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# Statement of the U.S. Chamber of Commerce

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**ON:** The Transatlantic Trade & Investment Partnership

**TO:** Office of the U.S. Trade Representative

**BY:** U.S. Chamber of Commerce

**DATE:** May 10, 2013

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

The U.S. Chamber of Commerce is pleased to submit this statement to the Office of the U.S. Trade Representative outlining our interests and priorities as negotiating positions are developed for the proposed Transatlantic Trade & Investment Partnership (TTIP).

No priority facing our nation is more important than putting Americans back to work. More than 7% of the U.S. workforce is unemployed — a figure that soars to nearly 15% when those who have stopped looking for jobs and the millions of part-time workers who want to work full time are included. As a nation, the biggest policy challenge we face is to create the 20 million jobs needed in this decade to replace the jobs lost in the recent recession and to meet the needs of America's growing workforce.

World trade must play a central role in reaching this job-creation goal. After all, outside our borders are markets that represent 80% of the world's purchasing power, 92% of its economic growth, and 95% of its consumers. The resulting opportunities are immense, and many Americans are already seizing them: One in three manufacturing jobs depends on exports, and one in three acres on American farms is planted for hungry consumers overseas.

The United States and the European Union (EU) enjoy the broadest, deepest, and most successful economic relationship in the world. The figures are well known:

- The United States and the EU each generate over \$16 trillion in GDP and together produce nearly half of global GDP.
- The U.S.-EU single commercial relationship is the world's largest, with total commerce surpassing \$6.5 trillion (including trade in goods and services as well as sales by foreign affiliates).
- U.S. merchandise exports to the EU topped \$265 billion in 2012 while merchandise imports reached \$381 billion.
- U.S. services exports to the EU surpassed \$201 billion in 2010 (latest data available) while services imports reached \$152 billion.
- U.S. firms have direct investments topping \$2.3 trillion in the EU — half of all U.S. direct investment abroad and 20 times what they have invested in China. These investments generate \$3 trillion in sales for American companies annually.
- European companies have invested \$1.8 trillion in the United States and directly employ more than 3.5 million Americans.

Despite the breadth and depth of this relationship, there are substantial additional benefits to be gleaned from still closer cooperation. Thus, we applaud the Administration's commitment to proceeding with these transatlantic trade and investment negotiations.

The Chamber strongly encourages the U.S. negotiating team to strive for a comprehensive and ambitious agreement. Our organization has consistently supported a “no exclusions” stance in trade negotiations, meaning that the Chamber opposes the exclusion of specific commodities and sectors from liberalization under new trade agreements. The TTIP is no different.

## **Trade in Goods: Consumer and Industrial Products**

Trade in goods between the United States and the EU exceeded \$646 billion in 2012, representing the largest international exchange of goods in the world. While the United States and the EU have generally low tariff rates, the volume of trade is so large that the overall tariff bill our companies face is in fact quite high: A recent Bloomberg study notes that U.S. firms pay approximately \$6.4 billion in tariffs to the EU, money that could otherwise be dedicated to investment and job creation. Moreover, since as much as 40% of transatlantic trade in goods is intra-company, firms often pay duties on both sides of the Atlantic as they ship components and products back and forth. This double taxation significantly affects the global competitiveness of both U.S. and EU-headquartered firms.

Eliminating tariffs alone would have an immense economic impact. According to a 2010 econometric study<sup>1</sup> by the European Centre for International Political Economy (ECIPE), transatlantic trade would increase by \$120 billion within five years of tariff elimination, and U.S. and EU GDP would expand by a combined \$180 billion.

TTIP should eliminate virtually all tariffs immediately upon entry into force. Negotiators should spell out clear rules of origin for products benefiting from tariff elimination and allow for accumulation of origin with other trade agreement partners. In cases where tariffs remain high, the agreement should specify phase-out periods that reflect scheduled tariff elimination under other U.S. and EU trade agreements with a view toward enhancing U.S. competitiveness.

In terms of market access, the TTIP also represents an opportunity for the United States and the EU to set a standard with regard to “forced localization” measures, which have proliferated in recent years in a number of emerging markets. In this regard, the TTIP must ensure that market access for goods and services is not be conditioned on requirements to invest in, develop, or use local R&D, intellectual property, manufacturing or assembly capabilities; transfer technology to another party involuntarily; or disclose proprietary information.

