

*This **POSITION PAPER** sets out and describes the European Union's general approach on "Engineering industries" in the TTIP negotiations. It was tabled for discussion with the US in the negotiating round of 19-23 May 2014 and made public on 7 January 2015.*

EU POSITION PAPER

TTIP REGULATORY ISSUES - ENGINEERING INDUSTRIES

1. INTRODUCTION

The final report of the US - EU High Level Working Group on Jobs and Growth (February, 2013) highlights that as regards regulatory aspects TTIP should contain, in addition to cross-cutting disciplines and TBT plus elements, provisions concerning individual sectors.

The purpose of this non-paper is to present possible elements for a sectoral approach for the engineering industries (mechanical, electrical and electronic sectors). It contains preliminary ideas, based on input from EU industry that can be complemented and refined at a later stage with further input from stakeholders. The elements suggested are complementary to those proposed by the EU concerning horizontal disciplines (Regulatory Coherence and TBT), which would be applicable also to this sector.

The scope of this non-paper covers mechanical, electrical and electronic equipment and products.¹ While it is a somewhat heterogeneous sector, composed of a plurality of subsectors subject to different regulatory requirements, it encompasses an important family of products with high relevance to the transatlantic economy. Specific ICT issues could be also addressed separately.

Transatlantic trade in this sector is indeed significant, but also has a potential which is not fully exploited. Chapters 84 and 85 account for approximately 25 % of total EU–US trade.

Barriers arising from regulatory divergences are deemed to have a more significant impact on trade than tariffs.

Regulatory systems for machinery, electrical products and electronics diverge in the US and the EU, notably as regards technical regulations affecting their marketing and use as well as conformity assessment. Conformity assessment procedures for these sectors are generally lighter in the EU, where supplier's declaration of conformity (SDoC) is the general rule, with some exceptions for specific categories of equipment involving significant risks or specific phenomena, like emissions. In the US, third party conformity assessment is more widely required, as workplace safety regulations (adopted by the Occupational Safety and Health Administration, OSHA) require third party conformity assessment for a wide range of products (37 product categories) that can be used in the workplace, of which the most relevant one is electrical conductors and equipment. US regulations also establish mandatory requirements for several other categories of products, for which OSHA either establishes its own technical requirements or relies on referenced standards approved by US Standard Development Organisations (SDOs). Other requirements are established by other agencies,

¹ This also includes electronic products; however, the paper does not intend to deal with issues specific to the electronics and IT sectors, which are addressed in separate discussions under TTIP.

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like the National Highway Traffic Safety Administration (NHTSA), the Environmental Protection Agency (EPA) or the US Coast Guards (USCG) for recreational craft, as well as at local level (States or cities).

TTIP could improve market access by:

- Developing regulatory cooperation with a view to:
 - promoting regulatory convergence and international disciplines
 - encouraging cooperation between standard development organisations and fostering the use of common and/or international standards (i.e. ISO, IEC, ITU) in support of regulation
 - lowering the costs of conformity assessment procedures
 - promoting cooperation on enforcement/market surveillance
- Improving transparency of applicable regulations.
- Establishing specific provisions to enhance regulatory convergence in areas of common interest.

2. ELEMENTS FOR REGULATORY COOPERATION

Despite the regulatory differences, the engineering industries could benefit from increased cooperation between regulators in the EU and the US, in particular for emerging technologies but also in other areas where the legislation would be revised and where it has been observed that differences in regulatory requirements create significant trade barriers.

a) Regulator-to regulator-cooperation:

TTIP could establish cooperation mechanisms between the different regulators which are, among others, OSHA, EPA, USCG, NHTSA and the Federal Communications Commission (FCC) in the US; and primarily DG ENTR in the EU. In this regard, TTIP could provide a basis for US and EU regulators to engage in international regulatory cooperation.

Those mechanisms could cover areas such as:

- ***Exchange of information on regulatory plans*** at an early appropriate stage, including periodical information on regulatory initiatives, early consultations and informed dialogue between regulators, with the possibility of providing comments and receiving feedback.
- Commitment to closely ***cooperate in the development of international disciplines*** (regulations, guidelines and recommendations) and the presentation when feasible of joint EU/US initiatives in international organisations.
- Cooperation and exchanges for the ***review of conformity assessment procedures*** with a view to ensuring proportionality to the risk they intend to address.

The objective of this collaboration should be, where possible, to reduce unnecessary regulatory divergences regarding technical regulations and to introduce the least possible burdensome conformity assessment procedures, while guaranteeing high levels of safety.

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Ideally, TTIP could already define specific areas of collaboration. However, it should also provide the possibility to add future areas of interest as a result of technological developments.

b) Cooperation between standard setting organisations:

Apart from fostering collaboration between regulators, this sector would benefit from increased cooperation between standardisation bodies across the Atlantic. TTIP could encourage this collaboration so that technical requirements are aligned as much as possible. This cooperation would focus on new technologies, but it could also extend to the revision of standards for existing technologies where (existing) standards differ, as those differences actually have an impact on the ability of the product to comply with both sets of requirements without modifications.

This collaboration would also include work carried out in international standardisation bodies (i.e. ISO, IEC and ITU). In the EU's view, the outcome of such work should be used as basis for the development of standards at national or regional level. Ideally, where feasible, the parties would encourage their standards development organisations to present joint EU/US proposals in these fora and be consistent in their implementation.

However, as SDOs in both the EU and the US are private bodies to which the Administrations can give no instructions, work carried out in the TTIP framework can only act as an encouragement for SDOs to cooperate.

c) Cooperation on enforcement/market surveillance :

A productive and interesting cooperation on market surveillance is already in place at informal level between EU (Administrative Co-operation Working Group - ADCO), US (FCC) and Canada in the electronic sector. The EU and US Representatives (DG ENTR and FCC) have already expressed the wish to share more information and increase the level of cooperation.

Up to now the work has been carried out in an informal manner. During the 4th Round of negotiations the parties expressed their interest in formalizing their cooperation under the framework of TTIP in order to have a more structured cooperation with a possibility to have common actions, for instance joint campaigns. Confidentiality will be an issue to be looked at.

3. TRANSPARENCY AND ACCESS TO REGULATORY INFORMATION

In comparison with the EU, which has a single regulatory framework for placing products on the market, different sets of regulations may apply at sub-federal and local level in the US. For instance, several US States have their own Occupational Health and Safety Plans, and do not necessarily apply the same standards as those applied by OSHA. In addition, there are binding technical provisions applied at local level by the "authorities having jurisdiction" (AHJ).

While regulatory convergence, where possible, should remain the priority objective, both

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parties could also explore other possibilities to enhance regulatory transparency, in particular when regulatory requirements are scattered over different levels of regulations (national, regional and local). The diversity of regulatory requirements and complex access to information on such requirements can constitute barriers to market entry, especially for SMEs. The TTIP could provide for better access to information on the regulatory requirements by product and geographical area, with the aim of simplifying the operation of mandatory procedures.

4. SPECIFIC ACTION IN CERTAIN AREAS

TTIP could also address regulatory issues concerning these sectors that may be raised by industry. It could thus contain specific provisions in certain sectors or subsectors of engineering industries, that could be negotiated as part of TTIP or which could be developed afterwards. Input and concrete proposals from industry from both sides would be particularly useful for the determination of the areas where such action, and its contents, could be envisaged.

5. NEXT STEPS

The following next steps are suggested:

- Exchange information on regulatory plans
- Examination of possible areas for regulatory cooperation
- With the contribution of relevant stakeholders, identification of specific actions in concrete areas.
- Subsequently, determining which deliverables can be obtained within TTIP in the short and medium term.