



Request for Public Comments on the EU-US High Level Working Group on Jobs and Growth

Submission from the Federation of German Industries (BDI)
Registration number: 1171817758-48

The Federation of German Industries (BDI) is pleased to provide the following submission in reference to the Public Consultation on the EU-U.S. High Level Working Group on Jobs and Growth which has been developed after consultations with our members.

Date
26 April 2012

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We very much appreciate the opportunity to share our views on options for the further liberalization of transatlantic trade and investment. The BDI, together with its members, is encouraged by the strong momentum of transatlantic consultations since the last EU-U.S. Summit. German industry expects the High Level Working Group to play a major role in removing trade barriers, in deepening the transatlantic market integration and in creating opportunities for economic growth and employment. The BDI submission is not final but a contribution to the ongoing process of the Working Group.

The BDI, together with European and U.S. business associations, recently presented a “Transatlantic Business Association Statement on the High Level Working Group on Jobs and Growth” (**Annex A**). This statement, endorsing the project of a Transatlantic Pact for Jobs and Growth, was submitted to the President of the European Union, José Manuel Barroso, the President of the European Council, Herman Van Rompuy and the Commissioner for Trade, Karel De Gucht.

About the BDI

The Federation of German Industries (BDI) is the umbrella organization of German industry and industry-related service-providers. The BDI is the voice of 38 sector associations, 15 regional offices located throughout Germany, and 100,000 companies with a workforce of eight million. The BDI is a founding member of BUSINESSEUROPE.

1. The Significance of Transatlantic Trade and Investment

Despite the current economic challenges, transatlantic economic relations have remained strong: the United States is Germany's second largest trading partner outside of the EU. Germany ranks fifth among foreign investors in the U.S. and contributes significantly to growth and employment. More than 3,400 German companies of all sizes are active all over the United States. All in all, German companies directly employ more than 580,000 American workers. In 2010 total assets of German firm affiliates in

**Federation
of German Industries**
Member Association of
BUSINESSEUROPE

Address
Breite Straße 29
10178 Berlin

Postal Address
11053 Berlin
Germany

Phone Contacts
Tel.: +49 30 2028-1463
Fax: +49 30 2028-2463

Internet
www.bdi.eu

E-Mail
B.Welschke@bdi.eu

the U.S. totalled \$1,5 trillion¹. U.S. businesses are also strongly invested in the German market, with affiliates of U.S. companies supporting 628,200 jobs in Germany.

The recent quick recovery of Germany's economy has highlighted the stabilizing and job-creating role of the small and medium-sized companies and is an indication of the job potential that lies in the facilitation of transatlantic trade for this sector of the economy on both sides of the Atlantic.

2. Comprehensive agreement between the EU and the U.S.

German industry favours a comprehensive economic agreement on trade, investment and services between the EU and the U.S. Such an approach is necessary to revitalize transatlantic leadership as regards addressing current issues such as economic growth, job creation, free trade, investment and effective regulation around the world. A comprehensive agreement would bring considerable gains for both the EU and the U.S. Due to the significant volume of transatlantic trade and investment, a recent study indicated that the dismantling of tariffs alone could increase GDP on both sides of the Atlantic up to \$85 billion annually².

A comprehensive agreement should include:

- Regulatory cooperation and non-tariff barriers, building on the work of the Transatlantic Economic Council (TEC);
- Conventional barriers to trade: elimination of all industrial tariffs without exceptions as well as non-tariff barriers;
- A substantial reduction or elimination, where possible, of agricultural tariffs;
- Protection of investment and broad market access for investment;
- Public Procurement;
- Protection of Intellectual Property;
- Access to raw materials;
- Disciplines of export restrictions and
- Liberalisation of trade in services.

We support the intention to engage formally in negotiations on substantive issues which promise early results. However, there should be a clear understanding on both sides of the Atlantic that only a comprehensive agreement will have a substantial impact on jobs and growth both in the United States and the EU.

¹ "The Transatlantic Economy 2012. Annual Survey of Jobs, Trade and Investment between the United States and Europe", Daniel S. Hamilton and Joseph P. Quinlan, Centre for Transatlantic Relations, 2012, http://transatlantic.sais-jhu.edu/publications/books/Transatlantic_Economy_2012/120321_pocket_TAE_final.pdf

² „A Transatlantic Zero Tariff Agreement: Estimating the Gains from Transatlantic Free Trade in Goods“, ECIPE, by Frederik Erixon and Matthias Bauer; released on the website http://www.ecipe.org/media/publication_pdfs/a-transatlantic-zero-agreement-estimating-the-gains-from-transatlantic-free-trade-in-goods.pdf

For German industry, progress on regulatory cooperation is a vital element of the Transatlantic Economic Dialogue. The BDI underlines the importance of a successful TEC process and urges the High Level Working Group to build on the results of the TEC and the already existing EU-US dialogues in negotiations for a comprehensive trade agreement on jobs and growth.

