

Oil & Natural Gas Industry Positions on Potential Energy Issues in TTIP
January 2015

Introduction

The American Petroleum Institute (API) and the International Oil and Gas Producers Association (IOGP) have agreed on a set of policy principles outlined in this document in order to provide the EU and US negotiators of the Transatlantic Trade and Investment Partnership (TTIP) with our views on a set of issues that have emerged for potential inclusion in TTIP.¹ This paper is a follow-up to our July 2014 policy position paper, in which we shared our positions on a set of overarching principles for TTIP, as agreed by the oil and gas industry on both sides of the Atlantic.

API and IOGP together account for more than half of the world's oil output and about one third of global gas production and work on behalf of their international oil and gas member companies to enhance the opportunities for oil and natural gas production and improve the competitiveness of the industry in the worldwide economy. The 700+ member companies of API and IOGP support free trade and a Transatlantic Trade and Investment Partnership (TTIP) that removes barriers, promotes market-oriented policies and creates genuine opportunities for commercial growth and job creation.

Based on preliminary documents and discussions, we have attempted to address the energy issues that have been raised for potential inclusion in TTIP. Although we observe that many of these issues would be applicable across industry sectors, the two associations do not take a formal position on the architecture of TTIP at this time. As indicated issue-by-issue below, the oil and natural gas industry on both sides of the Atlantic supports a TTIP that codifies competition, market forces and the free flow of oil and gas products and services between the US and EU, and supports principles that achieve these objectives.^{2 & 3}

TTIP Principles

API and IOGP support the abolition of trade and investment restrictions on oil and natural gas goods and services and the liberalization of all trade in oil and natural gas. We support principles that achieve the objective of increasing trade in oil and natural gas, as well as principles that help to underpin investments in finding, developing, producing and transporting hydrocarbon resources. These principles include a commitment to stable, competitive and predictable investment frameworks; free market competition and protection from monopolies and other forms of market abuse; anti-corruption; contract sanctity; and protection from arbitrary asset confiscation by host governments. API and IOGP

¹ These issues emerged in two leaked EU "Non-papers," the first dated 20 September 2013 and leaked in May 2014 (<http://big.assets.huffingtonpost.com/TTIPNonPaper.pdf>), and the second dated 27 May 2014 and leaked in July 2014 (<http://www.scribd.com/doc/233022558/EU-Energy-Non-paper>).

² API and IOGP recognize that proposals may be developed by the negotiating teams throughout the TTIP process and will endeavour to provide a combined response to the negotiating teams as appropriate. The Associations will engage on the specific topic of the TTIP treaty's architecture, once the EU and US government negotiating teams determine a clearer idea of how the energy aspects of TTIP are to be structured.

³ The two associations recognise that TTIP shall not affect an EU member state's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, as per Article 194 of the EU Treaty.

understand that the TTIP agreement may in due course be used to help foster principles of good practice in the context of other international negotiations by the US and EU. API and IOGP have not taken a position on whether the energy provisions of TTIP should be structured in such a way as to better enable this. We have instead chosen to focus on the substance of the provisions.

Export Restrictions

Consistent with our support of the abolition of trade restrictions, API and IOGP oppose export restrictions and support the liberalization of energy exports, which includes the granting of oil and natural gas export licenses and the lifting of import restrictions. We believe energy should be subject to the same treatment in TTIP as other industry sectors with regards to the liberalization of exports. In addition, we believe oil and natural gas should be treated the same as other goods and services under TTIP provisions that govern dual-use trade.

Wholesale Energy Domestic Price Regulation

Generally, API and IOGP believe that market forces should set prices for goods and services and support provisions in TTIP that would abolish any domestic price regulation for energy goods. We support a TTIP that prohibits domestic wholesale regulated prices and liberalizes these prices where they exist. We agree that TTIP should bind parties to requirements that any domestic pricing policy for public service obligations should be limited in scope and duration, well-defined and non-discriminatory.

Dual Pricing

API and IOGP support a TTIP that abolishes dual pricing of oil and natural gas products. We believe that a TTIP prohibition of dual pricing should apply to all goods and services across sectors, as dual pricing historically has been applied also to non-energy products such as agricultural and building materials products.

Oil and Gas Trading and Export Monopolies

As with our support for the prohibition of dual pricing, API and IOGP support a TTIP that also prohibits monopolies of any kind, including for trading and export. We believe in market competition and lifting barriers to market entry. API and IOGP believe that TTIP should apply trade principles that prohibit monopolies as well as of anti-competitive and monopolistic practices.

General Access Conditions and Non discrimination across oil and gas value chain

API and IOGP support access to oil and natural gas reserves and markets that does not discriminate between national versus non-national firms. We support non-discriminatory access across the value chain and across market segments of the oil and natural gas industry, from licensing, exploration, production, transportation and distribution, sales and purchasing, exporting and importing. The principle of “national treatment” in trade agreements typically is treated horizontally. API and IOGP will await any firm proposals by the negotiating teams regarding non-discrimination specifically for oil and natural gas before deciding whether to comment further. The priority must be on addressing the important principle of non-discrimination as part of TTIP.

Licensing

API and IOGP favour a TTIP with the principle of “national treatment” applicable across industry sectors and equally to oil and natural gas, including for licensing for exploration and development of hydrocarbon resources.

