

Eurometaux Position and Proposals on EU-US Transatlantic Trade and Investment Partnership

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SUMMARY

Eurometaux, the European Non-Ferrous Metals Association, welcomes the EU-US negotiations on an ambitious, deep and comprehensive EU-US Transatlantic Trade and Investment Partnership (TTIP). We believe that the future EU-US Agreement should aim at achieving a fair balance for both parties.

Eurometaux sees the TTIP as an opportunity to suggest changes so as to harmonise trade between the EU and US, including trade in the non-ferrous metals sector. Our priorities cover trade in goods, negotiations on rules of origin, regulatory issues, access to raw materials and energy issues, as well as the protection of intellectual property rights and service-related matters.

Goods: Although EU-US tariffs are comparatively low, trade volumes between the regions could still deliver sizeable gains. Eurometaux believes that the future EU-US Agreement should aim to totally abolish tariffs.

Rules of origin: Eurometaux supports the establishment of an agreed set of coherent rules of origin as a priority in the negotiations. Overall, the simplified and rational rules of origin agreed upon will help to facilitate trade between the EU and US.

Access to raw materials: Access to raw materials is of strategic importance for both economies. Eurometaux believes that co-operation between the US and EU authorities should take different forms, including cooperation in promoting quality recycling and avoiding valuable materials being treated in poor environmental, health and efficiency conditions. More alignment would also be desirable with regard to waste shipment requirements, while keeping in mind the strategic objectives defined by the EU with regard to resource efficiency and access to raw materials.

Energy: The TTIP should ensure free trade principles for the export of energy. Exports of liquefied natural gas (LNG) to the EU should be permitted by the US government without any delay or risk of withdrawal of export licences, thereby providing investment security for EU companies.

Regulatory co-operation: Eurometaux welcomes the EU-US negotiations in the field of regulatory cooperation. The European non-ferrous metals industry is therefore seeking harmonisation and simplification in the regulatory field and looking forward to substantial progress towards regulatory convergence as well as mutual recognition on compatible regimes.

Intellectual Property Rights: Eurometaux believes that, in the context of transatlantic cooperation, joint efforts should be made towards the enforcement of Intellectual Property rights.

Services: A visa facilitation process for non-US citizens in the USA would significantly help our globally acting companies in respect of job rotation.

Eurometaux therefore welcomes the EU and US TTIP Agreement, as it would be extremely beneficial for all parties to have an ambitious and comprehensive package in place. However, the EU and US should aim to achieve a fair package and not skip the important priorities of the industry.

The European non-ferrous metals industry is open to a dialogue with the European authorities in order to address this challenge together.

What should be priorities of the US-US Transatlantic Trade and Investment Partnership in specific areas?

Tariffs

The average industrial tariffs in the non-ferrous metals sector are between 3 and 4 per cent. Although EU-US tariffs are comparatively low, trade volumes between the regions could still deliver sizeable gains. Consequently, our industry is seeking the reduction/abolition of import duties/tariffs, particularly for a number of precious metals and copper products¹.

Rules of origin

Eurometaux supports the establishment of an agreed set of coherent rules of origin as a priority in the negotiations. Overall, the agreed simplified and rational rules of origin will contribute towards trade facilitation between the EU and US.

Access to Raw Materials

Access to raw materials is of strategic importance for both economies. Cooperation could take various forms, including cooperation to promote quality recycling and avoid valuable materials being treated in poor environmental, health and efficiency conditions. More alignment would also be desirable with regard to waste shipment requirements, while keeping in mind the strategic objectives defined by the EU with regard to resource efficiency and access to raw materials.

