

Text Of EU Draft Mandate

Strasbourg, 12.3.2013
COM(2013) 136 final

Recommendation for a COUNCIL DECISION

authorising the opening of negotiations on a comprehensive trade and investment agreement, called the Transatlantic Trade and Investment Partnership, between the European Union and the United States of America

{SWD(2013) 68 final}
{SWD(2013) 69 final}

EXPLANATORY MEMORANDUM

1. Background

The EU and the US share political and economic interests founded on democracy, the rule of law and universal human rights. Both the EU and the US are global actors making a substantial contribution to world peace and security and addressing global challenges such as poverty reduction.

The EU and the US are the world's major global traders and investors. Together the EU and the US account for almost half of global GDP and one third of total world trade. The transatlantic economic relationship is among the most open in the world and the two markets are deeply integrated through large flows of trade and investment: bilateral trade volume of goods and services amounted to 702.6bn euro in 2011, while bilateral investment stock was 2.394 trillion euro in 2011.¹

The bilateral trade relationship is extremely important for both partners. In 2011, the EU was the first trading partner of the US representing 17.6% of their trade in goods, while the US was the EU's second largest trading partner with 13.9% of the EU's total trade in goods. The bilateral trade balance has traditionally been to the advantage of the EU, standing at 73.5bn euro in 2011.

The Communication on Trade, Growth and World Affairs (2010) refers to the United States as a strategic partner, stressing that our capacity to jointly address regulatory obstacles to trade is key in achieving closer economic integration between The EU and the United States.

During their 28 November 2011 Summit meeting, President Jose Manuel Barroso, President Herman Van Rompuy and President Barack Obama established the High Level Working Group on Jobs and Growth (HLWG). They tasked it with identifying policies and measures to increase trade and investment to support mutually beneficial job creation, economic growth, and competitiveness.

By June 2012, the HLWG had analysed a wide range of potential options for expanding transatlantic trade and investment. In its interim report, the chairs of the HLWG, Commissioner Karel De Gucht and USTR Ron Kirk, reached the conclusion that a comprehensive agreement, addressing a broad range of bilateral trade and investment policies as well as issues of common concern with respect to third countries, could potentially provide significant benefits to both economies.

The HLWG continued its intensive work in the second semester 2012 with the aim of specifying the extent to which the Parties agree on the scope of a potential trade initiative and the degree of shared ambition regarding their respective priorities. A final report was published on 13 February 2013. It recom-

mended to U.S. and EU Leaders that the United States and the European Union launch, in accordance with their respective domestic procedures, negotiations on a comprehensive and ambitious agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and contributes to the development of global rules. It also recommended that the objective of such an agreement be to achieve a market access package that goes beyond what the United States and the EU have achieved in previous trade agreements. It also pointed out that a significant portion of the benefit of a potential transatlantic agreement turns on the ability of the United States and the EU to pursue new and innovative approaches to reduce the adverse impact on trade and investment of non-tariff barriers, with the aim of moving progressively toward a more integrated transatlantic marketplace. The HLWG recommended that the two sides explore new means of addressing these "behind-the-border" obstacles to trade, including, where possible, through provisions that serve to reduce unnecessary costs and administrative delays stemming from regulation, while achieving the levels of health, safety, and environmental protection that each side seems appropriate, or otherwise meeting legitimate regulatory objectives. A key shared objective should be to identify new ways to prevent non-tariff barriers from limiting the capacity of US and EU firms to innovate and compete in global markets.

In advance of any possible decision to launch such negotiations, the Commission services have undertaken an impact assessment of a potential trade initiative with the US analysing various trade policy options. The analysis concluded with the result that a comprehensive trade and investment agreement aiming at tackling, in particular regulatory obstacles to trade, would be the most beneficial policy option for the European Union in terms of GDP growth, exports, employment and wages.

A comprehensive trade and investment agreement could increase EU GDP between 0.27% and 0.48%, and EU national income by up to 86 billion euro.

In its October 2012 resolution on trade and economic relations with the United States, the European Parliament called for the launch of negotiations of a comprehensive EU-US trade agreement.²

In view of the potential economic and social benefits deeper transatlantic economic integration could provide for the EU, the February 2013 European Council called upon the Commission and the Council to follow up on the recommendations of the HLWG without delay during the current Presidency.

