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November 5<sup>th</sup>, 2012

**United States Council for International Business**  
**Submission to the U.S. Trade Representative on Promoting Regulatory**  
**Compatibility between the United States and the European Union**

The United States Council for International Business (USCIB) is in favor of cooperative and barrier-free trade, investment, and ambitious regulatory policy initiatives to deepen the U.S.-EU economic partnership, believing that doing so will have a lasting and positive effect on growth, competitiveness and job creation on both sides of the Atlantic. In that regard, we strongly support the efforts of the U.S.-EU High Level Working Group on Jobs and Growth (HLWG), which was established in November 2011. We hope the ultimate outcome of the HLWG will be actionable steps to launching formal negotiations for a meaningful comprehensive transatlantic economic agreement.

USCIB is pleased to respond to the September 28, 2012 Federal Register Notice requesting comments from stakeholders on how to promote greater transatlantic regulatory compatibility across industry sectors. While the U.S. and EU regulatory authorities have been working to successfully eliminate many traditional trade and investment barriers between the two economies, there are remaining issues that involve differing regulatory practices. We applaud both the U.S. Government and the European Commission in their goal to reduce excessive regulatory costs and unjustified regulatory differences through the work of the HLWG. USCIB members see the value of common approaches toward establishing a more integrated marketplace through cooperation in international standards and regulatory bodies, in trade opportunities and IP protection and enforcement in third countries. USCIB members further support closer coordination among regulators in the oversight of entities regulated in both markets to enhance oversight, but avoid overlap and duplication.

We note that in its 2012 *Recommendation of the Council on Regulatory Policy and Governance*, the Organization for Economic Co-operation and Development (OECD), raised the point that governments must balance the goals of preventing regulation from becoming an inappropriate impediment to trade in goods and services and should take into account relevant international regulatory settings when formulating regulatory proposals to foster global coherence. USCIB and its affiliate, the Business and Industry Advisory Committee to the OECD (BIAC) support the OECD's recommendations and believe better coordination ensures a level playing field for global businesses.

In this submission we address various regulatory concerns raised by USCIB members across several areas where more collaborative efforts are viewed as needed between the U.S. and the European Union. The discussion in the statement below is not exhaustive, and there may be significant issues that our members have not raised with us for this submission. The sectors are listed below in alphabetical order. We would be pleased to address any questions, and discuss any of these issues in greater detail and look forward to further opportunities for stakeholder engagement with regard to U.S.-EU regulatory compatibility.

## Sector Specific Comments

### **Chemicals**

The U.S. and EU have widely differing approaches to implementing chemical regulation, including legal, regulatory, social and cultural differences. Cooperation in developing and agreeing on key principles on priority areas in chemical management should be constructive, fostering improvements in the chemical regulatory environment in the U.S. and EU, and form a solid basis for regulatory cooperation globally. USCIB members believe that a cooperative approach has the potential to streamline the transatlantic market, and establish a high standard for cooperative third country engagement.

#### Regulatory Cooperation

USCIB members call for a more open and efficient regulatory environment through the removal of unnecessary barriers and inefficiencies where possible for the chemical industry. Simplifying the regulatory processes, improving transparency and promoting efficiencies, such as common data and definitions in regulatory processes as well as mutual recognition of notifications to avoid duplicative efforts should be key objectives in any future U.S.-EU trade initiative. Key emerging technologies should also be identified and a coordinated path developed for a common approach to regulations.

#### Tariff Liberalization

USCIB supports eliminating all chemical tariffs and non-tariff barriers. Chemical trade between the U.S. and EU is significant with import duties on both sides on average about 3%, eliminating these duties would result in considerable savings and also facilitate manufacturing flexibility by removing economic barriers when shipping chemical intermediates and components via “Transport Orders” between company sites in the U.S. and EU. Chemicals are at the start of the value chain and elimination of import duties would give an important boost to both economies.

