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Comments of Illinois Tool Works Inc. (ITW) re:

Transatlantic Trade and Investment Partnership[FR Doc. 2013-07430]

I. Introduction

Illinois Tool Works Inc. (ITW) is a nearly $17 billion global manufacturer, headquartered in Glenview, IL, that designs and produces an array of highly engineered components, products and systems, predominantly for commercial and industrial customers around the world. ITW celebrated its centennial as an American manufacturer in 2012 and is a highly diversified and decentralized company. With the close of 2012, ITW operated some 800 businesses in 57 countries where individual businesses focused on delivering products locally.

In December, 2012, ITW's CEO announced his implementation of the Company's Enterprise Strategy, whereupon the Company will stay true to its use of the 80/20 Principal and a decentralized organizational model; but will build our future growth from platform simplification resulting in fewer -but larger and stronger- business units. Hence, we predict more revenue will be generated via cross border sales than any time previously.

In 2002, 60% of revenues were generated in North America and 26% from the Europe/MENA Region. By 2012, 50% of revenues came from North America and 30% from Europe/MENA. Of the latter percentage, some 50% were generated in Europe, most of which from the European Union(EU) Member States. Hence, the relationship between ITW and the EU is long lived and material to our fiscal health and, when combined with the implementation of our Enterprise Strategy, the Transatlantic Trade and Investment Partnership (TTIP) is believed to be similarly material to our success.

We have reviewed the above referenced Request For Comments and the twenty (20) specific questions for which USTR is seeking input. These comments address those questions where ITW's experiences may add value to the Office's analysis and include additional points that ITW believes warrant consideration.

At the outset, ITW is in concurrence with and supportive of the October 30, 2012 comments submitted by the National Association of Manufacturers to the Office of Management and Budget titled, Promoting U.S. and European Commission Regulatory Compatibility

II. Specific questions raised by USTR for comment:

a) General and product-specific negotiating objectives for the proposed agreement;

The challenges ITW has and continues to face regarding impediments to exports to Europe focus on regulatory compatibility. The EU's institutional use of the Precautionary Principle as the basis for its regulatory schemes imposes unnecessary burdens, if not outright barriers, on the export of items into the EU market.

(b) economic costs and benefits to U.S. producers and consumers of removal of tariffs and removal or reduction in non-tariff barriers on articles traded with the EU;

We do not anticipate changes in tariff rates will affect our transatlantic trade.

(c) treatment of specific goods (described by HTSUS numbers) under the proposed agreement, including comments on—

(1) product-specific import or export interests or barriers,

See #2

(2) experience with particular measures that should be addressed in the negotiations,

a) EMF Directive

Emanating from an individual country, we were caught unawares of the effort to create a directive regulating Electro Magnetic Fields for welding equipment. Direct access to the processes was difficult, time consuming and burdensome. Nonetheless it has been approved and awaiting transposition by Competent Authorities into local law. In order for businesses to comply with the Directive, it will be necessary for them to have the 'practical guide' which will define metering and assessment methods required to comply with the Directive. Troubling still is the fact that metering devices necessary to prove compliance are still not commercially available – and are not expected to be so for, maybe, two years. The enforcement of the new EMF Directive should take into consideration the need for an EMF Practical Guide and, therefore, affect the start of the transposition period of the Directive. In this case, however, we feel strongly that the transposition period should not even start until the metering devices are commercially available.

The first paragraph of Article 13 of the Directive states, "The Commission shall draw up practical guides before [the date of transposition] in order to facilitate the implementation of this Directive." Therefore, any decision on the transposition date should allow a period of a minimum of 18 months between the publication of the practical guide and transposition to provide sufficient time for employers to put in place all the provisions of the Directive. For example, if the practical guide takes 2 years to prepare from the time the Directive comes into force, this implies that a transposition period of no less than 3 and a half years will be needed. Preferably 4 or 5 years should be given so as to allow effective implementation of the Directive by

employers. We are very concerned that, even with an extended period of transposition, the effective date is, de facto, that when the first Competent Authority adopts the Directive into local law.

b) *Biocidal Products Regulation*

EU should take steps now to heighten the awareness of its trading partners as to the differences between the old Biocidal Products Directive (BPD) and the new Biocidal Products Regulation (BPR) which enters into force on 1 September 2013. In particular, communications should highlight that all treated articles are now within scope and that certain transitional provisions exist.

