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OFFICE OF THE U.S. TRADE REPRESENTATIVE

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PUBLIC HEARING  
BEFORE THE TRADE POLICY STAFF COMMITTEE (TPSC)  
ON THE  
TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

+ + +

May 29, 2013  
9:30 a.m.

USITC Hearing Room  
500 E Street, S.W.  
Washington, D.C. 20436

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P R O C E E D I N G S

(9:35 a.m.)

CHAIRMAN BELL: This hearing will come to order. Welcome, my name is Douglas Bell. I'm the Chairman of the TPSC. This hearing will continue tomorrow, which is being conducted by the Trade Policy Staff Committee, an interagency body chaired by the Office of the U.S. Trade Representative.

In addition to USTR, there are representatives from the Departments of Commerce, Labor, State, Agriculture, Transportation, Health and Human Services, Interior, and Treasury on the Panel. Many members of the USTR staff, as well as those of other government agencies, will also be present during these two days.

The subject of this hearing is the Transatlantic Trade and Investment Partnership, or T-T-I-P, TTIP.

On March 20, 2013, the United States Trade Representative formally notified Congress of the Administration's intent to launch negotiations on a comprehensive agreement with the European Union

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1 aimed at achieving a substantial increase in  
2 transatlantic trade and investment.

3           The decision to launch negotiations for a  
4 TTIP agreement follows a year-long exploratory  
5 process conducted by the U.S.-EU High Level Working  
6 Group on Jobs and Growth established by  
7 President Obama and EU leaders during their  
8 November 2011 summit meeting and led by U.S. Trade  
9 Representative Ron Kirk and EU Commissioner for  
10 Trade Karel De Gucht.

11           USTR provided two opportunities for the  
12 public to comment as part of the HLWG mandate in  
13 2012. Comments received in response to these  
14 solicitations and during a large number of advisory  
15 committee briefings and other meetings with  
16 stakeholders played an important role in shaping the  
17 recommendation to launch this negotiation.

18           USTR is seeking public comments regarding  
19 U.S. interests and priorities with regard to this  
20 initiative and has solicited testimony and written  
21 comments from the public. Today we are scheduled to  
22 hear from 31 witnesses. Witnesses have supplied

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1 copies of their oral testimony, which are available  
2 on tables as you enter the hearing room. Written  
3 comments from other interested parties are available  
4 for review at [www.regulations.gov](http://www.regulations.gov).

5 I would also note that the transcript of  
6 the hearing will be posted on the docket for this  
7 hearing on [regulations.gov](http://regulations.gov) within approximately  
8 three weeks of the hearing.

9 Before proceeding, let me briefly review  
10 the structure of the hearing. As provided in the  
11 notice in the *Federal Register* announcing the  
12 hearing, each witness is invited to provide a  
13 five-minute oral statement summarizing the views  
14 contained in their comprehensive written submission.  
15 That statement will be followed by questions from  
16 members of the Government Panel.

17 Witness statements will be managed through  
18 use of the green, yellow, and red lights on the  
19 witness table. When the light turns yellow, there  
20 is one minute left for the presentation. As you can  
21 see from the witness schedule, we must keep as close  
22 to the schedule as possible if all witnesses are to

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1 receive their allotted time over the next two days.  
2 I will therefore ask that each witness quickly bring  
3 their statement to a conclusion as soon as the red  
4 light goes on.

5           We will take a one-hour lunch break from  
6 approximately 12:30 to 1:30 p.m., and I will  
7 reconvene the hearing promptly at that time with our  
8 first witness in the afternoon.

9           One last very important matter: Staging a  
10 hearing of this size and interest exceeded the  
11 facilities readily available to USTR. USTR is  
12 grateful to the U.S. International Trade Commission  
13 and its chairman, Mr. Irving Williamson, for making  
14 its facilities available to the Executive Branch for  
15 this event.

16           In particular, I want to thank  
17 Ms. Lyn Schlitt and her staff and Mr. William Bishop  
18 of the Office of the Secretary for their assistance  
19 in facilitating the consideration of our request for  
20 assistance and their invaluable cooperation and  
21 support in the planning and execution of this  
22 hearing.

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1 I will now ask the Panel members to  
2 introduce themselves, and then Dan Mullaney, the  
3 Assistant USTR for Europe and the Middle East, will  
4 make a statement.

5 Thank you for your participation, and we  
6 look forward to hearing your views. I'll turn to my  
7 left.

8 MR. CRAFT: Bill Craft, Economic Bureau,  
9 Department of State.

10 MS. ZOLLNER: Good morning. Anne Zollner,  
11 Bureau of International Labor Affairs, Department of  
12 Labor.

13 MR. BUCKLEY: Gavin Buckley, Office of the  
14 Assistant Secretary for International Affairs,  
15 Treasury Department.