¹ The products with the following tariff codes (as described in the Harmonized Tariff Schedule of the United States (2014)) should be particularly considered: Copper bars and rods of refined copper having a rectangular cross section (740710.50.10), Copper plates, sheets and strip, of refined copper, of a thickness of 5 mm or more (7409.19.10.00), Copper plates, sheets and strip, of a thickness of 5 mm or more of a width of 500 mm or more (7409.19.50.00), Copper profiles, of refined copper, (7407.10.30.00), Copper bars and rods, of refined copper, (740710.50.50), Copper plates, sheets and strip, in coils, of a thickness of 5 mm or more (7409.11.10.00), Copper plates, sheets and strip, in coils, of a thickness of less than 5 mm, of a width of less than 500 mm (7409.11.50.50), Parts suitable for use solely or principally with the apparatus under headings 8535, 8536 or 8537 (8538.90.80.80). Moreover, the following products: Rhodium solutions, Palladium solutions, Potassium dicyanoaurate (CAS number 13967-50-5), Silver cyanide (CAS number 506-64-9), and Disilver oxide (CAS number 20667-12-3)

Standards can be useful to define quality recycling along the value chains. Cooperation can also aim to explore new business models to close the loop.

Cooperation can also include transparency and efficiency aspects, such as

- A better understanding and monitoring of product and material flows from End-of-Life products:
 - improved statistics and data crunching; better customs codes distinguishing between new and used products;
 - “investigative intelligence” to break up the “wanted non-transparency” of waste/scrap trading
 - Prevention of dubious/illegal waste shipments
- Setting up an inventory of “urban mines” and developing a dynamic modelling of the future availability of secondary resources.

The US and EU should also explore ways to support secure supplies of critical raw materials that are essential to their respective economy. This could include initiatives to support the sourcing, engineering, use, recycling, recovery of critical raw materials.

Energy

The TTIP should ensure free trade principles for the export of energy. The export of liquefied natural gas (LNG) to the EU should be permitted by the US government without any delay or risk of withdrawal of export licences, thereby providing investment security for EU companies.

Regulatory co-operation

While the main objectives of Chemicals Management legislation in both jurisdictions are comparable, there are some intrinsic differences between the US and EU approaches to chemical management, whether in respect of design, development or implementation, related to e.g. varying legal, social, historical, cultural backgrounds and/or regulatory expectations.

Enhanced regulatory co-operation between the EU and US could help to achieve a better understanding of these differences, identify opportunities for compatibility, and address inconsistencies wherever possible. By removing an unnecessary regulatory burden, this would enhance the competitiveness of the EU and US manufacturing industries, boost trade between the regions, and promote high standards for human health and environmental protection.

Eurometaux's proposal is therefore to promote the identification and understanding of these differences, and to strive for consistency, mutual respect and streamlining in regulations and the implementation of some pieces of regulation. The focus should be on developing and agreeing on key principles underpinning regulatory decisions in several priority areas in chemical management.

The examples given below highlight existing differences and include concrete proposals for a way forward.

- **Product Policy and Product assessment methodologies**

Enhanced regulatory cooperation in the field of product policies would facilitate cost-effective trade between the EU and US, and would promote consistent product policies. Cooperation would be of great value with regard to product assessment methodologies such as the methodology for eco-design and for product environmental footprint. This would ensure more alignment in terms of requirements on products, and hence easier trade between the two areas. Eurometaux recommends that the requirements duly consider recycling in relation to dismantling or recyclability, for example.

- **Environmental classification**

To date, the US has not adopted the environmental classification endpoint of the UN GHS. This is linked to the way in which the responsibilities are dealt with in the US (OSHA versus EPA). EU companies currently include the environmental GHS classification on labels/documents. It is suggested that such labelling be accepted in the US, as it is fully based on GHS ruling.

- **Mixtures rules: different cut-offs are used in the EU vs. the US for some classification endpoints**

Given the different cut-off values adopted between the regions, it is possible for the same mixture to be classified in the US and not in Europe, which would require different warning language and symbols on labels, and which could have further downstream consequences causing technical barriers to trade.

- **Impact on the Transport of Dangerous Goods**

The process of implementing the new revision of the 'UN Recommendations on the Transport of Dangerous Goods - Model Regulations' is not being carried out simultaneously in the EU and in the US. The result is that transport classification can be different in the US compared to the EU. Moreover, it can be different in the US depending on whether goods are transported by sea, road or air.

