

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Technical Barriers to Trade" in TTIP. It was tabled for discussion with the US in the negotiating round of 10-14 March 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

TEXTUAL PROPOSAL

TECHNICAL BARRIERS TO TRADE (TBT)

Article 1

Objective and Scope

1. The objective of this Chapter is to promote convergence in regulatory approaches, by reducing or eliminating conflicting technical requirements as well as redundant and burdensome conformity assessment requirements.
2. This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures that may affect trade in goods between the Parties.
3. This Chapter does not apply to:
 - (a) purchasing specifications prepared by a governmental body for production or consumption requirements of governmental bodies ; or
 - (b) sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.
4. All references in this Chapter to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof.

Article 2

Incorporation of the WTO Agreement on Technical Barriers to Trade

1. The WTO Agreement on Technical Barriers to Trade (hereinafter referred to as "the TBT Agreement") is hereby incorporated into and made part of this Agreement.
2. References to "this Agreement" in the TBT Agreement, as incorporated into this Agreement, are to be read, as appropriate, as references to this Agreement (the TTIP).
3. The term "Members" in the TBT Agreement, as incorporated into this Agreement, shall have the same meaning in this Agreement as it has in the TBT Agreement.
4. Terms referred to in this Agreement, shall have the same meaning in this Agreement as they have in the TBT Agreement.

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Article 3
Co-operation

The Parties shall strengthen their co-operation in the areas of technical regulations, standards, metrology, conformity assessment procedures, accreditation, market surveillance and monitoring and enforcement activities in order to facilitate the conduct of trade between the Parties, as laid down in Chapter [...] (*Regulatory Co-operation*). This may include promoting and encouraging co-operation between their respective public or private organizations responsible for standardization, metrology, conformity assessment, accreditation, market surveillance or monitoring and enforcement activities; and in particular, encouraging their accreditation and conformity assessment bodies to participate in co-operation arrangements that promote the acceptance of conformity assessment results.

Article 4
Technical Regulations

1. The Parties undertake to co-operate as far as possible to ensure that their technical regulations are compatible with one another.

2. If a Party expresses an interest in developing a technical regulation of equivalent scope to one existing in or being prepared by the other Party, that other Party shall on request provide to the other Party, to the extent practicable, relevant data upon which it has relied in the preparation of the technical regulation, and on request discuss the possibility of developing harmonised or compatible technical regulations. The Parties recognize that it may be necessary to clarify and agree on the scope of a specific request, and that confidential information may be withheld. A Party planning to introduce a technical regulation shall, on request of the other Party, discuss the possibility of the elaboration of compatible technical regulations, or the enhancement of the compatibility of existing technical regulations by the Parties.

3. The Parties undertake to co-operate towards global harmonization of technical requirements in the framework of existing or planned international agreements or organizations in which the U.S. and the EU or its Member States participate.

4. Each Party shall endeavour to ensure that products originating in the other Party that are subject to technical regulation can be marketed or used across all the territory of each Party on the basis of a single authorisation, approval or certificate of conformity.

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Article 5

Transparency

1. In line with Articles 2.9.2, 5.6.2 and 3.2 of the TBT Agreement, the Parties agree: (i) to notify all relevant draft technical regulations and conformity assessment procedures to the WTO, regardless of the kind or form of the legal act, the level of government (central and local), or the authority adopting them, (ii) to make the draft text publicly available; (iii) in principle, to allow a period of no less than 60 calendar days following the notification for the other Party to provide comments in writing to the proposal.

2. (a) Each Party shall, upon request of the other Party, provide information regarding the objectives of, legal basis and rationale for, a technical regulation or conformity assessment procedure, that the Party has adopted or is proposing to adopt.

(b) Where a Party has received comments on proposed technical regulations or conformity assessment procedures from the other Party, it shall (i) upon request of the other Party, discuss written comments made by the other Party on such proposed technical regulations or conformity assessment procedures, with the participation of its competent regulatory authority, at a time when they can be taken into account; and (ii) provide written replies to such comments to the other Party no later than the date of publication of the final technical regulation or conformity assessment procedure.

3. (a) From the date of entry into force of this Agreement, each Party shall make publicly available all new technical regulations, adopted either at central level or by entities at a lower level than Federal (US) or Union (EU).

(b) Within [...] years of the date of entry into force of this Agreement, each Party shall make publicly available a complete registry of all its applicable technical regulations, new or existing, adopted either at central level or by entities at a lower level than Federal (U.S.) or Union (EU).

(c) Within [...] years of the date of entry into force of this Agreement, each Party shall make publicly available a complete registry of the titles and references of standards that have been selected for reference in, or use in connection with, technical regulations.

(d) The Parties agree to make the information referred to in (a), (b) and (c) of this paragraph accessible to the public through a single information point and to keep it up to date.

4. Where a Party detains at a port of entry a good imported from the territory of the other Party on the grounds that the good has failed to comply with a technical regulation, it shall without undue delay notify the importer of the reasons for the detention of the good, and provide an opportunity for the importer to appeal against the decision to detain the good.

