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Thank you Mr. Chairman for the opportunity to appear before the Committee today on the important issue of U.S.-EU regulatory cooperation. I hope that your hearings will serve as a stimulus to help reduce U.S. and EU trade and investment barriers. During my service in the Clinton Administration, I devoted considerable effort to advancing U.S.-EU trade relations, and I continue to take a keen interest in expanding cooperation between these two trading partners, who together account for nearly 40% of world trade.

In the Clinton Administration, I served as U.S. Ambassador to the European Union, Under Secretary of Commerce for International Trade, Under Secretary of State for Economic, Business, and Agricultural Affairs, and Deputy Treasury Secretary. In the spirit of full disclosure, I would first like to inform the Committee that my law firm, Covington & Burling, represents a number of American and European companies with significant interests in U.S.-EU regulatory issues. A number of the firm's clients are very satisfied with the regulatory environment; a number of other clients are less than satisfied or have company-specific problems on either side of the Atlantic. I also serve as Co-Chair of the European-American Business Council (EABC) along with former EU Ambassador Hugo Paemen. But this testimony represents my personal view.

As this hearing concerns U.S.-EU cooperation, I would like to begin by noting that current U.S.-EU trade relations -- perceptions notwithstanding -- are, on balance, quite productive and successful, and have been fundamentally sound for decades. Indeed, some $3 trillion of trade and investment between the United States and European Union occurs annually, the great majority of which is unimpeded. Millions of workers on both sides of the Atlantic owe their jobs to affiliates of U.S. and EU companies. The U.S. enjoys freer trade relations with the European Union than with most of its other trading partners. A strong, vibrant and productive economic relationship with the European Union is in the United States' national interest. Similarly, the United States is the largest market for Europe; strong economic relations with the United States is in Europe's interest as well. Most of the public attention and press coverage of the EU-U.S. relationship focuses on the most contentious, high-profile issues including steel, bananas, and GMOs. Nevertheless, we must not lose sight of the overall healthy trade relationship across the Atlantic.

We are still far from where we should be. We need a longer-term, broader vision for our transatlantic relationship and to set our sights on a more ambitious goal. That overarching goal should be a barrier-free economic relationship between the U.S. and EU by the end of the decade. Already on the trade side, tariffs are generally low, averaging around 3-4%. We should put our energy into eliminating regulatory and investment barriers.

In achieving this goal, we not only need more active engagement of the U.S. and EU, we need a reinvigorated transatlantic business relationship. I was pleased to play a major role in creating, along with the late Ron Brown, the Transatlantic

Business Dialogue (TABD) in 1994. Its purpose was to create business/government cooperation across the Atlantic. However, in recent years, the TABD has not played the essential role it should, because governments on both sides of the Atlantic have not given it the attention it deserves. We now have an opportunity to change that picture. Douglas Daft, Chairman and CEO of Coca-Cola, and Niall Fitzgerald, Chairman and CEO of Unilever, have agreed to serve as new Co-Chairs. In addition, Secretary Donald Evans has committed to a major effort to assure that TABD recommendations are given serious consideration. The European-American Business Council is being reinvigorated, and along with TABD, can play a major role in helping to achieve the goal of a barrier-free transatlantic economic space.

MRAs: Mutual Recognition as a Way to Achieve a Barrier-Free Transatlantic Economic Relationship

I would like to highlight up front what I consider to be a crucial factor for improving U.S.-EU regulatory cooperation: advancing the principle of mutual recognition. Because both the U.S. and EU share high health, safety and other technical standards, and because regulators on both sides of the Atlantic generally have confidence in their counterparts across the Atlantic, the U.S. and the EU should, in my view, focus heavily on expanding recognition of each others' regulatory processes. Broadening mutual recognition between the U.S. and EU will lower costs for U.S. and European companies, streamline product development and enhance productivity on both sides of the Atlantic. Enhanced mutual recognition could serve as a key step toward realizing what in my view should be the ultimate goal for U.S.-EU bilateral trade: a barrier-free transatlantic economic space.

One of the key early benefits of the creation of the TABD was the development of mutual recognition agreements, or MRAs. The basic concept behind MRAs was the simple proposition that products could be tested once and considered to have been tested in both markets. MRAs generally allow procedures for product assessment -- such as testing, inspection, and certification -- to be performed in the United States and Europe that recognize each other's standards. MRAs operate through confidence in each side's regulatory capabilities and reliance on each side's inspections and the exchange of inspection reports.