#### Sector-Consumer Pesticides (Biocides)

In order for a manufacturer to sell pesticides in the United States and other countries, government authorities must evaluate the pesticides thoroughly to ensure that they meet national safety standards to protect human health and the environment. Currently, manufacturers of agricultural pesticides and microbial pesticides can submit information to several countries using an OECD dossier document. However, there is no dossier format for other pesticides, *i.e.*, non-agricultural or non-crop pesticides. This lack of a dossier for non-agricultural pesticides (both active substances and formulated products) creates an opportunity to promote greater transatlantic regulatory compatibility.

As a first step, a common transatlantic dossier would be beneficial, although an OECD dossier offers a greater impact for much the same effort. Therefore we suggest that the U.S. and EU work on the development of a new OECD dossier template for non-agricultural pesticides. Use of the proposed new template would be beneficial to companies seeking registrations in multiple OECD countries; if multiple registrations in OECD countries are not being sought, the applicant could (and should be able to) use the local national template.

The U.S.-EU shared goals of reducing excessive regulatory costs, unjustified regulatory difference, and unnecessary red tape by promoting greater transatlantic regulatory compatibility would be advanced by this proposed action. In addition, the benefits would not be limited to transatlantic submissions, but would be realized by all countries that recognize and authorize the use of the proposed OECD non-agricultural template.

## **Customs and Trade Facilitation**

Positive steps have been taken in recent months to further transatlantic inter-agency and regulatory cooperation in the areas of customs and trade facilitation. The recent mutual recognition agreements on our trusted trader programs (C-TPAT and AEO) and air cargo security are positive strides toward greater efficiency and facilitation. But the establishment of these agreements is just the first step toward improving transatlantic regulatory compatibility. USCIB recommends that steps be taken toward improved regulatory cohesion in the following areas:

### Mutual Recognition of Trusted Trader Programs

USCIB applauds the May 2012 signing of the U.S. - EU Mutual Recognition Agreement between the U.S. Customs – Trade Partnership Against Terrorism (C-TPAT) and the EU’s Authorized Economic Operator (AEO) program. However, since the signing of the agreement, our members have noted some inconsistencies.

The agreement states (Section III(1)) that *“Each Customs Authority treats operators holding a membership status under the other Customs Authority’s Programme in a manner comparable to the way it treats members in its own Trade Partnership Programme, to the extent practicable and possible and consistent with applicable law and policy. This treatment includes, in particular, taking favourably into account in its risk assessment, for the purpose of the conduct of inspections or controls, the respective membership status of an operator authorised by the other Customs Authority in order to facilitate EU-U.S. trade and encourage the adoption of effective security-related measures”*.

Since August 1, 2012, CBP has recognized all EU traders with AEO status, irrespective of these AEOs’ role and function in the international supply chain. However, the EU currently plans to mutually recognize, as of January 2013, only C-TPAT members identified as “consignors” in the advance manifest submissions (so-called entry summary declarations or ENSs) to national customs administrations in the EU. This means that the parties legally responsible for the submission of such ENSs – ocean carriers – will not from that date be mutually recognized by the EU when these ocean carriers are C-TPAT members.

The current EU approach represents a significant difference from how the U.S. has already implemented its obligations under the agreement regarding European AEOs. Admittedly, the European Commission has indicated that it will be considering, in “a second phase,” how C-TPAT members other than those identified as “consignors” in the ENSs might be recognized by the EU. But the European Commission has not provided a firm timeline for the implementation of such a “second phase,” nor provided assurances that the “second phase” will encompass all C-TPAT members.

The EU should arrange for mutual recognition of all C-TPAT members. The current practice is not in conformance with the U.S. – EU bilateral agreement and undermines the stated goal of the Agreement. USCIB requests that the European Commission, without further delay, arrange for the mutual recognition by the EU of all parties identified in the ENSs that have C-TPAT status. Trade associations have already presented the European Commission with three possible ways for how this could be arranged, and the European Commission has confirmed that these proposed solutions would have no major resource implications for national customs administrations or result in major changes to their current IT systems and processes. Therefore, USCIB calls for a political decision by the EU to fully implement its obligations under the U.S. – EU mutual recognition agreement.

