

**Note – Tactical State of Play of the TTIP Negotiations  
– March 2016**

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### SUMMARY

Discussions during the 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> and 26<sup>th</sup> February 2016 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 to 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 as well as for the sustainable development chapter. Following substantial changes in the EU's proposal for investment protection, the EU in November 2015 presented a new and reformed approach to investment protection and investment dispute resolution for TTIP, which it presented to the US in detail during this round for the first time. Discussions took place in an open and constructive atmosphere. With regard to sustainable development, the US tabled its proposals on labor and environment, 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, among other things.

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, the 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, which means that substance will prevail over speed. The EU reiterated its intention to ensure that substantial progress be made in all three pillars of the agreement by the summer break.

### 1.1 Trade in Goods: Tariffs and Market Access

#### Non-agricultural goods

The discussion during this round centered upon the offensive interest on each side in terms of faster staging of custom duty elimination on a subset of products currently in the 3, 7 or T basket. The US questioned some of the EU sensitivities on certain chemical products, which also led to discussions on US export restrictions on LNG. The EU gave no room for flexibility on these products and highlighted that the TLs concerned are very few (around 35-40) compared to the overall number of chemical tariff lines (+1,100). The U.S. nonetheless expressed it would have to consult with its

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chemical industry on how to position itself vis-à-vis its current offer of EIF on all chemical tariff lines.

The EU proposed a possible package on mechanical devices in Chapter 84 and electrical appliances in Chapter 85 for which both parties share offensive interests. While the US showed an interest, it hastened to point out that it would need to consult with its industry regarding some of the products and that progress on motor vehicle-related parts would only be possible if the EU showed progress in the discussion on agricultural tariffs.

The US showed openness to improve staging on EU goods such as jewelery, handbags and hand tools for which it has no particular sensitivity vis-à-vis the EU. On ceramics (tiles and roofing) and glass (household wears), the situation is mixed as the US has traditional sensitivities which coincide in some cases with EU export interests. However, the US undertook to review whether certain segments could be put forward for improved staging.

In a more general context, the parties also discussed the fate of the tariff lines in the T basket for which the EU proposed that all NAMA tariff lines be limited to the 7-year basket. The US again explained that it was not against the 7-year basket limit, but could not bind itself to this until it was clear that this would be the ceiling for all tariffs.

### **Agricultural Goods**

#### ***Tariffs***

The EU sought clarification from the US on its capacity to improve the staging on a number of tariff lines under the “3” and “7” categories and corresponding to the ones offered by the EU at entry into force subject to reciprocity.

The US presented requests on EU lines included under “3”, “7” and “T”, pertaining mostly to the dairy (e.g., butter), cereals, and fruit and vegetables sectors. With respect to the latter, the US side requested elimination of the entry price system.

Products under “Other Treatment” were not discussed.

The US side indicated dairy, sugar, tobacco as products with particular sensitivity.

#### ***Chapter on agriculture***

Following the consolidation of the four textual elements (EU and US proposals for Chapter: EU proposal on wine and spirits; US proposal on spirits), a first review led to the identification of elements where further convergence seems possible (cooperation, committee on agriculture), and others where positions are far apart (export competition, wine).

As regards export competition, the US is opposed to the inclusion of any discipline in TTIP that would go beyond the Nairobi outcome. It pointed to a non-binding language in TPP where it resisted calls from other members to undertake specific commitments. The US suggested adding the language on export restrictions agreed in TPP and committed to propose an alternative language on cooperation in agriculture.

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On wine, the EU recalled that TTIP must include comprehensive disciplines on wine and spirits based on the incorporation of the existing bilateral agreements, and eliminate the possibility for US producers to use the 17 EU wine names (so-called “semi-generics”) listed in Annex II of the 2006 Wine Agreement. The US reiterated its opposition to the incorporation of wine rules in TTIP and to the EU request on semi-generics. The EU expressed strong concerns and will follow up at political level.

The EU presented its counterproposal for the annex on labeling provisions on spirits, based on the joint position of the EU and US industries. The two sides will now work on a consolidated text based on the EU and US proposals.

The two sides reviewed specific non-tariff issues. On some of them, specific steps were identified to work toward appropriate solutions and ensure follow up. On others, such as dairy import assessment or support of small beer and wine producers, the US is still questioning the significance of the issues for the EU industry.

### ***Fisheries***

As part of the 12<sup>th</sup> negotiating round, the EU and the US held a discussion on market access in the area of fisheries. The purpose of the meeting was to explore each side's export interest with a view on how to balance those with respective sensitive domestic interests. Both Parties explained their offensive and defensive interests. The US will now need to complete and improve its offer to reduce the current gap. The objective is to have complete liberalization in this sector, with a symmetrical dismantlement of tariffs for the sensitive products.

### **1.2 Public procurement**

Discussions focused firstly on the recent exchange of initial procurement offers. Both sides clarified the scope and the main value elements of their respective offers and provided further interpretation to the commitments and notes within the offer documents. The EU asked questions on US entities that covered the threshold values and their practical enforcement as well as on the service contracts covered. The EU also asked questions on how the contracts covered were procured in practice. Also, questions were asked comparing commitments made in TPP.

Furthermore, the EU continued to ask questions on market access in a number of key priority areas. These questions covered the following topics which are within Federal competence: new Federal domestic content restrictions (such as the FAST Act of February 2016, which raises American content requirement for rolling stock procurement funded by Federal Transit Administration from 60% to 70%), allowing local hiring preferences in some federally funded infrastructure projects, possible reorganization plans of the US Federal Aviation Administration, restrictions and exclusions on procurement of dredging and ship building, restrictions in procurement by the Department of Defense of specialty metals, textiles and hand tools as well as sub-contracting obligations with regards to US SMEs. The EU received factual answers on a majority of the questions. However, the US was not able to provide any further answers or comments with regard to sub-Federal procurement and again underlined its difficulties and sensitivities in this area. With regard to the process, the US clarified that anything remaining for market access in procurement is linked to sensitivities.

As for the textual provisions for the chapter, some of the key textual provisions relate to market access (such as on National Treatment and flow-down), more fundamental advancement is subject to agreement to be reached on market access. As for other areas of the text proposal, discussions allowed to clarify positions in view of more fundamental advancement in the next round. EU stressed in particular the need to find solutions to build more transparency and facilitate access to procurement by SMEs.