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Article 6 **Standardisation**

1. The Parties shall promote closer cooperation between the standardisation bodies located within their respective territories with a view to facilitating, *inter alia*:
 - (a) the exchange of information about their respective activities,
 - (b) the harmonization of standards based on mutual interest and reciprocity, according to modalities to be agreed directly by the standardization bodies concerned,
 - (c) the development of common standards, and
 - (d) the identification of suitable areas for such co-operation, in particular in new technologies.

2. The Parties shall use their best endeavours to ensure that standardisation bodies located within their respective territories (i) provide information in advance on their planned standardisation activities that concern the development of new, or review of existing, standards intended to support public policies, including the scope and purpose of the planned standards, and the prospective timetable procedures for their adoption, and (ii) publish drafts for public comment before finalising or adopting such standards.

3. If a Party intends to select an existing or planned voluntary standard for reference in technical regulations, such selection shall be subject to objective, clear and transparent criteria, which shall be published before the selection is made. Standards for reference in technical regulations applicable on all or part of the territory of the Parties shall be selected following consideration of relevant international standards and other standards developed through an open and transparent process, including standards developed by standardisation bodies located within the territory of the other Party.

4. The Parties undertake to keep references to standards in support of technical regulations up to date with the latest version of the standard and the latest review of the technical regulation.

5. The Parties shall endeavour to ensure that, in using standards to achieve compliance with the requirements of technical regulations or parts thereof, suppliers are free to use standards other than those chosen by domestic regulators for reference in such technical regulations, without prior authorisation from the regulator, provided that such suppliers can demonstrate (e.g., through adequate technical documentation) that the applied alternative solution complies with the requirements of the technical regulation, or parts thereof.

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Article 7

Conformity Assessment Procedures

1. The Parties undertake to co-operate with a view to reducing unnecessary burdens arising from differences in their respective conformity assessment requirements.
2. To that end, the Parties undertake to review within *[timeline to be discussed]* their conformity assessment procedures in order to move progressively towards the least burdensome possible procedures commensurate with the risk that the underlying technical regulations are intended to address. Priority areas for consideration shall include electrical safety, electro-magnetic compatibility, machinery and telecommunications.
3. *[Placeholder for referencing specific outcomes on conformity assessment resulting from the negotiations in individual sectors]*
4. Where the Parties require third party conformity assessment of products as a condition of compliance with technical regulations applicable on their respective territories, the Parties undertake to give consideration to mechanisms to facilitate the mutual acceptance of the results of conformity assessment conducted by conformity assessment bodies (CABs) located on the territory of the exporting Party.
5. (a) The Parties shall take measures sufficient to avoid actual or potential conflicts of interest between conformity assessment bodies and standardisation bodies, notably by establishing a clear separation of functions between them in cases where a standard referenced in technical regulations or otherwise allowed to be used to achieve compliance with technical regulations is set by an entity that also operates in the conformity assessment market.

(b) The Parties shall ensure that standards referenced in technical regulations do not contain technical requirements that limit the choice of CABs or that refer to specific CABs.
6. The Parties agree that, where a class of products is subject to conformity assessment procedures, and where components or parts of such products are also subject to conformity assessment procedures (and thus constitute products in their own right), CABs approved by the regulator to assess products that include such components or parts shall be obliged by the regulator not to require as a condition of assessing the product as a whole, that such components or parts be re-assessed by the CABs themselves, independently of the final product.
7. The Parties shall take appropriate steps to prevent the establishment or abuse of dominant positions by any CAB in the market of its territory for the assessment of a specific product or class of risks.

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8. In those areas where registration or authorisation procedures or similar requirements apply in both Parties, the Parties undertake to co-operate with a view to making such procedures and related requirements as compatible as possible and to identify opportunities for administrative simplification that would alleviate burdens for economic operators and facilitate bilateral trade in the products concerned.

Article 8
Marking and Labelling

1. In accordance with Article 2.2 of the *TBT Agreement*, with respect to technical regulations relating to labelling or marking requirements, the Parties shall ensure they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, such labelling or marking requirements shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create. Compulsory marking requirements, while continuing to provide the necessary information to the user or consumer as well as to public authorities regarding compliance of products with specific requirements, should be limited as far as possible to what is essential and to what is the least trade restrictive to achieve the legitimate objective pursued.

2. The Parties undertake to engage in a review of their marking and labelling requirements with a view to identifying sectors and areas where divergences could be reduced.

3. The Parties undertake to take administrative measures against misleading marking applied by suppliers on their territory. In particular, they undertake to apply measures against products on the market of their territory that bear marking that falsely purports to indicate origin in the territory of the other Party.

4. If a Party applies obligatory country of origin marking or labelling requirements, a marking designating the whole territory of a Party shall be accepted by the other Party as compliant with such requirements.

Article 9
Management of the Technical Barriers to Trade Chapter

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Article
Definitions

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