## **Trade in Goods: Agriculture**

The EU has been the fifth largest market for U.S. agricultural exports for the past four years, with exports reaching \$10 billion in 2008 but declining to \$9.6 billion in 2011. The latter sum represented just 7% of total U.S. farm exports. Currently, both the EU and the United States permit approximately 30% of all agricultural products to enter their markets duty free. Tariff elimination would bring a significant boost to trade since duties on agricultural products are higher than for other goods on both sides of the Atlantic.

U.S. and EU regulators share the objective of ensuring that the food in their markets is safe, and they have developed highly sophisticated and effective approaches to achieving this goal. However, these approaches differ significantly, and these differences have contributed to long-running disputes over sanitary and phytosanitary (SPS) measures. The TTIP represents a critical opportunity to approach these issues in a more comprehensive fashion, especially given

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<sup>1</sup> European Centre for International Political Economy, “A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods, Fredrik Erixon and Matthias Bauer, Occasional Papers 4/2010, Oct. 2010.

that only rarely do our regulators disagree on the safety of the foods allowed in one another's markets.

The TTIP must include a well-developed and binding chapter on SPS measures that are at least as strong as those in the SPS chapter of the Trans-Pacific Partnership (TPP). This chapter should reinforce the importance of science- and risk-based regulations and decision-making, including using science-based international standards and scientifically accepted methods that strengthen and elaborate requirements related to risk assessment and risk analysis.

This chapter should also provide for formal "fast-track" procedures that expeditiously address issues related to shipments of perishable goods and allow the automatic right for backup testing in the event of an adverse test result. The TTIP should also make full use of the existing U.S.-EU Veterinary Equivalence Agreement as well as recent experience in reaching a mutual recognition agreement on organic produce to resolve such problems.

### **Supply Chain, Customs Modernization, and Trade Facilitation**

In today's global economy, businesses are linked together through a web of interconnected, predictable, and efficient supply chains. Inputs come from all over the world to create products with the greatest value for the consumer. As a result, more than half of all international trade today is in intermediate goods, according to the OECD. Limiting cross-border friction will boost the global competitiveness of U.S. and EU businesses and reduce costs across their highly-integrated transatlantic operations.

Chokepoints at the border, such as costly customs procedures, inefficient security programs, and burdensome regulation, reduce the critical predictability of the supply chain, and as a result can have the same stifling impact on trade as tariffs. Indeed, a recent study by the World Economic Forum and Bain & Company entitled *Enabling Trade Valuing Growth Opportunities* found that reducing global supply chain barriers could increase world GDP by as much as 5% and international trade by 15% — figures that surpass the potential impact of tariff elimination by a large margin. Cutting red tape at the border through trade facilitation reforms could boost the world economy by as much as \$1 trillion and generate more than 20 million jobs, according to the Peterson Institute for International Economics.

The United States and the EU should modernize the customs architecture which governs the movement of goods across the Atlantic. The establishment of a "single window" through which importers and related parties can electronically submit all information to comply with customs' and other government agencies' information requirements is especially important. In practice, this would be one single window for the United States and one single window for the EU, and these agencies should agree to a common set of import and export data elements for customs, security and other government agency data requirements. The single window would decrease the transaction cost of trade, open markets to small and medium-sized businesses, and improve targeting capabilities for government. Provision for electronic pre-clearance based on advanced data should also be included so that goods are cleared before their arrival at a port of entry.

Governments should commit to common procedures for goods clearance to build a "one government at the border" approach to border management. This would include requirements of

all government agencies with border and hold authority in the United States and the EU to coordinate inspection activities. Currently exporters face national customs clearance processes in EU Member States that maintain separate procedures and computers systems. Companies on both sides of the Atlantic face dozens of agencies that lack enforcement and facilitation coordination. To reduce the high costs and unnecessary delays this can generate, all security, customs, product safety, and other requirements should be cleared with a single release, and released separate from payments of duties or import charges.

The United States and the EU should reaffirm their commitment to a multi-layered and risk-based approach to enforcement and security procedures. Risk management provides the greatest possible security while simultaneously facilitating legitimate trade. This includes the future development of supply chain, customs, and other government agencies' border procedures and regulations. The Air Cargo Advance Screening (ACAS) initiative serves as an example of how programs should be developed, by coordinating, consulting, and piloting on both sides of the Atlantic. To prevent diverging transatlantic regulations, we should develop common requirements for data, common communications with carriers and forwarders, and risk criteria.

