

NOTE FOR THE TPC/INTA

EU-US Relations: Interim Report on the work of the Executive Working Group

30 January 2019

I. Introduction

When President Juncker, accompanied by Commissioner Malmström, met President Trump in Washington on 25 July 2018, the transatlantic trade relationship appeared on the brink of a significant deterioration. Tensions had already increased as a result notably of the imposition on 1 June of additional US duties on imports of EU steel and aluminium on supposed national security grounds, together with the launch in May of a separate investigation into the national security dimension of US imports of cars and car parts. With €6 billion of EU exports of steel and aluminium already subject to additional duties - and a potential €50 billion of exports of cars and car parts at stake if that investigation should lead to the same outcome – there was widespread concern in the EU that the US was pulling the EU towards a trade war that would impact a significant volume of two-way transatlantic trade.

The EU had reacted promptly and proportionately to the measures on steel and aluminium by requesting consultations under the WTO Dispute Settlement Understanding, implementing rebalancing through additional tariffs on selected goods imported from the US and introducing safeguard measures of its own to guard against potential trade diversion and protect European businesses from the negative effects of the US measures.

During a difficult discussion on trade issues at the G7 Charlevoix Summit in early June, President Trump invited President Juncker to visit Washington for bilateral discussions on the full range of the EU-US relationship, but with a particular focus on ways to improve the transatlantic trade relationship and forge a stronger economic partnership.

It was against this backdrop that the two Presidents met on 25 July. Their discussions were successful and the two Presidents announced in a joint press conference immediately afterwards that they had agreed to launch a new phase in the bilateral EU-US trade relationship. This positive outcome to the meeting of the two Presidents signalled a shared desire to bring to an end a period of escalating trade tensions and focus work on efforts to strengthen the transatlantic trade relationship, to mutual benefit.

The substantive scope of EU-US engagement to follow up the 25 July meeting is defined in a Joint Statement agreed by the two Presidents on 25 July (a copy is included in Annex I). It foresees cooperation across five tracks:

- 1) reciprocal liberalisation of trade in (non-auto) industrial goods;
- 2) exploration of trade facilitating actions in a number of identified sectors (services, chemicals, pharmaceuticals, medical devices and soybeans);
- 3) closer cooperation on standards;
- 4) strategic cooperation on energy issues, including recognition of the goal of increasing EU imports of liquefied natural gas (LNG) from the US as a contribution towards improved energy supply diversification;
- 5) WTO reform and cooperation to address global challenges of unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state owned enterprises and overcapacity.

The EU and US agreed to set up an Executive Working Group (EWG) to take this joint agenda forward.

In addition, both sides agreed to refrain from any measures that would go against the spirit of their agreement while work on this joint agenda is ongoing. This would therefore imply that the US would not impose any Section 232 measures on EU cars and car parts.

Details on the work done to date under each track of this joint agenda are set out below. It should be kept in mind that the two Presidents agreed in this joint agenda to focus on a limited range of areas where results could be realistically achieved quickly and without entering areas of significant sensitivity for either side. This is why for example the joint agenda does not include agriculture – which is a sensitivity for the EU side – or public procurement – which is a sensitivity for the US. In this sense, cooperation under the joint agenda should not be compared with the wide-ranging and comprehensive scope of a typical modern EU trade agreement, such as the Transatlantic Trade and Investment Partnership (TTIP) which the EU and US were negotiating until 2016.

Over the six months since July, the EU has followed up the Joint Statement with vigour and is committed to work towards balanced and mutually beneficial outcomes. The EU has proposed a number of both short-term and medium-term actions to implement different elements of the EWG work programme. In some areas, such as soybeans and LNG, the EU's efforts are already starting to reap results.

The present report provides an overview of the work done to date to deliver on the joint agenda contained in the Joint Statement¹.

II. The Executive Working Group (EWG)

The EWG is co-chaired by Commissioner Malmström and USTR Lighthizer in close cooperation with cabinet officials and senior advisors of the National Economic Council on the US side, and the Cabinet of President Juncker and the Secretariat-General of the European Commission on the EU side.