In 1998, the U.S. and EU completed MRAs covering multiple sectors, including telecommunications and information technology equipment, pharmaceuticals, and medical devices. These markedly reduce business costs of duplicative tests and inspections. Although the emergence of MRAs in the late 1990's raised hopes of an advancing trend, momentum has since stalled. Indeed, while serving in the Clinton Administration, I observed first hand some of the obstacles facing cooperative efforts such as MRAs operating within regulatory systems that are overwhelmingly domestic in focus. In the pharmaceutical sector, for example, the FDA was consistently suspicious of the capability of some EU Member States to oversee high pharmaceutical standards in laboratories. A related obstacle on the European side is the EU's inclination to regulate at the European level, only to leave enforcement to Member States, which often results in different levels of enforcement and different treatment of European and U.S. companies.

Encouraging greater confidence in regulatory systems across borders, together with a renewed momentum for MRAs by expanding their reach into as many

sectors as possible, would significantly contribute to U.S.-EU cooperation in regulatory matters.

But this will never happen if matters are left solely to individual regulatory agencies, which have a domestic, rather than international, focus. Agencies need strong White House direction to engage in regular sustained dialogue with their transatlantic counterparts in order to achieve a level of confidence in each other's regulatory processes. This, in turn, will help promote mutual recognition.

The business community, through TABD and EABC, needs to be proactive in suggesting to governments on both sides of the Atlantic ways to achieve greater mutual recognition. There is a recent example, in the area of financial markets, of ways in which mutual recognition can be used to make progress.

Understanding that a transatlantic capital market cannot function efficiently without a genuinely cooperative regulatory approach, the U.S. and EU have undertaken productive discussions on at least two key issues for financial markets: resolving the application of Sarbanes-Oxley to European companies and harmonizing U.S. and European accounting rules. But these are only first steps to what should be our ultimate goal -- a barrier-free financial market, which would encourage robust competition between European and U.S. exhanges.

I applaud the initiative of the International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB) to facilitate a convergence process between U.S. GAAP and EU IAS accounting standards -- such efforts will help to eliminate barriers such as the EU requirement that all companies listing on a European exchange adopt IAS standards by 2005. Similar application of

mutual recognition could also help to resolve the current unhelpful stance of the SEC in placing "trading screens" on the U.S. market for foreign companies; given that European standards are comparable to U.S. regulation of the financial markets, a targeted accommodation by the U.S. in this instance would help to support transatlantic market access without harm to investors. Under the leadership of EU Commissioner Frits Bolkestein and Paul Volker, former Chairman of the Federal Reserve, a great deal of progress is being made. In effect, each side would recognize the adequacy of the other's accounting standards, the concept of "equivalence" as Commissioner Bolkestein calls it.

Moreover, even where mutual recognition of regulatory standards may not be achievable, cooperation is nevertheless advanced by pursuing workable solutions, such as current talks seeking to clarify the application of Sarbanes-Oxley rules to European companies, requiring European auditors to register with U.S. authorities. The EU sees the application of Sarbanes-Oxley to European firms as extraterritorial, while the US sees the law as a legitimate post-Enron effort to assure the adequacy of audits of companies that choose to list themselves on a U.S exchange. Here again, EU Commissioner Bolkestein is working effectively to find a solution, this time with William McDonough, Chairman of the Public Company Accounting Oversight Board (PCAOB), and William Donaldson, Chairman of the SEC. Reasonable deference to European inspections of European auditors could clear the way for an agreement. Creatively, Mr. McDonough has suggested a joint registration, in which firms would register both with their national authorities, and with the PCAOB, and there would be joint U.S.-EU inspection of auditors outside the U.S.

Just as MRAs can serve as a positive model for improving regulatory cooperation between the United States and European Union, we also have available, unfortunately, numerous unhelpful examples.