- **US and EU legislation on DOT (US) and UN ADR (EU) for Environmentally Hazardous substances**

There is a discrepancy between US and EU legislation on DOT (US) and UN ADR (EU) for Environmentally Hazardous substances, leading to situations where chemicals are classified as hazardous goods in the EU, whereas they are not classified as such in the US. The requirement of reportable quantity limits in the US leads to the opposite situation, whereby chemicals are classified as hazardous goods in the US, but not in Europe. These differences result in a significant administrative burden when transporting goods between regions, as well as delays in shipments.

- **Impact on hazard communication**

A harmonized inventory of hazard classifications would increase legal certainty and set an important benchmark for a global inventory. This classification system needs to be based on common principles (to be developed) like the Globally Harmonized System, weight of evidence, substance identity (impurities, composition, form and physical state) and assessment of data quality.

This would also avoid having to change product labels during transport from the EU to the US and vice versa, which is a major obstacle and a potential source of errors and resulting fines.

- **Exchange and recognition of REACH data**

Information about the hazards of chemicals is a basic building block for chemicals management. There are currently differences between the EU and the US approaches, making the mutual acceptance of data difficult. Developing common principles, practices and guidelines in risk assessment processes will help to guarantee a common scientific basis for regulatory decisions in the region, as well as ensuring that companies can use the same data under both systems.

This could entail:

- Harmonizing methodologies evaluating metal specificities, and accepting new methods
- Agreeing on data quality and reliability
- Using the same data format: IUCLID
- Developing common understandings and approaches to intelligent testing, read-across, uncertainty analysis and weight of evidence
- Agreeing on how to perform exposure assessment, including e.g. similar definition of uses
- Agreeing on the scope of risk assessment, e.g. definition of the life cycle
- Animal welfare principles

In this context it seems reasonable for the European Chemicals Agency (ECHA) and EPA to develop a more practical approach to share data among themselves without jeopardizing the value of these data, or imposing the burden of information protection entirely on the private sector.

Although the two government agencies have reportedly entered into a Memorandum of Understanding (MOU) regarding information exchange, it is not clear what this MOU actually covers.

- **Application of PBT Criteria in Assessing Risks for Metals and Metal Substances**

The EU REACH Regulation specifically recognizes that persistent, bioaccumulative, and toxic (PBT) criteria should not be applied to inorganic substances as part of a risk assessment process, given the fact that the criteria currently applied are not valid scientifically for inorganic materials. There is no equivalent recognition within a regulatory framework in the US.

In this context, it is important for the US regulations to be harmonized with the EU regulations. In particular, it should be clearly recognized that PBT criteria cannot be applied to metals.

- **Restrictions of Hazardous Substances Directive**

Although some federal states have implemented regulations similar to the Restrictions of the Hazardous Substances Directive (RoHS), the US has not implemented this legislation at federal level.

Protection of Intellectual Property Rights

It is important to harmonize the approaches to Intellectual Property. Eurometaux therefore believes that joint efforts should be made towards the enforcement of Intellectual Property rights in the context of transatlantic cooperation as well.

Trade in services

Our members would welcome the removal of barriers to trade in services, as they affect the ability to establish physical outlets in the country and supply services through these outlets.

For example, visa facilitation process for non-US citizens in the USA would significantly help our globally acting companies in respect of job rotations.

Eurometaux represents the European non-ferrous metals industry

- **Non-ferrous metals contribute to the European creation of wealth and jobs: they represent 2% of EU GDP and create 450,000 direct jobs and over 1 million indirect jobs in Europe. Their use in high-tech and high added-value activities makes them extremely valuable to the EU's economy and competitiveness.**
- **The non-ferrous metals industry is indispensable for modern society. Thanks to their intrinsic properties – including durability and recyclability - non-ferrous metals are vital in order to meet essential societal needs and to build a low-carbon economy.**