Following preparatory meetings at senior officials level in August, Commissioner Malmström and Ambassador Lighthizer met in Brussels on 10 September 2018 to launch the exercise. Subsequent meetings at Ministerial level were also held in New York on 25 September and in Washington on 14 November and on 8 and 10 January 2019.

A number of additional discussions have taken place at technical level between EU and US officials. In particular, regulatory issues were discussed in a meeting of the EWG at technical level in Washington on 23-26 October and in which relevant regulatory Departments and Agencies of the US Government and the European Commission participated. Technical contacts also took place in the margins of the political level meetings of 8 and 10 January.

The two sides agreed at the EWG meeting of 10 September that their immediate focus should be work to identify trade-facilitating steps that would build on ongoing regulatory cooperation activities.

DG Trade circulated on 3 October 2018 an Information Note to EU Member States in the Trade Policy Committee and to members of the International Trade Committee of the European Parliament setting out the approach that the Commission proposed to follow in respect of EWG work on regulatory issues. This note identified a preliminary list of areas where there was potential for fruitful EU-US cooperation and noted that the immediate

¹ The present report has been prepared by the European Commission and is not intended to reflect joint views agreed with the United States.

objective of the EWG would be to identify concrete actions where regulatory cooperation can facilitate transatlantic trade.

In presenting these ideas, the Commission emphasised that all regulatory cooperation activities undertaken in the context of the EWG should respect a number of guiding principles:

- Cooperation should be driven by regulators in areas where they identify a common interest. There are many areas and issues where EU and US regulators face comparable challenges. However there are also others where EU and US approaches and processes diverge. Cooperation should not be envisaged where regulatory objectives and basic legislation are very different.
- Domestic law and regulatory procedures will need to be fully respected and levels of protection should be at least maintained, and improved where possible. Cooperation should take place on a voluntary basis, respecting each side's regulatory autonomy. Discussions on regulatory issues and standards would be held outside the context of any possible trade negotiation.
- The highest levels of transparency and accountability should apply, including through civil society engagement and the pursuit of a dialogue with all interested stakeholders.

The Commission continues to apply these principles in the ongoing EWG work.

III. Overview of activity in each of the work areas identified in the Joint Statement

The main focus of work over the last few months has been on developing a set of potential short- and medium-term deliverables on regulatory issues.

The situation in each of the different work strands identified in the Joint Statement of 25 July is set out below, along with an indication of what steps the EU considers can be rapidly agreed in each area in order to facilitate transatlantic trade. The listing of issues in the table below follows the same order as in the Joint Statement.

1) Reciprocal liberalisation of tariffs for industrial goods: *working together towards "zero tariffs, zero non-tariff barriers and zero subsidies on non-auto industrial goods"*

Tariffs: The EU stands by the agreement reached in July and is ready to engage in negotiations on tariff liberalisation for industrial products as soon as the US is in a position to do the same. On 18 January 2019 the Commission submitted a proposal to the Council for the launch of negotiations for an agreement with the US on the elimination of tariffs on industrial goods, together with draft negotiating directives for this purpose².

On 16 October the US Administration launched formal domestic consultation procedures under US Trade Promotion Authority legislation. During the 90-day statutory period for consultations, the US side was unable to conduct any scoping discussions with the EU.

Non-tariff barriers: regulatory issues have been centre stage in the work of the EWG and a meaningful set of short- and medium-term deliverables can be envisaged (as set out below).

² In line with standard practice and in line with its commitment to transparency, the Commission's proposal was made public in parallel with its transmission to the Council. It can be seen at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1971>.

Subsidies: the EU has put forward ideas for stronger multilateral disciplines on industrial subsidies in the context of work on WTO reform. Updating and strengthening the rules in this area will be particularly important as part of an effective joint response to the challenges posed by China. Negotiations on Fisheries subsidies are being considered in the WTO in Geneva.

