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Congress of the United States

House of Representatives

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MEMORANDUM

July 23, 2013

To: **Subcommittee on Commerce, Manufacturing, and Trade Democratic Members and Staff**

Fr: **Committee on Energy and Commerce Democratic Staff**

Re: **Hearing on "The U.S.-E.U. Free Trade Agreement: Tipping Over the Regulatory Barriers"**

On Wednesday, June 24, 2013, at 9:45 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled "The U.S.-E.U. Free Trade Agreement: Tipping Over the Regulatory Barriers."

I. BACKGROUND

The economies of the United States and the European Union are the two largest in the world, representing over 40% of global gross domestic product, combined.[1] They are also increasingly interdependent. In 2012, more than $1.5 trillion in trade flowed between the U.S. and the member states of the E.U., nearly double the value of such trade ten years earlier.[2] The United States and the European Union share similarly high levels of economic development and are both major producers of advanced technologies and services. Consequently, much of U.S.-E.U. trade involves similar products originating in similar domestic consumer markets, with corresponding regulatory protections that developed separately over time.[3]

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[1] Central Intelligence Agency, *World Factbook* (July 2013) (online at www.cia.gov/library/publications/the-world-factbook).

[2] This figure reflects international transactions on the current account, *i.e.*, goods, services, income, and cash transfers. It does not include international transactions involving financial assets, *i.e.*, capital flows, which make up an additional, significant portion of the U.S.-E.U. trade relationship. Bureau of Economic Analysis, *U.S. International Transactions* (June 14, 2013) (online at www.bea.gov/iTable/iTable.cfm?ReqID=6&step=1).

[3] William H. Cooper, *EU-U.S. Economic Ties: Framework, Scope, and Magnitude*, Congressional Research Service (Apr. 2, 2013) (online at crs.gov/pdfloader/RL30608).

As a unit, the European Union is the largest trade partner of the United States. In 2012, U.S. goods and services exports to the E.U. were $463.5 billion, accounting for 21% of the overall total, while goods and services imports from the E.U. were $534 billion, or 19% of the total.[4] Similarly, the United States is the largest trading partner of the European Union, and a comparable proportion of the exports supplied and imports purchased by the European Union involve the United States.[5] Top categories of goods exchanged between the U.S. and the E.U. include chemicals, transportation equipment (including motor vehicles), general machinery, computers and electronics, petroleum and coal products, and other miscellaneous manufactured commodities.[6]

Trade barriers in the form of taxes and tariffs are already low between the E.U. and the U.S. Successive rounds of trade liberalization under the General Agreement on Tariffs and Trade (GATT) – along with federal legislation authorizing the President to negotiate – produced significant tariff reductions to the point where average tariffs between the U.S. and E.U. are now under 3%.[7] In 1995, GATT was succeeded by the World Trade Organization (WTO), which provides the principles and rules under which the U.S. and E.U. conduct trade today.

Current proposals to promote U.S.-E.U. trade on a bilateral basis originate from several recent developments. Both the United States and the European Union experienced sharp economic downturns in 2008-2009 and have been slow to recover. Several E.U. countries have also faced severe sovereign debt crises that have further impeded growth in the region. U.S. and E.U. officials alike have stated that increased trade between the two markets could help improve domestic economic performance.[8] Moreover, while the United States and European Union recently completed new bilateral free trade agreements with countries such as South Korea, Colombia, and Peru, multilateral trade liberalization has slowed as the WTO's Doha

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[4] William H. Cooper, *EU-U.S. Economic Ties: Framework, Scope, and Magnitude*, Congressional Research Service (Apr. 2, 2013) (online at crs.gov/pdfloader/RL30608); Office of the U.S. Trade Representative, *European Union* (2013) (online at www.ustr.gov/countries-regions/europe-middle-east/europe/european-union).

[5] *Id.*

[6] International Trade Administration, *Product Profiles of U.S. Merchandise Trade with a Selected Market,* TradeStats Express (2013) (online at tse.export.gov).

[7] European Union, *Countries and Regions: United States* (June 18, 2013) (online at ec.europa.eu/trade/policy/countries-and-regions/countries/united-states). Among federal legislation, the 1962 Trade Expansion Act (Pub. L. 87-794) was particularly important to bringing about reductions in U.S.-Europe tariffs.

