

*This textual proposal is the European Union's initial proposal for a legal text on Energy and Raw Materials in TTIP. It was tabled for discussion with the US in the negotiating round of 11-15 July 2016 and made public on 14 July 2016. The actual text in the final agreement will be a result of talks between the EU and US.*

## **Transatlantic Trade and Investment Partnership**

### **EU TEXTUAL PROPOSAL**

#### **Energy and Raw Materials**

*DISCLAIMER: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage.*

*In addition to the provisions on Energy and Raw Materials laid down in this document, the Parties must agree on a legally binding commitment to eliminate all existing restrictions on the export of natural gas in trade between them as of the date of entry into force of the Agreement. The language of such commitment is still to be discussed.*

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## **Chapter on Trade in Goods (new provisions)**

### *Article X*

#### **Prohibition on export monopolies**

A Party shall not institute or maintain a monopoly for the exportation of any good to the other Party.

### *Article XX*

#### **Transit**

Article V of the GATT 1994 is hereby incorporated into this Agreement.

### *Article XXX*

#### **Export pricing<sup>1</sup>**

A Party shall not adopt or maintain a higher price for exports of goods to the other Party than the price charged for such goods when destined for the domestic market, by means of any measure such as licenses or minimum price requirements.

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<sup>1</sup> This provision will be added as a new sub-paragraph in the Article on export and import restrictions in the TiG Chapter.

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## **Chapter on Energy and Raw Materials**

### **Section I – General Provisions**

#### *Article 1*

#### **Objective**

The Parties aim at liberalising bilateral trade in goods, services and investment in the areas of energy and raw materials, and improving environmental sustainability and international governance in these areas, in accordance with the provisions of this Agreement, and in particular with Articles X (export duties), XX (export restrictions), XXX (transit), IV (export monopolies) and V (export pricing) of the Chapter [on Trade in Goods/Market Access].

#### *Article 2*

#### **Principles**

Consistent with the provisions of this Chapter, the Parties preserve their right to adopt, maintain and enforce measures necessary to pursue legitimate public policy objectives, such as securing the supply of energy goods, protecting society, the environment, public health and consumers and promoting public security and safety.

#### *Article 3*

#### **Definitions**

For the purpose of this Chapter:

- a) “Energy goods” refers to the goods from which energy is generated, listed by the corresponding HS code in Annex I to this Chapter;
- b) “Raw Materials” refers to materials used in the manufacture of industrial products, listed by the corresponding HS code in Annex I to this Chapter;
- c) “Sustainable renewable energy” refers to a type of energy produced from wind, solar, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas or biogases;
- d) “Energy efficiency” refers to a ratio of output of performance, service, goods or energy, to an input of energy;
- e) “Standards” means [*as defined in the TBT Chapter*];

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f) “Technical regulations” means [as defined in the TBT Chapter];

#### *Article 4*

##### **Transit**

The Parties recognize that Article V of GATT 1994 is applicable to the movement of energy goods via pipelines or electricity grids.

#### *Article 5*

##### **Third-party access to energy transport infrastructure**

1. Each Party shall ensure that operators of transmission systems in its territory<sup>2</sup> grant access to their systems to entities of the other Party for the transport of gas and electricity. Such access shall be granted on commercial terms that are reasonable, transparent and non-discriminatory, and at cost-reflective tariffs. Each party shall publish the terms, conditions and tariffs for the access to and use of energy transport infrastructure.
2. Notwithstanding paragraph 1 of this Article, a Party may introduce or maintain a limited list of derogations from the right to third party access based on objective criteria set out in legislation, provided that they are necessary to fulfil a legitimate policy objective.
3. Each Party shall maintain or establish a regulatory body that is separate from, and not accountable to, operators providing, or entities having access to, energy transport infrastructure. The regulatory body shall be legally competent to resolve disputes, within a reasonable period of time, regarding appropriate terms, conditions and tariffs for the access to and use of energy transport infrastructure.
4. Nothing in this Article shall prevent a Party from adopting temporary measures necessary to protect the safety and to preserve the integrity of energy equipment or infrastructure, subject to the requirement that such measures are not applied in a manner which would constitute a disguised restriction on trade or investment of the other Party.