Partnership between the private and public sectors on supply chain security has become a cornerstone for transatlantic commerce. The U.S.-EU C-TPAT/AEO mutual recognition agreement was a welcome step; nevertheless, potential for further alignment remains. The TTIP should enhance mutual recognition with the following:

- One online application process accepted in the United States and EU Member States;
- Single validation and revalidation visits with the results accepted by both sides;
- Demonstrable benefits that include reduction of the likelihood of inspections;
- Fast-track privileges for members' shipments when inspections are required;
- Expedited handling of members' shipments in post-incident recovery operations;
- Payment of customs duties on an account basis as opposed to per transaction;
- Permission to provide required documents and commercial information post-release; and
- Common information requirements where the export declaration of one side is accepted as the import declaration of the other side.

In addition, raising and harmonizing the *de minimis* value for the collection of customs duties and other taxes on low-value goods is critical to facilitate trade. It is also critical to reducing trade barriers for small and medium-sized businesses, allowing them access to international markets. The TTIP should include a commitment to a minimum *de minimis* level of \$800 (or its euro equivalent), covering all duties and taxes, and to linking the *de minimis* value to the consumer price index. This level should be applicable regardless of country of origin.

Both the United States and the EU would benefit from improving their procedures for duty drawback. In some cases, companies ignore these processes because the costs outweigh the benefits of participation. The TTIP should include commitments to simplify, streamline, and align duty drawback procedures, including through the creation of a "same condition" drawback provision in the EU, and promote consultation in advance of future duty drawback modifications to achieve greater convergence.

Given the importance of supply chains to competitiveness, the TTIP should follow the TPP's lead and include a new chapter on Competitiveness and Business Facilitation to

complement the chapter on Customs Administration and Trade Facilitation. The chapter would include a commitment from the United States and the EU to each designate a single regulatory agency for the purposes of supply chain facilitation. The two agencies would have authority to cut through red tape at the border and throughout the supply chain. The agencies should also develop policy to improve connectivity and coordination across all government agencies that impact the supply chain.

The Competitiveness and Business Facilitation chapter should also include development of a Transatlantic Business Facilitation Committee (TBFC). The TBFC would convene government and business representatives from both sides of the Atlantic to develop an action plan to address supply chain connectivity. The committee would meet regularly to promote progress on initiatives and have the authority to bring forward recommendations to address emerging issues. The TBFC is important to promote the long-term issues that face connectivity. New issues will arise over time, and the TBFC would serve as the driving force behind progress to solving these issues and strengthen our trade relationship.

### **Investment**

Investment, rather than trade, is the foundation of the transatlantic economic relationship. At the end of 2011, U.S. companies' investments in the European Union had reached \$2.3 trillion, and these investments directly employed over 4.2 million European workers. Similarly, EU-headquartered firms' investments in the United States reached \$1.8 trillion and employed 3.8 million Americans. Combined, these investments power enterprises with annual sales exceeding \$4 trillion, a number which dwarfs both bilateral trade flows and U.S. trade and investment relationships with other countries.

Despite this remarkable relationship, there is no formal investment agreement between the United States and the European Union. However, the United States has ratified Bilateral Investment Treaties (BITs) or Treaties of Friendship, Commerce, and Navigation with nearly all EU Member States.

The EU recently gained competence from its Member States to negotiate investment agreements. The TTIP should build on this to conclude a full and ambitious investment promotion and protection chapter, less out of concern for the current state of investment protection in either the United States or the EU, but as a symbol of our joint commitment to strong investment protections globally. The investment chapter of the TTIP should eventually serve as the "gold standard" for other investment agreements.

