SUMMARY OF TESTIMONY

Testimony of Jean M. Halloran

Senior Advisor for International Affairs, Consumers Union

U.S. House of Representatives, Committee on Energy and Commerce,

Subcommittee on Commerce, Manufacturing and Trade

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

July 24, 2013

In sum, Consumers Union, and consumer groups on both sides of the Atlantic, are deeply concerned that this agreement, focused on "regulatory convergence" and "mutual recognition," will lead to an erosion of consumer protection in the vast areas it is addressing. We are also deeply concerned that an agreement on investor-state dispute resolution will potentially create a new court system that could end run the one we currently rely upon. These concerns are intensified by the secrecy in which the two sides intend to conduct this negotiation, which means that the public and Congress itself will have no opportunities to point out or address serious problems.

We urge Congress and the Administration to establish "harmonization upward" to the highest levels of consumer protection as an avowed goal of this negotiation, to abandon any effort to establish an investor-state dispute resolution mechanism, and to insist on, at the very least, publication of draft negotiating text at regular intervals, so we call all see what is going on.

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Thank you for inviting me to testify today and I am pleased to be able to give you the consumer viewpoint on the trade negotiations that have just begun between the European Union (EU) and the United States (US). I represent Consumers Union, the policy and advocacy arm of Consumer Reports, which has 8 million subscribers to its print and web editions. The views I am presenting are also those of the Transatlantic Consumer Dialogue (TACD) which includes all the major consumer organizations on both sides of the Atlantic (see www.tacd.org).

Trade between the EU and US already has many obvious benefits for consumers, increasing choices in products and services, ranging from automobiles to banking to wines. For example, a new trade agreement that reduced certain tariffs or harmonized the different regulations of each so that they were more protective of consumer health and safety would obviously be very beneficial.

Harmonization, Regulatory Convergence and Mutual Recognition

However, consumer groups are extremely concerned that the avowed focus of this negotiation, which is regulatory and other non-tariff barriers, and "behind the border" impediments to trade will not achieve this objective. There has been much discussion of

the need for regulatory convergence and harmonization, possibly by "mutual recognition" of standards. The EU and US are both advanced, highly civilized societies, which both have high consumer protections standards for their citizens, so one would think we could be on the right track.

The answer, unfortunately, is we are probably not. Theoretically, harmonization, if it is to the highest standard of consumer protection, could bring great benefits. However, this has not been the history of trade agreements, and it does not appear to be the goal of US or EU negotiators. The scope of topics being tackled in this negotiation is breathtaking, including potentially auto safety, chemical safety, biotechnology and nanotechnology safety and labeling, pharmaceutical safety and patent protections, privacy on the internet, banking regulations, food safety, medical device safety, and toy and consumer product safety. We find the potential for erosion of standards in these areas alarming.

Let's look at a few examples of why consumer groups are extremely concerned. The concept of "regulatory convergence" implies some sort of movement to the middle where standards differ. In the area of toy safety, however, this Committee and the US Congress with bi-partisan support worked hard to pass the Consumer Product Safety Improvement Act (CPSIA), a law to address a sudden influx of hazardous toys – toys that, in most cases, were made in China. A key provision of the law requires children's product manufacturers, such as toy companies, to obtain independent third party certification from an accredited laboratory that says US standards for the lead and other

safety standards were being met. Europe does not require third party certification for toys. How do we converge here?

The idea of "mutual recognition" is equally concerning here. Some might propose that we simply recognize the company self-certification behind the "CE" mark as comparable to our requirement for third party certification. We feel, however, that this could potentially open the door for toys make in China by European companies, for sale in the United States, to be less safe than toys made by US companies and therefore subject to the CPSIA provisions. Consumers could be put at risk and US toy companies could be forced to compete on an un-level playing field.

Let me take another example, from the food safety area. When mad cow disease was discovered in the UK a number of years ago, the UK and other European regulators struggled with what action to take, and continued to allow European beef products to be shipped and sold across borders, while slowly increasingly stringent restrictions were put in place on animal feed, the source of the problem. The US by contrast took prompt and definitive action to close its border to beef from the UK and other countries where the disease surfaced.