16 MR. JONES: Skip Jones, International  
17 Trade Administration, Department of Commerce.

18 MS. HERMAN: Debbie Herman, Foreign  
19 Agricultural Service with the U.S. Department of  
20 Agriculture.

21 MS. ABRAHAM: Julie Abraham, Office of  
22 International Transportation and Trade, Department

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1 of Transportation.

2 MS. CLARK: Elana Clark, Office of Global  
3 Affairs, U.S. Department of Health and Human  
4 Services.

5 CHAIRMAN BELL: Dan?

6 MR. MULLANEY: Thanks very much, Doug, and  
7 members of the Panel. I'd like to welcome today our  
8 witnesses, the U.S. Government Panelists, and those  
9 present today in the gallery. We are looking very  
10 much forward to hearing your testimony today and  
11 tomorrow regarding the Administration's intention to  
12 initiate negotiations with the European Union on the  
13 Transatlantic Trade and Investment Partnership, or  
14 TTIP.

15 I think everyone present here is aware of  
16 the extraordinary transatlantic economic  
17 relationship which accounts for nearly half of  
18 global GDP and 30 percent of global trade. Each  
19 day, goods and services worth nearly \$3 billion are  
20 traded across the Atlantic. Our investment  
21 relationship reached nearly \$4 trillion in 2011.  
22 More than \$9 million is traded between us every

1 5 minutes. Even so, President Obama and his  
2 European colleagues felt there was more we could do  
3 to take advantage of the potential for increased  
4 jobs and growth in our markets.

5           During their 2011 leader summit, they  
6 created the U.S.-EU High Level Working Group on Jobs  
7 and Growth, tasking the U.S. Trade Representative  
8 and the European Commission for Trade with  
9 investigating the options available to better  
10 exploit our untapped potential for job creation,  
11 growth, and international competitiveness.

12           After 14 months, during which it consulted  
13 closely with a wide range of public and private  
14 sector stakeholders, the High Level Working Group  
15 concluded in its February 11, 2013 final report that  
16 an agreement that addresses a broad range of  
17 bilateral trade and investment policies, as well as  
18 global issues of common interest, would be the best  
19 option for generating substantial economic benefits  
20 on both sides of the Atlantic.

21           On March 20, 2013, the Administration  
22 notified Congress of its intent to launch the TTIP

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1 and outlined its broad negotiating goals. We have  
2 an ambitious negotiating agenda including, but not  
3 limited to, seeking full elimination of tariffs,  
4 substantial progress on reducing regulatory and  
5 other non-tariff barriers without compromising  
6 legitimate regulatory objectives, and pursuing  
7 disciplines that address emerging challenges for  
8 global trade such as state-owned enterprises and  
9 localization barriers.

10 Our letter to Congress began a formal  
11 90-day period of consultation during which we are  
12 working closely with Congress and with private  
13 sector stakeholders to more carefully hone our TTIP  
14 negotiating objectives. A major component of that  
15 consultation, of course, is our process of obtaining  
16 and reviewing comments submitted in response to a  
17 notice published in the *Federal Register*.

18 As Doug noted, this is our third request  
19 for public submissions since the High Level Working  
20 Group was formed, and the input that we have  
21 received has been a critical component of our  
22 decision-making process. We are carefully reviewing

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1 the hundreds of submissions we received during our  
2 latest request reviews and are very thankful for the  
3 thoughtful and valuable contributions.

4 We do not underestimate the challenge of  
5 concluding a comprehensive trade and investment  
6 agreement with the EU. However, we believe that the  
7 potential gains overwhelmingly justify the effort.

8 Exploratory discussions over the past year  
9 and the support for a comprehensive agreement that  
10 has been offered by a significant and diverse set of  
11 stakeholders boost our confidence that it will be  
12 possible to find mutually acceptable solutions on  
13 difficult issues and conclude an agreement that will  
14 benefit U.S. workers, manufacturers, service  
15 suppliers, farmers, ranchers, innovators, creators,  
16 small and medium-sized businesses, and consumers.

17 A successful agreement with the EU could  
18 create significant new business and employment in  
19 the United States, and we are envisioning an  
20 ambitious and intense negotiating timeline that will  
21 get us across the finish line quickly. We must get  
22 the substance right, of course, but we acknowledge

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1 that a negotiation that drags on is in no one's  
2 interest.

3 Today and tomorrow, we will hear the  
4 testimony of 62 witnesses who represent a wide range  
5 of interests. We greatly appreciate the work that  
6 went into the submissions and testimony and want  
7 again to underscore the importance of these  
8 consultations in helping us better to understand the  
9 concerns and objectives of our many stakeholders.