### 1.3 Trade in Services and Investment

The EU and the US covered the following areas in the services discussion: 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.

As regards **liberalization of investment**, we had one day of discussions focusing on definitions, market access, national treatment, performance requirements and senior management and board of directors. The EU and the US 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. Work towards a consolidated text has progressed, notably on definitions, performance requirements and senior management and board of directors.

As regards **financial services**, the EU and the US agreed on the architecture of the financial services chapter according to the EU proposal: the EU accepted a stand-alone chapter on financial services (content to be negotiated) and the US agreed to a process of negotiation, whereby horizontal disciplines (such as national treatment) would be centralized for the sake of efficiency and to avoid undesired inconsistencies. Once these discussions reach sufficient maturity, we will discuss if and how to modify these provisions to the FS chapter.

Furthermore, we started work on the consolidated text. The focus of the discussions was on definitions, the scope of the financial chapter as well as rules and exceptions (specific exception, prudential exception). In particular the US chapter on financial services covers only financial service suppliers, which are regulated and supervised as financial institutions (all other financial services suppliers are covered in the investment chapter), whereas the EU chapter covers all categories of financial service suppliers. Moreover, the EU prudential exception includes a necessity test as opposed to the US proposal which includes an anti-circumvention test as in the GATS.

The EU and the US have not changed their positions on **regulatory cooperation in financial services**: The US continues to oppose discussing this issue in TTIP, whereas the EU confirmed that its mutual access offer for Financial Services hinges upon the US satisfactory engagement in regulatory cooperation.

The EU and the US discussed the approach to **domestic regulation** on the basis of the EU non-paper and taking into account the current outcome of TISA negotiations. The US took a cautious position on the application of domestic regulation to non-services such as manufacturing.

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Also, we discussed **delivery services** on the basis of the EU and US proposals tabled for this round. The US text is based on the jointly agreed TISA text and, as such, has many things in common with the EU's proposal for TTIP.

The US presented its proposal on **direct selling** and stressed its benefits for SMEs. The EU expressed an interest in including provisions on direct selling in TTIP provided that the proposal does not affect the EU's rules on consumer protection. The US agreed with the approach.

The EU and the US made further progress in the negotiations related to the framework of **mutual recognition agreements**. The focus was on ensuring that the mechanism envisaged by the agreement would be compatible with EU and US regulatory systems. The US confirmed its ambition of going beyond its existing practices including TPP and TISA. The Parties also discussed how to apply different types of dispute/mediation/appeal mechanisms to the framework. Intersessional discussions on auditors and architects are planned for March.

The discussions on market access focused on telecoms and maritime transport (EU interests) and Annex 2 (US interests).

Apart from that, we had three days of discussions on **telecommunications services**, covering all EU and US proposals. There was an in-depth discussion on the scope of the chapter (the EU insisting on covering new telecommunications services, such as broadband, and the US proposing a self-defined scope) and on access obligations for major suppliers. However, there is no major progress to report at this stage. The US signaled that progress on these key EU interests might be accelerated if discussions on data flows and computing facilities also advanced faster (allegedly because US telecom operators are very interested in data flows). There was some progress on the text of the telecoms chapter, most notably on the provisions on interconnection and competitive safeguards.

Discussions on **e-commerce** covered all proposals except for the provisions on data flows and computing facilities. There was good progress on understanding each other's proposals and on exploring potential possibilities for compromise. With regard to non-discrimination of digital products, the US emphasized that they are very interested in this concept irrespective of the coverage of audio-visual services. They signaled some openness to refer to a more neutral term (digital content instead of digital products) and to exclude audio-visual services from this provision. Positive discussions also took place on the EU proposals on e-trust services and e-authentication and on the prohibition of prior authorization requirements for online services.

### 1.4. Rules of Origin

#### *Product-specific rules*

Negotiators discussed the following issues:

##### (i) US proposal on 'Origin Procedures' (Section B)

- The US text follows the TPP model, however
  - (i), it excludes a number of elements incorporated there, e.g., the requirement for importing customs authorities to request information from the exporter/producer before denying a claim of preference, as well as some references to customs cooperation and
  - (ii) it re-introduces the knowledge of the importers.

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- The US highlighted the need for a speedy verification procedure and for the importing party to decide on the originating status of the goods, the US expressed concerns on the possibility for the EU system to be subject to abuses by the exporting authority, which may be inclined to protect its exporters' interests by confirming the originating status of the goods.
- While agreeing on the need to establish an appropriate procedure of verification, the EU insisted on the need to protect the confidential information of exporters/producers. In this sense, the cooperation of both Parties' authorities in case of verification would ensure the needed comfort for the operators. EU noted that the US system could also be subject to abuses by the importing authorities, which could refuse the preferences without having contacted the exporter/producer or the authorities of the exporting Party.
- The US requested the EU to react to its proposal.

### (ii) 'General Provisions' part (Section A)

- The texts of the 'non-conflictive provisions' of the Parties are close in substance and drafting. The US seemed to be open to considering the EU's compromise texts proposal.
- Specific discussions took place on the concrete functioning of the US proposal on 'requirement for originating status' and 'cumulation'. The US confirmed that its proposal is that the products are originating 'in TTIP' (common origin) and that materials and also all types of processes may be cumulated by the Parties (full cumulation).
- The EU formulated a list of concrete questions on the functioning of several US provisions (meaning of 'produced entirely in the territory of the Parties', definition of 'territory of US' in relation with the territorial seas/EEZ, etc.) and requested the US to come back with detailed explanations.
- The US agreed on EU/US consolidated text containing the initial positions of the Parties for the reading room, subject to final legal confirmation.

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

- The US indicated its readiness to exchange proposals on agricultural products in the round of April.
- The Parties compared in detail the respective proposals for Chapters 85 and 86. The US approach for many products in HS Chapter 85 is to impede the import of the relevant parts, and to permit for the assembly of the imported parts to confer origin only if a certain value added is reached in the Party, as the EU does. The Parties noted that the positions are close for HS Chapter 86.
- The US flagged the possibility of certain changes in the chemical sectors, i.e., to use a horizontal rule for each chapter, as the EU proposes.
- The EU recalls the basics of the anti-fraud clause (in all agreements; protection of public revenues, applicable in case of systemic fraud/lack of enforcements of the rules by one Party), and clarified US concerns.
- Both Parties agreed that the anti-fraud clause will build on the “origin procedures” (certification/verification of origin) once established.
- Both Parties agreed that there is no divergence in the objective of fighting against fraud, and that accordingly, we must introduce relevant provisions. The question remaining is “how”.