c) *Classification, Labeling and Packaging (CLP) Regulation*

The European Chemicals Agency (ECHA) should extend the time to notify the Classification and Labeling (C+L) of a substance first put on the EU market from 30 days to 60 days. This is consistent with the time period allowed for late pre-registration of such substances. It takes more than 30 days for indirect importers (non-EU entities) of substance mixtures to evaluate sales across broad product lines and determine when a product containing a first-time substance has been sold into the EU. ECHA now allows Only Representatives (OR) to complete C+L notifications on behalf of EU importers if authorization statements are provided by the importers to the OR. ECHA should continue to work with OR to resolve similar issues which complicate REACH compliance for non-EU entities as compared to their EU counterparts.

d) *REACH and RoHS Substance Lists*

Additions to the REACH Substances of Very High Concern (SVHC) and RoHS Restricted Substances Lists should be based on sound science and actual risk to human health and the environment and not by "political priorities" influenced by special interest groups. Both the REACH Regulation and RoHS Directive need to focus on the highest risk substances and not expand priority lists simply to appease certain stakeholders.

(3) approach to tariff negotiations, including recommended staging and ways to address export priorities and import sensitivities in the context of the proposed agreement; *See (b)*

(d) adequacy of existing customs measures to ensure that duty rates under an agreement with the EU apply only to goods eligible to receive such treatment, and appropriate rules of origin for goods entering the United States under the proposed agreement;

The abundance of Free Trade Agreements (FTA), with each having unique rules of origin, causes confusion and likelihood of error for those who create FTA certificates of origin. The complexity created by each new FTA is problematic for businesses.

In some of the current FTA's, responsibility for the claim may lie with the importer; in others, it lies with the exporter. So even that basic responsibility requires an understanding of each program. The intent of each FTA is to facilitate trade; that worthy goal is overshadowed by the increased business risk and cost of complying with each different program. The problem lies in the various methods of qualifying products for each FTA. Within a single FTA, some products require a substantial transformation; others a minimum regional value content requirement; and, still others some combination of the methods. The rules are different for each FTA, so that the qualification process must be performed for each destination.

The first step, education as to the proper use of each agreement, creates a new series of seminars in order for all parties involved to properly take advantage of the opportunity. This steep learning curve is not only costly, but carries a high risk for error. Suppliers may provide inadequate or inaccurate certificates, brokers may misunderstand the rules and improperly claim tariff benefits on behalf of their clients based purely on origin, importers may fail to properly validate certificates or audit the brokers work. Everyone involved in the agreement must understand each FTA's nuances. In order to qualify for each different FTA, traders must perform detailed calculations which may include a need to solicit and validate certificates from suppliers and a detailed bill of material test.

The US/Israel FTA and GSP each have a simpler method to determine if products qualify: a straight percentage of the transaction value. These programs promote production in the countries, yet do not require performing a complex qualification process.

While the US/Israel FTA requires a certificate, GSP does not even have that requirement. That is a mixed blessing. Without any certificate requirement, brokers are more likely to claim benefits in error and all parties are more likely to believe that country of origin by itself determines qualification. In addition, it can be difficult to substantiate claims after the fact.

It seems that the most efficient method for any new FTA's would be to follow the US/Israel model, which has one basic qualifying rule and yet includes a certification requirement, so that someone has to make a positive decision to participate in the program. This seems to be the least confusing of all the available options.

(e) existing sanitary and phytosanitary measures and technical barriers to trade that should be addressed in the negotiations; *N/A*

(f) opportunities for greater transatlantic regulatory compatibility, including concrete ideas on how greater compatibility could be achieved in a particular economic sector, without diminishing the ability of the United States to continue to meet legitimate regulatory objectives, for example with respect to health, safety and the environment, and which sectors should be the focus of such efforts;

We would call your attention to 15 USC 5401 Section 3(7). Debate over the efficacy of the Fastener Quality Act [PL 101-592] included input by EU-based OEMs who claimed the statute as a TBT. The Commerce Department, with DG Enterprise, convened negotiations

within the framework of the TransAtlantic Business Dialogue wherein stakeholders negotiated a solution adopting mutual recognition of key standards. This section defines 'fastener quality assurance systems' as ISO 9000, 9001, 9002, TS 16949 QS 9000, AS 9000 and Verband der Automobileindustrie 6.1, et al. The crafting of this definition stirred more controversy, especially among US producers, than any of the other amendments to the original Act. Yet, the stakeholders negotiated this language among themselves in an effort to remove the barriers created by the Act.

It is highly unlikely that TTIP can include language that will mitigate TBT claims of the many sectors and products currently facing burdens and barriers to trade; but clear language adopting functional equivalency, mutual recognition and the transparent mechanisms to apply such tools is critical if a TTIP is to be effective.