10 Finally, let me also state clearly that  
11 this is certainly not the final opportunity to  
12 present views. We will welcome additional input  
13 throughout the negotiating process.

14 Again, thank you very much for coming  
15 today, and we look forward to hearing your  
16 testimony.

17 CHAIRMAN BELL: Thank you very much, Dan.

18 All right, we are going to now go ahead  
19 and proceed with the statements by witnesses. If  
20 the American Automotive Policy Council and European  
21 Automobile Manufacturers Association would please  
22 come to the witness stand?

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1           In the case of all witnesses, I would ask  
2 that if you please identify yourself by name and  
3 organization for the purposes of the transcript. If  
4 you would like to proceed, please do.

5           MR. BLUNT: Certainly. Well, thank you  
6 for the opportunity to share our views on this very  
7 important subject. I am Matt Blunt. I am the  
8 President of the American Automotive Policy Council.  
9 We are a trade association representing the domestic  
10 and international public policy interest of our  
11 members, Chrysler, Ford, and General Motors. We  
12 made a joint submission with our European  
13 counterpart, ACEA, and I am here representing both  
14 associations today.

15           On May 10th, AAPC and ACEA jointly  
16 submitted a detailed auto regulatory convergence  
17 proposal in response to the USTR *Federal Register*  
18 Notice on this subject. This statement is based on  
19 that submission, but I certainly would recommend you  
20 look to that statement for a more thorough treatment  
21 of this subject.

22           As the largest manufacturing and exporting

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1 sector in the United States, the auto industry has a  
2 major stake in the conclusion of a Transatlantic  
3 Trade and Investment Partnership agreement, or TTIP.  
4 We believe a well-negotiated TTIP that includes the  
5 elimination of tariffs and the major non-tariff  
6 barriers in the auto sector has great potential to  
7 grow the transatlantic auto trade investment  
8 relationship.

9           TTIP will represent the largest share of  
10 auto production and sales ever covered by a single  
11 free trade agreement. U.S. and EU auto-related  
12 trade is also significant, accounting for 10 percent  
13 of all trade between the two economies.

14           The negotiation of TTIP presents an  
15 opportunity to implement a regime that effectively  
16 breaks down regulatory barriers in the auto sector,  
17 recognizes regional integration that benefits both  
18 the U.S. and the EU, reduces costs, and increases  
19 commercial predictability, while respecting U.S. and  
20 EU sovereignty, and certainly without sacrificing  
21 vehicle safety or environmental performance.

22           Past efforts to harmonize auto standards

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1 have been ineffective and slow, so we are proposing  
2 a new approach. There would be neutral recognition  
3 for existing automotive regulations and for future  
4 regulations that are deemed necessary, the  
5 establishment of a joint regulatory harmonization  
6 process that facilitates the development and  
7 adoption of common future new regulations.

8           Acceptance of an existing regulation  
9 should be presumed, recognizing the significant  
10 advancements that the regulations have provided in  
11 environmental and safety technologies in both the  
12 U.S. and EU, unless the analysis of the data  
13 conducted by the responsible regulatory agency  
14 demonstrates that the regulations is deficient from  
15 a safety or environmental perspective.

16           We recommend that instead of waiting for  
17 the FTA to enter and enforce, the process begin in  
18 earnest immediately in close cooperation with  
19 industry in order to take advantage of the current  
20 increased existing political will and interest in  
21 regulatory convergence.

22           In our May 10th submission, we provided a

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1 non-exhaustive list of U.S. and EU safety and  
2 environmental regulations for mutual recognition  
3 during the TTIP negotiations and proposed a data-  
4 driven assessment for purposes of completing the  
5 necessary assessment.

6           In light of the short time frame  
7 designated for the TTIP negotiation, achieving  
8 comprehensive mutual recognition is obviously  
9 unlikely. And, as such, we have put forth a limited  
10 non-exhaustive list of regulations for consideration  
11 for mutual recognition. We, therefore, also  
12 recommend that the U.S. and EU include a provision  
13 in TTIP establishing a joint auto task force to  
14 continue to work towards comprehensive mutual  
15 recognition following the conclusion of the trade  
16 pact negotiations.

17           One or more regulations needed a joint  
18 U.S. and EU auto regulatory harmonization process  
19 that takes into account the differences in U.S. and  
20 EU auto regulatory development. And implementation  
21 timelines need to be developed that promotes and  
22 facilitates the development and adoption of the

1 common future new regulations. This process should  
2 also include a mechanism to foster the development  
3 of common voluntary standards in the pre-regulatory  
4 environment.