[8] *See* White House, *Remarks by the President in the State of the Union Address* (Feb. 12, 2013) (online at www.whitehouse.gov/the-press-office/2013/02/12/remarks-president-state-union-address); European Commission, *Karel De Gucht – On the Start of the EU-US Trade Talks in Washington* (July 8, 2013) (online at ec.europa.eu/commission_2010-2014/degucht).

Development Round, which began in 2001, still continues without having reached a conclusion.[9] As a result, several countries, including the United States, have sought alternative means for achieving new export and investment opportunities.[10]

II. THE PROPOSED U.S.-E.U. TRADE AND INVESTMENT AGREEMENT

On November 28, 2011, the United States and European Union established a High Level Working Group on Jobs and Growth, led by then-U.S. Trade Representative Ron Kirk and E.U. Commissioner for Trade Karel De Gucht, to investigate ways to "increase U.S.-E.U. trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness."[11] The group's final report concluded that a comprehensive trade and investment agreement would best serve these goals. On February 12, 2013, President Obama announced his administration's intention to launch U.S.-E.U. trade negotiations, which was confirmed in a joint statement the following day with the top two leaders of the European Union.[12] Following a public comment period, the first round of Transatlantic Trade and Investment Partnership (TTIP) negotiations took place in Washington, D.C. during the week of July 8, 2013. A second round is scheduled to take place in Brussels during the week of October 7, 2013.

A. Stated Objectives

The European Union has estimated that a TTIP agreement would add 0.5% to the E.U.'s annual output. Noting that tariffs between the U.S. and E.U. are already low, the E.U. has stated

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[9] The United States also recently completed a free trade agreement with Panama. In the Doha round, major impediments to an agreement exist on issues such as agriculture tariffs and subsidies, industrial tariffs, market access for manufacturing and services, and trade remedies.

[10] For instance, the Trans-Pacific Partnership (TPP) is a potential free trade agreement among at least twelve nations in the Asia-Pacific region and the Americas, currently on its 16th round of negotiations. Some issues the negotiations have attempted to address are considered relatively new elements of trade policy, prompting U.S. Trade Representative Ron Kirk to refer to the TPP as a "21st century trade agreement" and say, "we expect the TPP agreement to serve as a model for the future of American trade." Office of the U.S. Trade Representative, *USTR Ron Kirk Remarks on Trans-Pacific Partnership Negotiations* (Dec. 14, 2009) (online at www. ustr.gov/about-us/press-office/press-releases/2009/december/ustr-ron-kirk-remarks-trans-pacific-partnership-n).

[11] White House, *Fact Sheet: High-Level Working Group on Jobs and Growth* (Nov, 28, 2011) (online at www.whitehouse.gov/the-press-office/2011/11/28/fact-sheet-high-level-working-group-jobs-and-growth).

[12] White House, *Remarks by the President in the State of the Union Address* (Feb. 12, 2013) (online at www.whitehouse.gov/the-press-office/2013/02/12/remarks-president-state-union-address); European Union, *Statement from United States President Barack Obama, European Council President Herman Van Rompuy, and European Commission President José Manuel Barroso* (Feb. 13, 2013) (online at europa.eu/rapid/press-release_MEMO-13-94_en.htm#PR_metaPressRelease_bottom).

that "the key to unlocking this potential lies in the tackling of non-tariff barriers," which "come from diverging regulatory systems (standards definitions notably), but also other non-tariff measures, such as those related to certain aspects of security or consumer protection."[13] In its final report recommending a comprehensive trade and investment agreement, the High Level Working Group called for negotiators to address: (1) market access obstacles related to tariffs, services, investment, and procurement policies; (2) regulatory issues and non-tariff barriers; and (3) modes of cooperation for challenges in specific areas, including intellectual property rights, environment and labor, customs and trade facilitation, competition policy, state-owned enterprises, localization, raw materials and energy, small- and medium-sized enterprises, and transparency.[14]

The High Level Working Group placed a particular emphasis on addressing regulatory issues and policies considered non-tariff barriers. Based on its engagement with stakeholders, the group recommended that U.S.-E.U. negotiators update two existing WTO treaties, address regulatory process issues, and establish a framework for identifying future regulatory cooperation. Most relevant to the content of current regulations, the group also called for "steps aimed at promoting regulatory compatibility in specific, mutually agreed goods and services sectors, with the objective of reducing costs stemming from regulatory differences in specific sectors."[15] It advised negotiators to utilize three concepts where appropriate: *harmonization*, or the goal of changing regulatory measures to make them uniform on an international basis; *equivalence*, or the maintenance of differing measures as long as they fulfill the same regulatory goals, in practice; and *mutual recognition*, or the formal acceptance by each party of the other's measures for complying with trade agreement provisions, even though they may differ.[16]