On what specific areas should a Transatlantic Agreement focus?

The BDI recommends the launch of negotiations in the following areas:

➤ Regulatory Cooperation and Non-Tariff Barriers

Different regulatory regimes on both sides of the Atlantic cause unnecessary transaction and compliance costs for companies and consumers and can lead to trade distortion. More harmonization and mutual acceptance would serve the vital interests of companies as well as consumers on both sides and would strengthen global competitiveness and the growth of the transatlantic economy. In particular, this would lower the cost barrier for SMEs to enter the transatlantic marketplace, even in low-volume markets.

The BDI proposes that the process of regulatory cooperation should be incorporated into the agreement and a work program included which the TEC should accomplish.

The BDI advocates cooperation in a wide number of key technologies and innovative sectors, such as automotive, electro-technical products and electronics, machinery, chemicals, cloud computing and nanotechnology. This approach aims at developing joint approaches to emerging regulatory issues and avoiding the creation of new and unintended barriers to trade. At the last TEC meeting, held in November 2011, the EU and the U.S. agreed to avoid creating new barriers for emerging technologies, such as cloud computing, nanotechnology and bio based food. The TEC also encouraged regulators on both sides to implement common regulatory principles and best practices. We very much hope that the adoption of this "Common Understanding on Regulatory Principles and Best Practices" as well as a joint understanding on "Building Bridges between the U.S. and the EU standards system" will help to create new and binding mechanisms to promote cooperation, collaboration, and coherence in standardisation.

On June 2, 2011, the Representative of German Industry and Trade (RGIT) in Washington D.C., on behalf of the BDI, submitted the attached comments on regulatory cooperation to the Department of Commerce (**Annex B**). We would be grateful if this earlier contribution would be taken into account.

The BDI suggests improving regulatory cooperation between the U.S. and the EU by setting common regulations and standards, particularly in the following areas:

- **Automotive** – Non-tariff measures have a major impact on automotive trade flows between the U.S. and the EU. In this context, aligning existing as well as future automotive regulations and standards becomes important:
 - For existing regulations and standards, the mutual recognition of currently manufactured vehicles is necessary in order to facilitate the existing automotive trade between the EU and the U.S.
 - For future automotive regulations, standards and technologies, close cooperation is needed, by which both the EU and the U.S. would agree to consult each other before introducing new technical legislation. Today the EU essentially applies the United Nations Economic Commission for Europe (UNECE) 1958 Agreement and the U.S. the Federal Motor Vehicle Safety standards (FMVSS). The U.S. and the EU should work on harmonising in future both legislations. This cooperation would be in addition to that already existing in WP29 in Geneva and in the TEC.

An encouraging example for ongoing efforts to align new standards is currently being pursued by the TEC for electric vehicles. An electric vehicle work plan has been developed and has called for transatlantic standardisation of innovative technologies and alternative fuels, in particular electro-mobility, to be placed on the TEC agenda. The BDI welcomes the development for an electric vehicle work plan and has campaigned for transatlantic standardisation of innovative drive technologies and alternative fuels, in particular electro-mobility, to be placed on the TEC agenda. We encourage the U.S. and the EU to use this as a model for harmonization in other areas.

Closer transatlantic cooperation on future automotive regulations, standards and technologies is an important issue for many sectors: in addition to the automotive manufacturers and suppliers, industries such as the electrical and electronic component manufacturers, engineering, chemicals, energy, information technology and communications would benefit as well as the metal industry.

- If the EU and the US can agree on common future standards, this would create a major opportunity for

a more international approach and to invite other countries such as Japan, South Korea, as well as the BRICS and ASEAN countries to join.

- ***Electro-technical safety and machinery*** – The BDI supports common transatlantic standards on horizontal safety aspects (in particular for electrical safety and machinery) and for common specific safety standards covering most products in this field. We call for the acceptance of the use of the relevant international standards and for initiating an exchange on conformity assessment procedures for the safety of electrical equipment.
- ***Food and Drink*** - the U.S. are the second largest export market outside of the EU and one of the most important trade partners for the German food and drink industry. Regulatory constraints have a major impact on food and drink trade between Germany and the U.S. To increase bilateral trade and create growth and jobs it would be important to eliminate the non-tariff barriers for German exports to the U.S. and prevent any hindrance to trade that could be caused by regulatory measures in the future.
- ***Cloud computing*** - One particular challenge for cloud service providers are the legal uncertainties in the transatlantic market with regard to the conflicting data rules by the U.S. Patriot Act and nationals' laws in the EU such as the German Data Protection Act (BDSG). In many cases service providers face the impossible challenge to either infringe U.S. law by not transferring data to U.S. Authorities or to violate law in the EU by actually doing so. In order to provide legal certainty for all parties in the future, this situation should be subject of a political solution and negotiations.