2. Nature and scope of the comprehensive trade and investment agreement

The Agreement should provide for the progressive and reciprocal liberalisation of trade and investment in goods and services as well as rules on trade and investment related issues with particular focus on removing unnecessary regulatory barriers. The Agreement will be very ambitious, going beyond existing WTO commitments.

In order to be balanced and commercially attractive for the EU, the Agreement should include commitments in respect of entities at all levels of government.

3. Preparation of the draft negotiating directives

Member States and civil society were consulted in ad-

vance of the preparation of the draft negotiation directives in the framework of the impact assessment carried out by the Commission.

4. Procedures

In line with normal practice and with the EU Treaty, the Commission will conduct the negotiations, in consultation with Member States in the appropriate committee of the Council. The Commission shall report regularly to this committee and to the European Parliament on the progress of negotiations.

The Commission recommends to the Council:

- to adopt the attached Decision authorising the Commission to negotiate on behalf of the European Union, a comprehensive trade and investment agreement, called "Transatlantic Trade and Investment Partnership" between the European Union and the United States of America;
- to issue the negotiating directives appended to that Decision;
- to appoint the special committee, foreseen in Article 207 TFEU, to assist it in this task.

Footnotes:

¹ Source: Comext, Balance of Payments, Eurostat.

² The European Parliament resolution received a majority of 526 for, 94 against and 7 abstentions.

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-388>

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas negotiations should be opened with a view to concluding a comprehensive trade and investment agreement, called the Transatlantic Trade and Investment Partnership, with the United States of America,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate on behalf of the Union a comprehensive trade and investment agreement with the United States of America.

Article 2

The Commission shall negotiate the provisions of the Agreement on the basis of the negotiating directives set out in the annex.

Article 3

The negotiations shall be conducted in consultation with the Trade Policy Committee pursuant to Article 207(3) of the Treaty.

Article 4

This Decision is addressed to the Commission.

Done at Strasbourg,
For the Council
The President

ANNEX

Nature and Scope of the Agreement

1. The Agreement will exclusively contain provisions on trade and trade-related areas applicable between the Parties. The Agreement should confirm that the transatlantic trade and investment partnership is based on common values, including the protection and promotion of human rights and international security.

2. The Agreement shall be comprehensive, balanced, and fully consistent with World Trade Organisation (WTO) rules and obligations.

3. The Agreement shall provide for the reciprocal liberalisation of trade in goods and services as well as rules on trade-related issues, with a high level of ambition going beyond existing WTO commitments.

4. The obligations of the Agreement shall be binding on all levels of government.

5. The Agreement should be composed of three key components: (a) market access, (b) regulatory issues and Non-Tariff Barriers (NTBs), and (c) rules. All three components will be negotiated in parallel and will form part of a single undertaking ensuring a balanced outcome between the elimination of duties and the elimination of unnecessary regulatory obstacles to trade.

Preamble and General Principles

6. The preamble will recall that the partnership with the United States is based on common principles and values consistent with the principles and objectives of the Union's external action. It will refer, inter alia, to:

- Shared values in such areas as human rights, fundamental freedoms, democracy and the rule of law;

- The commitment of the Parties to sustainable development and the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, full and productive employment and decent work for all as well as the protection and preservation of the environment and natural resources;

- The commitment of the Parties to an Agreement in full compliance with their rights and obligations arising out of the WTO and supportive of the multilateral trading system;

- The right of the Parties to take measures necessary to achieve legitimate public policy objectives on the basis of the level of protection of health, safety, labour, consumers and the environment that they deem appropriate;

- The shared objective of the Parties to take into account the particular challenges faced by small and medium-sized enterprises in contributing to the development of trade and investment;

- The commitment of the Parties to communicate with all relevant interested Parties, including the private sector and civil society organisations.

Objectives

7. The objective of the Agreement is to realise the untapped potential of a truly transatlantic market place, generating new economic opportunities for the creation of jobs and growth through increased market access and greater regulatory compatibility.

8. The Agreement should recognise that sustainable development is an overarching objective of the Parties and that they will aim at ensuring and facilitating respect of international

environmental and labour agreements and standards while promoting high levels of protection for the environment and labour. The Agreement should recognise that the Parties will not encourage trade or foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation and standards, or by relaxing; core labour standards or policies and legislation aimed at protecting and promoting cultural diversity. The Agreement shall not contain provisions that would risk, prejudicing the Union's cultural and linguistic diversity, namely in the audio-visual sector.

