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COUNCIL OF THE  
EUROPEAN UNION

Brussels, 27 May 2014

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WTO

NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE

**SUBJECT:** Non-paper on a Chapter on Energy and Raw Materials in TTIP

**OBJECTIVE:** *For information*

**REMARKS:**

The enclosed paper on Energy and Raw materials is a slightly modified version of the non-paper already shared with MS in the summer of 2013. The non-paper was handed over by Commissioner De Gucht to USTR Froman in early May. The non-paper is explaining the issues at hand, the relevance of negotiating trade related energy and raw materials trade and investment rules, also in light of the current crisis in Ukraine.

**Non-paper on a Chapter on Energy and Raw Materials in TTIP**

1. In the High Level Working Group (HLWG) report published in February 2013, it was agreed that the EU and U.S. would negotiate energy and raw material (ERM) commitments in the rules pillar, supporting the aim of developing rules relevant to bilateral ERM trade and investment, and to potential obstacles caused by the lack of pro-competitive regulations outside our borders. Such commitments could over time contribute to the progressive strengthening of trade and investment rules for ERM, thereby benefitting our security/diversity of supply, our consumers and our companies. To this end, the EU has proposed a comprehensive chapter that would contain rules, principles and modes of cooperation.

2. TTIP would benefit from a comprehensive chapter on energy and raw material commitments:

- First of all, international rules for trade and investment in energy and raw materials are less well developed than in many other sectors. The U.S. and the EU have negotiated some bilateral rules to fill gaps in the past (EU-Ukraine DCFTA, NAFTA). Establishing a more complete set of rules would allow the EU and the U.S. to set the terms of good regulatory policy in this area, reflecting practices that are already applied in our own markets. EU and U.S. companies would be first beneficiaries. Despite the considerable change in the U.S. energy landscape due to the shale revolution, EU and U.S. energy and raw material companies will remain dependent in the future on open markets, and will have to continue sourcing significant critical raw materials and energy from third countries.
- Secondly, from a geopolitical point of view, a chapter on energy and raw materials in TTIP would send a strong signal on the determination of the EU and the U.S. to ensure that trade and investment in these important areas is covered by international trade rules responding to principles of good governance, transparency, pro-competitive regulation and free access to natural resources once decisions on their exploration have been taken. Only a dedicated chapter will allow for the necessary coherence and the required visibility to fulfill this role. Having energy and raw materials addressed in provisions dispersed throughout different chapters of a TTIP agreement would not result in the kind of integrated disciplines that are required to address the specificities of these products and the way in which they are traded. In the future, an energy and raw materials chapter negotiated between the U.S. and the EU could serve as a platform for each party's negotiations with energy and raw materials relevant partners such as Mexico for instance.

- Third, TTIP would contribute to reinforcing the security of supply of the EU and its Member States. The current crisis in Ukraine confirms the delicate situation faced by the EU with regard to energy dependence. Of course the EU will continue working on its own energy security and broaden its strategy of diversification. But such an effort begins with its closest allies. Building a strong and comprehensive chapter in TTIP, which would combine our support for procompetitive regulation while also lifting bilateral restrictions on gas and crude oil, will show our common resolve to increase security and stability through open markets. Of course, while this may – for several reasons - not have immediate effects, it would increase potential sources of supply in the future.
- Last but not least, there is a systemic issue to be considered. The EU and the U.S. have been at the forefront of challenging export restrictions for the last decade, as illustrated by their successful common effort to lift China's export restrictions on raw materials including rare earths. Combatting resource nationalism, together vis-à-vis third countries while at the same time allowing for export restrictions to exist between us sends the wrong message to our partners and offers some of these resource-rich countries a great opportunity to interpret trade rules in a way which is detrimental to our economies.

3. The EU has so far not received a reaction from the U.S. that corresponds to the ambitious goals set in the High Level Working Group report. We have only noticed some limited opening on the U.S. side to consider energy specific provisions on transport and transit and cooperation provisions on off-shore safety, but a clear agreement to discuss a comprehensive chapter on energy and raw materials is still lacking.

4. The U.S. has also been hesitant to discuss a solution for US export restrictions on natural gas and crude oil in the TTIP through binding legal commitments. The EU proposes to include a legally binding commitment in the TTIP guaranteeing the free export of crude oil and gas resources by transforming any mandatory and non-automatic export licensing procedure into a process by which licenses for exports to the EU are granted automatically and expeditiously. Such a specific commitment would, in the EU's view, not require that the U.S. amend its existing legislation on oil and gas.

5. On the basis of principles common to the EU and the U.S., it should not be difficult to establish a chapter with rules on trade and investment in energy and raw materials. The EU believes that our regulatory systems are sufficiently comparable to find rules and principles that fit with both regulatory regimes without imposing any additional obligations on the EU or the U.S.

6. In conclusion, a clear signal from the U.S. at this stage that it is accepting the principle of negotiating a specific chapter including provisions on unrestricted access to U.S. natural resources would show our resolve while further encouraging investments in the upstream and downstream energy sectors. Such a signal would also usefully build on the political support recently expressed by the U.S. Administration at its highest levels in favour of stronger energy security and more integrated energy policy in the EU by demonstrating that TTIP could also bring a concrete contribution in this respect. Finally, such a signal will resonate internationally by emphasising the transatlantic commitment to open markets and good governance for energy and raw materials.