

**STATEMENT**  
**on**  
**U.S. – EU REGULATORY AFFAIRS**  
**before the**  
**SUBCOMMITTEE ON EUROPEAN AFFAIRS**  
**of the**  
**SENATE COMMITTEE ON FOREIGN RELATIONS**  
**for the**  
**U.S. CHAMBER OF COMMERCE**  
**by**  
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**Introduction**

I am Gary Litman, Vice President for Europe and Eurasia of the United States Chamber of Commerce. The U.S. Chamber is the world's largest business federation, representing more than three million businesses and professional organizations of every size, sector and region in the country. Tens of thousands of our member companies derive much of their business from trade with European partners, obtain their capital from European creditors and investors, and build their competitive edge on the basis of European supplies and human capital. Throughout the last decade, Europe accounted for half of total global earnings of U.S. companies, as measured by U.S. affiliate income.<sup>1</sup> The Chamber welcomes this opportunity to present its views on U.S. regulatory relations with the European Union [EU].

The fact that we discuss regulatory cooperation rather than tariffs and quotas reflects the depth of the Transatlantic market and its integral nature. With the possible exception of Canada, no other economic partnership affords companies opportunities to operate so efficiently, almost seamlessly in two distinct jurisdictions. An ever-improving U.S.-EU regulatory cooperation is important for business in order to preserve the enormous gains of the transatlantic market and prevent any frictions between the two systems from spiraling out of control.

In analyzing regulatory cooperation between U.S. and Europe, we proceed from the fact that the European Single market is of vital importance to American business. The EU is here to stay and grow and we welcome it. Next year will mark yet another transformation of the EU with the accession of ten new member states, a new Constitution, elections of a new and more powerful Parliament and a new college of Commissioners. Through this evolution, the EU will remain based on a social model and legal regime that are different from the United States and reflect the European democratic choice. We have no intention to advocate the importation of the European regulatory practice in the U.S. Nor do we

wish our problems on our European partners. The business community is not advocating the creation of supranational regulators for the Transatlantic market. Our goal is to rid this market of duplicative or incompatible rules. Our ambition is to preserve the flexibility afforded by two highly sophisticated regulators without always having to fight off the next crisis in relationships over a specific product, standard, or procedure. In our view, this goal can only be achieved through political will and engagement by legislatures on both sides. It is up to the U.S. Congress and its counterparts in Europe to both compel and enable regulators to cooperate.

The next twelve months will see the reform of most European institutions. Please note in this regard a submission from the American Chamber to the European Union, AmCham EU, which represents many of European firms of American parentage, attached. This is the best time to show our commitment to regulatory cooperation so that in shaping their institutions, European have confidence that we mean business in regulatory cooperation.

### **U.S.-EU Economic Partnership is Essential for Global Growth**

As we mentioned in our previous testimony before this Subcommittee, June 24, 2003, the U.S. commercial relationship with the European Union is unlike any other we have in size, complexity and degree of integration. Our extraordinary level of trade is only the tip of the iceberg of our commercial relations. Over 20% of U.S. exports in goods go to the European Union and European customers consume over 40% of American services. Although we export more to Europe, and Europe exports more to the U.S. than we each do anywhere else in the world, trade accounts for less than 20% of transatlantic commerce. U.S.-Europe commercial relations are much more about investments and direct job creation in each other's markets than it is about trade. Consequently much of this trade is between parent companies and their affiliates.

Our immense level of investments in each other's markets validates that our commercial relationship is balanced, mature and very similar in structure.<sup>ii</sup> Therefore, we do not lose jobs to Europe; instead we create jobs in each other's markets. Last year about one in twelve factory workers in the U.S. was employed by one of 4,000 European-owned businesses.<sup>iii</sup> We have become responsible for each other's growth and prosperity.

It is therefore important to nurture the transatlantic economy and find all possible means to further develop it. European economists estimate that dismantling the remaining tariff and non-tariff barriers between U.S. and Europe would add about one percent to European GDP, accruing in perpetuity, or somewhere between 40 and 50 billion USD. Other studies suggested that the gains for the U.S. economy would be about 0.5% of U.S. GDP.<sup>iv</sup> Expansion of the transatlantic marketplace would directly and immediately benefit millions of Americans and Europeans.

Beyond the Atlantic, U.S. and Europe economic partnership generates worldwide growth as the principal engine of economic development in the world. Conversely, a dysfunctional or underdeveloped U.S.-EU relationship would have far-reaching negative

consequences beyond the Atlantic shores. The economies of the Middle East, Africa, Central and South America depend on a well functioning and growing U.S.-Europe commercial relationship to develop their own economies. The multilateral consequences of this essential bilateral relationship are important to keep in mind.

