



EU - US TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

Raw materials and energy

Initial EU position paper

Without prejudice

Introduction

This position paper aims to identify common ground between the EU and the US regarding the treatment of raw materials and energy in the context of the EU-US Transatlantic Trade and Investment Partnership (TTIP) negotiations.

Raw materials and energy and their subsequent trade across borders have not been fully covered by international trade and investment rules over the last decades. Yet forecasts suggest demand will continue to grow across sectors and countries as the world population grows and living standards improve. In parallel, efficient distribution has also become more pressing in particular for EU and US companies as production processes rely on a wider variety of critical inputs, some of which can be found only in a limited number of locations.

Although the US's energy landscape is changing, US and EU companies will remain dependent on open markets to source significant parts of their raw material and energy needs far into the future. Our companies operate complex raw material and energy supply chains, with varying dependences as processors, suppliers, importers and exporters, and as consumers too. Downstream companies depend on inputs of energy and raw materials from third countries, while upstream companies compete for access to resources abroad. These developments

take place against an ever greater demand for trade and regulatory policies that will promote sustainability.

In the EU's view, World Trade Organisation (WTO) rules do not fully reflect issues related to international production and trade in raw materials and energy, as also illustrated in the WTO's 2010 Annual Report which was devoted to this issue. The WTO rulebook contains tough rules to tackle import barriers, and weaker concomitant rules to address export barriers. This has affected energy and raw materials, insofar trade restrictions in this area are more pertinent on the export side. Other examples are the lack of definition of energy services in GATS, an absence of effective rules on international transit of energy goods transported by pipeline, prevalent trade and distribution monopolies in countries where domestic production is not monopolised, widespread use of local content requirements imposed on the equipment of foreign companies when they operate large scale projects in third countries, and insufficient transparency in regulatory processes pertaining to the granting of licenses for exploitation or trade in energy products.

The EU and the US have worked closely together over the past years and sent a strong signal in support of open trade and non-discriminatory access for raw materials and energy. Some of the

above shortcomings have been partially addressed in the WTO accession protocols and in FTAs negotiated by the EU and the US. Some progress has also been achieved through the dispute settlement process. The multilateral trade system would however benefit from a stronger set of rules in the area of energy and raw materials. Indeed, international trade agreements have made only a modest contribution to promoting the application of market principles in this area regarding access, distribution, trade and sale.

The TTIP could therefore make an important contribution to the development of that process, within limits agreed by both sides. It could provide a basis to take the issues forward in a more comprehensive manner by providing an open, stable, predictable, sustainable, transparent and non-discriminatory framework for traders and investors in raw materials and energy, in a way that also serves our wider shared geo-strategic and political objectives for the longer term.

Disciplines agreed in the transatlantic context could serve as a model for subsequent negotiations involving third countries. It also sends a powerful signal to other countries that trade in raw materials and energy can be and will be subject to global governance, including the fundamental principles of transparency, market access and non-discrimination. In addition, agreed rules on trade and investment in raw materials and energy would also contribute to developing and promoting sustainability.

Approach

It is understood that general disciplines and commitments concerning trade in goods and services, and investment, negotiated in the TTIP will apply to raw materials and energy, including e.g. non-discrimination, the elimination of import and export duties and other restrictions relating to import or exports.

It is also understood that where the general rules do not address certain energy and raw materials related issues, these should be covered by energy and raw materials specific rules. Such rules would go beyond existing WTO provisions and in particular beyond the provisions in GATT and GATS. There are precedents as both the EU and the US have negotiated such specific rules with third countries.

Disciplines

Scope

In principle, the scope of specific rules could include measures related to trade and investment in raw materials i.e. raw materials used in the manufacture of industrial products (excluding e.g. (processed) fishery products or agricultural products), and energy products, i.e. crude oil, natural gas electrical energy and renewable energy.

The following areas have been identified around which specific raw material and energy provisions could be developed.