MARKET ACCESS

Trade in Goods

9. Duties on imports and exports

The goal will be to eliminate all duties on bilateral trade, with the shared objective of achieving a substantial elimination of tariffs upon entry into force and a phasing out of all but the most sensitive tariffs in a short time frame. In the course of negotiations, both Parties will consider options for the treatment of the most sensitive products, including tariff rate quotas. All customs duties, taxes, fees, or charges on exports and quantitative restrictions on exports to the other Party which are not justified by exceptions under the Agreement shall be abolished upon the application of the Agreement.

10. Rules of origin

Negotiations will aim at reconciling the EU and US approaches to rules of origin in a manner that contributes towards trade facilitation and takes into account the interests of the European Union producers. They should also aim at ensuring that administrative errors are dealt with appropriately. The scope for cumulation with countries that have concluded Free Trade Agreements (FTAs) with both the EU and the US will be considered.

11. General exceptions

The Agreement will include a general exception clause based on Articles XX and XXI GATT.

12. Safeguards

To maximise liberalisation commitments, the Agreement may contain bilateral safeguard clause by which either Party may remove, in part or in full, preferences where a rise in imports of product from the other Party is causing or threatening to cause serious injury to its domestic industry.

Trade in Services and Investment

13. The aim of negotiations on trade in services will be to bind the existing autonomous level of liberalisation of both Parties at the highest level of liberalisation captured in existing FTAs, while seeking to achieve new market access by addressing remaining long-standing market access barriers, recognising the sensitive nature of certain sectors. Furthermore, the US and the EU will include binding commitments to provide transparency, impartiality and due process with regard to licensing and qualification requirements and procedures, as well as to enhance the regulatory disciplines included in current US and EU FTAs.

14. The Agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIVbis CATS).

15. The aim of negotiations on investment will be to negotiate investment liberalisation and protection provisions, including investor to state dispute settlement, on the basis of the highest levels of liberalisation and highest standards of protection that

both Parties have negotiated to date.

16. As regards investment protection, the objective of the respective provisions of the Agreement should:

- provide for the highest possible level of legal protection and certainty for European investors in the US,
- provide for the promotion of the European standards of protection which should increase Europe's attractiveness as a destination for foreign investment,
- provide for a level playing field for investors in the US and in the EU,
- build upon the Member States' experience and best practice regarding their bilateral investment agreements with third countries,
- and should be without prejudice to the right of the EU and the Member States to adopt and enforce, in accordance with their respective competences, measures necessary to pursue legitimate public policy objectives such as social, environmental, security, public health and safety in a non-discriminatory manner. The Agreement should respect the policies of the EU and its Member States for the promotion and protection of cultural diversity.

Scope: the investment protection chapter of the Agreement should cover a broad range of investors and their investments, intellectual property rights included, whether the investment is made before or after the entry into force of the Agreement.

Standards of treatment: the negotiations should aim to include in particular, but not exclusively, the following standards of treatment and rules:

- a) fair and equitable treatment, including a prohibition of unreasonable, arbitrary or discriminatory measures,
- b) national treatment,
- c) most-favoured nation treatment,
- d) protection against direct and indirect expropriation, including the right to prompt, adequate and effective compensation,
- e) full protection and security of investors and investments,
- f) other effective protection provisions, such as an "umbrella clause",
- g) free transfer of funds of capital and payments by investors,
- h) rules concerning subrogation.

Enforcement: the Agreement should aim to include an effective and state-of-the-art investor-to-state dispute settlement mechanism, providing for transparency, independence of arbitrators and predictability of the Agreement, including through the possibility of binding interpretation of the Agreement by the Parties. State-to-state dispute settlement should be included, but should not interfere with the right of investors to have recourse to the investor-to-state dispute settlement mechanisms. It should provide for investors a wide range of arbitration fora as currently available under the Member States' bilateral investment agreements. Consideration should be given to the possibility of creating an appellate mechanism applicable to investor to state dispute settlement under the Agreement.