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### *Textiles*

Discussions took place on the following issues:

(i) The standard approaches of both Parties to product-specific rules (PSR), as well as some other elements such as tolerances, origin quota derogations and cumulation.

- Detailed exchange following the comparison of the EU approach (where the product-specific rule requirements apply to all materials) and the US method (where the product-specific rule requirements apply exclusively to some materials; those which define the classification of the product). In conclusion, the US approach is more relaxed than the EU one.
- The US raised questions on the EU-Vietnam FTA, and more precisely, on cumulation with Korea as a solution to relax the rules. Detailed questions on the functioning of EU extended cumulation followed.
- Further details on the different functioning of 'origin quota derogations' and the 'short supply list mechanism' were highlighted. The US considers 'origin quota derogations' products as 'non-originating' and they are therefore only partially covered by the FTA. Products in the short supply list are deemed originating (the list is considered part of the PSR). The US repeated that they will no longer pursue 'origin quota derogations' in its FTAs.
- Specific certificates of origin issued by governmental authorities are used only for cases of 'origin quota derogations' in some regimes (AGOA) because of the procedures needed for the implementation of the quotas.

ii. The elements of the US proposed Chapter on Textile and Clothing referring to anti-circumvention and information sharing. The EU noted that:

- some of the provisions did not seem to be relevant in an agreement between the EU and the US. The US agreed.
- other provisions seemed to have an undefined scope, i.e., they were not clear on what the obligations of a Party would be in case of a request for cooperation by the other Party.
- potential overlapping with the CCMAA (Customs Cooperation and Mutual Assistance Agreement)
- Confidentiality issues where not clearly addressed.

The US confirmed that:

- The scope of these provisions goes beyond strictly preferential origin issues of textiles and clothing and would also cover infringements and fraud on non-preferential origin (anti-dumping, origin marking), but not on other elements such as labeling. The reason behind these proposed provisions is the high incidence of fraud (determined in around 50% of cases investigated).
- US customs may provide customs cooperation following a request by a partner importing country for the verification of the preferential originating status of textile and clothing products exported from the US. The legal authority vis-à-vis exporters to conduct such verifications would be derived from the Free Trade Agreement, possibly supported by further legislation implemented in the US. Although US customs could potentially request the cooperation of the exporting partner country for preferential imports, it prefers in most cases to do its own verification including direct visits to the exporting country.

## **2.1 Regulatory Coherence**

Discussions took place in a constructive manner and good progress was made in both sessions. As the respective proposals reflect exchanges over the past months (with each side taking into account some of the comments received in previous negotiations), they are a very useful starting point for further work. Both sides asked a number of questions for clarification and agreed that work will need to continue between sessions, including on legal issues. Although further analysis is needed, it is safe to say that provisions tabled by both the EU and US are complementary in many respects and could form the basis for identifying common ground. Looking ahead, each side will provide additional information on its proposals prior to the next negotiating round. Furthermore, the Parties agreed to work on a possible consolidation of both parts in parallel. However, a number of important issues remain to be addressed: scope (both in terms of measures and authorities covered), the question of how to identify the cooperation activities that should be covered, and the architecture (relationship of the regulatory cooperation chapter with sectors), including the institutional mechanism, which will be crucial to the future operability of regulatory cooperation.

## **2.2 Technical Barriers to Trade**

Discussions on standards during this round sought to strike a balance between the existing respective proposals and can therefore be seen as an attempt to find a compromise on:

- i) transparency concerning the referencing of standards in support of regulatory objectives and the active participation of governments in the development of standards;
- ii) cooperation between EU and US standardization bodies, also with a view to enhancing stakeholder participation;
- iii) consideration and use of standards developed by the other side;
- iv) possibility for stakeholders to submit proposals to both Parties for common EU-US standards.

The US and the EU also discussed existing textual provisions on cooperation, resolution of trade concerns, and the role and functions of the TBT Committee. The US also provided a “bracketed” version of the original EU proposal on standards with edits or alternative wording which would make the EU text potentially acceptable to them.

Difficult issues, not discussed in detail during the round but referred to by the US remain: 1) the US insistence on the reference to its approach to international standards; 2) the link made by the US between “openness” (meaning an unqualified right of participation of US stakeholders in CEN-CENELEC) and the possibility for US agencies to consider European standards for referencing; 3) the US request for a process establishing the equivalence of US and harmonized European standards.

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

The EU proposed that US regulatory Agencies would have the obligation to a) inform the public of their participation in standards development activities, and b) make public their intention to reference a standard in regulation at an early stage and allow any interested person to provide feedback not only once a standard has been preselected – as it is currently done under the notice and

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comment procedure, but even before that preselection is made by means of an Advance Notice for Proposed Rulemaking or a Request for Information. On its side the EU would publish the draft of the Annual Union Work Program on standardization and the different standardization requests, and allow any interested person to provide feedback. The US welcomed this idea, but questioned the details of its implementation regarding mostly deadlines and procedures for providing feedback, as well as accountability of the commission regarding the taking into account of the feedback.

### ***Stakeholders' participation in standards setting***

The US insisted on its request for the commission to “require”, in its standardization request, CEN and CENELEC to involve US experts in its standards development process (with no guarantee of reciprocity) as a condition for referencing harmonized standards.

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

The US insisted on reflecting its understanding of international standards in the relevant provisions, this is to say that any standard complying with the criteria of the WTO TBT Committee Decision on Principles for the Development of International Standards, is an international standard, even if the body developing them is not an organization where participation takes place through national delegations.

### ***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.

### ***Provision on cooperation***

There are some commonalities between the EU and the US proposals on bilateral cooperation which should facilitate consolidation. The EU underlined the need to ensure consistency and avoid duplication with the horizontal Regulatory Cooperation Chapter and flagged the difficulty of accepting that the proposed cooperation should have a specific objective to, inter alia, “establish procedures to recognize as equivalent standards used as a basis for or in support of compliance with regulations.” The EU insisted on the need to approach cooperation on standards in a more holistic way and not just focusing on equivalence of standards. The US indicated that they have similar procedures in place with Canada and Mexico but could not offer any practical example of equivalence granted.