A Step in the Wrong Direction: The EU Chemicals Directive

One particularly timely example of a regulatory step in the wrong direction is the current EU proposal for regulation of the chemical industry, known as REACH or Registration, Evaluation, and Authorization of Chemicals. The REACH proposal requires manufacturers and importers of chemicals, or products containing chemicals, to register their products with the newly-established European Chemicals Agency and to provide information on hazard, exposure and risk for 30,000 new and existing substances that are produced or imported in yearly quantities exceeding one metric ton. Evaluation requires regulators to assess risks for 5,000 substances that are produced or imported in yearly quantities exceeding 100 tons, and also for substances in lower quantities if they are "of concern." Authorization applies to substances of "very high concern," for which specific permission would be required for certain uses. In addition, "downstream" users would be required to carry out additional testing if the exposure or use of a covered product exceeds that foreseen by the manufacturer. The European Commission appears likely to adopt its proposed regulation at the end of October 2003.

Candidly, the current REACH proposal represents exactly the kind of top-heavy, non-risk based regulatory approach that only impedes progress on EU-U.S. cooperation in regulatory matters. In particular, the EU should

streamline the authorization process, which will be dominated by EU Member States who could regulate similar substances in different ways, to ensure that the system is practical and efficient, while still protecting public health and the environment. One method for streamlining the process is through a more risk-based approach that would expand the regulatory focus beyond intrinsic hazardous properties to include the potential for exposure to the environment. Similarly, more comprehensive exemptions should be made available for substances whose chemical structures or uses pose low health and environmental risks.

The public comment period for the REACH proposal was welcome, something not often seen with EU regulation. It elicited over 6,000 comments worldwide, most negative. These comments have led to some changes in the revised draft, like the temporary exception of polymers. However, the revised September draft continues to have some of the basic flaws of the earlier draft and imposes heavy costs on the chemical industry and downstream users. The

REACH proposal represents a retreat from risk-based scientifically-oriented regulation and thus is a significant step in the wrong direction for US-EU cooperation in regulatory matters.

Trade Barriers

Both the U.S. and EU impose numerous barriers to the free flow of transatlantic trade. The EU's longstanding moratorium on approval of Genetically Modified Organisms or GMOs in food products has cost US farmers hundreds of millions of dollars in lost sales annually in the EU. When I was U.S. Ambassador to the European Union, I was involved in helping obtain EU approval for GMO products like ROUNDUP READY soybeans. But unrealistic fears of GMO products by the European public has blocked approvals for several years of other safe GMO products. The EU moratorium is devoid of any scientific basis and, in my opinion, violates WTO requirements. I applaud the initiative of Bob Zoellick, the United States Trade Representative, to initiate the WTO dispute resolution process against the EU.

But the U.S. is hardly blameless. We have adopted measures that are also questionable and restrict European trade. The unilateral imposition of tariffs on steel products from Europe and other nations seems to have been based more on good politics than good policy. We rejected tariffs in the last year of the Clinton Administration. A WTO panel has found they violate WTO rules. A recent U.S. government study has found that while these tariffs have helped the steel industry, they have damaged a far broader group of steel users, including the U.S. auto industry. They should be terminated at the earliest possible moment.

Likewise, the "Fly America" requirement imposed on U.S. government travel limits travel options for hard-pressed senior U.S. officials, and is increasingly dubious in an area of transatlantic airline alliances and international code-sharing. In addition, both sides maintain restrictions on the ability of professionals to practice in each others jurisdictions.

Investment barriers

We should also work to eliminate investment barriers that limit investment by U.S. companies in Europe and European companies in the U.S. We limit foreign investment in areas like airlines and in the broadcast sector. These restrictions are generally antiquated in an increasingly integrated transatlantic market. Likewise, the "Buy America" provisions included in the House version of the Fiscal Year 2004 Department of Defense Authorization Bill undermine current efforts to remove remaining barriers and prevent the Pentagon from having the greatest flexibility to purchase the best product at the lowest prices.

There are obviously legitimate international security concerns with foreign investment in general and European investment in particular in certain limited instances. The Exon-Florio Act and the CFIUS process reflect these concerns. But Exon-Florio has been used to block foreign investment only in a few instances. However, we must make certain that Exon-Florio is not used inappropriately. My recent experience is that a few U.S. agencies would like to bar all foreign investment in "critical infrastructure," even presumably from companies in allied European countries. This would be a serious mistake and must be avoided. September 11 should not be used as an excuse to impose new barriers on European investment.