The TTIP investment chapter should include at least the high-standard of protections found within the 2012 U.S. model BIT, as well as the detailed principles set out by ten U.S. and European business associations in November 2011<sup>2</sup>. Specifically, provisions of a TTIP investment chapter should include:

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<sup>2</sup> <http://www.investmentpolicycentral.com/sites/investmentpolicycentral.drupalgardens.com/files/Multi-association%20TEC%20Investment%20Principles%283%29.pdf>

- A broad definition of investment;
- The right to establish and operate investments on a non-discriminatory basis, across the full range of economic sectors, including agriculture, mining, manufacturing and services; this should be done on a “negative list” basis, with only limited and tightly defined exceptions;
- The right to transfer monies related to an investment;
- The right to transfer, process, store and manage data related to an investment;
- Allowing expropriation only for a public purpose, on a non-discriminatory basis, with due process, and with prompt, adequate and effective compensation for the fair-market value of the investment;
- Provisions on competition with state-owned or state-controlled enterprises; and
- A robust investor-State dispute settlement (ISDS) mechanism.

While some argue that ISDS need not be part of the TTIP given the demonstrated U.S. and EU commitment to the rule of law, the Chamber insists that the United States and the EU must include these provisions as a signal to the world of our willingness to commit to the same set of rules that we urge other commercial partners to uphold. Moreover, ISDS provisions already exist in the extensive network of BITs the United States has negotiated with individual EU Member States.

With regard to market access and limits on ownership, challenges remain on both sides of the Atlantic. Despite well-known sensitivities, the Chamber urges the TTIP negotiators to avoid carve outs of any particular sector and put all investment barriers on the negotiating table. In trade negotiations, when one party seeks to exclude a given commodity or sector from an agreement, other parties tend to follow suit, limiting the ambition and scope of the agreement. This must not be allowed to happen with the TTIP.

## **Services**

In both the United States and the European Union, services account for about three-quarters of all economic activity and employment. The United States and the EU are by far the world’s largest exporters of services. Together, these two economies account for 70% of global services trade, much of which takes place within the transatlantic relationship. The United States exported \$210 billion in services to the European Union and imported \$150 billion in services from the EU in 2012.

The relative importance of services trade is growing for both the United States and the EU. Cross-border trade in services between the United States and the EU has increased from about 30% of total transatlantic trade in 2000 to 36% in 2012. In general, this growth reflects increased travel and transport, royalties, and in particular business and professional services in the areas of finance, insurance, education, computer services, management, architecture, legal, and engineering.

To achieve its full potential, the TTIP must provide liberalization of services across all four modes of delivery. For example, a U.S.-based software company may export its products to Europe via the Internet (“cross-border trade,” known as mode 1), provide training to its staff at a facility in Spain (“consumption abroad,” mode 2), sell service contracts through a French



affiliate (“commercial presence,” mode 3), and employ a Dutch national at its headquarters on an H-1B visa (“movement of natural persons,” mode 4).

To secure the greatest possible benefit from the TTIP, all modes of delivery must be subject to liberalization. Companies rely on all four modes of delivery in a seamless fashion because they are not perfect substitutes for one another. To illustrate, the software company in this example may find it uneconomical to provide training in Spanish in the United States, and providing hands-on service to a major French client from a remote location may be impractical. Similarly, companies in today’s worldwide economy often find it difficult to staff certain highly-skilled positions exclusively with U.S. citizens.

The Chamber believes that financial services should be included in the negotiations in the same manner as other services industries and that the TTIP’s regulatory cooperation provisions should likewise extend to all services sectors. This is in keeping with the Chamber’s view that the TTIP should provide comprehensive market access and national treatment for services in all modes and eliminate barriers to investment. Inclusion in the TTIP need not impair regulators’ ability to take appropriate prudential measures.

The Chamber recently submitted recommendations relating to specific services sectors in comments relating to the Trade in Services Agreement (TISA) negotiations. We believe the TTIP should aim to achieve a level of liberalization and openness at least the equal of the TISA per those recommendations. The Chamber encourages U.S. officials to consider how best to approach particular challenges in these concurrent negotiating fora, seeking outcomes that reflect how the transatlantic negotiations will likely lend themselves to greater depth in some areas while the TISA will cover an even larger share of the world economy than the TTIP.

## **Digital Trade**

Consumers, businesses, and organizations of all sizes rely on and benefit from a constant stream of information and digital goods and services flowing seamlessly back and forth across the Atlantic. Businesses capitalize on this digital trade to create valuable products and services, enhance productivity, enable cost-savings, improve efficiency, protect consumers, and foster increased growth and jobs. Digital trade goes beyond what may traditionally be thought of as e-commerce to include the provision of electronic products, services, and ICT functionality as well as the flow of information that encourages trade in physical goods and enables the efficient management of global operations, all of which businesses of all sizes and sectors need to thrive in today’s economy. The United States and the EU should work together to create a binding framework with clear, consistent, and predictable rules to bolster digital trade across the Atlantic and serve as a global benchmark. The TTIP must also recognize that digital trade affects all sectors, including financial services.

