TTIP: Cross-cutting disciplines and Institutional provisions

Position paper – Chapter on Regulatory Coherence

The TTIP provides a historic opportunity for the EU and the US to substantially enhance regulatory co-operation. Such co-operation should be guided by both Parties' right to develop and maintain, policies and measures ensuring a high level of environmental, health, safety, consumer and labour protection, fully respecting the right of each side to regulate in accordance with the level of protection it deems appropriate. Closer regulatory co-operation is not only important to progressively achieve a more integrated transatlantic marketplace but also to ensure that the EU and the US jointly and actively promote the development of international regulations and standards in co-operation and dialogue with other partners, as well as ensure together in the most effective way the objectives at stake.

This position paper includes ideas on how the TTIP could establish an effective system of transatlantic regulatory co-operation, based also an specific regulatory dialogues already in place or to be developed in certain areas. It should be read together with the "Building Block" paper of 20 October 2013, which also outlines the general objectives to be pursued by the Horizontal Chapter.

1. Scope

The Horizontal Chapter on Regulatory Coherence should cover, in principle, any planned and existing regulatory measures of general application with significant (potential or actual) impact on international (and in particular transatlantic) trade. For the EU side, this would include EU primary legislation (regulations and directives), as well as implementing measures adopted at EU level and delegated acts ("non-legislative acts"). On the US side, this would include Congress Bills as well as rules by US federal executive and independent agencies. The rules of this Chapter should also extend to regulations by US States and EU Member States, subject to possible adaptations.

All sectors should be covered by the disciplines on the Horizontal Chapter, also based on existing specific regulator dialogues. Where necessary, these disciplines may be further specified for selected sectors. In case of overlaps, any specific provisions of the TBT, SPS, Financial Services or Sustainable Development chapters will prevail over the more general rules of the Horizontal Chapter. Any specific provisions related to regulatory cooperation and the institutional framework for this cooperation in the domain of financial services will override the general rules of the Horizontal Chapter.

With a view to protecting and respecting the right of the Parties to regulate, both sides will reaffirm their sovereign right to adopt new regulatory initiatives, to regulate in pursuit of legitimate public policy objectives and to ensure that their laws and policies provide for and encourage high levels of environmental, health, safety, consumer and labour protection.

2. Essential requirements for effective regulatory cooperation

The TTIP should include a clear commitment to maintain or establish the necessary conditions for enhanced regulatory co-operation and should also develop a light governance structure for that purpose. Regulators (US executive and independent federal agencies) and competent authorities (Commission services) should engage in bilateral and international regulatory cooperation as part of fulfilling their domestic objectives, to maximise common regulatory goals and examine options that could enhance regulatory compatibility, without prejudice to their right to regulate and to define the level of protections deemed appropriate on either side.

In concrete terms, where appropriate, regulators/competent authorities should cooperate to enhance regulatory compatibility, with a view to exploring trade facilitative solutions, e.g. by way of

recognition of equivalence, mutual recognition or reliance and exchange of data and information, or other means. Regulators/competent authorities should give due consideration to substantiated proposals from the other side or joint requests from EU and US stakeholders on how to achieve these goals and be required to communicate to the other Party and the stakeholders in any appropriate form the outcome of this assessment and its rationale. The outcome of such action could be integrated in TTIP following the procedures mentioned under point 7 below.

Regulators/competent authorities should actively cooperate in promoting international standards, regulations, guidelines and recommendations and ensure their consistent implementation. This should include a commitment to I) closely cooperate in the development of relevant international instruments an II) the presentation, when feasible, of joint EU/US initiatives in international organisations working on these instruments.

Where relevant, the Parties will take the necessary steps to ensure their regulators/competent authorities can engage in such cooperation without unnecessary restrictions, including any institutional, statutory or other barriers/ inflexibilities. Regulators/competent authorities an both sides should assess impacts of their regulatory initiatives in international and in particular transatlantic trade in addition to other effects and take into account written comments from the other side on these aspects in their respective regulatory procedures.

3. Periodic information on upcoming initiatives in the pipeline

Parties should update each other regularly, at least twice a year, on the main elements of any regulatory and legislative initiatives with potential significant trade impact as of planning stage. Each side should share this information with stakeholders through a single access point.

In addition, on the EU side, the Commission would inform the US Administration about potentially significant upcoming primary legislation and non legislative acts as defined above.

The US administration would inform the Commission about Congress bills pending (e.g. once marked up for debate in the respective Committee or Subcommittee), as well as upcoming rules by Federal Agencies (executive and independent).

The information provided should include regulatory measures falling within the scope of thematic TTIP chapters on TBT, SPS, Customs, Procurement, etc. and pertaining to sectors subject to specific regulatory commitments. The information should identify the problem, the regulatory objectives, the envisaged consultations, the way in which impacts (including on international and in particular transatlantic trade) will be assessed as well as the timing for adoption of the measure.

If one Party makes a reasoned request for information on upcoming regulatory measures by an EU Member State or a US State in the areas that will be covered by the Horizontal Chapter, the other Party will use best endeavours to supply information on these initiatives, as available.