### ***US provision on resolution of trade concerns***

The US proposal aims for a technical discussion on trade irritants concerning existing or planned TBT measures with a view to finding bilateral solutions as soon as possible, without having recourse to more formal procedures under TTIP. While not objecting in principle to having such a mechanism, the EU stressed the need to ensure that this is used efficiently and not hindered by trivial issues and does not duplicate unnecessarily parallel ongoing discussions on the same matters in the WTO TBT Committee framework.

### ***US provisions on role and functions of the TTIP TBT Committee***

Most of the proposed functions are not problematic and in line with both sides' practice in other FTAs. However, the US proposal reflects the US preference for a strong TBT Committee which also encompasses some overseeing functions on regulatory cooperation.

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

Both sides appointed new lead negotiators – Koen van Dyck, SANTE and Sharon Borner, USTR. Discussions on SPS were cumbersome, partly due to the fact that the US proposals were based on the TPP agreement most of the time. The Parties discussed proposed articles on regionalization, audits, certification and anti-microbial resistance. The discussion also covered new annexes on regionalization and audits (the EU proposed to use the agreed text from the Veterinary Agreement of 1998 as a basis), and on certification (proposed by the US). Because new text had been tabled, the discussion largely focused on explaining the text and underlying objectives and concepts of each side. Given that internationally agreed guidance documents are available in the area of audits and also on regionalization, both sides questioned the need for annexes that describe procedures at the level of detail as in the Veterinary Agreement.

On regionalization, it became apparent that US ambitions are not as far-reaching as the EU proposal, in particular in the area of plant health. To provide a more suitable structure for further discussion, it was agreed to reorganize the text in a way that more clearly separates general principles, provisions related to animal diseases and provisions related to plant pests. The EU undertook to make a proposal which reorganizes the elements but does not change the substance of either side's text.

On audits, the US asked many detailed question about the annex proposed by the EU – although the text comes from in the Veterinary Agreement. On very short notice, on 20 February, the US had sent a revised text proposal for the Article which is based on TPP Agreement. The EU was not in a position to enter into text consolidation on this revised back. The US took the view that the Article on 'audits' should not address the verification activities of the FDA or APHIS, because these agencies do 'inspections' rather than 'audits'. The EU took the view that the Article should preferably address all verification activities, i.e., audits and inspections.

On certification, the US proposed a annex and some revisions to the proposed text of the Article, which were discussed in detail. It appears that the US is seeking to simplify certification procedures as much as possible. The EU understands 'certification' as one aspect of the overall trade conditions and signaled a certain flexibility on this issue, if other aspects of bilateral trade conditions (audit, swift approval procedures) are also addressed.

Many detailed questions were asked about the proposed Article on anti-microbial resistance. No text brackets were removed. The US volunteered to update the consolidated text proposals on the audits and certification articles. The EU will work on the consolidated regionalization text. It was agreed to schedule a discussion between sessions, possibly in early April.

### **2.4 Sectors**

#### **Pharmaceuticals**

Regulators on both sides noted that there is the intention to establish a Mutual Recognition Agreement on GMP inspections including all 28 MS, provided that the FDA receives reports of the audits conducted under the Joint Audit Program (JAP) (i.e., MS peer review system) and a set of additional information on each country. Afterwards, the FDA will carry out its own assessment country by country. This is a significant step forward compared to previous negotiation rounds. The

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implementation of this understanding should be further fine-tuned, as the FDA aims at MS being included progressively on a rolling basis and the Commission wants to make sure that all MS will be evaluated and included before TTIP enters into force.

From the eight audits (Sweden, Greece, Croatia, Germany, UK, the Czech Republic, Hungary and Italy) in 2015 in the context of the JAP, only three reports have been made available to the US FDA (SE, EL, HR). The five other reports are due to be finalized in the coming weeks. Those reports are produced by EU MS auditors and include feedback from the auditee. The FDA undertook to take a decision on each MS, three months after having received the JAP audit report and other additional information (MS conflict of interest rules and pre-audit documentation). In comparison with the process followed for the other MRAs on GMP, it is remarkable that the FDA would essentially rely on the JAP since it is an EU MS internal system of audits. It is therefore of utmost importance that MS deliver the JAP audit reports within a shorter time frame (e.g., not more than four months) and provide the additional information required for FDA assessment.

Consideration should be given to accelerating the program in order to complete the audits of all MS before TTIP is signed. In addition to its current financial support, the Commission will discuss with Member States possibilities to increase human resources to support a higher number of audits in order to achieve this objective.

The FDA did not show interest on working on generics (EU proposal submitted in December 2015), arguing a lack of resources to examine the proposal but undertook to provide feedback by the next round. Considerations that scientific work should be excluded from TTIP were also put forward. However, the EU insisted on the need to work under TTIP to promote regulatory and scientific collaboration in areas such as biosimilars, generics and pediatrics.

On the exchange of confidential trade secret information, there is agreement that this is an important matter but there is not yet agreement on what instrument to use. The FDA favors a document to be signed by each MS, the Commission and the European Medicines Agency. In accordance with this approach, the FDA has proposed a template that is under legal analysis. The Commission favors using TTIP as a legal basis for the exchange of confidential and trade secret information.

### Cosmetics

All in all, discussions on cosmetics remain very difficult and the scope of common objectives fairly limited.

The US confirmed that in the US, UV filters (which are used in many cosmetic products) will continue to be subject to safety assessment based on animal carcinogenic studies that EU enterprises cannot provide due to the EU ban on animal testing. The EU and US approaches remain irreconcilable and EU market access problems will therefore remain.

Although it would be important to enhance scientific cooperation on the safety assessment of cosmetic ingredients, there was no agreement on the modalities to be established.

The FDA is not interested in working on labeling (as dual labeling is allowed) nor on collaboration within INCI (International Nomenclature of Cosmetic Ingredients). The only interest is to carry out a pilot project on a set of colorants (however, the outcome/impact of such a study is unclear).

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The FDA indicated that it has no intention to revisit its Sun Protection Factor (SPF) efficacy testing standard that deviates from the existing ISO standard (the EU idea would be to avoid double testing). Despite not being identical to the ISO standard, the FDA believes its guidelines are in line with the ISO standard.