The United States and the EU should strive to achieve a “future-proof” agreement that provides flexibility for new technologies and actively encourages the creation and recognition of interoperable solutions. The TTIP must acknowledge that there can be multiple approaches that achieve a compatible regulatory outcome, particularly in areas such as data protection and privacy. Processes must be put in place that facilitate future attempts to reach broad, flexible, cross-sectoral solutions and might include specific references to those horizontal processes

developed in the regulatory section. When appropriate, there should also be the ability to provide for sector-specific arrangements to go deeper and provide greater levels of recognition.

It is often difficult to distinguish specific policy areas of the digital trade agenda as most topics are interconnected, and regulating one area in a restrictive manner can increase burdens across many aspects of the U.S.-EU relationship.<sup>3</sup> At a minimum, however, we would expect these important principles to be specifically applied to provisions related to data privacy and protection, cloud computing and other ICT services, cross-border information flows, and local infrastructure.

### **Movement of Persons Related to Trade**

Some 25 million people travel between the United States and the EU annually, reflecting deep historical, family, and economic ties and supporting robust travel industries. The TTIP should facilitate these exchanges to promote tourism and to promote other kinds of trade and investment. In particular, TTIP should:

- Extend the U.S. Visa Waiver Program to the whole of the Schengen territory and consider it, rather than individual EU member states, as a basis for meeting the Visa Waiver Program criteria for admission to the program;
- Confirm and extend currently provided treaty-trader and -investor status to qualified business representatives from both sides to allow qualifying nationals of each to reside indefinitely in the other jurisdiction to pursue their business interests;
- Allow temporary movement of professional and highly-skilled service providers to be extended to semi-skilled service providers and installers of purchased machinery and equipment on the basis of a bonding requirement;
- Facilitate intra-corporate transfers, including of third-country nationals employed for a specified period (perhaps a year) by qualifying transatlantic firms, especially with respect to fulfilling obligations under service contracts, be it in the services or manufacturing sectors;
- Provide an agreed annual number of specific U.S. visas to EU contract service suppliers; and
- Set up a Transatlantic Business Visitors Card, similar to the APEC Business Visitors card, with a dedicated lane at passport controls in airports.

### **Regulatory Cooperation and Standards**

Many analysts believe the real benefit of the TTIP will derive from its promise to deliver greater regulatory coherence and cooperation. The TTIP negotiations must include disciplines concerning technical barriers to trade (TBTs) to ensure least trade restrictive approaches to the regulation of goods within the United States and the European Union. The TTIP should support a

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<sup>3</sup> See, for example, a study on the economic impact of the EU's proposed General Data Protection Regulation by the European Center for International Political Economy (ECIPE), *The Economic Importance of Getting Data Protection Right: Protecting Privacy, Transmitting Data, Moving Commerce* ([http://www.uschamber.com/sites/default/files/grc/020508\\_EconomicImportance\\_Final\\_Revised\\_lr.pdf](http://www.uschamber.com/sites/default/files/grc/020508_EconomicImportance_Final_Revised_lr.pdf)). Among other findings, it indicates EU exports of manufactured goods to the United States could decrease by as much as 11% under an onerous approach to data protection regulation since goods exports are highly dependent on efficient provision of services.

common agreement on what constitutes an international standard, built on references that have come out from the World Trade Organization (WTO) TBT Committee Decisions. This would allow regulators the flexibility and choice to use a given standard to meet regulatory objectives based upon the actual qualities and attributes of that standard, such as the excellence of technical content, relevance to world market conditions, and diverse international participation in its development.

Negotiators must also agree on new commitments, applicable to all regulators, to deliver both *ex-ante* and *ex-post* cooperation to ensure regulatory frameworks achieve the highest possible levels of compatibility. In addition, the TTIP must drill down into specific sectors of the economy to prioritize and bridge regulatory differences that do not otherwise advance a health, safety, or other legitimate regulatory objective.