### **Future Regulatory Cooperation Rests on an Honest Assessment of Past Efforts**

Prior attempts by the U.S. and the EU to patch their differences and sign mutual recognition agreements have to some limited extent helped the transatlantic economy grow, but are far from being satisfactory. They focused on recognition of conformity assessment bodies in each other's jurisdiction and on guidelines for exchange of information between technocrats and enforcement agencies, for example, in antitrust and competition matters. The record of implementation of various regulatory cooperation agreements shows that cooperation only works when there is political will on both sides of the Atlantic. In other words, the role of Congress and European legislatures is critical to the success of any agreement on regulatory cooperation.

Political backing is essential in preventing regulatory divergence because domestic lawmakers and regulators generally do not take into consideration the impact of the rules they propose on foreign companies.<sup>v</sup> Domestic regulations often clash with the demands of international trade and investment, and foreign companies typically do not have a voice in domestic and regulatory processes. Non-cooperation on regulatory and legislative matters results in direct costs to companies and consumers, with the creation of duplicate and non-compatible rules on both sides of the Atlantic.

Frameworks for U.S.-EU cooperation exist, notably with the 1997 U.S.-EC Mutual Recognition Agreement [MRA] and its six "sectoral" annexes. However, these cooperation attempts appear to have yielded limited gains. Our members indicate two factors for the limited success of the MRAs: 1) the independence of the regulatory agencies involved and 2) the lack of committed resources for transatlantic regulatory collaboration. We should also add the fluid nature of European institutions that are in the midst of a major reform due to enlargement and constitutional changes. We urge Congress to review the short history that led to the signing of the 1997 MRA and assess the limited successes and failures of this agreement. There is no need to reinvent the wheel, especially if the wheels we recreate will lead us in the same unsatisfactory direction.

We suggest Congress should review the roles played by: 1) the Federal Communication Commission [FCC] in the implementation of the 1997 MRA Telecommunications and Electromagnetic Compatibility annexes; 2) the Occupational Safety and Health Administration [OSHA], a division of the Department of Labor, in the implementation of the 1997 MRA Electrical Safety annex; and 3) the Food and Drug Administration [FDA] Medical Device and Pharmaceutical Good Manufacturing Practices annexes. Clearly where the U.S. Trade Representative [USTR] office was ahead of its time with compelling reasons to negotiate swift and ambitious agreements with the European

Commission, U.S. regulatory agencies found the practicalities of cooperation much more questionable, and the resources unavailable.

### **Based on Past Experience, What Can We Reasonably Expect and Want?**

The major problems for U.S. business are not found at the borders. They are not related to tariffs and quotas, which play a relatively minor role in U.S.-EU relations. Since American companies see themselves very much as part of the European economy and vice versa, it is the EU and Member State domestic regulations and public policies which concern us most of all. Internal regulations and practices directly affect U.S. economic interests at least as much as they crimp the business of European companies in the same jurisdictions.

As the EU is devising new and much strengthened regulatory agencies and centers of regulatory power, it is remarkable how little strategic coordination exists between most of the relevant U.S. and EU agencies. Among the many new agencies in Europe currently at different stages of development are the European Food Safety Agency, Cyber Security Agency, European Environment Agency, and Office of Harmonization in the Internal Market, the Joint Research Centre, the European Chemicals Agency and probably an intergovernmental defense procurement agency.

Having certainty that regulators on the transatlantic marketplace coordinate their regulatory activities in a transparent, strategic and efficient way would advance American business interests. Nothing could be more damaging to business than ad hoc regulatory forays in the new Europe driven by political expediency, the absence of regulatory benchmarks and a lack of understanding of how transatlantic business will be impacted.

It would be particularly valuable to build strong linkages during the process of establishing new regulatory bodies in Europe. The Transatlantic Economic Partnership [TEP] initiative, launched at the U.S.-EU Summit of May 1998 was to promote a more positive trade agenda. Among other lofty goals, TEP Action Plan should have improved the “dialogue” between U.S. and EU regulators. In the process, TEP proposed in April 2002 non-binding U.S.-EU guidelines on Regulatory Cooperation, which so far seem to have produced limited results and are in need of being energized. Priority agencies that need to develop better lateral coordination with emerging European counterparts include:

1. National Institute of Standards and Technology (NIST);
2. Food and Drug Administration (FDA);
3. Federal Communications Commission (FCC);
4. Environment Protection Agency (EPA);
5. Securities and Exchange Commission (SEC);
6. Department of Homeland Security (DHS);
7. International Trade Commission (ITC);
8. Federal Trade Commission (FTC);
9. Department of Energy (DOE);