#### *Article 6*

##### **Consultation Mechanism**

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<sup>2</sup> For the United States, the operators include independent system operators and regional transmission organizations of inter-state gas pipelines and electricity connections in its territory. For the EU Party, the operators include members of the European Network of Transmission System Operators for Electricity and the European Network of Transmission System Operators for Gas.

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1. The Parties establish hereby a consultation mechanism aimed at preventing and rapidly reacting to a situation of disruption to, or deterioration of, the supply of energy to any of the Parties, or to a threat thereof .
2. The details of this mechanism are laid down in Annex II.

## **Section II –Cooperation on energy efficiency, sustainable renewable energy and raw materials**

### *Article 7*

#### **Cooperation on Standards, Technical Regulations and Conformity Assessments**

1. The Parties shall promote cooperation between the regulators and/or standardization bodies located within their respective territories on the area of energy efficiency and sustainable renewable energy, with a view to contributing to sustainable energy and climate policy and facilitating, *inter alia*:
  - a) the convergence, or harmonisation where possible, of their respective existing or applied standards on energy efficiency and sustainable renewable energy, based on mutual interest and reciprocity, and according to modalities to be agreed by the regulators and the standardisation bodies concerned;
  - b) the development of common standards on energy efficiency and sustainable renewable energy;
  - c) joint analysis, methodologies and approaches, to assist and facilitate the development of relevant tests and measurement standards, in cooperation with the relevant respective standardisation organisations; and
  - d) the promotion of standards on equipment for sustainable renewable energy generation and energy efficiency, including product design and labelling, where appropriate, through existing international cooperation initiatives.
2. The Parties shall foster the voluntary adoption by industry of energy efficiency standards for goods when it is likely to deliver the policy objectives faster or in a less costly manner than mandatory requirements.

### *Article 8*

#### **Mutual recognition of test results**

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When the Parties request test reports in order to verify compliance with technical regulations or standards on energy efficiency, the Parties shall accept the test reports on energy efficiency issued by a laboratory accredited for such tests by an accreditation body signatory of the mutual recognition arrangements under the International Laboratory Accreditation Cooperation (ILAC) or International Accreditation Forum (IAF).

## *Article 9*

### **Cooperation on Energy and Raw Materials**

The Parties shall cooperate in the area of energy and raw materials with a view to, *inter alia*:

- a) reduce or eliminate trade and investment distorting measures in third countries affecting energy and raw materials;
- b) coordinate their positions in international fora where trade and investment issues related to energy and raw materials are discussed and foster international programmes in the areas of energy efficient, sustainable renewable energy and raw materials;
- c) foster exchange of market data in the area of energy and raw materials;
- d) promote corporate social responsibility in accordance with international standards, such as the OECD Guidelines for Multinational Enterprises and Due Diligence Guidance;
- e) promote research, development and innovation in the areas of energy efficiency, sustainable renewable energy and raw materials;
- f) foster exchange of information and best practices on domestic policy developments;
- g) promote the efficient use of resources (i.e. improving durability, reparability, design for disassembly, ease of reuse and recycling of goods); and
- h) promote internationally high standards of safety and environmental protection for offshore oil, gas and mining operations, by increasing transparency, sharing information, including on industry safety and environmental performance.

## *Article 10*

### **Working Group**

*[NB: this Article will have to be adjusted, to make it fit for cooperation between the Parties and regulatory authorities and as discussions on the Regulatory Cooperation Chapter proceed*

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1. A Working Group for Energy and Raw Materials is hereby established. The Working Group shall monitor the implementation of this Chapter as well as support and further develop bilateral regulatory cooperation between responsible authorities of the Parties.

1. The Working Group shall meet upon request of either Party or of the Joint Committee for the purpose of reviewing the implementation of commitments taken under this Annex or examining stakeholder requests.

2. The cooperation between the responsible authorities of the Parties shall be guided by a joint regulatory cooperation work plan which sets out short and medium term priorities for regulatory cooperation.