On TBT issues, trade in goods and services are facilitated by voluntary consensus-based standards. When governments reference the broadest possible range of standards that meet regulatory objectives, barriers to trade are minimized. In its drive to promote a Single Market, the EU has tended to focus on a limited universe of standards bodies that it deems to be “international.” Unfortunately, this excludes many standards setting organizations that enjoy diverse participation of experts from around the world, including Europe. There is a growing recognition in Europe that such a blinkered approach can inhibit competitiveness, and in response, the EU is liberalizing its approach to standards setting in the ICT sector. This is a welcome development that should be broadened and accelerated as part of these negotiations.

More generally, closer regulatory cooperation between the United States and the EU has the potential to unleash growth opportunities, cost savings, and efficiencies. While the U.S. and EU regulatory systems differ, they share regulatory objectives because our citizens demand equivalent levels of protection. When a 2007 German Marshall Fund survey conducted by the Pew Research Center for the People and the Press asked Americans and Europeans whether U.S. and EU regulations for products and services should be made as similar as possible, the response was overwhelmingly positive: 67% of Americans and 80% of Europeans supported closer cooperation.

Regulatory cooperation in the context of the TTIP is not about more regulation or less regulation; rather, it is about building partnerships between our regulators to allow them to become more efficient and more effective in fulfilling their mandate to protect consumers, investors, workers, and the environment. Moreover, an optimal regulatory environment allows the market to be more competitive and innovative.

The TTIP should establish a framework that permits and encourages regulators in all goods and services sectors to increase cooperation with their transatlantic counterparts by:

- Endorsing good regulatory practices and principles, including thorough consideration of alternatives such as self-regulation, economic instruments such as charges or fees, better enforcement of liability schemes, and voluntary standards as addressed in the APEC-OECD Integrated Checklist on Regulatory Reform;
- Setting a mandate to aim for mutual recognition of compatibility regulatory approaches *where our systems provide equivalent outcomes*, and requiring a justification for divergent approaches;

- Creating new tools to assess *ex-ante* compatibility and evaluate *ex-post* equivalence;
- Providing for greater regulator-to-regulator sharing of relevant information to narrowly tailor rulemakings but also affording greater protection of data and confidential business information, especially trade secrets submitted as part of conformity assessments or other product approval requirements;
- Increasing transparency and stakeholder involvement in rulemakings and within existing regulatory dialogues;
- Incorporating an institutional mechanism to facilitate best practices in transatlantic regulatory cooperation, encourage adherence to the horizontal principles and enable an “evergreen” process of incorporating increasing numbers of bilateral regulator agreements;
- Preserving regulatory autonomy but making regulatory cooperation as a process binding, especially for regulations with significant transatlantic impact; and
- Ensuring comprehensive coverage of horizontal commitments, including financial services.

While the TTIP’s horizontal obligations above would apply to all regulators, certain sectors are likely to be well positioned to reach more detailed regulatory cooperation commitments relatively quickly. The level of ambition will vary on a sector-by-sector basis but those that should be examined for possible inclusion in context of the TTIP include, but are not limited to, autos, chemicals, medical devices, pharmaceuticals, consumer products, and information, communication and technology (ICT) products.

In October 2012, the U.S. Chamber and BusinessEurope submitted a joint paper<sup>4</sup> on regulatory cooperation that expands on the concepts outlined above. It should be considered to be incorporated by reference in this current submission.

### **Government Procurement**

At a time of budget constraints, governments at all levels should strive to provide taxpayers the best value for their money. They can achieve this by promoting a level playing field and fair competition for procurements. Given that U.S. and EU firms are often so integrated across the Atlantic that they cannot fulfill “Buy National” criteria, the United States and the EU should define products and services coming from either as meeting those criteria or exempt them altogether. The TTIP should also establish that all levels of government and public entities in both the EU and the United States will commit to consider on a fully non-discriminatory basis bids to provide goods and services from firms based in the United States or the EU.

### **Competition Policy**

The explicit inclusion of competition policy and enforcement in U.S. trade agreements is a relatively recent and welcome addition to the U.S. approach to trade negotiations. It is important that the TTIP agreement build on this trend.

