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Topic: Regulatory Aspects of Trans-Atlantic Trade and Investment Partnership (TTIP), U.S.-EU Free Trade Agreement

Venue: Committee on Trade, European Parliament, Brussels, Belgium.

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MAJOR POINTS OF TESTIMONY

1. Companies doing business on both sides of the Atlantic face an array of conflicting or inconsistent regulations that act as non-tariff barriers to free trade. Each year the number of conflicting or inconsistent regulations grows, due to the lack of adequate regulatory cooperation.

2. Although many business sectors are impacted, my experience is that the automotive, agricultural, and chemicals sectors are disproportionately impacted, with disparate approaches to health, safety and environmental regulation acting as the most frequent cause of non-tariff barriers to trade.

3. When health, safety and environmental regulations are developed by the US and the EU, there is insufficient effort at collaboration, cooperation, convergence, harmonization, and mutual recognition. The lack of coordination occurs on both the scientific and policy/political aspects of regulatory design, implementation and enforcement.

4. After regulations are issued and conflicts or inconsistencies are discovered, regulators in the US and EU are slow to recognize the differences as non-tariff barriers to trade and are often reluctant to refine the regulations for purposes of convergence.

5. There is no general pattern concerning which regulators have the stronger case for their regulatory design. Sometimes the EU regulations are better designed and justified. In other cases the US regulations are better designed and justified. More frequently, US and EU regulations are both defensible but still different and inconsistent.

6. The World Trade Organization is not a very effective forum for dispute resolution. Even when one party wins a dispute over another, the remedies are weak. Lawsuits in the World Trade Organization should be considered a last resort when all other efforts at cooperation have failed. Lawsuits in the WTO are a sign of a problem, not an indication that a solution is likely to be forthcoming.

7. Since the two political systems are both complex, with multiple institutions sharing power over regulation, it is difficult for either the EU or the US to negotiate convergence, harmonization or mutual recognition of specific regulatory programs. Any approach to across-the-board convergence, harmonization or mutual recognition is unlikely to be workable for all

categories of regulation. What is need is a new transatlantic process that produces carefully-tailored forms of regulatory cooperation on a sector-by-sector and even regulation-by-regulation basis. Even when harmonization or mutual recognition are not feasible, a greater degree of convergence may be feasible. No process currently exists to stimulate meaningful cooperation.

8. With respect to the huge stock of regulations that are already in place, the US and EU should, each year, jointly call for public nominations of burdensome regulations (especially in areas where the US and EU have functionally equivalent regulations) that might be improved by greater convergence, harmonization or mutual recognition. The nominations should be jointly evaluated by OMB (US) and the Secretary General's Office (EC-EU), and a schedule should be published for review and refinement of the meritorious nominations. OMB and SG should then track the progress of sectoral regulatory cooperation to ensure that the schedule is followed. The European Parliament should oversee this process, making sure that it is undertaken rigorously. Establishment of a new transatlantic board on regulatory cooperation will probably be necessary to ensure that petitions from stakeholders are considered carefully and fairly.

9. The key to the success of TTIP will not be just convergence on existing regulations but a new process of meaningful cooperation on the development of new regulations. Under TTIP, the US and EU should agree to use existing structures (OIRA-OMB in the US and the Impact Assessment Board-SG in the EU) to increase transatlantic cooperation and coordination on new regulations. RIAs in both the US and EU should be required to assess trade ramifications and explore cooperative regulatory options. Data sharing should be a priority provision of the TTIP and a commitment should be made to remove any legal barriers to data sharing between governments. Specifically, the forthcoming agreement between the EU and the US should include (a) scientific and policy-analytic cooperation, including shared guidance, on regulatory risk assessment and impact analysis and possibly a jointly developed regulation with a joint RIA, to illustrate a high level of cooperation, (b) development of coordinated regulatory agendas ("regulatory radars") so that EU regulators are aware of what is happening in the US (and vice versa), and can strive to address new issues at roughly the same time, (c) publicly disclosed regulatory cooperation sessions on sectoral issues, where public comments are invited from stakeholders prior to the sessions, (d) regulatory harmonization, whenever feasible, (e) mutual recognition, when harmonization is not feasible, unless the EU or US can make a compelling scientific case that mutual recognition is likely to cause significant risk to human health, safety or the environment, (f) convergence, when harmonization and mutual recognition are not appropriate, and (G) designation of politically accountable authorities with responsibility for engaging in regulatory cooperation. Finally, TTIP should require both parties to adopt equivalently transparent regulatory procedures, including equal opportunity for public comment/consultation by stakeholders, regardless of whether they are a US or EU entity.

10. The European Parliament and the U.S. Congress can play a critical role in making sure that regulators undertake good practices of regulatory cooperation. Each year the European Parliament and the U.S. Congress should hold hearings where OMB-US, SG-EC, regulators and stakeholders are invited to testify on the rate of progress in regulatory cooperation. The European Parliament and Congress should develop scorecards for regulatory cooperation, overall and by specific industry sector and regulatory unit. Each year regulators should be invited to testify as to what steps they will take to improve their performance, as measured in the

scorecards. The European Parliament's Impact Assessment Unit could also play a constructive role prodding the European Commission to engage in more RIA collaboration with the United States (OMB and the U.S. regulators), and by publishing illustrations of how RIAs on the two sides of the Atlantic could both be improved and harmonized. Models of successful regulatory cooperation should also be documented and publicized by the European Parliament, thereby facilitating a pattern of learning from success.

Thank you for the opportunity to participate in the discussion of TTIP.

BASIS OF EXPERIENCE FOR THIS TESTIMONY

From 1990 to 2001, Dr. Graham served as a tenured Professor of Policy and Decision Sciences at the Harvard School of Public Health and founding Director of the Harvard Center for Risk Analysis. In this capacity, he studied the development of health, safety and environmental regulations in the U.S. and Europe. From 2001 to 2006 Dr. Graham served in the George W. Bush administration as the Senate-confirmed Administrator of the Office of Information and Regulatory Affairs (OIRA) of the U.S. Office of Management and Budget (OMB). One of Administrator Graham's initiatives was the first high-level regulatory cooperation activity between the US and EU. Dr. Graham is currently Dean of the one of the largest schools of public administration in the United States.