Going forward, it is also important to ensure that the agreement is implemented in a manner that provides concrete benefits to certified entities, such as automatic known consignor status in terms of air cargo security. Air cargo received from such shippers should be viewed as secure, not subject to additional security controls, and given unimpeded priority (fast track) processing through customs. Another key benefit would be ensuring that an applicant that is certified in one program is also certified in the other program, without the need to file separate applications for each program.

#### Air Cargo Security

The U.S. and EU are currently taking different approaches to improve the security of the international operations of air cargo carriers bringing shipments in from third countries. The U.S. approach is based on Emergency Amendments and specific measures for cargo identified as high threat. The EU has adopted the ACC3 (Air Cargo or Mail Carrier operating into the Union from a 3<sup>rd</sup> country airport) program which is based on airport, operator specific designation and validation, and verification of screening entities and other players in the supply chain. It also includes specific measures for high risk cargo. Notably, however, the EU and U.S. have not adopted the same definitions of “high risk” cargo.

USCIB welcomes the June 1, 2012 air cargo security agreement between the U.S. and EU as a useful model for recognizing air cargo security regimes for shipments originating within the U.S. and EU, but the provisions in this agreement must be strengthened in order to withstand any future threats. The agreement recognizes the validity of each jurisdiction’s program, but it does not harmonize the regulations or establish harmonized definitions across the board. Therefore, the relevant U.S. and EU agencies should enter into a regulatory dialogue to strengthen the mutual recognition agreement and to develop a harmonized approach to air cargo security regulations and procedures that include, inter alia, a common definition for high risk cargo, common standards for accepted security equipment and screening methods, common requirements for staff training, and improved intelligence sharing.

#### Advance Cargo Information for Security Risk Assessment

There are currently numerous advance cargo information pilot programs underway in the EU in Belgium, France, Germany, and in the UK. The U.S. has the ACAS (Air Cargo Advance Screening) pilot program. There are no regulatory requirements yet, but USCIB strongly urges a common U.S.-EU approach going forward. It is essential to prevent diverging regulations, by

developing common requirements for data on each shipment, common protocols in communication with carriers/forwarders, and common risk criteria.

### De Minimis Import Values

USCIB members support a commercially meaningful *de minimis* value threshold for the imposition of duties and customs requirements for both markets. Currently, the EU *de minimis* value is significantly below that of the U.S., leading to significant barriers for small exporters. Studies have found that higher *de minimis* values provide substantial benefits to the supply chain and the local and national economies. Raising the *de minimis* threshold would reduce regulatory and financial burdens for small and medium sized enterprises and would allow host country border authorities to focus the often minimal resources on real risks. The cost benefits in the short and medium term would be shared by all parties. USCIB encourages all legislative and regulatory efforts to increase the *de minimis* threshold in the U.S. and urges the EU to coordinate on a parallel effort to benefit both markets.

### **Financial Reporting and Audit**

The global economic crisis and on-going efforts to restore confidence has underscored the interdependence of the European and American financial markets, requiring the need for closer U.S.-EU cooperation and stronger regulatory convergence across the Atlantic. Strong financial reporting and quality audit are key parts to enhancing market integrity; transatlantic leaders should use the opportunity the HLWG presents, and:

- agree International Financial Reporting Standards (IFRS) as the global standard for financial reporting and encourage countries to adopt IFRS without modification; its adoption on both sides of the Atlantic, and elsewhere, will bring significant benefits in terms of transparency and confidence in capital markets as well as lower financial reporting costs, all important steps towards the eventual goal of a barrier-free transatlantic market;
- support the adoption of International Standards on Auditing (ISAs) as the global standards for auditing; and
- work to eliminate barriers that unnecessarily restrict the mobility of professional services providers and ownership of audit firms.

