of US-produced natural gas.

- The path ahead

The EU and the US have previously stated that they aim to conclude TTIP negotiations by the end of 2014, which would be an ambitious timetable. Indeed, EU sources indicate that a target date of mid-2015 is generally considered more feasible, although the Obama Administration has suggested on several occasions that late-2017 would be a realistic goal for TTIP's completion. Three rounds of TTIP negotiations are expected to be held before the end of 2013, with the second round scheduled to be held in Brussels during the week of 7 October 2013.