The BDI welcomes the launch of a dialogue on cloud computing at the last TEC meeting which should be used to share information and best practices with a view to avoiding unnecessary divergences in new regulations and standards.

- ***Nanotechnology*** - The debate on the potential implications of nanotechnology is increasing. German industry advocates a risk-based approach built on a sound scientific foundation. The U.S. and the EU should work together on a balanced and proportional regulation for this new and promising technology and jointly counteract any unfounded stigmatisation, also at international level. The U.S., Germany and the EU have intensified safety research on the implications of nanomaterials. Any unilateral regulatory activities, such as the Commission's recommendation on a definition of nanomaterials are counterproductive.

- **Promoting cross-border data flow** – Open markets for information and communication technologies (ICT) are important for our economies. Consistent, transparent and common rules governing the treatment of digital goods, services and data flows are fundamental for these markets. The BDI applauds the adoption of an EU-U.S. agreement on a set of non-binding trade-related ICT principles. Cooperation on global rules and the approximation of rules across the Atlantic concerning data privacy and data protection should be a central element of the negotiations on a Transatlantic Pact for Jobs and Growth.

➤ **Conventional Barriers to Trade including Tariffs**

German industry calls for the elimination of all tariffs between the U.S. and the EU. No exceptions should be allowed, all industrial tariffs must be completely abolished. Industrial tariffs are low in comparison to many emerging markets but they are still high for industrialized countries. With an average of 5 to 7 percent – for some sectors the tariff barriers are considerably higher - their elimination would deliver sizeable gains for companies and consumers. Bilateral trade between the EU and the U.S. is largely composed of intra-company trade, suggesting potential gains of great magnitude.

Special attention should also be given to the following issues:

- **Trade and Security** – German industry welcomes the mutual recognition of the customs-business partnership programs AEO and C-TPAT recently agreed by the TEC and applicable in the summer of 2012.

However, the BDI continues to call on the U.S. to repeal the legislation that requires the 100 % scanning of sea and air freight at foreign ports before shipping to the U.S. Potential repercussions are so far-reaching that the legislation would act as a serious hindrance to EU-U.S. trade. It contradicts all existing customs security initiatives, which are based on target risk analysis. Moreover, the costs are immense for both the EU and the U.S. The European Commission has calculated on the basis of a pilot project in Southampton that the cost of scanning for each container would exceed \$500. The BDI appreciates the efforts of the U.S. Administration to delay the implementation of this law, but would prefer a repeal of this requirement. We call for a risk-based solution for cargo screening.

➤ **Investment and Services**

Foreign direct investment is vital to the transatlantic economy. The EU is the most important source of direct investment in the U.S. and vice versa. Mutual investment creates jobs and stimulates innovation

in both our economies. It enhances the global competitiveness of the transatlantic economy.

The BDI thus welcomes the “Statement on Shared Principles for International Investment” the U.S. and the EU recently agreed on. The EU and the U.S. have affirmed their commitment to promoting open investment policies at home and abroad and stress that these policies are fundamental to our prosperity.

The BDI proposes to adopt these principles to the following areas and to remove remaining barriers to transatlantic investment:

- ***Open aviation markets*** – The BDI supports the further liberalization of the transatlantic aviation market so that airlines can compete on equal terms. The EU-U.S. market is mature with similar market opportunities and homogenous structures dominated by privately-owned companies. While the removal of most restrictions on traffic rights (domestic rights for EU carriers in the U.S. outstanding) and the implementation of a harmonized market framework and competition review has already done much to improve the conditions for free and fair competition, airlines’ ability to bid for public sector business regardless of nationality and the removal of ownership and nationality clauses which reduce airlines’ ability to invest in each other or to access international capital should be key objectives for a Transatlantic Pact on Jobs and Growth.

The BDI calls for the creation of an Open Aviation Area (OAA), which would dismantle restrictions on EU ownership of U.S. airlines in a liberalized market accounting for 60 percent of world aviation. The 2008 Open Skies agreement between the EU and the U.S. is only the first step towards a more liberalized air transport market. However, given the absence of international competition rules in aviation (i.e. the non-inclusion of aviation in the WTO), special consideration must be given to fairness of such access and its use.