3. The first joint regulatory cooperation work plan shall be agreed no later than by the time of signature of the Agreement and shall be endorsed by the European Commission and by the [US authority].

4. The responsible authorities of each Party shall publish the joint regulatory cooperation work plan on their respective websites.

5. The responsible authorities of each Party shall implement the joint regulatory cooperation work plan.

6. The responsible authorities of the Parties shall review annually the joint regulatory cooperation work plan. In this review, the Parties shall take into account, *inter alia*, progress achieved during the preceding year and consider new areas that would benefit from regulatory cooperation. For the review of the joint regulatory cooperation work plan, the responsible authorities of each Party shall consult stakeholders including Small and Medium Size enterprises and public interest groups.]

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## *Annex I*

### **List of Energy Goods by HS code**

coal (HS code .... ),  
 crude oil (HS code .... ),  
 oil products (HS code .... ),  
 natural gas whether liquefied or not (HS code .... ), and  
 electrical energy (HS code .... )

### **List of Raw Materials by HS code**

*[to be further defined, unprocessed and semi-processed products covered in the following chapters, but excluding energy goods as defined above:]*

chapter	heading
25	Salt; sulphur; earths and stone; plastering materials, lime and cement
26	Ores, slag and ash
27	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes
28	Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes
29	Organic chemicals
31	Fertilisers
40	Rubber
41	Raw hides and skins (other than furskins) and leather
44	Wood and articles of wood
45	Cork and articles of cork
47	Pulp of wood or of other fibrous cellulosic material
50	Silk
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric.
52	Cotton
53	Other vegetable textile fibres; paper yarn and woven fabrics of yarn
71	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof
72	Iron and steel
74	Copper and articles thereof
75	Nickel and articles thereof
76	Aluminium and articles thereof
78	Lead and articles thereof
79	Zinc and articles thereof
80	Tin and articles thereof
81	Other base metals; cermets; articles thereof



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## *Annex II*

### **Energy Consultation Mechanism**

1. This consultation mechanism shall apply to prevent and rapidly react to a situation of disruption to, or deterioration of, the supply of energy to any of the Parties, or threats thereof. For the purposes of this mechanism, the Coordinators are respectively the US Secretary of Energy and the Member of the European Commission in charge of Energy.
  2. Should one of the Parties become aware of such a situation or of a threat thereof, the Coordinators shall notify each other in writing, within the shortest possible time, of the necessity to initiate the mechanism.
  3. The Coordinators may request consultations immediately after the receipt of the notification. The consultations shall aim at elaborating a common evaluation of the situation and of possible further developments and drafting a joint action plan in order to minimise the impact of an emergency situation and, if possible, to overcome the emergency situation. The consultations shall be held within 5 days after the date of receipt of the request.
  4. If an emergency situation occurs, the Coordinators may request the establishment of an ad hoc task force with the task of examining the ongoing circumstances and further developments and solving the situation. The ad hoc task force may consist of:
    - (a) representatives of the Parties;
    - (b) representatives of energy companies established on the territory of the Parties; and
    - (c) experts, proposed and mutually approved by the Parties.
  5. Each Party shall do its utmost within the scope of its competence to minimise any negative consequences for the supply of energy between the Parties. The Parties shall cooperate with the aim to reach an immediate solution in a spirit of transparency.
  6. Each Party independently carries its costs relating to the actions in the framework of this mechanism.
  7. The Parties shall maintain in confidence all information exchanged between them that is designated as being of a confidential nature. The Parties shall take any necessary measures to protect confidential information on the basis of the relevant legal and normative acts of the Parties as well as in accordance with applicable international agreements and conventions.
  8. A violation of the provisions in this Annex cannot serve as a basis for dispute settlement procedures under Title XX of this Agreement or any other agreement applicable to disputes between the Parties. Moreover, a Party shall not rely on or introduce as evidence in such dispute settlement procedures:
    - (a) positions taken or proposals made by the other Party in the course of the procedure set out in this Annex; or,
    - (b) the fact that the other Party has indicated its willingness to accept a solution to the emergency situation subject to this mechanism.
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