By engaging constructively to move forward the above, the U.S.-EU will not only improve the environment for supporting high quality financial reporting and audits across both sides of the Atlantic, but also will enable momentum towards a more integrated and transparent marketplace. This will greatly contribute to the growth of transatlantic business, trade, and investment, and better position EU and U.S. companies to compete in the global economy.

### **Green Economy and Growth**

Both the U.S. and EU have assigned a high priority to pursuing greener growth, most recently at the U.N. Conference for Sustainable Development (“Rio+20”). USCIB believes that trade is a powerful vehicle for the broad deployment of the greener technologies, energy, products and know-how on which green growth will depend. Clearly, U.S.-EU cooperation in this area, both between themselves and vis à vis third countries, holds tremendous promise.

In this connection, we encourage the U.S. and EU to consider possibilities to cooperate for green growth across the entire economy. The potential for greening will not be realized by focusing on just a few sectors. Traditional industries and all sectors can and should help deliver green growth.

Policies intended to advance climate or environmental objectives which lead to discrimination or higher costs for industry not only hamper trade but also undermine the trade/environmental synergy that greener growth depends on. For example, the conflict arising from the EU Emissions Trading System (ETS) coverage of the air transport sector has shown the preferability of collaborative efforts and less trade restrictive alternatives. USCIB members strongly encourage the U.S. and the EU to work together to avoid unilateral measures that are counter-productive to both trade and environment objectives.

### **Information and Communications Technology (ICT)**

The ICT sector serves as a powerful enabler of international trade, economic development, and jobs creation. Studies by the World Bank and other organizations have found a positive correlation between economic growth and investment in the Internet and other ICTs. According to some estimates, U.S. GDP growth in the past five years has been fuelled some 15 percent by products and services transmitted digitally over the Internet. All measures of transatlantic regulatory significance agreed under any new agreements therefore should be drafted and implemented in a manner that encourages continued investment in the internet eco-system and promotes cross-border data flows. At the same time Washington and Brussels should endeavour to build confidence and trust in the Internet and ICTs by promoting safety and security online. International cooperation and interoperable regulatory requirements focused on promoting consumer trust through a safe and secure online environment is the best way to encourage continued investment and innovation.

#### Internet Governance

By the end of 2011, an estimated one-third of the world's population was using the Internet; by 2016, some experts anticipate that figure could increase by 40 percent. But the power of the Internet to continue to fuel innovation and deliver economic benefits to businesses and consumers can only be realized through an approach to governance that is flexible, open and is based on meaningful participation from all stakeholders, government, industry and civil society. The United States and the European Union therefore should reaffirm their joint commitment to multi-stakeholder model for internet governance through organizations such as the Internet Corporation for Assigned Names and Numbers (ICANN) and the Internet Governance Forum (IGF). They also should work together to ensure that Internet growth and flexibility are not compromised by proposals aimed at bringing the internet under the jurisdiction of the International Telecommunications Union (ITU), a treaty organization..

#### Privacy

Business shares with government the desire to provide effective protection of personal data and privacy. But national variations in the way different governments implement their shared commitment to privacy must not be so burdensome as to hamper the responsible flow of data across borders that serves as the lifeblood of businesses operating in the Digital Age. The EU's

current effort to revise its Data Protection Regulation presents an excellent opportunity for the EU and U.S. to focus together on how to promote interoperability of privacy requirements between the two economies.

USCIB supports the overall goals of the Regulation, particularly its attempts to create a harmonized data protection standard across the EU and its stated purpose of making certain not to prohibit or restrict the free flow of data. However, as currently drafted, some areas of the Regulation would undermine the attractiveness of the EU for investment. USCIB is separately communicating its specific comments on the regulation to the EU.

### Cybersecurity

Security of information systems and networks is critical to building the trust of business and private citizens who want and need to use the internet and ICT products and services to access innovative products and services, and increase their communications capabilities, operating efficiencies, and technological capabilities. The United States and the EU should work closely to ensure that they develop compatible approaches to addressing criminal behaviour online and ensuring the security of information systems. A failure to do so could risk disrupting confidence and adoption of internet services by businesses and consumers which will in turn undermine continued investment. This collaboration might extend to international standards-setting bodies, where the U.S. and EU could play a leadership role in guiding the global development of common cybersecurity standards and objectives.