5 Key elements of this standards  
6 harmonization process must aim at strengthening the  
7 automobile industry in both regions with lower costs  
8 and increased predictability, reduce complexity  
9 costs and administrative burdens while keeping  
10 needed flexibility, have strong and sustained  
11 political support at the highest levels of  
12 government, and engage industry to work together to  
13 develop each harmonized approach and we believe  
14 provide a timeline to complete the development of  
15 the harmonization process.

16 We believe that the TTIP presents an  
17 opportunity to break down tariffs and regulatory  
18 barriers in the auto sector, promote regional  
19 integration, reduce costs, and increase commercial  
20 predictability, while respecting U.S. and EU  
21 sovereignty and without sacrificing vehicle safety  
22 and environment performance.

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1           We support a comprehensive approach  
2 whereby priorities are directly linked and thus  
3 should be considered in a single undertaking. And  
4 we also believe that to achieve an ambitious  
5 outcome, especially with regard to regulatory  
6 convergence, there must be decisive and sustained  
7 political will at the highest levels of both the  
8 economic and regulatory agencies.

9           Again, I thank you for the opportunity to  
10 be here, and I'll be happy to attempt to answer any  
11 questions you might have.

12           CHAIRMAN BELL: Thank you, Mr. Blunt.  
13 Sorry about that. Thank you, Mr. Blunt. We do have  
14 some questions.

15           I'd like to turn to my Department of  
16 Transportation colleague to start us off, please.  
17 Thank you.

18           MS. ABRAHAM: Thank you, Doug. And good  
19 morning, Governor. Thank you for your testimony.

20           In your testimony, you propose that  
21 acceptance of an existing regulation should be  
22 presumed by one party or the other unless the

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1 analysis of the data by that party demonstrates that  
2 the regulation is deficient from a safety or  
3 environment perspective.

4           Could you give us an example of how the  
5 regulators could demonstrate this in practice? For  
6 example, what data, for what vehicles would they  
7 use, how do they obtain it, is it from the  
8 manufacturers or from the other party? Can you  
9 clarify this a little bit more?

10           MR. BLUNT: Certainly. And actually we're  
11 still trying to determine what the best datasets  
12 would be to recommend. There is obviously lots of  
13 macro data that would indicate that the same safety  
14 criteria are met, the same safety objectives, and  
15 the same high levels of environmental performance.  
16 But in terms of what precise datasets should be  
17 utilized, we are still evaluating that question.

18           MS. ABRAHAM: Thank you. That would be  
19 important to submit to the record.

20           MR. BLUNT: Absolutely, thank you.

21           MS. ABRAHAM: I have one more question, if  
22 the time allows. Also in your testimony or in your



1 written comments, you stated that one of the guiding  
2 principles should be no net increases in regulatory  
3 requirements as a result of regulatory convergence  
4 of existing regulations. And other commenters urged  
5 no decrease in safety benefits.

6 Can you give us your thoughts on a path  
7 forward that might hold the promise for all parties  
8 involved?

9 MR. BLUNT: Certainly. And by that, I  
10 want to be clear we are certainly not suggesting  
11 that there shouldn't be new regulations, if new  
12 needs emerge. But we are stating that in the  
13 process of convergence, itself, we shouldn't  
14 establish a new set of standards that we attempt to  
15 comply with.

16 So, as an aspirational goal, we propose  
17 that vehicles built to the EU standards or U.S.  
18 standards would be deemed safe for either market.  
19 Am I answering your question, or not quite?

20 MS. ABRAHAM: That's fine for now. I have  
21 one more question.

22 CHAIRMAN BELL: You do have time.

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1 MS. ABRAHAM: Okay. One last question  
2 that I have is given that the U.S. and European  
3 regulations are enforced in completely different  
4 ways -- we here have self-certification, the EU has  
5 type approval.

6 MR. BLUNT: Right.

7 MS. ABRAHAM: What effect would your  
8 proposal for mutual recognition have on the  
9 traditional enforcement practices of each party?

10 So, for example, what practices would the  
11 U.S. regulators need to follow with respect to  
12 vehicles and motor vehicle equipment type approved  
13 as meeting European standards and what practices  
14 would EU regulators need to follow with respect to  
15 self-certified vehicles meeting U.S. standards?

16 MR. BLUNT: And under our proposal, a  
17 vehicle built to a self-certification in the United  
18 States, built to our self-certifying standards,  
19 would be deemed safe for either market and  
20 acceptable in either marketplace. And the same  
21 would apply to Europe. A vehicle that was built to  
22 a certain standard of type approval would be deemed

1 safe for either the EU or the U.S. and just accepted  
2 because essentially we are achieving the same high  
3 standards, high level standards of environmental  
4 performance and safety performance.