B. <u>Stakeholder Goals</u>

Many of the public comments submitted by U.S. exporters emphasized means by which addressing various topics through TTIP could reduce costs or yield efficiencies in individual industries.[17] The topics proposed were highly diverse, but examples included:

- ***Reducing forced localization,*** in which governments use investments or policy incentives to favor locally-manufactured products in a discriminatory manner over imported goods;

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[13] European Union, *Countries and Regions: United States* (June 18, 2013) (online at ec.europa.eu/trade/policy/countries-and-regions/countries/united-states).

[14] United States-European Union High Level Working Group on Jobs and Growth, *Final Report* (Feb. 11, 2013) (online at trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf).

[15] *Id.*

[16] *Id.*

[17] Office of the U.S. Trade Representative, *Comments Concerning Proposed Transatlantic Trade and Investment Agreement*, USTR-2013-0019 (May 2013) (online at www.regulations.gov/#!docketDetail;D=USTR-2013-0019).

- ***Increasing the participation of small- and medium-sized enterprises in trade,*** by reducing conventional barriers that may disproportionately limit their ability to export;

- ***Maintaining the free flow of workers,*** especially those with STEM degrees, to ease high-value, cross-border innovation;

- ***Addressing the impact of state-owned enterprises,*** or firms that are substantially state-supported, both of which can distort fair competition; and

- ***Limiting barriers to cross-border data flows,*** to ensure the free flow of information around the world, particularly via the Internet.

C. Stakeholder Concerns

Submitted comments also expressed several concerns with the proposed agreement, as described in public materials and statements by U.S. and E.U. leaders. These concerns included, but were not limited to, the following:

- ***Regulatory protections are not barriers to trade.*** Consumer product safety, auto safety, privacy rights, public health, food safety, environmental protection, financial stability, and labor rights advocates stressed that current regulations were implemented because they advance consumer well-being, and, in some cases, save lives. Moreover, they expressed concern that TTIP would expose regulations that had been built through significant time, effort, technical research, and, above all, expertise, to adjustment or elimination without a similarly considered approach, in the name of reducing trade barriers.

- ***Likely TTIP provisions would undermine democratic institutions.*** Comments included concerns that TTIP's focus on duly-implemented regulatory measures would undermine the democratic institutions that create and uphold them.

- ***There already exist methods by which the U.S. and E.U. can make regulations more compatible.*** Comments expressed some doubt that it was necessary for the proposed agreement to provide a forum for improving regulatory compatibility – whether through harmonization, equivalence, or mutual recognition – when institutions already exist to serve this purpose. For example, significant efforts to harmonize auto safety regulations can and do take place through the United Nations' World Forum for Harmonization of Vehicle Regulations (WP.29), currently authorized under the 1998 Agreement on Global Technical Regulations.

- ***The TTIP process lacks transparency.*** Comments expressed strong concerns over a lack of transparency, and encouraged the U.S. and E.U. to release TTIP text for public comment at different stages in the negotiating process in order to ensure equal participation by all stakeholders. Commenters were also concerned that, in current practice, business interests are afforded disproportionate access to high-level negotiators.

- ***TTIP would not only make it more difficult for the U.S. and E.U. to enact needed, future regulatory protections, but also for other nations to do so.*** Given the substantial market power of the U.S. and E.U., concerns were raised that this agreement could pressure other countries, particularly developing nations, to avoid implementing sensible protections.[18]

III. WITNESSES

The following witnesses have been invited to testify:

The Honorable Matt Blunt
President
American Automotive Policy Council

John Castellani
President and Chief Executive Officer
Pharmaceutical Research and Manufacturers of America

The Honorable Cal Dooley
President and Chief Executive Officer
American Chemistry Council

Dean Garfield
President and Chief Executive Officer
Information Technology Industry Council

Jean Halloran
U.S. Liaison, Transatlantic Consumer Dialogue Secretariat
Senior Advisor for International Affairs, Consumers Union

Carroll Muffett
President and Chief Executive Officer
Center for International Environmental Law

[18] *Id.*