Relationship with other parts of the Agreement: investment protection provisions should not be linked to the market access commitments taken elsewhere in the Agreement. These market access commitments may include, when necessary, rules prohibiting performance requirements.

All sub-central authorities and entities (such as States or

municipalities) should effectively comply with the investment protection chapter of this Agreement.

Public procurement

17. The Agreement shall aim for the maximum ambition, complementing the outcome of the negotiations of the revised Government Procurement Agreement in terms of coverage (procurement entities, sectors, thresholds and services contracts, including in particular public construction). The Agreement will aim at enhanced mutual access to public procurement markets at all administrative levels (national, regional and local), including in the field of defence and security as defined in Directive 2009/81 /EC and in the fields of public utilities, covering relevant operations of undertakings operating in this field and ensuring treatment no less favourable than that accorded to locally established suppliers. The Agreement shall also include rules and disciplines to address barriers having a negative impact on each others' public procurement markets, including localisation requirements, and those applying to tendering procedures, technical specifications, remedy procedures and existing carve-outs, including for small and medium-sized enterprises, with a view to increasing market access, and where appropriate, streamlining, simplifying and increasing transparency of procedures.

REGULATORY ISSUES AND NON-TARIFF BARRIERS

18. The Agreement will aim at removing unnecessary obstacles to trade and investment through effective and efficient mechanisms, by promoting an ambitious level of regulatory compatibility for goods and services, including through mutual recognition, harmonisation or other means of enhancing cooperation between regulators. Regulatory compatibility shall be without prejudice to the right to regulate in accordance with the level of health, safety, labour and environmental protection and cultural diversity that each side deems appropriate, or otherwise meeting legitimate regulatory objectives, and will be in accordance with the objectives set out in paragraph 8. To this end, the Agreement shall include provisions related to the following matters:

- Sanitary and phytosanitary measures (SPS)

On SPS measures, the negotiations shall follow the negotiating directives adopted by the Council on 20 February 1995 (Council Doc. 4976/95). The Parties shall establish provisions that build upon the WTO SPS Agreement and on the provisions of the existing veterinary agreement, introduce disciplines as regards plant health and set up a bilateral forum for improved dialogue and cooperation on SPS issues. In areas covered by the existing EU-US veterinary agreement, the relevant provisions should be considered as part of the negotiations. Provisions of the SPS chapter will seek to build upon the key principles of the WTO SPS Agreement, including the requirement that each side's SPS measures be based on science and on international standards or scientific risk assessments, applied only to the extent necessary to protect human, animal, or plant life or health, and developed in a transparent manner, without undue delay. The Agreement should also aim at establishing cooperation mechanisms on animal welfare between the Parties.

- Technical regulations, standards and conformity assessment procedures

Building on the Parties' commitments under the

WTO Agreement on Technical Barriers to Trade (TBT), the Parties shall also establish provisions that build on and complement such provisions, with a view to facilitating access to each other's markets, and establish a mechanism for improved dialogue and cooperation for addressing bilateral TBT issues. The objectives of these provisions would be to yield greater openness, transparency and convergence in regulatory approaches and requirements and related standards-development processes, as well as, inter alia, to reduce redundant and burdensome testing and certification requirements, promote confidence in our respective conformity assessment bodies, and enhance cooperation on conformity assessment and standardisation issues globally.

- Regulatory Coherence

The Agreement will include cross-cutting disciplines on regulatory coherence and transparency for the development and implementation of efficient, cost-effective, and more compatible regulations for goods and services, including early consultations on significant regulations, use of impact assessments, evaluations, periodic review of existing regulatory measures, and application of good regulatory practices.

- Sectoral provisions

The Agreement will include provisions or annexes containing additional commitments or steps aimed at promoting regulatory compatibility in specific, mutually agreed goods and services sectors, with the objective of reducing costs stemming from regulatory differences in specific sectors, including consideration of approaches relating to regulatory harmonisation, equivalence, or mutual recognition, where appropriate. This should include specific and substantive provisions and procedures in sectors of significant importance to the transatlantic economy, including, but not limited to, automotives, chemicals, pharmaceuticals and other health industries, Information and Communication Technologies and financial services. The aim will be to remove existing NTBs, prevent the adoption of new NTBs and ensure market access at a level greater than that delivered through horizontal rules of the Agreement. With regard to financial services, negotiations should also aim at common frameworks for prudential cooperation.