2) Exploration of trade facilitating actions in a number of identified sectors (services, chemicals, pharmaceuticals, medical devices and soybeans):

Following consultations involving DG Trade and USTR, and regulators on both sides (DGs GROW, CNECT, ENER, SANTE on the EU side, and their US counterparts), the EWG has identified a number of potential positive actions and activities in areas such as cybersecurity, pharmaceuticals and medical devices, which have the potential to facilitate transatlantic trade.

Pharmaceuticals: Agreement has been reached in principle to expand the scope of the U.S.-EU Pharmaceutical GMP Mutual Recognition Agreement (MRA) to include veterinary drugs. The two sides will work to identify a plan of actions and timetable to support an informed decision by July 2019. Both sides will also endeavour to start in 2019 joint inspections of manufacturing facilities for human vaccines and plasma-derived pharmaceuticals, paving the way for the potential extension of the MRA to these areas no later than 2022. This MRA facilitates trade by reducing unnecessary duplications of inspections at manufacturing sites.

Under the existing MRA, the EU and US are able to avoid unnecessary duplicate inspections and thereby realise savings of the order of \$380,000 per average inspection, as well as ensuring an improved allocation of resources by regulators. Once the agreement is fully implemented, hundreds of inspections of pharmaceutical facilities could potentially be avoided thanks to the EU-US agreement.

Medical Devices: The EU will take steps to make use of single audit reports (an initiative of the International Medical Device Regulators Forum – IMDRF) in a manner that is compatible with EU legislative requirements³. The EU and US will cooperate to ensure alignment of electronic database specifications for Unique Device Identifiers (UDIs) and will develop a plan for bilateral test of compatibility of respective UDI databases, in concert with ongoing IMDRF efforts⁴.

Soybeans: There has been a significant increase in US exports since the start of the 2018/19 marketing year on 1 July 2018. Over the first 31 weeks of the marketing year, up to 27 January 2019, the EU imported 6.1 million tonnes of soybeans from the US, representing an increase of 114% compared to the same period in 2017-18. Given this strong trade performance, the US presently has a 77% share of all EU imports of soybeans (compared to 39% in the same period in 2017-18).

The Commission has examined information submitted by the US soybean industry on a voluntary sustainability certification scheme and assessed it as complying with mandatory EU

³ The current membership of IMDRF is Australia, Brazil, Canada, China, EU, Japan, Korea, Russia, Singapore and the US. The idea behind the Medical Devices Single Audit Programme (MDSAP) is that recognised auditing organisations can conduct a single audit of a particular medical device manufacturer that will satisfy the requirements of multiple regulatory jurisdictions as regards Quality Management Systems (QMS) and Good Manufacturing Practices (GMP) requirements. The single audit programme became operational in 2017. At present five IMDRF members are members of the MDSAP consortium (Australia, Brazil, Canada, Japan and US).

⁴ Unique Device Identifiers (UDIs) are a tool to facilitate the identification and tracking of specific medical devices placed on the market. Such a system already exists in the US and is currently being introduced in the EU.

sustainability requirements for their use in biofuels: on that basis it adopted a decision on 29 January recognising the scheme under the EU's Renewable Energy Directive (RED). Once in force, the decision will open additional commercial opportunities for US exporters, as the soya oil derived from crushing US soybeans in the EU (a by-product of the soybean meals used as animal feed) will then be eligible to count towards EU sustainability targets for biofuels: thus, US soybeans will improve their competitive position vis-à-vis Brazilian soybeans.

Cybersecurity: The EU (DG CNECT) and the US (NIST) have agreed to intensify their cooperation in this area. A first meeting to discuss standards and conformity assessment issues is expected to take place during the first half of 2019. The EU has confirmed that globally relevant standards, including where applicable standards and technical specifications developed by US-domiciled standards development organisations, may be taken into consideration in the future development of standards and voluntary certification schemes in the EU. Certification schemes under the EU Cybersecurity Regulation to be agreed will not prevent continued participation by EU Member States in existing international conformity assessment approaches. The EU and US have also agreed to intensify cooperation on standards and conformity assessment (including certification approaches) for connected devices.