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<sup>4</sup> [http://ec.europa.eu/enterprise/policies/international/cooperating-governments/usa/jobs-growth/files/consultation/regulation/9-business-europe-us-chamber\\_en.pdf](http://ec.europa.eu/enterprise/policies/international/cooperating-governments/usa/jobs-growth/files/consultation/regulation/9-business-europe-us-chamber_en.pdf)

The United States and the EU are two of the most advanced and well-established competition enforcement jurisdictions in the world today. Our governments have had in place memoranda of understanding to guide both policy and enforcement cooperation for more than 20 years. Despite the depth of experience and high degree of cooperation which has been achieved, substantive policy and legal frameworks differences remain. While many in the business community would very much like to see closer alignment of U.S. and EU competition policies, we do not believe that the TTIP should attempt to bridge all of these differences but instead should largely focus on what message a TTIP agreement can send to the rest of the world regarding competition enforcement.

TTIP should identify what transparency and due process obligations are expected with regard to enforcement proceedings to enable an agency to become credible and effective in achieving its objectives. It is critical that antitrust enforcement agencies not operate as “black boxes” and that those under investigation are able to fully understand the legal and economic theories that underpin investigations so that an adequate defense can be mounted. The United States is now incorporating a series of increasingly robust due process (procedural fairness) obligations in this regard, most recently in its proposals for the TPP negotiations. These U.S. proposals should form the basis for discussion in the TTIP.

Further, the TTIP should seek to include several of the OECD and ICN merger review best practices as part of a complete and comprehensive approach to transparency and procedural fairness. To date, the U.S. approach in trade agreements has focused largely on cartel and conduct proceedings. However, many global transactions today require merger review across multiple jurisdictions. Merger clearance, the coordination required across jurisdictions, as well as the development of merger remedies is becoming increasingly complex. Demonstrating a firm U.S.-EU commitment to best practices on merger clearance in this agreement along with a pledge to work more closely together and with third-countries in regard to merger review should be added to any competition provisions of a TTIP agreement.

Finally, with regard to competition policy and enforcement, the EU legal system fails to extend legal privilege to in-house counsel, something that is afforded within the United States and within various EU member states. This is no doubt a difficult subject; however the ambitious nature of the TTIP can only be achieved if difficult subjects like this are raised and addressed.

### **State-Owned Enterprises**

The other major interest in the competition chapter of the TTIP is the opportunity to develop joint disciplines with the EU regarding state-owned enterprises that are engaged in commercial operations. Here, too, the Trans-Pacific Partnership is breaking new ground as the United States has led an effort to develop cutting-edge obligations to ensure a level playing field for all commercial actors.

U.S companies active in the worldwide economy are increasingly put at a disadvantage by the unfair practices of companies that are owned and assisted by governments. State-owned and state-influenced enterprises and other national champions engaging in commercial transactions are distorting competition and allowing governments to circumvent obligations they have undertaken in multilateral and bilateral trade and investment agreements. We understand that government involvement in the marketplace will always be present in various forms and to

various degrees within each country, but in order to prevent an undermining of trade commitments, the anti-competitive behavior of state-owned enterprises must be held in check.

In the context of the TTIP, the commercial operations of state-owned enterprises are not a significant concern in either the United States or the EU. In fact, the EU has a robust body of state aid laws that largely ensures commercial actors, including those which are state-owned, are not favored by governments over their competitors. The TTIP represents a unique opportunity to offer unified transatlantic leadership to other governments to ensure they do not circumvent multilateral and bilateral trade and investment obligations through state-owned enterprises. Such distortions to competition skew the playing field and actively undermine confidence in international trade and investment rules.

It is important that the TTIP:

- Address these concerns as they arise in an investment, cross-border, and third country context;
- Discipline government financial subsidies to these entities which are provided on a preferential and non-commercial basis;
- Discipline government preferential regulatory (non-financial) treatment that is often provided to these entities; and
- Ensure that a government is accountable for these entities' decisions when they are proven to be discriminatory or made as a result of government influence and not conducted "in accordance with commercial consideration."

### **Intellectual Property Rights**

Intellectual property (IP) — including patents, copyrights, trademarks, trade secrets and related rights — is a critical driver for the transatlantic economic engine. Effective protection and enforcement of IP rights provide innovative and creative companies of all sizes and across sectors with the incentives to commercialize and bring their products to market, which in turn facilitates the creation of jobs, continued innovation, public safety, and access to new technologies. In the United States alone, IP industries account for 55 million jobs, \$5.8 trillion in output, and \$1 trillion in exports, according to a study by the U.S. Chamber's Global IP Center.