- ***Movement of people*** – Bureaucratic delays, significant expenses and considerable uncertainty with the visa issuance process in the U.S. are significant problems for German companies hiring qualified workers in the US. German industry calls for a reform of current U.S. visa policies, including more certainty in the visa-issuance process. Travel to and from the U.S. could be facilitated by a transatlantic registered traveller programme.
- ***Unpredictability of U.S. Legal System*** – For German industry, the US legal system constitutes a huge risk and causes potentially exorbitant legal expenses. The U.S. legal system is often perceived as a significant barrier to investment,

especially by small and medium-sized companies. Critical elements include (but are not limited to) the concept of the “opt-out” class action, the use of (pre-trial) discovery which often conflicts with European privacy legislation, the “American rule” for attorney’s fees, and punitive damages. The U.S. legal system should not serve as a risk to foreign investors but rather as a safeguard that allows the pursuit of legitimate business interests.

- ***Extraterritorial application of U.S. (sanctions) legislation*** - The BDI is very concerned about the extra-territorial application of US legislation, especially sanctions legislation. Other areas of concern include notably financial market legislation and the Alien Tort Statute. U.S. extra-territorial measures and jurisdiction can place EU companies involved in legitimate business transactions and actively complying with EU and international law at serious risk.

Especially in the area of sanctions, EU measures have a far reaching approach similar to U.S. sanctions and are imposed in cooperation with a number of countries, in particular the U.S. Therefore, EU companies abiding by EU sanctions law should as a matter of principle not be penalised under third countries' legislation and should be exempted from any extra-territorial measures or action by the U.S. The current practice is not legally acceptable and is politically detrimental to the unity of the transatlantic community in its common stance towards sanctioned countries.

➤ **Public Procurement**

A Transatlantic Pact on Jobs and Growth should include safeguards for an open public procurement market, allowing for fair competition and going beyond GPA commitments in terms of coverage and existing thresholds. National treatment at all procurement levels (federal, state and municipal) should be ensured, preventing any discrimination based on by By-National provisions.

➤ **Protection of Intellectual Property Rights (IPR)**

The protection of Intellectual Property Rights (IPR) is vital for the transatlantic economy. German industry welcomes efforts to create a level-playing field for both statutory law and the respective enforcement in the field of IPR. The U.S. patent reform in 2011 is seen as a great achievement. From the European perspective, the change in the U.S. patent law to the “first-to-file” principle is a milestone for international patent harmonization. Creating a unitary European patent would be equally important for international competitiveness. Both steps would re-open the door for negotiations on a substantive Patent Law Treaty.

Joint transatlantic efforts to improve the global cross-border enforcement of IPR have been weakened by the recent public debate on ACTA (Anti-Counterfeiting Trade Agreement) in the EU. Misunderstandings about ACTA and a serious lack of awareness concerning the importance of IPR have been dominating the recent public debate. German industry is concerned that the ratification process of ACTA will stall. In this event, the joint attempts to strengthen the respective collaboration of the U.S. and the EU could suffer a significant setback. German industry believes that the fight against counterfeiting and piracy needs strong political backing in the EU and in the U.S.

➤ **Access to raw materials**

The supply of raw materials is an important prerequisite for industry's competitiveness in the U.S. and the EU. This is industry's primary responsibility. As to export restrictions in key raw materials countries (e.g. 40% export tariffs on coking coal from China and 20 to 25% on iron or from India) governments should cooperate more at transatlantic level in terms of strategy.

3. Conclusion

German industry calls for a strong political signal to support the opening of negotiations on a comprehensive Transatlantic Pact on Jobs and Growth. Now is the time to tackle the many remaining barriers for trade, investment and services across the Atlantic for the benefit of market integration and the competitiveness of our economies. We expect these negotiations to also have a positive impact at multilateral level and on world trade. This Pact should be ambitious, comprehensive and inclusive.

The BDI takes great interest in the success of the High Level Working Group on Jobs and Growth and is prepared to support it in all areas of concern.



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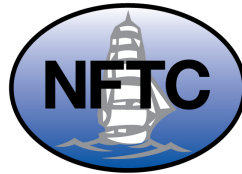
Emergency Committee
for American Trade



EUROCHAMBRES



NATIONAL ASSOCIATION OF
Manufacturers



Transatlantic Business Association Statement on the High-Level Working Group on Jobs and Growth

We, the representatives of the U.S. and European business communities, call upon our leaders to move swiftly to deepen the transatlantic economic and commercial relationship through ambitious trade, investment, and regulatory policy initiatives.

With both the United States and the European Union facing fiscal and macroeconomic challenges at home and new economic powers around the globe, we believe now is the time to create a barrier-free transatlantic market to drive the job creation and growth we both urgently need.