On alternatives to animal testing (ATMs), the FDA is willing to accept TPP language (recommendation to use ATMs when available) but that would not apply in any case of any cosmetic product containing a sunscreen ingredient.

### Textiles

The textile regulatory meeting was constructive and areas of common interest were identified (textile labeling, safety aspects and standards). However, concrete modalities to put into practice such cooperation have not yet been established. The next step should be for the EU to draft and table a legal text.

### Cars

The EU and the US held a constructive and detailed technical discussion based on the EU proposal to explore equivalence, equivalence plus and/or expedited harmonization deliverables based on test cases and follow-up discussions (safety aspects of automotive regulation). The two sides exchanged detailed information on each of the issues, agreeing that more work on technical details would be needed between sessions. In general, there was a shared understanding of the issues that would need to be addressed, with safety standards related to crashworthiness continuing to be the most complex area of work. There was also an exchange of views regarding the UN 1998 Agreement process. The EU side expressed openness to improve aspects related to transparency.

The two sides gave updates on potential areas for **expedited bilateral harmonization**:

- Adaptive front lighting – common work to be developed based on NHTSA research
- Automatic emergency braking system – the process in the EU has been launched aiming at a Commission 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 the Geneva process, which will hopefully be 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

The two Parties need to further reflect on how to translate the current three agenda points into specific objectives/deliverables to be achieved within TTIP negotiations.

The US keeps insisting on the need for the EU to implement the Medical Device Single Audit

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Program (MDSAP) Pilot as soon as possible and to implement IMDRF guidance documents. The EU is currently only an observer in the MDSAP and the intention of the Commission is to decide with MS on possible full participation in the future. In addition, should the EU decide to become a full member of the MDSAP, i.e., for the EU to be able to accept the manufacturing site audits carried out by third country auditors, a legal basis would need to be established. There is a need to improve the uptake of MDSAP among manufacturers and auditing organizations (need of critical mass of auditors and audits to be able to assess MDASP functioning). The Commission may also inquire if other MS are available to actively participate in the MDSAP.

The EU undertook to discuss possible further implementation of IMDRF MDSAP guidance documents with the EU Notified Body Operations Group (NBOG) as this matter is MS responsibility.

On Unique Device Identification – UDI, the Commission (DG GROW) IT team is reviewing the US UDI Database (GUDID) technical file and is engaged in preparatory technical work to integrate EU UDI system. The idea

is to build in an EU system aligned and interoperable (data exchanges) with the US system. The US system has been operational since September 2014. The EU system will take some years to become operational. A DVC will take place between EU and US technical experts on 9 March.

Regarding Regulated Product Submission – RPS, industry seems to be very keen on this strand of work. In the IMDRF Pilot, 11 applications have been accepted so far. Five notified bodies of the EU are involved. Ireland is coordinating the effort on the side of EU regulators.

### ICT

#### ***Market surveillance***

The Parties continued to discuss how to establish a market surveillance framework for cooperation in TTIP relating to ICT products, in particular those that in the EU are covered by the Radio and the EMC Directive. The Parties continue to agree on their interest in having language in TTIP on this issue. The US will put forward a text during the following round which is largely based on the Draft Memorandum of Understanding drafted by the Federal Communications Commission and the Administrative Cooperation (ADCO) groups of the EU in 2010.

#### ***E-labeling***

The US debriefed the EU on the progress of its Notice for Proposed Rulemaking in this area, which they intend to have finished before the end of 2016. The US insisted that there is a window of opportunity for the EU and the US to converge on the requirements in this area. The EU, while welcoming future exchanges on this area, noted that this is not a legislative priority, and that whenever considered this will be part of a larger exercise in which other e-compliance activities will be considered.

#### ***Software-Defined Radio***

The EU and the US provided mutual updates on the state of play of legislative preparatory work

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relating to the compliance of software-defined radio. Both parties confirmed their interest in exchanging views and information on this issue.

### ***Specific Absorption Rates***

The EU provided updates on current developments concerning standards relating to the specific absorption rate and measurement methods. Both parties agreed to continue exchanging information.

### ***E-health***

The EU noted that the new work stream on innovation ecosystems appears to be generating a lot of interest among newcomers/stakeholders in both the EU and the US.

The EU side emphasized the importance of maintaining (as agreed several times with the US side over the last couple of years) the good progress of the roadmap work under the auspices of the TEC.

### ***E-accessibility***

The Parties discussed recent developments in their cooperation on e-accessibility issues and noted their satisfaction with the ongoing process. During the discussion the US confirmed its intention to publish its e-accessibility standards in October this year. Both sides agreed to re-examine the situation once the US standard has been published and try to see if the European standard (EN) could be aligned then. Both parties agreed that once the alignment is completed a discussion could take place to address the internationalization of the common accessibility standards.

### ***Encryption***

The EU and the US continued to discuss conformity assessment principles for ICT products that use cryptography. The discussion was based on the TPP text, which the US linked to the World Semiconductor Council (WSC) principles.

The EU noted the sensitivities of Member States, which are competent in this area and which would not like to see its right to regulate curtailed in a security-related area. The EU went on to present a set of questions, derived from previous contacts with Member States. As the US was not ready to provide a reply on the spot, the EU will be sending the set of follow up questions in written form. Given the complexity of the subject, both sides agreed on the need to further deepen the issue on both policy and technical aspects before the next TTIP round.

### ***Engineering***

The discussion on the engineering sector was characterized by continuous reluctance on the part of the US side to engage in this sector.

The EU pointed to the numerous industry contributions received in that sector (including joint submission from EU and US industry associations) and reported on ideas brought forward by industry to translate these general requests into specific items (e.g., harmonization of safety pictograms). The EU also requested a presentation from OSHA on safety legislation in the area of machinery in order to facilitate the identification of possible areas of cooperation.



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The US pointed out that joint industry submissions address very general issues of principle that are subject to other negotiations chapters (TBT and Regulatory Cooperation) and are not sufficiently precise to justify a sector-specific annex. According to the US, this level of generality reflects the de facto lack of agreement between EU and US industries on specific issues relating to that sector. The US reiterated that in order to justify a specific engineering annex and the involvement of the relevant US regulators, ideas must be concrete enough to provide a clear benefit in terms of avoiding costs/administrative burden for industry.