As noted in numerous joint statements, the United States and the EU recognize the importance of promoting modern, effective, and robust protection of intellectual property. This is reflected in the strong protections and enforcement provisions already in place in both markets.

We believe that an effective chapter on intellectual property in the TTIP should commit both sides to further improve existing laws, regulatory measures, and standards. Where differences between IP law, enforcement, and regulatory regimes are significant, U.S. and EU regulators should strive to harmonize around best practices. Areas ripe for consideration include, but are not limited to: trade secret protection, patent term extensions, data exclusivity periods, and trademark marketing approvals. Negotiations also should ensure that confidential commercial information submitted to government regulatory agencies in marketing approval applications is protected from indiscriminate disclosure.

A high standard IP chapter can also serve as the basis for stepped-up joint efforts to promote robust IP protection and enforcement in third countries, where market access barriers include: establishment of industrial policy priorities, procurement preferences based on domestic IP, and compulsory licensing requirements, among others. By working together to promote the highest possible standards for IP protection and enforcement in these markets, the United States and the EU can level the playing field for businesses and enhance the global level of innovation.

## **Labor**

The Chamber supports the fundamental goal of treating workers fairly and agrees that the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work sets out appropriate principles with which the United States and the Member states of the EU should comply. A significant bipartisan majority in Congress agrees with this position, as seen in the congressional approval of the trade agreements with Peru, Colombia, Panama, and South Korea, all of which referenced the ILO Declaration. Those votes confirmed the wisdom of the careful balancing of interests in the four agreements.

Moreover, it is relevant that the United States and the members of the European Union are strong democracies with an enduring commitment to upholding and enforcing labor principles. These shared values and strong institutions provide a firm foundation for the TTIP and any provisions it may include relating to labor.

It is important that U.S. negotiators resist calls to extend the reach of any labor provisions in the TTIP beyond the approach employed in the recently approved trade agreements. Doing so would needlessly risk eroding business and political support for the TTIP. The approach to labor principles in the most recently approved trade agreements should be embraced in the TTIP and used to continue the work of expanding the new bipartisan consensus on trade.

## **Small and Medium-Sized Enterprises**

Small and medium-sized enterprises (SMEs) generate about two thirds of net new jobs in the United States, according to the U.S. Small Business Administration, and the numbers appear to be similar in Europe. Over 97% of the 293,000 U.S. companies that export are small and medium-sized enterprises. However, this figure represents just one of every 100 U.S. SMEs, underscoring how difficult it is for smaller firms to enter export markets. The TTIP presents a real opportunity to help this critical segment of the American economy.

SMEs have at best limited resources to overcome traditional market entry barriers, such as steep tariffs or licensing requirements. Non-tariff barriers are especially harmful to smaller companies because they add to the fixed costs of doing business. Where a \$10,000 permit is a nuisance for a big firm, it can be a show-stopper for a smaller one. Elimination of tariffs and non-tariff barriers will be critical to enable SMEs to gain entry to promising markets.

## **Conclusion**

The U.S. Chamber of Commerce strongly supports the proposed Transatlantic Trade & Investment Partnership. It has the potential to strengthen the U.S. economic recovery, generate good jobs, and fortify the global rules-based trading system. It will extend similar benefits to the

citizens of the European Union. The Chamber strongly urges that negotiations for a comprehensive and ambitious TTIP be formally launched as soon as possible with a goal of concluding them expeditiously.

The Chamber is aware that there is some debate in both the United States and the European Union on whether to exclude certain sectors from the TTIP negotiations. As referenced above, the U.S. Chamber of Commerce Board of Directors adopted a Policy Statement in 2004 underscoring Chamber support for a “no exclusions” stance in trade negotiations, meaning that the Chamber opposes the exclusion of specific commodities and sectors from liberalization under new trade agreements. In trade talks, the historical record shows that whenever one party seeks to exclude a given commodity or sector from an agreement, others tend to follow suit, limiting its reach. *A priori* exclusions lead to weaker commitments by prospective trade agreement partners in terms of market access as well as rules.

For the United States to achieve the goal of a true 21st century agreement with state-of-the-art rules, our negotiators must hold fast to the goal of a comprehensive and ambitious accord. The U.S. Chamber of Commerce stands ready to assist the U.S. negotiating team in achieving this goal.