Chemicals: There are effectively significant differences between the regulatory systems in place in the EU and the US. The EU is willing to explore the scope for improved information exchange between respective regulators and an enhanced cooperation between respective risk assessment agencies. In any event, the EU is ready to consider stakeholder inputs on potential areas for voluntary regulatory cooperation.

Services: There has been little discussion of services issues in the EWG up to now. The EU should remain open to possibilities for the EWG to take up particular services regulatory issues, notably in the event that specific priorities or proposals are advanced by stakeholders.

Potential additional activities: The Commission remains open to consider voluntary cooperation activities in additional sectors even if these are not mentioned explicitly in the Joint Statement of 25 July.

3) Closer cooperation on regulatory issues and standards: "*close dialogue on standards in order to ease trade, reduce bureaucratic obstacles and slash costs*"

The EU has proposed an intensified dialogue on standards, and in particular to enhance cooperation on the development and use of new standards in support of regulations, for example in the area of new technologies. The Commission has suggested a number of potential sectors where such cooperation might be considered such as additive manufacturing, robotics and automated and connected vehicles, together with the more general topic of pursuing a closer cooperation both bilaterally and in the context of international standardisation activities in relevant bodies such as ISO, IEC and UN(ECE).

The EU has also indicated its readiness to negotiate an international agreement to reduce the costs of conformity assessment in transatlantic trade provided that the right conditions are met to ensure a high level of trust in conformity assessment on both sides of the Atlantic. The Commission therefore submitted a proposal to the Council on 18 January 2019 for the launch of negotiations for an agreement with the US on conformity assessment, together with draft negotiating directives⁵. Successful negotiations in this area could bring significant economic

⁵ In line with standard practice and in line with its commitment to transparency, the Commission's proposal was made public in parallel with its transmission to the Council. It can be seen at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1971>.

benefits, in particular for Small and Medium-sized Enterprises (SMEs) which tend to be disproportionately affected by the costs involved in obtaining certification of their products for export to markets where different regulatory requirements and procedures apply. Reducing conformity assessment costs for economic operators on both sides of the Atlantic – without lowering safety standards or necessary quality assurances for consumers – would facilitate additional trade.

4) Strategic cooperation on energy issues, including recognition of the goal of increasing EU imports of liquefied natural gas (LNG) from the US as a contribution towards improved energy supply diversification

The Commission (DG Energy and President's Cabinet) are continuing to have an intensive dialogue with US counterparts (Department of Energy and National Security Council) covering different aspects of the energy relationship. A dialogue is also maintained in the context of the EU-US Energy Council.

The EU has an interest to import more competitively-priced LNG from the US in order to diversify suppliers and has ample unutilised import capacity in existing terminals. The EU is investing in additional import capacity and in improvements to infrastructure that will further integrate the EU gas market with the objective that all Member States can have direct or indirect access to LNG. The Commission is currently examining, together with the US, the possibility of holding a high level event on LNG in early May in Brussels.

The EU continues to underline the importance of the US addressing the non-automatic export licensing regime. The US has indicated some openness to relaxing its mandatory discretionary licensing requirement for export shipments to the EU, while looking for a reassurance from the EU that it will continue to benefit from an open EU market to trade and investment.

5) WTO reform and cooperation to address global challenges of unfair trading practices

Discussions on WTO reform are mostly taking place in the context of the trilateral cooperation in which Japan also participates. The EU has made specific proposals on WTO reform and a level playing field (eg for improved rules on industrial subsidies).

The EU and US have made joint proposals in the WTO on notifications and improved transparency.

Since the Joint Statement of 25 July, the EU, US and Japan have held two Trilateral Ministerial Meetings, on 25 September in New York and 9 January in Washington.

The Commission has explained to the US side the various strong actions taken by the EU to deal with the consequences of the unfair trading practices of third countries such as China (eg firm implementation of domestic trade defence instruments, Commission proposal on investment screening, active use of WTO dispute settlement and advocacy of global efforts to address global overcapacities in sectors such as steel).