5           So we would propose that you could build  
6 to either standard and it be accepted in either  
7 market.

8           MS. ABRAHAM: Okay, thank you.

9           CHAIRMAN BELL: Okay. Well, I think that  
10 concludes our questions. Thank you very much.

11          MR. BLUNT: Thank you.

12          CHAIRMAN BELL: If the representative for  
13 Advocates for Highway and Auto Safety could -- thank  
14 you very much. If you could please introduce  
15 yourself and go ahead.

16          MR. JASNY: Thank you, Mr. Bell,  
17 Mr. Mullaney, members of the Panel. Thank you for  
18 the opportunity to testify this morning.

19                 My name is Henry Jasny. I am Vice  
20 President of Advocates for Highway and Auto Safety.  
21 And we are here to say that whatever else you do in  
22 TTIP, you should not include motor vehicle safety

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1 regulations as part of the negotiations for a new  
2 trade agreement.

3           Safety regulations are not your normal  
4 non-trade barriers. They are important both to the  
5 nations that have established those standards. They  
6 are protecting thousands of people on the roads.  
7 Despite our current standards, we have had over  
8 100,000 deaths on our roads in the past 3 years.  
9 But even a subset of the Federal Motor Vehicle  
10 Safety Standards that are in existence are estimated  
11 to have saved nearly 400,000 Americans since 1975.

12           There are a lot of reasons why the  
13 differences in standards were created between the EU  
14 and the U.S. There is a different fleet makeup  
15 between the two areas, different behaviors of  
16 drivers and attentiveness to regulations, roadway  
17 designs in the two areas are different, and there  
18 are compliance differences regarding how the  
19 regulations are enforced. And that's why Advocates  
20 opposes negotiations to include motor vehicle safety  
21 standards.

22           The TTIP may afford a one-way street for

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1 revising safety standards downward. We are  
2 concerned that that mutual recognition or regulatory  
3 convergence will lead to less stringent regulations  
4 overall.

5           Three examples of problems with  
6 internationally harmonized standards I can point to  
7 right now are: lighting standards. When the U.S.  
8 voluntarily attempted to harmonize its standards to  
9 allow European headlamps into the U.S. market, the  
10 European headlamps don't cast a lot of light above  
11 the horizon. This is not a problem in Europe where  
12 all overhead lighting, overhead signs, and  
13 directional signs are generally lit by external  
14 sources. But in the U.S., highway signs are not  
15 externally lit by separate sources, and so it was a  
16 major pitched battle to make sure that European  
17 headlights coming in had to meet the U.S.  
18 requirements for overhead lighting.

19           The brake standard revision that was done  
20 in the 1990s, FMVSS 135, in order to harmonize with  
21 the European standard, NHTSA eliminated several  
22 tests for burnish and recovery.

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1           The side door locking standard that was  
2 done on the existing executive agreement on global  
3 trade and global technical regulations, in which  
4 NHTSA decided to eliminate a secondary mandatory  
5 locking and latching requirement, only had a primary  
6 requirement and a warning to the driver which would  
7 require human intervention, rather than having a  
8 redundancy system, a mechanical redundant system to  
9 ensure the safety and protection of occupants.

10           In addition, international harmonization  
11 undermines U.S. law. We have known that under the  
12 GTR process, when the agency NHTSA goes over to  
13 Geneva and discusses and it makes agreements and  
14 then comes back and holds that forth as something to  
15 be put out for public comment, the public is in a  
16 bad position because the agency has already made  
17 commitments in Geneva and we can't undermine those.  
18 The agency has already committed. This undermines  
19 the Administrative Procedures Act, the APA, and  
20 hurts American consumers and safety groups when they  
21 try to upset the applecart.

22           It will inhibit regulatory initiatives

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1 because where agreements have been made  
2 internationally to agree on one set of standards, it  
3 will be that much harder for the U.S. to increase or  
4 improve safety standards if it otherwise would feel  
5 it was necessary. It creates an inertia. Had the  
6 agreements on certain standards been in place in the  
7 '60s, '70s, or '80s, we probably wouldn't have the  
8 same performance standards we have now.

9           The executive agreement on Global  
10 Technical Regulations already meets the requirements  
11 that you are looking for. This was an agreement  
12 done at the insistence of the car industry and  
13 manufacturers and resulted in what we think is an  
14 imperfect system. The sliding door locks was a  
15 result of that. And we think that having a  
16 redundancy of trade negotiations over safety  
17 requirements is unnecessary.