### Chemicals

Both sides agreed to speed up the process as much as possible over the next months. General common objectives were identified. This constitutes significant progress, seeing that the US has been reluctant to engage or commit to any particular objectives until now. Text-based discussion could then follow.

Furthermore, the EU and the US reviewed the status of the follow-up actions agreed at the 11<sup>th</sup> round. As part of its follow-up actions, the EU consulted with the MS involved in pilot projects to find out whether they found them useful. Two competent authorities confirmed that they had found the information exchange with the US authorities on priority substances useful and one reported that they would continue this cooperation in the future.

Another competent authority reported that the initial information exchange had established that the US and the Member States were working on different issues relating to one priority substance – further cooperation would, therefore, be only of limited value. One competent authority noted that the information exchange had been useful, but probably more for the US than for that Member State due to different timelines for the work envisaged. All competent authorities confirmed that the cooperation with the US had not led to additional work nor to any delays in the planning and execution of its own activities.

The US had requested to again discuss the sharing of data for regulatory purposes, in particular the sharing of confidential information, as this had come up in several of the pilot projects. The EU stressed that this is a cross-cutting issue also relevant for other sectors, notably pharmaceuticals, and possibly also for horizontal regulatory cooperation. The US recalled that TSCA (Toxic Substances Control Act) had very strict rules concerning the protection of CBI (Confidential Business Information) and agreements with other countries (such as Australia or Canada) had included provisions stating that this kind of sharing is only possible with the consent of data owners. The EU mentioned that a similar proposal had been made by European industry; however, the EU considered that in such a configuration, the involvement of authorities is not actually needed as data owners can directly agree to make their data available to whichever authority requests them. The REACH regulation contained clear rules for authorities: exchange of confidential information with a third country is possible without the consent of data owners, provided there is a formal agreement in place that ensures protection of CBI. The EU also recalled that a Congress TTIP ratification bill could override current US legal limitations. The US considered that this would be unlikely and saw benefits in consent-based provisions, i.e., the opinion of authorities on the data that an owner also agrees to make available to the other authority. The US noted that one of the pilot projects had revealed an interest in being able to share confidential information in the possession of a Member State but outside of REACH (e.g., from a national product register). The EU commented that REACH contained no provisions that would apply to such data and that this would have to be

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further examined – it might be relevant for other sectors as well. The EU recalled that the topic of facilitating data sharing also included data formats and the follow-up to the data sharing symposium organized by ACC (American Chemistry Council) in July 2015, which had aimed at convincing the US EPA (Environmental Protection Agency) that it is possible to work with robust study summaries (as the EU does) rather than with full study reports. The EPA had agreed to conduct a retrospective analysis comparing some full study reports and robust summaries to assess whether the latter were sufficiently reliable. But this depends on willingness of industry to make available suitable data. The EU was willing to participate in and contribute to such a review.

There had not been any progress in the pilot project on classification and labeling as the US OSHA (Occupational Safety and Health Administration) had not completed its analysis of differences in the classification rules for mixtures in Safety Data Sheets. The OSHA had reached out to the ACC to investigate whether EU-US differences on SDS existed only on paper or whether they posed a real problem for operators. Feedback was still outstanding. The EU welcomed outreach and recalled that this should also take place on the EU side, once the paper from the US was available. The OSHA committed to deliver the more comprehensive analysis by the end of March, and then a follow-up telephone communication could be held in the week of 4 April.

### **Pesticides**

The EU and the US discussed shared objectives 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 the CODEX or the OECD. Discussions were held to consider the sharing of scientific information and data sources, as well as crop groupings that are part of the respective regulatory toolboxes during application procedures. Parties will further explore these in advance of the next round.

### **3. Rules**

#### **3.1. Sustainable Development**

The discussions took place in a constructive atmosphere. The US clearly felt more comfortable engaging in the discussions on the basis of its own text proposal, including in terms of its general willingness to have discussions concerning some areas that go beyond previous US FTA practice.

This allowed the EU to reiterate messages on the importance of an ambitious text, and to seek detailed feedback from the US on the innovative elements in the EU proposal – notably on the “thematic articles” on core labor standards and on environmental issues.

However, it should be noted that the proposal tabled by the US is still partial, and notably does not cover all areas of interest to the EU (and included in the EU text). The US adhered to a cautious position in several of such areas, reiterating during the round that internal consultations are still ongoing – including on some topics already addressed in TPP, such as biodiversity.

Therefore, while the constructive spirit of this round is a positive signal, further exchanges will be needed in order to have a full assessment of the scope and level of detail pursued by the US in this area. The architecture of the text also remains an issue to be discussed further.

### 3.2 Trade in Energy and Raw Materials

The US did not come forward with its priorities on energy and raw materials. The US argued that they were not in a position to exchange anything with the EU, given that the inter-agency process had not been concluded. Nevertheless, the US seemed willing to present priorities ahead of the next round in April.

Discussion on certain elements of the Trade in Goods/Market Access chapter helped to clarify whether horizontal provisions could cover specific issues pertaining to Energy and Raw Materials, such as dual pricing and export restrictions. As regards the latter, the US kept insisting that the export of natural gas to the EU could be linked with the EU's commitments and reservations in the Services and Investment chapter.

### 3.3. Small and Medium Enterprises

This was a particularly encouraging and positive meeting. On the Committee, the EU and US agreed on substance but still need to work out some drafting issues. On the website, a potential landing zone was explored. The US would not give information on NTBs organized by HS code, but could provide a robust website with all the relevant information consolidated into a single place. The US also signaled resistance to binding commitments on information about sub-federal.

The Parties are working to finalize the consolidation of the EU and US proposals on the Committee, where there is no substantive difficulty.

Furthermore, the Parties agreed that the SME chapter should also reflect SME-specific issues addressed elsewhere in TTIP.

### 3.4 Customs and Trade Facilitation

A productive exchange allowed for further progress in the text of the chapter. Convergence was explored in relation to several articles, subject to confirmation after internal consultation by both Parties. Tier I areas where such progress was made include inquiry points, release of goods, international standards, use of information technology and electronic payment data, and documentation, post-clearance audit, customs brokers, pre-shipment inspection, transit and shipment.