General Principles of Risk Management in Offshore (i.e., Offshore Safety for Oil & Gas Production)

Generally, API and IOGP support a TTIP that preserves regulatory autonomy and establishes a regulatory cooperation process, including transparency and stakeholder consultation. With regards to risk management of offshore process safety, API and IOGP support recognition of the respective EU and US performance-based regulatory regimes, recognition of the best practice, high-level principles within these regimes, and an ongoing regulatory cooperation process between regulatory authorities. API and IOGP believe that a TTIP-prescribed “one-size-fits-all” regulatory regime for offshore safety would be unnecessary and potentially counter-productive, given different geologic basins and operating environments, and particularly if such a regime would have the practical effect of overriding or interfering with the detail of existing offshore safety regulation in the US and EU.

Transit

API and IOGP support TTIP provisions that would prohibit the non-discriminatory transit of any product, including oil and natural gas. API and IOGP support TTIP provisions that would prohibit the discrimination in the transit of hydrocarbons with respect to the product’s origin or destination – whether inside or outside the EU or the US. API and IOGP also support TTIP provisions that would prohibit the unauthorized taking of any industry product while it is in transit.

Interruption

API and IOGP believe that the issue of interruption of energy would be covered sufficiently under the provisions outlined in the Transit section above, through trade principles that prohibit discrimination and unauthorized taking of products in transit. API and IOGP support TTIP provisions that prohibit any taking of products in transit, which in the case of the transit of oil and natural gas would prohibit the interruption or reduction of the flow of oil and natural gas, irrespective of origin and destination – whether inside or outside of the EU or the US.

Third Party Access

API and IOGP believe that the current respective US and EU legal frameworks governing third party access to inter-state (in US: across US state lines; in EU: across EU member state borders) oil and natural gas pipelines are sufficient so as not to constitute barriers to trade, although some work on implementation remains to be done. Supporting principles of non-discrimination and addressing anti-competitive practices in relation to oil and gas infrastructure will be important in establishing a TTIP framework that supports trade and investment.

As with Offshore Safety (see above) and as a general principle regarding TTIP’s treatment of regulation (see Regulatory Authorities section below), API and IOGP support a TTIP that preserves regulatory autonomy and also establishes a process for regulatory cooperation. Starting with mutual recognition of regulatory regimes governing third party access, API and IOGP support efforts by TTIP to strengthen and more effectively implement good regulatory practices.

Regulatory Authorities

API and IOGP believe that TTIP should preserve regulatory autonomy – including mutual recognition of EU and US regulatory regimes for oil and natural gas – and establish a regulatory cooperation process. API and IOGP support regulations that are risk-based, evidenced-based and incorporate cost-benefit analysis. API and IOGP support regulations that are transparent and are the product of timely stakeholder consultation.

API and IOGP believe that underneath TTIP’s umbrella provisions ensuring regulatory autonomy and mutual recognition, it may be possible to outline in TTIP oil and natural gas sector-specific commitments for regulatory coherence and cooperation. API and IOGP look forward to working with TTIP negotiators on both sides to discuss and agree on any such regulatory coherence and cooperation provisions in TTIP.

API and IOGP recognize the important responsibility of managing sustainability impacts associated with producing and providing essential energy for global development. However, policies or principles which seek to lower greenhouse gas emissions, set renewable targets, mandate sustainability certification, etc., should be scientifically based, supported by comprehensive analysis and transparent processes, and also be in accordance with domestic environmental laws and global sustainability principles.

Localization

API and IOGP support provisions in TTIP that require competitive and transparent bidding for project approvals, operational licenses and labour sourcing – and also provisions that prohibit mandatory local content requirements.

Standards, Technical Regulations and Conformity Assessment

API and IOGP support treatment in TTIP of standards and conformity assessment measures, in compliance with national regulations and through the typical vehicle of a Technical Barriers to Trade (TBT) chapter.

Standards and technical programme organizations, such as API and IOGP, produce standards and conformity assessment measures in compliance with national regulations and by following the precepts of openness, balance, consensus and due process in the development of such standards. By policy, these standards are performance-based to the maximum extent possible, allowing them to be applied to different operating and environmental conditions, including those that exist between the United States and the European Union.

API and IOGP expect the US and EU to recognize these differences and not mandate a “one-size-fits-all” regulatory approach. As such, we strongly encourage timely and formal consultation with industry stakeholders prior to the enactment or implementation of any rule or regulation. This will ensure that the necessary consideration of the precepts above – required for the viability and ultimate success of any standard or regulatory regime – are given their due regard.

Early Warning Mechanism

API and IOGP support a horizontal TTIP early warning mechanism, coupled with regulatory cooperation as described above in Regulatory Authorities, as a feature of trade transparency for industry to adapt with sufficient time to any changing regulations and standards in EU and US markets respectively.

Public Procurement

API and IOGP support transparent and non-discriminatory access to public procurement contracts and encourage that a link is made by TTIP to the latest WTO Government Procurement Revised Agreement.

Exceptions

API and IOGP do not advocate exceptions to any of the positions espoused above as they would be codified in TTIP. API and IOGP do not support exceptions for the oil and gas sector for, e.g., non-commercial scale research and development nor for safety regulation and standards. API and IOGP believe that the oil and gas industry should not be singled out for TTIP exceptions, and that any such exceptions that would apply to oil and natural gas be ones that apply across multiple industry sectors.

Implementation and Cooperation

API and IOGP support a TTIP that encourages enhanced implementation and cooperation between the EU and the US, in recognition of the importance of the combined EU and US markets for our industry and because the US or the EU are the domiciles for the vast majority of our respective members. We also support a strong Investor State Dispute Settlement (ISDS) mechanism as part of efforts to strengthen the enforceability of the principles described in this paper, as well as other free market principles such as contract sanctity, anti-corruption and protection from arbitrary asset confiscation. We note that several EU member states already have their own bilateral investment agreements with each other and believe similar strong protections should exist between the EU and US.