18           As the representative from the Department  
19 of Transportation may remember, a lot of time was  
20 invested by DOT and NHTSA in developing the GTR  
21 system, and by safety groups. We think that it is  
22 unfortunate to have redundancy in trade negotiations

1 where we don't have redundancy in terms of safety.

2           And just to conclude, the vehicle  
3 manufacturing industry's principles are to have no  
4 hybrid standards, no best practices, and not to  
5 cherry-pick safety standards so its standards can  
6 only be diluted. I hate to think when those  
7 agreements are broached with other markets, such as  
8 India or China, what will happen in terms of  
9 compromising those standards that have already been  
10 diluted.

11           During the decade of global road safety  
12 that has been announced by the U.N. General  
13 Assembly, I think it would be unfortunate to place  
14 downward pressure on vehicle safety standards  
15 through this trade agreement. Thank you.

16           CHAIRMAN BELL: All right, well, thank you  
17 for your comments, Mr. Jasny.

18           I am going to -- if our Department of  
19 Transportation representative would like to start us  
20 off, please?

21           MS. ABRAHAM: Thank you and good morning,  
22 Henry. Nice to see you again.

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1 MR. JASNY: Good morning.

2 MS. ABRAHAM: I do have a question about a  
3 statement you made in your written testimony  
4 regarding your concern about the public  
5 accessibility of information related to TTIP  
6 negotiations and the processes for seeking public  
7 input under the TTIP negotiations.

8 Can you explain that concern in more  
9 detail to us? And also can you give us your  
10 thoughts about a path forward on harmonization that  
11 might hold the promise for all parties involved?

12 MR. JASNY: Well, to the first part of  
13 your question, I have seen nothing that lays out how  
14 this negotiation as to safety standards would evolve  
15 or take place.

16 The fear is that it would be done by  
17 insiders in Geneva where American organizations have  
18 no access and no entry. The group that now staffs  
19 the GTR process, WP.29, is only open to certain  
20 organizations, international organizations. I  
21 believe there are eight or nine. All of those,  
22 except for one, are industry trade associations.

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1 There is only one consumer organization, and that is  
2 based out of England.

3           We have no means to travel to Europe to  
4 partake, to participate, or to hear what goes on.  
5 We are totally reliant on the agency to represent  
6 and put on their website what the discussions are  
7 and what the negotiations are, and that is always  
8 after the fact. So we have that information when  
9 the agency comes back.

10           With respect to what would happen in this  
11 context, it is totally a blank slate. We just  
12 really don't know what would occur. And they  
13 generally tend not to be very accessible to the U.S.  
14 public that wants to participate in all the vehicle  
15 safety negotiations.

16           As we heard from the prior witness, they  
17 don't even have an idea of what they are going to  
18 propose, and the automobile manufacturers carry a  
19 lot of weight in these negotiations. So we have no  
20 idea what this is going to look like.

21           We have been down this road with the GTR  
22 process, and that took a great deal of time and

1 struggle over how there would be an interaction in  
2 Europe of the standards at WP.29 where the U.S.  
3 public is excluded, and then how that would be  
4 transparent when it comes back to the U.S.

5           It is not a perfect system. It is not  
6 something we would have voluntarily desired, and we  
7 opposed it, but it does seem to work for the most  
8 part in terms of allowing U.S. citizens and  
9 organizations to participate in that process. We  
10 are still not satisfied with it, but we like it a  
11 lot better than this unknown process that has yet to  
12 be determined.

13           MS. ABRAHAM: Thank you.

14           CHAIRMAN BELL: Any follow-up questions?  
15 Anyone else on the Panel? No, okay.

16           Mr. Jasny, thank you very much for your  
17 time and consideration.

18           MR. JASNY: Thank you.

19           CHAIRMAN BELL: Next, if the American  
20 Insurance Association?

21           MR. SIMCHAK: Good morning. Thank you all  
22 very much for this opportunity to testify on behalf

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1 of the American Insurance Association and on the  
2 interest of our members in the TTIP.

3 AIA is the leading property casualty  
4 insurance trade organization in the United States.  
5 We represent approximately 300 major U.S. insurance  
6 companies that provide all lines of property  
7 casualty insurance to consumers and businesses in  
8 the United States and around the world.

9 AIA members write more than \$117 billion  
10 annually in U.S. property casualty premiums and  
11 approximately \$225 billion annually in worldwide  
12 premiums. AIA members make up some of the most  
13 globally active property casualty insurers, and many  
14 of our members have major operations in Europe.

15 As we stated in our submitted comments,  
16 AIA strongly supports the TTIP, and we urge the U.S.  
17 Government to make financial services an essential  
18 part of the negotiations. The TTIP would constitute  
19 the largest bilateral economic relationship in the  
20 world, as you know. Bilateral trade and investment  
21 in the insurance sector alone exceeds \$185 billion  
22 per year, and together the two economies represent

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1 74 percent of global premium income.