Clarification was supplied on important outstanding issues including:

- advance rulings, where differences remain on scope, timelines for adoption and validity, and publications;
- expedited shipments, where the EU is focusing on discussions on the substance of simplifications afforded to operators;
- *de minimis*, with an emphasis by the EU on efforts toward the facilitation of VAT payments, as announced in the EU communication on the Digital Single Market.

The scope of the Article on fees and charges remains open.

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The EU introduced new proposals relating to:

- Objectives and principles;
- Tier I texts on authorized operators and on single window;
- A proposal on Tier II activities and on the specialized committee.

The initial exchange allowed for several clarifications. The articulation of Tier I commitments and Tier II activities was discussed, notably in relation to data alignment. Exchanges will continue at the next round.

The US introduced new proposals relating to:

- advice and guidance; the text proposed reflects a US administrative procedure allowing operators to request advice and guidance on a customs transaction from a designated authority;
- standards of conduct; the text introduced by the US is intended to complement language envisaged in a separate chapter on anti-corruption;
- the customs treatment of shipping containers; the EU mentioned that this matter could be addressed in the context of language on temporary admission.

Further discussions of customs-related topics (temporary admission, return of goods after repair, duty-free entry of commercial samples) took place in a joint meeting of the Customs and Trade Facilitation and the trade in goods groups. The EU mentioned its intention to present a proposal on temporary admission ahead of the next round.

Finally, in response to a request from the EU, agreement was also reached on a updated version of the consolidated text of the chapter, reflecting progress made in the discussions over the past year and including the latest respective textual proposals. This document is soon to be made available to EU stakeholders.

### **3.5 Intellectual Property Rights, Including Geographical Indications**

A positive feature of the twelfth round of IP discussions was the US submission, for the first time, of some texts on relatively consensual areas (international treaties and general provisions). However, the US remains unwilling to table, at this stage, concrete proposals on more sensitive offensive interests that have been expressed by some of its right holders or that are explicitly referred to in its TPA (for instance on patents, on technical protection measures and digital rights management or on enforcement).

When confronted with the EU warning that bringing sensitive proposals that would require changes in EU law to the table – and doing it at a late stage of the negotiation – may have a negative impact on stakeholders and has very limited chances of being accepted, the US reiterated its understanding that the IPR chapter should not be a standard (TPP type) text, but also insisted that such a departure from its “model” creates some difficulties in terms of addressing the demands included in the IPR related sections of its TPA.

Additional details on the content of the future section on cooperation which the US intends to table very soon:

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It should broadly capture the level of cooperation that already exists, in particular through the work of the Transatlantic IPR Working Group, i.e., it should cover cooperation in relation to third countries; international organizations; customs matters; voluntary stakeholder initiatives, technical assistance and capacity building, support to SMEs (including websites), etc. Institutionally, it would be important to put in place an IPR Committee ensuring transparency in its activities and inclusion of a wider range of stakeholders.

One negative element of note is that certain US legislative projects in areas that are very important for EU right holders appear not to be making progress in Congress. This is the case in particular for the draft laws on patent reform (addressing the problem of patent trolls) and on the copyright sectors identified as offensive interests by the EU (broadcasting rights, public performance and resale rights).

As regards geographical indicators, discussions focused on the preparation of an intersessional discussion prior to the next round.

### 3.6 Competition

The EU and the US continued discussions exploring possible common language for the competition chapter (including on procedural fairness) on a non-prejudice basis.

The discussions allowed the Parties to further identify possible agreement and start working on texts, subject to respective internal clearance and consultation processes.

Article X. 1 (General Principles): The US confirmed that it agrees with the EU-sponsored notion of having general principles.

X.2 (Legislative framework): The US agreed to capture merger control. It was agreed to refer to respective laws in a footnote.

X.3 (Implementation): New article combines “Legal Framework and Implementation”.

- The US agreed to keep the EU text on “non-discrimination” to avoid using the term “person” (US competition law concept);

- (*Procedural fairness*) The Parties continued to explore possible ways forward indicating sensitive language and possible red lines. The EU repeated its concern that some of the US proposals may be interpreted as requiring the EU to change its existing legal system which the EU cannot agree to. Language discussions included possible acceptable language (in agreement with procedural fairness provisions in the EU) on: (i) Information of allegations drawn against parties; (ii) “Reasonable opportunity to be represented by counsel”; (iii) “to engage with the Party's competition authorities on significant legal, factual or procedural issues”; (iv) “reasonable opportunity to set out all factual and legal arguments which are relevant to the defense of an enterprise”; and (v) “opportunity to review the evidence as permissible under the Parties' respective laws”.

The EU reiterated that the US-proposed reference to “reasonable deadlines” would be open to disputes about interpretation. The US proposed to mitigate this risk with more general language.

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The US (DOJ) reiterated that court decisions are not published in written form (relates to cartel infringements) but they acknowledged there was some form of transparency through court records and public access to court proceedings, sometimes press releases, etc. The US therefore proposes not to include criminal matters in the obligation to provide written decisions that are “made public”. The EU reiterated that contrary to the US consent decrees, commitment decisions are voluntary remedies offered by the Parties and therefore any language would have to be fully respectful of the Article 9 Commitment Decisions set up. Both sides explored language that would capture the possibility for the voluntary resolution of competition concerns which would be respectful of existing laws.

EU Article X.4 (application of competition law to all enterprises, including SOEs): The EU considers it important to include this provision in the TTIP. The EU pointed again at similar language accepted by the US in the US-Australia FTA and the TPP Agreement and urged the US to consider similar language. The EU clarified that the EU is not attempting to change US law but only to confirm in the text what the exemptions from the Sherman Act are (state action doctrine) which would correspond to the wording of the EU Article 106 TFEU. The EU confirmed openness to placement of that Article (Competition Chapter or SOE Chapter), as long as it is included somewhere.

X.4 (Cooperation): The US made proposals to streamline the language, however with no intention to change the content of the Article. The EU appreciated that the US is ready to accept language regarding business secrets (the EU reminded the US again on the sensitivity of EU Member States as regards confidential information and business secrets).

X.5 (Review clause): Both sides agreed on common language. The Parties confirmed their agreement to bracket the exact review period and wait for outcomes of the General Chapter.

X.7 (Dispute settlement): Both Parties agree to the language.

The Parties agreed to consult internally on the draft of the consolidated text and continue working towards lifting the remaining brackets.