At the same time, we must work hard in a post-9/11 environment to balance national security interests with maintaining open U.S.-EU commerce. This presents a challenge to new areas. First, the U.S. is requiring extensive passenger reservation data, which conflicts with EU data protection laws. Hopefully, the EU can provide a derogation from these laws if it gets reassurance form the U.S. about the scope of the data required, limits on the time it would be stored, and use only for the war against terrorism.

The second conflict is with the U.S. demand for inspection of containers at the ports of EU Member States. The US has signed a number of bilateral container agreements with individual Member States without recognizing that the European Commission has legal competence in this area. The 1997 US-EU Customs Cooperation Agreement could be expanded to address container security issues.

Closer Antitrust Cooperation

The US and EU should strive to achieve the same results in major merger/acquisition and competition cases in order to avoid the uncertainty and inefficiency to business occasioned by differing results. Our marketplaces are similar, and our antitrust outcomes should reflect these similarities. One setback for U.S.-EU cooperation in regulatory matters arose from the EU decision to block the merger of General Electric and Honeywell approved by a U.S. antitrust authority, using a "bundling" concept that could make it difficult for companies to offer a range of products. In the Boeing-McDonnell Douglas case, the merger was approved by both competition authorities, but with substantially different terms required by the EU, causing transatlantic tension. Sensitivity to U.S. competition authorities in this instance -- where

the investigation focused on two U.S. companies -- would have been warranted and would have avoided harm to U.S.-EU efforts to advance transatlantic competition relations. Similar sensitivity should be exercised by EU competition authorities in their investigation of Microsoft, particularly when proposing the very remedy -- the unbundling of Microsoft's Media Player software and its Windows operating system -- that U.S. authorities had considered and rejected. The same approach proposed by the EU was rejected by Judge Kollar-Kotelly, the District Court Judge who approved the settlement. In rejecting the approach of the minority of states whom the EU seems to be following, Judge Kollar-Kotelly stated that "unbundling" would cause "clear and certain harm to the entire personal computer ecosystem." The EU's proposed remedies create significant inefficiencies and could threaten growth in the Information Technology sector because it would require Microsoft to ship one product to the EU and another to the rest of the world. I am aware of only one instance where the U.S. has disapproved of a merger approved by the EU, namely the Air Liquide/BOC/Air Products merger.

Greater sensitivity in both instances would have found support in the 1991 U.S.-EU Agreement concerning application of competition laws. The 1991 Agreement affirmed longstanding principles of "comity" in antitrust investigations. At its core, this doctrine dictates that one party, in order to avoid conflict with the other, will recognize the important interests of the other party in exercising its jurisdiction, particularly when the substantive issues under review predominantly impact one party. Similarly positive for cooperation efforts was the establishment of a U.S.-EU antitrust working group comprising representatives from the U.S. Federal Trade Commission, the Department of Justice, and the European Commission. Progress has been made on

mergers, as in the successful Solvay/Montedison-Ausimont transaction, in which divestitures were required on both sides of the Atlantic. Indeed, multiple mergers illustrate successful instances of U.S.-EU cooperation, including Imetal/English China Clays, Exxon/Mobil, and Halliburten/Dressor. But progress should be made in other areas of competition law that could further advance U.S.-EU cooperation in competition matters. US and EU competition authorities should aim to reach a convergence of views on key substantive issues (such as the bundling of complementary products and services) as well as procedures (such as the timing of the merger review process).

Conclusion

There are other areas where we can help create a barrier-free transatlantic marketplace. One example would be a U.S.-EU open skies initiative, given the recent legal competence of the European Commission to negotiate Europe-wide agreements. A liberalized transatlantic aviation marketplace is a worthy goal. By continuing to build on productive efforts -- such as harmonizing competition and accounting standards, and expanding the reach of MRAs, while dealing with counterproductive efforts, such as the REACH proposal and Buy America provisions, we can further stimulate the already productive U.S.-EU relationship and take a major step toward creating a barrier -free transatlantic space.

Congress has a strong role to play in these areas. For example, former Senate Finance Committee Chairman Bill Roth was deeply involved in these issues. I applaud your initiative, Chairman Allen, and hope you will remain engaged with the European Commission and your counterparts in the European Parliament in working toward a barrier-free transatlantic market.