We think the US action was entirely correct and appropriate. The US had a plentiful supply of beef here in the US and did not need to take risks with European beef. But let's look for a minute at what would have happened if the EU and US had agreed to a scheme of mutual recognition on the safety of livestock products at that time. The US could have been forced to keep taking European meat for as long as European deemed it safe enough to sell to Europeans.

To take a third example, the Congress struggled long and hard to pass Dodd-Frank, which contains vitally and profoundly important provisions to protect consumers, and the nation, from another financial industry melt down. Europe does not have similar legislation or protections. We see grave dangers to attempts to harmonize in this area, unless of course Europe is agreeing to all the protections the US is developing under Dodd-Frank.

Clearly harmonization can work if the two sides harmonize to the highest level of consumer protection in either the EU or US. We would, for example, support a negotiation in which the EU agreed to require nutritional labeling on packages with all the information required in the US, and the US agreed to require labeling where genetically engineered ingredients were present. We would also support NHTSA's adoption of the EU's child occupant protection standards, as the European tests and rates the fit of child safety seats in cars, as well the performance of child safety seats in car crashes. But we have seen little evidence that this is how the negotiation will proceed. "Regulatory convergence" in which one side's regulations are watered down, or "mutual recognition," in which each side is forced to accept products from the other side that potentially don't meet domestic standards, are not, in our view, acceptable or wise goals of a trade agreement.

Investor State Dispute Resolution

Investor state dispute resolution mechanisms were originally included to provide a means for US corporations who invested in countries that had poor legal systems to obtain compensation if a government acted, to say, nationalize their oil wells. Such

mechanisms are completely unnecessary in the EU-US context. Both societies have very well established court systems and abide by the rule of law.

An investor-state mechanism could allow a European funeral parlor company to bring a case in a special trade tribunal and demand compensation if, say, the state of Mississippi, or the Federal Trade Commission, enacted new standards for funeral parlors, which the European company did not meet and it was forced to close. Indeed something like this has already happened under NAFTA dispute resolution proceedings.

Investors should not be empowered to sue governments to enforce the agreement in secretive private tribunals, and to skirt the well-functioning domestic court systems and robust property rights protections in the United States and European Union. Experience elsewhere shows how powerful interests from tobacco companies to corporate polluters have used investor-state dispute resolution provisions to challenge and undermine consumer and environmental protections. Investors must not be empowered to sue governments directly for compensation before foreign investor tribunals over regulatory policy.

Secrecy Versus Transparency

One last critical concern of consumer organizations is the secrecy in which these negotiations will be conducted. We certainly understand, as you do as members of Congress, that not every conversation about policy can or needs to be held in public. But Congress makes public pending legislation—when it is introduced, marked up in committee, passes the House or Senate, and after conference. Our trade negotiators have no such obligations. Rather, all drafts and related documents will be classified as top secret. They have no plans to release negotiating texts at any point, until the entire

agreement is completed to their satisfaction, at which point it will be up to Congress and the public to take it or leave it.

It is not just consumers who suffer from being in the dark. You as members of Congress are also prohibited from seeing negotiating texts. This has not always been true in the past—the negotiating texts of the Doha Round and the Free Trade of the Americas agreement were periodically made public. The US global food standards agency, known as the Codex Alimentarius Commission, conducts all its work entirely in public.

Secrecy is not how our democracy normally functions. There is no reason why negotiating texts, especially where regulatory issues will be so involved, cannot be released after each negotiating session. Consumer groups have specifically requested that a Consumer Advisory Committee be established that can provide input on texts and policy in an open, non-classified manner.

We urge you to demand that USTR periodically make public the texts they are drafting.

Conclusion

In sum, Consumers Union, and consumer groups on both sides of the Atlantic, are deeply concerned that this agreement, focused on "regulatory convergence" and "mutual recognition," will lead to an erosion of consumer protection in the vast areas it is addressing. We are also deeply concerned that an agreement on investor-state dispute resolution will potentially create a new court system that could end run the one we currently rely upon. These concerns are intensified by the secrecy in which the two sides intend to conduct this negotiation, which means that the public and Congress itself will have no opportunities to point out or address serious problems.

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