### **Innovation**

Higher economic and jobs growth across the Atlantic will be best served by a relentless focus on ensuring a common and pro-innovation approach to regulation in emerging new areas. Regulation should be based on 'light touch' principles capable of implementation in a similar or mutually compatible way in the EU and U.S. These core principles (such as between the EU and U.S., and U.S. and Japan, on ICT policies and ICT regulatory principles) would obviate the need for long term major harmonisation or Treaty-based efforts. There may also be scope for combined efforts in pre-competitive R&D between Government led or funded programs; and in shared best practice on funding models. All this could act to reinforce a joint EU/U.S. effort with third markets e.g. BRICS, Japan. The innovation areas which appear most suitable for such a mutual effort are:

- nanotechnology and related areas;
- cloud computing norms, data privacy and transborder data flows;
- smart grid and e-mobility norms and;
- cyber security

The EU and U.S. should also try to address material existing problems of regulatory or standards divergence, particularly in the high tech area, which are causing substantial competitive imbalances between EU and U.S. businesses.

## **Investment**

USCIB strongly supports greater U.S.-EU joint efforts on international investment policy, both bilaterally and cooperation on third-country and international policy aspects of international investment. We welcome the “Joint Statement of the European Union and the United States on Shared Principles for International Investment” announced in April 2012. We look forward to seeing the U.S. and EU move forward to implement and operationalize those general principles. We suggest the following areas for U.S.-EU action:

- In the context of a U.S.-EU effort to negotiate a comprehensive, high-standard economic agreement, we urge both sides to reduce barriers to Foreign Direct Investment (FDI) from the other partner so as to facilitate increased FDI flows, deepening transatlantic economic integration and bolstering competition, growth and jobs. Transatlantic restrictions on FDI should be reduced on both sides to the absolute minimum necessary to, as cited in the Joint Principles document, ensure “genuine national security risks.” Reducing our respective bilateral investment barriers also provide clear demonstrations of U.S. and EU leadership as we cooperate to drive investment liberalization globally.
- We would urge that in the current global environment, bilateral U.S.-EU investment liberalization should not be extended on an MFN basis to other major economies unless they afford both U.S. and EU investors comparable access. We should avoid “free riding” by major economies unwilling to match our ambition in investment liberalization.
- The U.S. and EU should accelerate and deepen their cooperation on key third country investment issues, especially regarding large, fast-growing emerging economies which still have far too many counterproductive barriers to FDI.
- U.S. and EU experts in the investment field and beyond need to work much more closely together on the issue of State-Owned Enterprises (SOEs) where our private companies are increasingly competing with SOEs around the world. When private companies and SOEs are competing for investment projects, there needs to be a level playing field.
- As noted in the Joint Statement, “Fair and Binding dispute settlement..., including investor-to-State arbitration” is essential. Strong Investor State Dispute Settlement (ISDS) disciplines are under assault from some governments and other critics around the world. We urge the U.S. and EU to take the lead in standing up for strong and effective dispute settlement procedures around the world.
- We urge the U.S. and EU to work together to ensure that both in bilateral and broader investment policy efforts, definitions of covered Investments are comprehensive and reflect the full range of investment vehicles and practices we see in today’s global markets. We are very concerned that some governments and anti-business critics are trying to limit the scope of investments to narrow, traditional forms of investment, inconsistent with today and tomorrow’s investment practices.

### ***About USCIB***

USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and regulatory coherence. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. As the U.S. affiliate of the International Chamber of Commerce, the International Organization of Employers and the Business and Industry Advisory Committee to the OECD, USCIB has a unique global network through which it provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment. More information is available at [www.uscib.org](http://www.uscib.org).

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