10. Department of Transportation (DOT & FAA).

A vigorous and systematic dialogue between U.S. and European regulators similar to that in effect on anti-trust matters, thanks to the fairly successful Application of Competition Laws Agreement of 1990, would allow us to better understand the impact of European regulations and avoid the surprise in Brussels when a new draft proposal suddenly becomes another bone of contention with the United States. We need to look beyond conformity assessment. A better strategy may be a process of sharing regulatory initiatives between agencies with a specific funded mandate to consider the impact on transatlantic actors and companies in each other's jurisdiction. It is important to be able to appear at each other's hearings or stakeholder consultations. There are some good examples of openness to this notion, including the recent Internet consultation on the European Chemicals Policy Directive. Attached is the U.S. Chamber's submission to the EU Commission and a set of comments from one of our members with broad interest in the matter. We were pleased to have the opportunity to comment. We would be even more encouraged if any of our comments were taken into consideration in the amended text to be released later this month. The proof will be in the pudding.

At the same time, we need to develop mechanisms that would guarantee consideration to each other's views that is commensurate to the important stake we have in the continuing growth of the Transatlantic market. We would also support recommendations by the Atlantic Council to encourage the U.S. Congress and the European Parliament to compare "best practices" in regulatory policy and rule-making, and to focus on policy areas where the rules have not yet been written or the technologies involved are truly transformative (e.g. the hydrogen fuel initiative).<sup>vi</sup> The business community would also welcome an initiative to develop common guidelines for risk assessment of new technologies and materials.

No amount of regulatory cooperation will be sufficient without supervision by the legislative bodies. A recent example is provided by the Diesel engine emissions regulations in Europe. In this case the U.S. Environmental Protection Agency and European Commission have each proposed comprehensive new emissions standards for off-road diesel engines ranging from 50HP to 750HP. The respective regulations would impose a range of emissions limits for specific pollutants and implementation dates. The two regulators consulted at an early stage in European rule-making process. As a result, the Commission's Directive (COM (2002) 765) is aligned with EPA's proposed rules. Where discrepancies exist, such as between emissions levels, power categories, and implementation dates, the Commission has intended that a 2007 Technical Review, called for in its proposals, would further align the standards. Thus, the regulators have succeeded in coordinating sophisticated technical matters. Nevertheless, the European Parliament is now considering amendments that would put the Commission Directive further out of alignment with the EPA proposed rule. If passed, the amendments would require the use of different engine technologies between the U.S. and EU, resulting in two different engine and machinery product lines. Each machinery line would be more expensive because of the lower volume of production over which to recover fixed costs. European machines will be more expensive to produce and purchase and would be more

expensive to operate. Environmental gains will be minimized as well, as the increased cost of new equipment will inhibit farmers and other equipment owners from converting from older, non-compliant equipment. A better understanding of the integrated nature of the marketplace by European legislators in this case would save millions to companies and consumers.

We hope that a strategic regulatory dialogue will soon lead to negotiations and strong mutual commitments between the U.S. and the enlarged European Union. In fact, the Chamber believes that it is time to start discussing with the European Union a way to negotiate a bilateral trade, regulatory cooperation and investment enhancement agreement, similar to the agreement currently under consideration between Canada and the EU, that would recognize the unique and highly integrated nature of our common business with Europe and establish clear ways of resolving regulatory differences. The transatlantic business community does not want the two regulating juggernauts to impede the exciting business opportunities that constantly emerge in our extraordinary shared marketplace.

This concludes my testimony.

## ATTACHMENTS

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- <sup>i</sup> Joseph P. Quinlan, *Drifting Apart or Growing Together? The Primacy of the Transatlantic Economy*, Center for Transatlantic Relations, Washington, 2003.
- <sup>ii</sup> Gary Clyde Hufbauer, Institute for International Economics and Frederic Neuman, Johns Hopkins School for Advanced International Studies, Paper presented at a conference titled “Transatlantic Perspectives on the U.S. and European Economies: Convergence, Conflict and Cooperation”, Kennedy School of Government, Harvard University, April 11-12, 2002.
- <sup>iii</sup> Hylke Vandenbussche et al., *Enhancing Economic Cooperation between the EU and the Americas*, Centre for Economic Policy Research, London 2002.
- <sup>iv</sup> USITC, *The Economic Effects of Significant US Import Restraints*, Publication 3201, May 1999.
- <sup>v</sup> Gregory Shaffer, *Reconciling Trade and Regulatory Goals: The Prospect and Limits of New Approaches to Transatlantic Governance Through Mutual Recognition and Safe Harbor Agreements*, The Parker School of Foreign and Comparative Law, Columbia University, *Columbia Journal of European Law*, Fall, 2002.
- <sup>vi</sup> The Atlantic Council Bulletin Vol. XIV, No. 2, *Managing Risk Together: U.S.-EU Regulatory Cooperation*, June 2003.