2 We envision a two-track approach to  
3 insurance in the TTIP, one track that elevates and  
4 supports the EU-U.S. Insurance Dialogue Project, and  
5 a second track for addressing international trade  
6 commitments and horizontal barriers to trade.

7 On the first track, as you know, insurance  
8 is a highly regulated industry. We have much to  
9 benefit from greater regulatory cooperation,  
10 understanding, and ultimately recognition of where  
11 the outcomes of our regulatory systems are the same.  
12 We believe that the TTIP agenda for insurance  
13 regulatory matters should not seek to duplicate the  
14 ongoing Insurance Dialogue. Rather, it should be  
15 complementary, providing political support to ensure  
16 milestones are met in a timely manner and that the  
17 current level momentum is maintained.

18 AIA has been engaged with the Insurance  
19 Dialogue since its inception, and we look forward to  
20 continuing to engage with the U.S. Government, the  
21 state regulators, and their counterparts in Europe.

22 We would like TTIP to recognize the

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1 progress that has been made in the Insurance  
2 Dialogue thus far, and lead to an annual report to  
3 leaders with a political-level mandate to dedicate  
4 the necessary resources to maintain momentum and  
5 produce results.

6           We call for this along with the political  
7 confirmation that the transatlantic insurance and  
8 reinsurance relationship is too important to let  
9 slip into stagnation.

10           Track 2 would also be important.  
11 Insurance trade between the U.S. and the EU marks  
12 one of the most important relationships in the  
13 global insurance system. While trade between the  
14 U.S. and the EU is generally open, there are  
15 improvements that could be achieved through a trade  
16 negotiation, including binding current market  
17 access. And perhaps more importantly, a  
18 transatlantic trade agreement can set global  
19 standards for other negotiations.

20           The TTIP should strive for full market  
21 access and national treatment of the insurance trade  
22 without exception, and both governments should seek

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1 to allow greater cross-border insurance trade  
2 access.

3           Track 2 could also address horizontal  
4 issues that are essential to insurance as well as  
5 other sectors. It should include standard-setting  
6 disciplines on state-owned enterprises, or SOEs. It  
7 should also ensure that the free flow of data be  
8 protected and that the ability of insurers to store  
9 and process corporate data in a manner that best  
10 fits their corporate model are enshrined in the  
11 TTIP.

12           Related to data flows, we believe that the  
13 EU's proposed general data privacy regulations  
14 proposals for collective redress could encourage  
15 abusive litigation that would raise cost for  
16 insurers and consumers substantially while doing  
17 nothing to protect data privacy. We hope that the  
18 TTIP process can be used to encourage the EU to  
19 implement a data protection plan that causes as  
20 little disruption to insurance trade as possible.

21           Finally, I want to suggest that the EU-  
22 U.S. ensure that provisions of the TTIP reinforce

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1 the high standards being pursued in the trade and  
2 services agreement for the TISA. AIA is a strong  
3 supporter of the TISA.

4 Because the EU and the U.S. are the two  
5 leading members of the TISA negotiations, I hope  
6 that both negotiations will support each other  
7 despite the different framework under which each  
8 negotiation is being pursued.

9 Insurance is a fundamental ingredient for  
10 creating a robust and seamless economy that can  
11 sustain growth and job creation on both sides of the  
12 Atlantic. As such, we hope that financial services  
13 and specifically insurance will be viewed as a key  
14 component of the TTIP.

15 Thank you very much. I will be happy to  
16 answer any questions you may have.

17 CHAIRMAN BELL: Thank you. Actually, my  
18 first question is if you could identify yourself for  
19 the purposes of the transcript.

20 MR. SIMCHAK: My apologies. My name is  
21 Steve Simchak. I am the Director of International  
22 Affairs at the American Insurance Association.

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1           CHAIRMAN BELL: Excellent. Dan, why don't  
2 you start us off with a question or two?

3           MR. MULLANEY: Good morning. Thank you,  
4 Mr. Simchak, for your testimony. In your written  
5 statement, you said that the TTIP should secure  
6 insurance commitments across all four modes of  
7 supply with a particular focus on the cross-border  
8 provision of insurance. You also suggested that  
9 TTIP should expand the forms of insurance that can  
10 be offered on a cross-border basis.

11           I was wondering if you might be able to  
12 elaborate on the importance of this mode of supply  
13 to the insurance industry and perhaps describe the  
14 forms of insurance that you would like to see  
15 covered via this mode in the TTIP agreement.