### **State-Owned Enterprises (SOEs and subsidies)**

The Parties engaged in substantive discussions on the basis of their respective text proposals. The US proposal covers both the 'traditional' (non-subsidy) part of SOE provisions, but also a subsidy part, covering only SOEs. Since there is no agreement yet on the EU requests to cover all levels of government and to extend subsidy rules to all enterprises, the discussions were carried out on a hypothetical “what if” basis.

#### *SOEs (non-subsidy part)*

The EU reconfirmed its position that a political decision would be needed to ensure that future rules apply at sub-federal levels of government (and not only at central level). The EU reminded the US that the EU objective is to negotiate an ambitious agreement that would set the gold standard for SOE rules. The US reiterated its position that the TTIP cannot be seen as achieving less than what was achieved in the TPP.

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The discussions were constructive and both Parties showed willingness to find solutions on a number of issues. The US clarified its position by tabling some modifications to its original text proposal, taking inspiration from the TPP (financial services exemptions, articulation of NT rule, and transparency). The fact that the EU published the text of the concluded Vietnam negotiations helped the discussions. The discussions showed that EU and US positions are similar on a number of key definitions (monopolies, designation, commercial activities, and commercial considerations), rules (commercial considerations and non-discrimination, delegated authority), and transparency. More work however is required in the following areas:

- SOE definition: The US repeated its willingness to explore the inclusion of the “control” aspect into the definition, as proposed by the EU. The discussions brought up useful ideas and the EU will follow up on these.
- Special rights or privileges: Due to time constraints, there was no discussion this time but the EU will follow up during the next round. The concept is difficult for the US.
- Anticompetitive practices in a non-monopolized market: The EU requested that this article be dropped or, in the alternative, that it be excluded from DS rules. The US again showed willingness to consider the EU's request.
- Transparency: Due to time constraints, there was no time to discuss these provisions in detail but discussions will continue next time.

The Parties agreed to exchange information between the sessions.

### *Subsidies*

The US reiterated its position that SOEs should be treated differently because they are different in the sense that they may not operate exactly as private companies and therefore warrant a tougher set of rules. The EU repeated its concern with the unbalanced approach of the US text proposal on SOE subsidies covering EU MS while not covering SOE subsidies at the US sub-federal (state) level.

The EU further reiterated its position that before being willing to engage in negotiations on provisions specifically addressing the issue of subsidies to SOEs, it would be necessary to first agree on a common ground covering provisions relating to subsidies to both SOEs and private companies, in particular as regards transparency and consultations. The US took note of the EU position. The US is willing to consider engaging on the condition that the EU is willing to consider specific rules for SOEs and fisheries. As for subsidies to services, the US expressed hesitation to engage outside SOEs. The US was also willing to consider EU proposals regarding prohibited subsidies, albeit limited to SOEs.

In their discussions, the Parties concentrated in particular on the definition of subsidy (“non-commercial assistance”) the treatment of internal transfers, and the concept of “imputability”, especially in the context of the US proposal regarding SOE giving subsidies to other SOEs. In these discussions, the Parties explored the US “five-factor test” (developed in some DVC cases) and the relevant case law, and the interplay with the “delegated authority” rule and the WTO concept of “public body”. The Parties also discussed the EU concept of “regional specificity”. The US expressed willingness to clarify the concepts of “benefit” and “specificity” in its proposal for a subsidy definition.

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The Parties agreed to exchange information between the sessions.

### 3.7 Investment Protection

Regarding investment protection, discussions focused on definitions, expropriation and transfer articles. The EU provided further explanation on its text proposal sent on 12 November 2015. The EU and the 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 fair and equitable treatment) and with the objective of consolidating the respective texts.

Regarding resolution of investment disputes, the exchange of views on the respective text proposals focused primarily on understanding the respective approaches and on identifying areas of convergence. The US asked mainly factual and exploratory questions concerning the EU's intentions and the objectives behind the new provisions in the EU proposal.

Discussions relating to “definitions and scope” were generic. Some convergence was found on the shared intention behind the “on behalf approach” under the definition of “claimant”, as well as the principled agreement on the definition of “respondent”. Parties also agreed in principle to include definitions on the various rules referred to in this section including “UNCITRAL Transparency rules”, “ICSID Convention”, “ICSID additional facility rules”, “New York Convention” and “UNCITRAL Arbitration Rules”.

As regards amicable resolution, the US agreed on the principle that any Alternative Dispute Resolution is positive and expressed interest in the EU's rationale for requiring that a mutually agreed solution be notified to the Committee. On consultation, the US also inquired about the objective pursued by the EU in making consultations a requirement under the agreement, and how that could potentially impact timelines.

Parties also discussed the Article on Consent to arbitration where some commonality and some structural differences were identified. As regards the submission of a claim, some shared the view that the requirement to have loss or damage resulting from a breach and the procedural rules that should apply in a dispute under the TTIP agreement also on the procedural rules to apply in a dispute under TTIP and that these should be considered to be of a dynamic nature (meaning changing with time). As regards third party funding, the US explained that this type of financing is uncommon in the US. The article on other claims was also discussed where the Parties found some agreement regarding the Parties' respective intentions to prevent parallel and multiple proceedings as well as provisions allowing for the early dismissal of unfounded claims.

The Parties also identified a number of areas where there is broad agreement, including on the approach taken with respect to preliminary objections in a dispute, the approach on transparency and public access to the proceedings and the status of the non-disputing party in a proceeding. Other areas discussed included an article on 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. Other provisions such as the Tribunal of First Instance and the Appeal Tribunal were not broached in this round.



### **3.8. State-to-State Dispute Settlement**

This round was dedicated to intense discussions on the existing EU and the new US compromise proposal on compliance, tabled shortly ahead of round 12. We could identify the key areas of convergences which include the right to request a reasonable period of time for compliance ('RPT') and sequencing between compliance review and suspension of obligations, but with considerable streamlining of the compliance and sanctions arbitration proceedings in case of continued non-compliance of the responding party after the RPT has expired. Some conceptual differences remain, notably concerning the standard for review of the level of the sanctions and which Party can request a compliance panel during the sanctions. There was agreement to further tidy up the joint consolidated text between the sessions. The US also committed to respond to the EU proposal on mediation in the next round since it was not ready for that in this round.