4. Regulatory dialogues

Upon a specific request of one Party the other Party should offer to enter into a dialogue, providing information on possible options and impacts, and react to written comments of the requesting Party. Parties shall explore possible concrete means to get to compatible outcomes or coordinated approaches, where appropriate, which achieve their respective regulatory objectives pursued, including the level of protection deemed appropriate on either side, while avoiding negative impacts on international and in particular transatlantic trade.

Consideration should also be given to means of actively and jointly promoting common regulatory objectives in international bodies. Each side should be prepared to provide information to the other side on the concrete regulatory options being considered in such bodies and discuss how

regulatory objectives can be achieved while at the same time avoiding negative impacts on international, in particular transatlantic, trade and investment.

Whether in a bilateral or international context, each side should reply in writing to written comments from the other side, with the shortest possible delays.

On the EU side, the exchange on legislative initiatives between the competent authority (EU Commission) and the US regulator should take place as early as possible after the receipt of the request and before the adoption of the Commission proposal for a regulation/directive. The exchange on non-legislative acts should take place as early as possible following the request.

On the US side, regulatory exchange upon request on non-legislative measures between the US regulator and the EU Commission should take place as early as possible at pre-notice and post-notice stage, and before the final rule is published in the Federal Register. As regards significant bills pending in the US Congress the Office of Management and Budget (OMB) and the Office of Legislative Information (OLI) should facilitate the transmission of written comments or statements the Commission may want to make vis-à-vis the respective Congressional Committee.

The Commission and the US administration should establish structures facilitating these dialogues. Both sides may provide to each other access to information on legislative proposals pending before their (co)-legislators (e. g. via a specific website) and establish contact points to facilitate delivery of comments made by either side vis-à-vis the (co)-legislators, to the extent feasible.

Upon request of one Party in relation to significant regulatory measures under development by a US State or an EU Member State, the other Party should seek to facilitate a dialogue involving the requesting Party and the US State or EU Member State.

5. Impact assessment/Cost benefit analysis

US regulators (executive and independent federal agencies) and competent authorities in the EU (Commission services), when carrying out impact assessment/cost benefit analysis on proposed regulatory measures covered by this Chapter, should assess impacts on international and in particular transatlantic trade. Impact assessment should be informed by appropriate input from stakeholders concerned. The impact assessment/ cost benefit analysis should be published together with the proposed or final measure.

Both sides will exchange, upon request, information on underlying assumptions, scientific evidence and data as well as methodology applied.

Impact assessment finding and cost –benefit analysis as tools in support of policy making will not prejudge the Parties' sovereign right to adopt new regulatory or legislative initiatives, to regulate in pursuit of their public policy objectives and to ensure that their laws and policies provide for and encourage high levels of environmental, health safety, consumer and labour protection.

6. Information on existing legislation and enquiry and contact points

Each Party would undertake stakeholder consultations on regulatory and legislative measures in the areas that will be covered by this Chapter, according to their respective consultation framework.

Each Party should establish or maintain appropriate mechanisms for responding to enquiries from any interested person regarding any measures of general application covered by this Chapter. Upon request each Party should provide information on any existing or proposed measure that the other Party considers might affect the operation of this Agreement, regardless of whether it was notified.

Each Party should endeavour to identify or create enquiry or contact points for interested persons of the other Party with the task of seeking to effectively resolve problems for them that may rise from the application of measures of general application. Such process should be easily accessible, time-bound, result-oriented and transparent. They should be without prejudice to any appeal or review procedures, which the Parties establish or maintain.

Each Party should seek to provide central information tools containing information on legislative and regulatory initiatives, relevant for this Chapter.

7. Institutional framework

A Regulatory Cooperation Council (RCC) will be established with participation from senioror level representatives from regulators/competent authorities and trade representatives, as well as Commission's Secretariat General (SG) and the US Office for Information and Regulatory Affairs (OIRA). The RCC will meet at least twice a year and will prepare a yearly Regulatory Programme.

The functions of the RCC will include inter alia:

a) Preparing and releasing to the public on a yearly basis a priority programme of regulatory cooperation ("Regulatory Programme") outlining the planned and ongoing regulatory cooperation activities and objectives and reporting on the implementation of sectoral undertakings and other priority actions;

b) Considering and analysing, with the help of the relevant working groups substantive joint submissions from EU and US stakeholders or submissions from either Party on how to deepen regulatory cooperation towards increased compatibility for both future and existing regulatory measures;

The RCC may be assisted by sectoral ad hoc working groups. In the domain of financial services the functions of the RCC to monitor, guide the cooperation and to prepare the yearly Regulatory Programme will be assumed by a competent sectorial body established by the TTIP.

Specific modalities will be established for interaction of the RCC with legislators (US Congress and the European Parliament). The RCC should interact with stakeholders, including business, consumers and trade unions. For this purpose a EU-US multi-stakeholder advisory committee or similar body should be established that would regularly meet with and work with EU competent authorities and US regulators in crafting regulatory measures or taking decisions how to further compatibility of existing one (e.g. through mutual reliance, recognition, etc.).

The relationship between the RCC and decision-making bodies under TTIP should be considered at a later stage.