Transparency

Increasing transparency and predictability is the first and most important step towards a better (global) governance of trade in raw materials and energy. Transparency improves investment opportunities, facilitates continued production, and improves the functioning and expansion of infrastructure, including for transportation. The agreement should therefore encourage transparency in the process of licensing and allocation conditions of licences that could be required for trade and investment activities. Additionally, it should be assessed how to incorporate elements related to the Extractive Industry Transparency Initiative (EITI), which also reflects EU and US domestic legislation.

Market access and non-discrimination

In line with this objective, the elimination of export restrictions, including duties or any measure that have a similar effect should be ensured.

As regards non-discrimination, it is proposed to clarify that no Party may impose a local content requirement for the operation of an energy or raw material project.

In the context of exploration and production of raw materials and energy, it is important to confirm that the parties should remain fully sovereign regarding decisions on whether or not to allow the exploitation of their natural resources. Once exploitation is permitted, however, non-discriminatory access for exploitation, including for corresponding trade and investment related opportunities, should be guaranteed by regulatory commitments. The US and EU should also have an

interest in developing regulatory commitments on off shore safety standards, reflecting their respective domestic legislation.

The EU and the US should consider rules on transport of energy goods by natural gas pipelines or electricity grids, which would be particularly relevant in countries with monopolized pipelines. In this context, there should be regulation of transport and transit. The agreement could provide that if private construction of infrastructure is not allowed or not economically viable, Third Party Access (TPA) should be mandatory, subject to regulatory control by an independent regulator vested with the legal powers and capacity to fulfil this function. Transit rules should build on the transit rules defined in different relevant existing treaties and be established in a manner to avoid or mitigate an interruption of energy flows.

Competitiveness

There are at least two different areas where competitiveness in the raw materials and energy markets can be improved.

Government intervention in the price setting of energy goods on both the domestic market for industrial users and of energy goods destined for export purposes should be limited. A prohibition on dual pricing should further limit the possibility for resource rich countries to distort the market and subsidize sales to industrial users thus penalising foreign buyers and exports. Whereas further reflection is needed, precedents in WTO Accession commitments or relevant provisions from the NAFTA Agreement (Article 605(b)) could possibly be used to explore possible avenues.

As regards State Owned Enterprises (SOEs) and enterprises granted Special or Exclusive Rights (SER) specific rules for raw materials and energy could be discussed. Although these rules should in principle be of a general nature, it could appear necessary during the negotiation process to agree on rules specifically for companies active in the raw materials and energy sector, especially in so far as they benefit from special or exclusive rights.

Trade in sustainable energy

The EU and the US have a shared interest in improving global governance in the area of renewable energy. Liberalisation of trade in green goods and services would bring considerable environmental, social, economic and commercial benefits to the US and the EU. A rules-based, open international market would promote more cost-efficient and more widely available green goods and services (including green technologies). It would also foster innovation as well as create jobs and bring an important contribution to the achievement of environmental objectives and the fight against climate change.

The TTIP could build on the APEC agreement on environmental goods. Parties could agree on commitments to address non-tariff barriers and trade irritants. In terms of concrete provisions, a confirmation of prohibition of local content requirements for goods, services and investments could be introduced. Commitments related to subsidies contingent on local content requirements and prohibitions on forced transfer of technology or set offs could also be included.

Energy efficiency and the promotion of renewable energies are a fundamental aspect of the energy policy of the EU and the US. They are being promoted through various policy measures, for instance regulatory measures, standards and incentive programmes. The TTIP should promote the objective of renewable energy and energy efficiency and should guarantee the right for each party to maintain or establish standards and regulation concerning e.g. energy performance of products, appliances and processes, while working, as far as possible, towards a convergence of domestic EU and US standards or the use of international standards where these exist.

Security of energy supply

The secure and reliable supply of energy is of crucial importance for any country. Consideration could be given to developing provisions on the security of energy supply designed, inter alia, to identify existing and upcoming supply and infrastructure bottlenecks that may affect energy trade, as well as mechanisms to handle supply crises and disruptions, taking into account and promoting multilateral mechanisms in this field.