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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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THE EUROPEAN UNION

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**NOTE**

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| From : | General Secretariat of the Council |
| To : | Delegations |
| Subject : | Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America |

Delegations will find attached the directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America, as adopted at the Foreign Affairs Council (Trade) on 14 June 2013.

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# DIRECTIVES FOR THE NEGOTIATION ON A COMPREHENSIVE TRADE AND INVESTMENT AGREEMENT, CALLED THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP, BETWEEN THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA

**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 ambitious, 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.

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5. The Agreement shall 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, the elimination of unnecessary regulatory obstacles to trade and an improvement in rules, leading to a substantial result in each of these components and effective opening of each others markets.

**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, the environment and the promotion of cultural diversity as it is laid down in the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 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.

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**Objectives**

7. The objective of the Agreement is to increase trade and investment between the EU and the US by realising 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 and setting the path for global standards.

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, labour and consumers, consistent with the EU acquis and Member States' legislation. 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.

9. The Agreement shall not contain provisions that would risk prejudicing the Union's or its Member States' cultural and linguistic diversity, namely in the cultural sector nor limit the Union and its Member States from maintaining existing policies and measures in support of the cultural sector given its special status within the EU and its Member States. The Agreement will not affect the capacity of the Union and its Member States to implement policies and measures to take account of developments in this sector in particular in the digital environment.

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**MARKET ACCESS**

**Trade in Goods**

10. *Duties and other requirements regarding 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 or authorisation requirements on exports to the other Party which are not justified by exceptions under the Agreement shall be abolished upon the application of the Agreement. The negotiations shall address concerns regarding remaining obstacles to trade in dual use items that affect the integrity of the single market.

11. *Rules of origin*

Negotiations will aim at reconciling the EU and US approaches to rules of origin in a manner that facilitates trade between the Parties and that takes into account the rules of origin of the EU and the interests of the EU producers. They should also aim at ensuring that administrative errors are dealt with appropriately. Following presentation of an analysis by the Commission of its possible economic consequences, and in prior consultation with the Trade Policy Committee, the scope for cumulation with neighbouring countries that have concluded Free Trade Agreements (FTAs) with both the EU and the US will be considered.

12. *General exceptions*

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

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13. *Anti-dumping and countervailing measures*

The Agreement should include a clause on anti-dumping and countervailing measures, acknowledging that any of the Parties may take appropriate measures against dumping and/or countervailing subsidies in accordance with the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or the WTO Agreement on Subsidies and Countervailing Measures. The Agreement should establish a regular dialogue on trade defence matters.

14. *Safeguards*

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

**Trade in Services and Establishment**

15. 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, in line with Article V of GATS, covering substantially all sectors and all modes of supply, while achieving new market access by tackling 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.

16. The Parties should agree to grant treatment no less favourable for the establishment in their territory of companies, subsidiaries or branches of the other Party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.

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17. The Agreement should develop a framework to facilitate mutual recognition of professional qualifications.

18. The Agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIVbis GATS). The Commission should also ensure that nothing in the Agreement prevents the Parties from applying their national law, regulations and requirements regarding entry and stay, provided that, in doing so, they do not nullify or impair the benefits accruing from the Agreement. The EU and Member States' laws, regulations and requirements regarding work and labour conditions shall continue to apply.

19. The high quality of the EU's public utilities should be preserved in accordance with the TFEU and in particular Protocol n°26 on Services of General Interest, and taking into account the EU's commitment in this area, including GATS.

20. Services supplied in the exercise of governmental authority as defined by Article I.3 of GATS shall be excluded from these negotiations.

21. Audiovisual services will not be covered by this chapter.

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**Investment Protection**

22. The aim of negotiations on investment will be to negotiate investment liberalisation and protection provisions including areas of mixed competence, such as portfolio investment, property and expropriation aspects, on the basis of the highest levels of liberalisation and highest standards of protection that both Parties have negotiated to date. After prior consultation with Member States and in accordance with the EU Treaties the inclusion of investment protection and investor-to-state dispute settlement (ISDS) will depend on whether a satisfactory solution, meeting the EU interests concerning the issues covered by paragraph 23, is achieved. The matter shall also be considered in view of the final balance of the Agreement.

23. 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, stability of the financial system, 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.

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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 provide for 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 as wide a range of arbitration fora as is currently available under the Member States' bilateral investment agreements. The investor-to-state dispute settlement mechanism should contain safeguards against manifestly unjustified or frivolous claims. Consideration should be given to the possibility of creating an appellate mechanism applicable to investor-to-state dispute settlement under the Agreement, and to the appropriate relationship between ISDS and domestic remedies.

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Relationship with other parts of the Agreement: investment protection provisions should not be linked to the market access commitments on investment taken elsewhere in the Agreement. ISDS shall not apply to market access provisions. 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**

24. 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), 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 local content or local production requirements, in particular Buy America(n) provisions, 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.