We commend the decision by the U.S.-EU Summit in November 2011 to establish the High-Level Working Group on Jobs and Growth chaired by U.S. Trade Representative Ron Kirk and European Trade Commission Karel De Gucht. The agenda of the Working Group should be far-reaching, covering, for example, tariff and non-tariff barriers to trade in goods and services, investment, regulatory cooperation, intellectual property protection and innovation, public procurement, cross-border data flows, and business mobility.

We believe that the Working Group provides an unparalleled opportunity to strengthen our economies, enhance the global competitiveness of our firms, and, in so doing, reinforce our joint capacity to maintain and modernize the rules-based international trading system which has benefited the global economy over the past 60 years.

We are encouraged by the support we have seen so far. On the EU side, German Chancellor Angela Merkel, UK Prime Minister David Cameron, and French President Nicolas Sarkozy have all signaled their support for closer transatlantic relations, as has the European Council in its January 30 Summit recommendations.

On the U.S. side, Secretary of State Clinton declared in early February that, “the new U.S.-EU High-Level Working Group on Jobs and Growth created by President Obama and his European counterparts should be at the forefront of our efforts to put our people back to work...America and Europe can and should be trading more with each other.”

The transatlantic business community is committed to working with you to develop creative solutions to eliminate trade, investment and regulatory barriers which undermine the ability of our companies and workers to expand economic growth and create jobs.

We urge President Obama and Presidents Van Rompuy and Barroso to grasp the opportunity of the May 19-20 G8 Summit to be ambitious and to commit to an accelerated launch of comprehensive transatlantic trade, investment and regulatory negotiations this year. The American and European people should not have to wait for the boost to growth and jobs that these initiatives will bring.



June 2, 2011

Ms. Lori Cooper
Office of the European Union
U.S. Department of Commerce
14th & Constitution Avenue, NW, Room 3513
Washington, DC 20230

Re **Docket ITA-2011-0006**: *Request for Public Comments Concerning Regulatory Cooperation Between the United States and the European Union That Would Help Eliminate or Reduce Unnecessary Divergences in Regulation and in Standards Used in Regulation That Impede U.S. Exports (Federal Register Vol. 76. No. 85, Tuesday, May 3, 2011)*

Dear Ms. Cooper:

The following comment is submitted by the Representative of German Industry and Trade (RGIT) on behalf of the Federation of German Industries (*Bundesverband der Deutschen Industrie, e.V.*, BDI) and the German-American Chambers of Commerce (AHK-USA) re Docket ITA-2011-0006.

This office approves of the objective to deepen further the transatlantic economic relationship by identifying barriers to trade and working to remove them through greater cooperation on policy priorities, regulations, and standards, and by engaging in concrete activities (“lighthouse projects”) that showcase advanced technology, foster the exchange of best practices, and promote greater dialogue between policymakers, regulators and industry on both sides of the Atlantic.

This office, and its principals, have been strong supporters of the Transatlantic Economic Council (TEC) since its creation at the 2007 EU-U.S. Summit in Washington, D.C. We support and closely monitor the EU-U.S. High Level Regulatory Cooperation Forum, the EU-U.S. Energy Council, and the EU-U.S. Summits. These forums convene public and private stakeholders and thus hold great promise for deepening even further the already vibrant transatlantic economic and investment relationship.

Transatlantic trade and investment are important motors of economic growth, well-paying jobs and prosperity. Liberalized markets can revitalize depressed regions, lower consumer prices and increase societal welfare. Regulations and standards that are divergent, incompatible, unduly burdensome, costly, ineffective or restrictive, can hinder the benefits of trade and investment.

This office circulated the *Federal Register* notice to our principals and their member associations and companies (Members), seeking “on-the-ground” commentary regarding areas where it may be possible to eliminate or ameliorate the effects of divergent standards and regulations without sacrificing protection or quality, and emerging or high-growth sectors that may benefit from timely transatlantic regulatory cooperation. The comments below come from companies and industry associations that are active worldwide, and in this country, in the electrotechnical/electronics and renewable energy sectors.

About the RGIT

The Representative of German Industry and Trade (RGIT) is the Washington, DC liaison office of Germany's largest trade and industry associations: the Federation of German Industries (BDI), and the Association of German Chambers of Industry and Commerce (*Deutscher Industrie- und Handelskammertag*, DIHK). Dr. Thomas Zielke is President. Founded in 1988, RGIT's mission is to foster free trade and a welcoming business environment on both sides of the Atlantic to achieve sustainable growth, jobs and innovation for companies involved in German-American economic relations.