The EU and US are committed to advancing the objectives highlighted in the September trilateral joint statement on non-market oriented policies and practices of third countries, industrial subsidies and state-owned enterprises, forced technology transfer policies and practices of third countries, WTO reform, working towards WTO negotiations on e-commerce and cooperation on other issues, and to continue working together to maintain the

effectiveness of existing WTO disciplines. There should also be further cooperation on relevant WTO dispute settlement cases and the improvement of WTO rules.

V. Next Steps

The Commission can take forward the majority of the actions described above without the need to receive specific negotiating directives from the Council. This is not the case, however, for negotiations on conformity assessment or on industrial tariffs. Accordingly, the Commission on 18 January 2019 submitted proposals to the Council for the launch of negotiations with the United States for bilateral agreements on conformity assessment and on industrial tariffs.

It should be emphasised that any action by the US to impose tariffs or quotas on EU exports of cars and car parts as a result of the ongoing Section 232 investigation would be hugely disruptive to this work programme and would effectively block further progress on key elements. It would also be counter to the commitment made by the US in July "not to go against the spirit of this agreement" while work in the EWG is ongoing. The application of restrictions on trade of automobile products would in any event lead to the suspension of negotiations in industrial tariffs as well as to rebalancing measures as in the area of steel and aluminium.

It should also be noted that the US has since July made no movement towards lifting Section 232 measures on steel and aluminium, notwithstanding the declaration in the Joint Statement that both sides want to resolve the steel and aluminium tariff issues and retaliatory tariffs. The rebalancing measures imposed by the EU on a list of US products worth €2.8 billion therefore remain in place. The Commission's proposal for negotiating directives on industrial tariffs envisages that the removal of restrictions on exports of steel and aluminium is a precondition for the conclusion of negotiations.

The Commission remains committed to ensuring full transparency of the work underway with the US, building on the regular briefings already provided to Member States in the Trade Policy Committee and to members of the European Parliament in the INTA Committee, as well as the dedicated expert meetings with Member State representatives on 15 October and 4 December 2018.

As indicated in the Explanatory Memorandum accompanying the Commission's recommendation to the Council on the launch of negotiations on conformity assessment, the Commission intends soon to hold a stakeholder consultation exercise on potential regulatory cooperation initiatives with the US. In addition to any feedback from stakeholders relevant for future negotiations on conformity assessment, the Commission will invite stakeholders to provide feedback on potential initiatives with the US in the regulatory cooperation area which could result in significant benefits while maintaining – if not enhancing – levels of regulatory protection.

ANNEX I

Joint U.S.-EU Statement following President Juncker's visit to the White House, Washington, 25 July 2018

We met today in Washington, D.C. to launch a new phase in the relationship between the United States and the European Union – a phase of close friendship, of strong trade relations in which both of us will win, of working better together for global security and prosperity, and of fighting jointly against terrorism.

The United States and the European Union together count more than 830 million citizens and more than 50 percent of global GDP. If we team up, we can make our planet a better, more secure, and more prosperous place.

Already today, the United States and the European Union have a \$1 trillion bilateral trade relationship – the largest economic relationship in the world. We want to further strengthen this trade relationship to the benefit of all American and European citizens.

This is why we agreed today, first of all, to work together toward zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods. We will also work to reduce barriers and increase trade in services, chemicals, pharmaceuticals, medical products, as well as soybeans.

This will open markets for farmers and workers, increase investment, and lead to greater prosperity in both the United States and the European Union. It will also make trade fairer and more reciprocal.

Secondly, we agreed today to strengthen our strategic cooperation with respect to energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply.

Thirdly, we agreed today to launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and slash costs.

Fourthly, we agreed today to join forces to protect American and European companies better from unfair global trade practices. We will therefore work closely together with like-minded partners to reform the WTO and to address unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state owned enterprises, and overcapacity.

We decided to set up immediately an Executive Working Group of our closest advisors to carry this joint agenda forward. In addition, it will identify short-term measures to facilitate commercial exchanges and assess existing tariff measures. While we are working on this, we will not go against the spirit of this agreement, unless either party terminates the negotiations.

We also want to resolve the steel and aluminum tariff issues and retaliatory tariffs.