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**REGULATORY ISSUES AND NON-TARIFF BARRIERS**

25. The Agreement will aim at removing unnecessary obstacles to trade and investment, including existing NTBs, through effective and efficient mechanisms, by reaching an ambitious level of regulatory compatibility for goods and services, including through mutual recognition, harmonisation and through enhanced cooperation between regulators. Regulatory compatibility shall be without prejudice to the right to regulate in accordance with the level of health, safety, consumer, 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 the starting point of the negotiations. Provisions of the SPS chapter will 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, while recognising the right for the Parties to appraise and manage risk in accordance with the level of protection that each side deems appropriate, in particular when relevant scientific evidence is insufficient, but 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 which will, inter alia, discuss equivalence on animal welfare between the Parties.

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The Agreement should seek to achieve full transparency as regards sanitary and phytosanitary measures applicable to trade, in particular establish provisions for the recognition of equivalence, implementation of pre-listing of food-producing establishments, preventing implementation of pre-clearance, recognition of disease-free and pest-free health status of the Parties and the principle of regionalisation for both animal diseases and plant pests.

- *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, also with a view to adopting relevant international standards, 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. Consideration should also be given to provisions on labelling and means of avoiding misleading information for consumers.

- *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.

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- *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, ensuring the removal of existing NTBs, preventing the adoption of new NTBs and allowing 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.

26. 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.

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

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**RULES**

**Intellectual Property Rights**

28. The Agreement shall cover issues related to intellectual property rights. The Agreement will reflect the high value placed by both Parties on intellectual property protection and build on the existing EU-US dialogue in this sphere.

29. Negotiations should, in particular, address areas most relevant for fostering the exchange of goods and services with IP content, with a view to supporting innovation. The negotiations shall aim to provide for enhanced protection and recognition of EU Geographical Indications through the Agreement, in a manner that complements and builds upon the TRIPS, also addressing the relationship with their prior use on the US market with the aim of solving existing conflicts in a satisfactory manner. After prior consultation with the Trade Policy Committee, additional IPR issues shall be considered in the negotiations.

30. The Agreement shall not include provisions on criminal sanctions

**Trade and sustainable development**

31. 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 low carbon goods, energy 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.

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32. 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, wildlife 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.

33. The economic, social and environmental impacts will be examined by means of an independent Sustainability Impact Assessment (SIA), involving civil society, and will be undertaken in parallel with the negotiations and will be finalised ahead of the initialling of the Agreement. The SIA will aim to clarify the likely effects of the Agreement on sustainable development, as well as to propose measures (in trade and non-trade areas) to maximise the benefits of the Agreement and to prevent or minimise potential negative impacts. The Commission shall ensure that the SIA is conducted in regular dialogue with all relevant stakeholders from civil society. In the course of negotiations, the Commission shall also maintain a regular dialogue with all relevant stakeholders from civil society.

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**Customs and Trade facilitation**

34. 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 promote modernisation and simplification of rules and procedures, standard documentation, transparency, mutual recognition of standards and cooperation between customs authorities.

**Sectoral Trade Agreements**

35. The Agreement should, where appropriate, review, build on and complement existing sectoral trade agreements, such as the Agreement between the European Community and the United States on trade in wine, in particular with regard to negotiations of terms under Annex II of the 2005 Agreement, the Agreement on Mutual Recognition between the European Community and the United States and the Agreement between the European Community and the United States of America on customs cooperation and mutual administrative assistance in customs matters.

**Trade and Competition**

36. The Agreement should aim at including provisions on competition policy, including provisions on antitrust, mergers and state aids. Furthermore, the Agreement should address state monopolies, state owned enterprises and enterprises entrusted with special or exclusive rights.

**Trade related energy and raw materials**

37. The Agreement will include provisions addressing trade and investment related aspects of energy and raw materials. Negotiations should aim at ensuring an open, transparent and predictable business environment in energy matters and at ensuring an unrestricted and sustainable access to raw materials.

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**Small and Medium-Sized Enterprises**

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

**Capital Movement and Payments**

39. 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**

40. 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.

41. Nothing in this Agreement should affect EU or Member State laws regarding public access to official documents.

**Other Rules Areas**

42. Following analysis by the Commission and in prior consultation with the Trade Policy Committee and in accordance with the EU Treaties, 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.

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**Institutional Framework and Final Provisions**

43. *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.

44. The Commission will, in a spirit of transparency, regularly report to the Trade Policy Committee on the course of the negotiations. The Commission, according to the Treaties, may make recommendations to the Council on possible additional negotiating directives on any issue, with the same procedures for adoption, including voting rules, as for this mandate.

45. *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. This mechanism will pay special attention to facilitating the resolution of differences in NTB issues.

46. *Authentic languages*

The Agreement which shall be equally authentic in all official EU languages, shall include a language clause.

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