19. The Agreement shall also include a framework for identifying opportunities and for guiding further work on regulatory issues, including provisions that provide an institutional basis for harnessing the outcome of subsequent regulatory discussions into the overall Agreement.

20. The Agreement shall be binding on all regulators and other competent authorities of both Parties.

RULES

Intellectual Property Rights

21. The Agreement shall cover issues related to intellectual property rights.

22. Negotiations should, in particular, address areas most relevant for fostering the exchange of goods and services with IP content, with a view to reducing costs and supporting innovation. Negotiations should provide for enhanced protection of key EU Geographical Indications through the Agreement.

Trade and sustainable development

23. The Agreement will include commitments by both Parties in terms of the labour and environmental aspects of trade and sustainable development. Consideration will be given to

measures to facilitate and promote trade in environmentally friendly and resource-efficient goods, services and technologies, including through green public procurement and to support informed purchasing choices by consumers. The Agreement will also include provisions to promote adherence to and effective implementation of internationally agreed standards and agreements in the labour and environmental domain as a necessary condition for sustainable development.

24. The Agreement will include mechanisms to support the promotion of decent work through effective domestic implementation of International Labour Organisation (ILO) core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work and relevant Multilateral Environment Agreements as well as enhancing co-operation on trade-related aspects of sustainable development. The importance of implementation and enforcement of domestic legislation on labour and environment should be stressed as well. It should also include provisions in support of internationally recognised standards of corporate social responsibility, as well as of the conservation, sustainable management and promotion of trade in legally obtained and sustainable natural resources, such as timber, wild-life or fisheries' resources. The Agreement will foresee the monitoring of the implementation of these provisions through a mechanism including civil society participation, as well as one to address any disputes.

25. The economic, social and environmental impacts will be examined by means of a Sustainability Impact Assessment that will be undertaken in parallel with the negotiations and which will be finalised ahead of the initialling of any final Agreement.

Customs and Trade facilitation

26. The Agreement shall include provisions to facilitate trade between the Parties, while ensuring effective controls and anti-fraud measures. To this end it shall include inter alia commitments on rules, requirements, formalities and procedures of the Parties related to import, export and transit, at a high level of ambition, going beyond commitments negotiated in the WTO. These provisions should also build and complement the customs cooperation provisions of the existing Agreement between the European Community and the United States of America on customs cooperation and mutual administrative assistance in customs matters.

Trade and Competition

27. The Agreement should include provisions on competition policy, including provisions on antitrust, mergers and subsidies. Furthermore, the Agreement shall address state monopolies, state owned enterprises and enterprises entrusted with special or exclusive rights.

Trade related energy and raw materials

28. The Agreement will include provisions addressing trade and investment related aspects of energy and raw materials.

Small and Medium-Sized Enterprises

29. The Agreement will include provisions addressing trade-related aspects of small and medium-sized enterprises.

Capital Movement and Payments

30. The Agreement will include provisions on the full liberalisation of current payments and capital movements, and include a standstill clause. It will entail carve-out provisions (e.g. in case of serious difficulties for monetary and exchange rate policy, or for prudential supervision and taxation), which will be in accordance with the provisions of the EU Treaty on the free movement of capital. Negotiations shall take into account the sensitivities attached to the liberalisation of capital movements not linked to direct investment.

Transparency

31. The Agreement will address issues of transparency. To this end, it will include provisions on:

- The commitment to consult stakeholders in advance of the introduction of measures with an impact on trade and investment;
- The publication of general rules and measures with an impact on international trade and investment in goods and services;
- Transparency as regards the application of measures having an impact on international trade and investment in goods or services.

Other Rules areas

32. The Agreement may include provisions regarding other areas related to the trade and economic relationship where, in the course of negotiations, mutual interest was expressed in doing so.

Institutional Framework and Final Provisions

33. Institutional framework

The Agreement will set up an institutional structure to ensure an effective follow up of the commitments under the Agreement, as well as to promote the progressive achievement of compatibility of regulatory regimes.

34. Dispute settlement

The Agreement will include an appropriate dispute settlement mechanism, which will ensure that the Parties observe mutually agreed rules.

The Agreement should include provisions for expedient problem-solving such as a flexible mediation mechanism.

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