RGIT is supported by Germany's Federal Ministry of Economics and Technology (BWMi) and serves as the voice of German Industry on behalf of RGIT's principals. The BDI speaks for 37 sector associations, 15 regional offices, and circa 100,000 companies with a total workforce of eight million people. A list of the BDI's members is attached as **Annex A**. The DIHK represents the 80 German Chambers of Industry and Commerce (IHK) and their 3.6 million member companies.

About the AHK-USA

The German-American Chambers of Commerce (AHK-USA) are the foreign representation offices of the DIHK in the United States. The AHK-USA is one of the largest bilateral trade organizations worldwide. The AHK-USA has office locations in Atlanta, Chicago and New York plus branch offices in Houston, Philadelphia and San Francisco. Outside Germany, the German Chamber Network (AHK) provides experience, connections and services worldwide through 120 locations in 80 countries.

1. The Significance of Transatlantic Investment and Trade

Transatlantic trade and investment between the United States (U.S.) and the European Union (EU) are the bedrock of the global economy, accounting for more than \$4 trillion in total commercial sales, 68 percent of foreign direct investment (FDI), 30 percent of global trade, 44 percent of world GDP, and 14 million "onshored" jobs. Billions of dollars transact across the Atlantic each day.¹

Underpinning these impressive numbers is a relationship founded on shared values, trust, dialogue, cooperation, compromise, and hard work. While there are important differences between the two markets, the commonalities and similarities are far greater than the variances. The EU-U.S. economic and investment relationship is more harmonious than many other bilateral trade relationship. The EU and the U.S. may not agree in every instance but they typically are in greater alignment with one another than with the large emerging economies.

In the accelerating global race to set standards, norms and precedents that can define markets for years to come, the scope, relative harmony and shared values of the transatlantic relationship should not be underestimated or ignored in favor of newer markets. Policymakers and regulators must bear in mind that market disruptions, whether transatlantic or another dimension, ultimately distort global economic and investment flows, which can impede growth and prosperity across the globe.

¹ Facts and figures cited in this section come from *The Transatlantic Economy 2010: Annual Survey of Jobs, Trade and Investment between the United States and Europe*, by Daniel S. Hamilton and Joseph P. Quinlan. http://transatlantic.sais-jhu.edu/bin/a/t/te2010_final_text.pdf.

German industry is a leading investor in the U.S.² More than 3,000 German companies of all sizes are active here. Combined, the U.S. subsidiaries of German companies directly employ more than 650,000 American workers, 12% of the 5.5 million in-sourced jobs in the country, and contribute tens of thousands of additional indirect jobs. Through December 31, 2009, German FDI in the U.S. totaled \$218 billion, nearly 10% of the \$2.3 trillion that foreign-based businesses have invested in the U.S. overall. Based on 2008 data, Germany is the 6th largest export market for the U.S., and the 5th largest exporter of merchandise to the United States.

Transatlantic trade and investment are a priority for this office, our principals, and their Members. There is strong support throughout the German business community to enhance transatlantic trade and investment by reducing regulatory barriers that can impede trade flows, increase costs to companies and consumers, and impair the competitiveness of American and European businesses.

2. Introduction

This office welcomes the opportunity to provide comment on how greater regulatory cooperation between the U.S. and the EU can enhance transatlantic commerce and investment by eliminating or reducing divergent regulations and standards, and by identifying emerging or high-growth sectors that may benefit from timely transatlantic regulatory cooperation. As noted, the comments below come from internationally active companies that are deeply involved in the U.S. market.

3. Contribution from Electrotechnical/Electronics Sector

Companies in the fields of electrical, electronic and optical connection, transmission and networking, plus manufacturing, mechatronics and software creation, submitted following comment:

- A. *Standardization Processes & Structure* - The general structure of standardization in the electrical/electronics industry is different between Europe, Asia and the U.S. In Europe standardization often occurs under a single European entity like CEN (The European Committee for Standardization) or CENELEC (the European Committee for Electrotechnical Standardization). If country-based standards are still in use they usually are accepted by other countries without further testing.

In contrast, in the U.S., there are at least 13 different organizations that issue standards. The biggest and best known of these is Underwriters Laboratories, Inc. (UL). UL's standards are well known and widely adopted. But, in a particular situation, a given manufacturer could choose another (non-UL) industry standard and manufacture equipment based on it.

- B. *Compliance Testing* – A second key difference is that, in the U.S., final assemblies are often tested against the applicable standard, not necessarily the single components that constitute the assembly. Example: Industrial Control Panels. In the U.S., with respect to automation assemblies, testing of the control panel is governed by UL 508A.

² Unless noted otherwise, facts and figures cited in this section come from *RGIT Fact Sheet: German-American Trade, Investment and Jobs*, 2010. http://www.rgit-usa.com/uploads/media/Fact_Sheet_2010.pdf.