(g) opportunities to reduce unnecessary costs and administrative delays stemming from regulatory differences, including how that could be achieved in a particular economic sector; *For later comment*

(h) opportunities to enhance customs cooperation between the United States and the EU and its member states, ensure transparent, efficient, and predictable conduct of customs operations, and ensure that customs measures are not applied in a manner that creates unwarranted procedural obstacles to trade; *To be determined*

(i) existing barriers to trade in services between the United States and the EU that should be addressed in the negotiations; *N/A*

(j) relevant electronic commerce and cross-border data flow issues that should be addressed in the negotiations; *N/A*

(k) relevant investment issues that should be addressed in the negotiations; *N/A*

(l) relevant competition-related matters that should be addressed in the negotiations; *For later comment*

(m) relevant government procurement issues, including coverage of any government agencies or state-owned enterprises engaged in procurements of interest, that should be addressed in the negotiations; *N/A*

(n) relevant environmental issues that should be addressed in the negotiations; *To be determined*

(o) relevant labor issues that should be addressed in the negotiations; *To be determined*

(p) relevant transparency and anticorruption issues that should be addressed in the negotiations; *For later comment*

(q) relevant trade-related intellectual property rights issues that should be raised with the EU.

Patent procurement and enforcement for all parties require efficiency and consistency. In the past, the European Patent Office (EPO) has enhanced our ability to obtain patents with consistent claim language throughout Europe. However, the enforcement of these patents has varied by country and the cost of obtaining patents in the EPO is much higher than the costs incurred in the US, for example. Europe has announced a new European patent and a European patent court. Provided these bodies are efficient and consistent, and recognize IP rights, we support the recognition of both in the treaty. Further, we support:

1. *strong trademark and domain name rights for legitimate users, and efficient proceedings for eliminating squatters from legitimate rights holders;*
2. *fees for the renewal of the expected unitary EU patent and for its dedicated EU patent court should be applied without bias toward the home country of the applicant;*
3. *strong gray market protection so we can maximize our marketing and distribution; and*
4. *strong border protection in both the US and Europe for products that infringe patents or trademarks or the trade dress of the rights holder including efficient access to processes affording border protection.*

III. Miscellaneous comments

The US process for crafting standards and codes should be defended; but it is not without traps:

a) *The voluntary consensus standards process that is prevalent throughout U.S. industries has served both industry and the U.S. economy well for many years. It is this voluntary consensus process that allows industries and other (global) stakeholders to come together to address technical issues involving interoperability, standardization, quality control and safety of the products offered for sale in the marketplace, while also ensuring that the proceedings are open and transparent. The voluntary consensus standards process has also provided the U.S. government with the standards necessary to perform its regulatory and procurement functions, in most instances, without the costs or duplication of government-created standards.*

   This system is unique in the world, and has frequently been met with suspicion -and even hostility- by many U.S. trading partners who are much more comfortable with a government-led standards system. As a result, U.S. interests face a constant battle to ensure that U.S. standards, and U.S. products made to those standards, are readily accepted in the global marketplace. Therefore it is critical that the U.S. government defend the voluntary consensus standards process against charges that it is somehow inferior to government-led processes.

   In that regard, we believe there is a critical gap in how our standards and code development processes are enforced that weakens the ability of the U.S. government to defend the system with our trading partners.

   We have experienced repeatedly the disconnect between the standards and codes created by national SDOs and the translation of those standards and codes either into state and local codes or of the local enforcement of such standards.

One ITW business has devoted considerable resources to the development of a new generation of commercial kitchen equipment intended to prepare food more efficiently, curb the consumption of energy and natural resources, emit less Volatile Organic Compounds (VOCs), consume fewer Chlorofluorocarbons and Hydrochloro-fluorocarbons; and better manage organic waste. These products meet the latest industry standards for performance and safety, and yet, time after time, sales of these products are lost due to a hodgepodge of locally written codes and disparate enforcement that prohibit their installation or operation, often based on outdated or inappropriate requirements. It is true that specific geographical or other conditions may exist that support local modification of a national standard to ensure the health and safety of the local population. However, when no such conditions exist, we are left with barriers to new and innovative products based on outdated requirements and no means for appealing such decisions.

b) *Today, we observe that because standards development in Europe is government-led and nearly every Member State organizes locally originating and redundant development bodies, US access to these processes are oftentimes burdensome and sometimes impossible. While we recognize ANSI serves as the US secretariat on our behalf, we need direct access. We encourage the negotiators to open these processes, both electronically and physically to US participants, including voting rights.*