The requirements under UL 508A cover “*industrial control panels intended for general industrial use, operating from a voltage of 600 volts or less,*” as well as “*industrial control panel enclosures and industrial control panels intended for flame safety supervision of combustible fuel type equipment, elevator control, crane or hoist control, service equipment use, marine use, air conditioning and refrigeration equipment, and for control of industrial machinery including metalworking machine tools, power press controls, and plastic injection molding machinery.*”³

Accordingly, technically, a connector could fall within the ambit of UL 508A but as a practical matter not be used in the given final assembly, as the standard virtually prohibits the use of connectors. There is no equivalent European standard that causes such a conflicting situation.

The example cited above burdens transatlantic commerce in that, under the present system, a U.S. manufacturer would often have to generate a solution that conforms to the requirements of the U.S. market, and another solution to serve the European market.

- C. *Competitiveness* – Under the current system, U.S. manufacturers in the electrical/electronics industry may face greater competitive pressure in having to conform to U.S. requirements for the domestic market and satisfy other requirements for foreign markets. Insofar as Asian countries are expressing interest in accepting or adopting the European standardization structure, U.S. manufacturers may benefit from using European standards.

Consider again UL 508A. This UL standard requires U.S. manufacturers to hardwire connections from the control panel to the various drives, robots etc. This limits the serviceability of such assemblies and therefore increases downtime. This lowers the competitiveness of the products on the European market, as serviceability and MTTR (mean time to repair) are important criteria for the economical evaluation of automation projects.

The relative fragmentation of the U.S. standards structure in this sector limits the opportunities of U.S. suppliers and increases their cost. It also creates long-term issues for their products, which limits competitiveness in the European markets.

The issues noted with respect to UL 508A are similar to issues with other UL standards.

³ <http://ulstandardsinfonet.ul.com/scopes/0508a.html>.

- D. *Excess Cost* – the additional cost created by dual standard solutions and/or dual developments for a single application reduces export opportunities for U.S. manufacturers relative to the high level of demand present in international markets. In some cases companies may elect to rely on offshore development and manufacturing of products to serve international markets rather than to export the products and devices from the U.S.

Solutions

- 1) Harmonizing such divergent standards would be beneficial and lower business and compliance, costs but this may be difficult to achieve given differences in the way in which standards are established and promulgated in the U.S. and the EU.
- 2) Given the systematic differences, an important first step would be to compile all available, applicable U.S. standards and then integrate them with European standards under IEC (the International Electrotechnical Commission).

4. Contribution from Wind Sector

Companies engaged in the manufacture of wind turbines and other components, submitted following comment:

- A. *Divergent Electrical/Technical Standards* – one of the greatest challenges in marketing our products (wind turbines) in North America is the lack of a harmonization of electrical and other technical standards between U.S. norms and industry, and EU-wide accepted IEC norms. Example: in many countries a threshold question is whether a wind turbine should be classified as a building, and therefore subject to local building codes and standards, or as a standalone technical system, akin to a gas turbine or other electrical generator.
- B. *Self-Certification* – under the terms of the European Machinery Directive, European manufacturers and companies can self-certify technical products that fall within the scope of the Directive. In the U.S., third party certification through Nationally Recognized Testing Laboratories (NRTLs) is required. This leads to greater compliance costs and potentially greater processing time before a product can go to market.

Solutions

- 1) Harmonizing standards between the U.S. and EU markets, or, ideally, adopting and recognizing IEC norms for technical products in the U.S., would promote substantial growth in the wind sector for U.S. and EU companies by moving beyond discussions whether to apply local building codes to wind turbines and which UL standards should apply to a given wind park.
- 2) Permitting manufacturers and companies covered by the European Machinery Directive to self-certify products also for sale and use in the U.S. market would stimulate transatlantic activity in the wind sector. Even if the U.S. regulatory authorities would not

be able to permit self-certification, a harmonized and more clear set of technical norms would deliver substantial value.

5. Contribution from ZVEI

The German Electrical and Electronic Manufacturers' Association (Zentralverband Elektrotechnik- und Elektronikindustrie e. V., ZVEI) represents the economic, technological and environmental policy interests of the German electrical and electronics industry. The ZVEI promotes the development and use of innovative technologies by proposals concerning research, technological, environmental protection, educational and scientific policy. It supports market-orientated European and international standards-making activities. The electrical industry manufactures and creates a wide range of products varying from electronic components to system solutions for automation, energy, transportation, safety and medical technology.

The ZVEI submitted comment directly. This is a recap of its comments and suggestions:

- A. *Self-certification* – the ZVEI reiterates arguments for permitting limited use in the U.S. of self-certification as an alternative or accepted variant to the current U.S. process, which requires that compliance testing be performed by NRTLs such as UL.
- B. *Multiple Standards* – citing as a test case the interplay of UL standards 508A (mentioned above), 2237 and 2238, the ZVEI questions the necessity for all three standards to be required in a given circumstance, where a relatively small change to the underlying process can trigger a time-consuming and costly process to obtain the additional certifications.
- C. *Technical Data and Design Documents* – the ZVEI questions the rationale behind requirements set forth by UL testing facilities in Europe relative to the provision of technical data and design documentation, where the necessary link between the data required and the need to test and certify the underlying components and sub-assemblies and products is absent or unclear.
- D. *International Cooperation* – the ZVEI cites U.S. national standards, often issued by UL or NEMA (the National Electrical Manufacturers Association), which typically do not correlate to similar internationally-adopted standards, as market barriers.

Solutions

1. The U.S. should increase participation in the work of international standards setting bodies such as IEC; the U.S. should adopt, e.g. through ANSI (the American National Standards Institute) internationally-recognized standards; and the U.S. should withdrawal, as done by EU member states, national standards that conflict with the international counterparts.
2. The UL should review its policies, procedures and rationale for requiring additional standards certifications where relatively minor changes are made to operational and manufacturing processes, and it should review its policies, procedures and rationale for

requiring technical data and design documentation that do not appear to have a link to the underlying components, sub-assemblies or products that are the focus of the test procedures.

6. Conclusion

As evidenced by the comments noted above, there are multiple ways in which the EU-U.S. economic and investment relationship, still the most prosperous and robust in the world, can be enhanced even further. This office appreciates the effort required to carefully assess regulations and standards, identify gaps that may be susceptible to harmonization or convergence, and commit the political and regulatory will that may be necessary to implement concrete solutions. This office welcomes the attention placed on identifying emerging areas where up-front, timely dialogue between policymakers, regulators and other stakeholders can help to avoid divergent approaches at a future point in time.

While dismantling or minimizing extant market barriers or challenges may not be easy, when done properly, substantial rewards can accrue to companies, consumers investors. This should provide sufficient motivation to ensure that the transatlantic marketplace continues to set the gold standard for open markets, liberalized investment policies, and high-performance goods, products and services.

This office appreciates your consideration of this public comment and would be pleased to answer any questions that you may have.

Sincerely,

Dr. Thomas Zielke

ANNEX A



[Verband der Automobilindustrie e.V. \(VDA\)](#)



[Hauptverband der Deutschen Bauindustrie e.V.](#)



[Bundesverband Baustoffe – Steine und Erden e.V. \(BBS\)](#)



[Verband Beratender Ingenieure \(VBI\)](#)



[Verband der Chemischen Industrie e.V. \(VCI\)](#)



[Zentralverband Elektrotechnik- und Elektronikindustrie e.V. \(ZVEI\)](#)



[Bundesverband der Deutschen Entsorgungs-, Wasser- und Rohstoffwirtschaft e.V.](#)



[Wirtschaftsverband Erdöl- und Erdgasgewinnung e.V. \(WEG\)](#)



[Bundesvereinigung der Deutschen Ernährungsindustrie \(BVE\)](#)



[Verband Forschender Arzneimittelhersteller e. V. \(vfa\)](#)



[Bundesverband der Deutschen Gießerei-Industrie \(BDG\)](#)



[Bundesverband Glasindustrie e.V.](#)



[Zentraler Immobilien Ausschuss e.V. \(ZIA\)](#)

Representative of German Industry and Trade

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[Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e.V.](#)

[\(BITKOM\)](#)



Verband der Kali- und Salzindustrie e.V.

[Verband der Kali- und Salzindustrie e.V. \(VKS\)](#)



BUNDESVERBAND
KERAMISCHE INDUSTRIE E.V.

[Bundesverband Keramische Industrie e.V. \(BVKI\)](#)



WIRTSCHAFTSVEREINIGUNG
KUNSTSTOFF

[Wirtschaftsvereinigung Kunststoff \(WVK\)](#)



DER FLUGHAFENVERBAND

[Flughafenverband ADV \(Arbeitsgemeinschaft Deutscher Verkehrsflughäfen\)](#)



Bundesverband der Deutschen
Luft- und Raumfahrtindustrie e.V.

[Bundesverband der Deutschen Luft- und Raumfahrtindustrie e.V. \(BDLI\)](#)



[Verband Deutscher Maschinen- und Anlagenbau e.V. \(VDMA\)](#)



Wirtschaftsvereinigung Metalle

[Wirtschaftsvereinigung Metalle e.V. \(WVM\)](#)



[Mineralölwirtschaftsverband e.V. \(MWV\)](#)



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