16           MR. SIMCHAK: Absolutely. Cross-one trade  
17 -- sorry, mode one services trade is cross-border  
18 services trade. And currently in trade  
19 negotiations, the U.S. seeks largely only  
20 reinsurance; marine, aviation, and transportation  
21 insurance; and services auxiliary to those type of  
22 insurance.

1           When you're talking about a lot of  
2 insurance flows between the U.S. and the EU, a lot  
3 of it is sophisticated insurance policies for  
4 sophisticated consumers, large corporations, and  
5 corporate policies. And although there isn't a  
6 large disruption between the U.S. and the EU on  
7 these international policies that span multiple  
8 countries, we believe that binding those commitments  
9 could set a good example for future trade  
10 negotiations.

11           CHAIRMAN BELL: So can you elaborate  
12 exactly what you mean by some of these sophisticated  
13 insurance policies? I mean where do they go beyond  
14 what we typically try to capture in our agreements?

15           MR. SIMCHAK: It could be a director and  
16 officer insurance, could be any range of insurance  
17 policies that are offered to corporate consumers.  
18 I'm not talking about statutory insurance, like auto  
19 insurance or those kinds of policies, or policies  
20 that are usually purchased by single consumers.  
21 These are policies for large corporations mostly.

22           CHAIRMAN BELL: Okay, thank you.

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1           MR. MULLANEY: You had mentioned in your  
2 testimony the importance of the free flow of data.  
3 I was wondering if you could maybe identify for us  
4 what you see as the significant present or potential  
5 barriers to the free flow of data that might be  
6 addressed in a TTIP negotiation.

7           MR. SIMCHAK: Absolutely. Well,  
8 generally, around the world we're seeing a growing  
9 trend of countries forcing the storage and  
10 processing of corporate data within their borders.  
11 And they do this for a number of reasons. It could  
12 be national security concerns, privacy concerns, a  
13 lot of different reasons.

14           But what we're saying is not that those  
15 concerns are unwarranted; they are very warranted.  
16 Those are important concerns that governments have  
17 to consider. That is their prudential  
18 responsibility, to consider and to make sure that  
19 their consumers are protected and that their  
20 financial stability is protected.

21           What we're saying is that where the data  
22 is processed and stored has nothing to do with how

1 the data is processed and stored. And so we would  
2 like to see a free flow of data permitted under the  
3 TTIP to allow that data to be processed and stored  
4 in a manner of choosing from the company.

5           Where we might see some issues with the  
6 EU, deal with the EU's proposed data privacy or data  
7 protection proposals, and that's the proposed set of  
8 regulations that have not come into practice yet.  
9 But we're watching it very closely. We are  
10 concerned that it could lead to the forcing of or  
11 the restriction of the free flow of data.

12           MR. MULLANEY: You mentioned the  
13 requirements where firms have to locate the data  
14 processing centers. Could you perhaps explain how  
15 the requirements for the location of data processing  
16 centers, how that increases costs or impedes your  
17 members' operations around the world?

18           MR. SIMCHAK: Absolutely. If you imagine  
19 an insurance company that operates in many different  
20 countries, let's say it operates in 75 countries, to  
21 maintain a data storage and processing center in  
22 each one of those countries raises costs enormously.

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1 Each one of those data processing centers is going  
2 to be enormously costly to the company.

3           So if you can maintain regional hubs, or a  
4 global hub, or utilize cloud services, that reduces  
5 the costs and creates a lot of economic efficiency  
6 for the company, which also in turn reduces costs  
7 for consumers. We also worry that by forcing the  
8 localization and the storage and the processing of  
9 data, it may limit the ability of a company to  
10 monitor for fraud and abuse of insurance.

11           CHAIRMAN BELL: All right, thank you very  
12 much, Mr. Simchak.

13           MR. SIMCHAK: Thank you.

14           CHAIRMAN BELL: If we could also now hear  
15 from the Property Casualty Insurance Association.  
16 If you can please identify yourself as well?

17           MR. SNYDER: Good morning. My name is  
18 Dave Snyder, Vice President, International Policy,  
19 for the Property Casualty Insurers Association of  
20 America that represents about 1,000 insurers and  
21 reinsurers based in the United States and around the  
22 world.

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1           Before I begin, I want to say that I am  
2 often on your side of the table as a member of a  
3 city council, and so I'll try to make my comments as  
4 useful to you as possible and reserve as much time  
5 for your questions, because I think that's the  
6 greatest area of progress that we can collectively  
7 engage in.

8           Clearly, businesses and individuals rely  
9 on insurance for their day-to-day activities. It is  
10 not hyperbole to suggest that every stakeholder that  
11 you will hear from today and tomorrow relies on a  
12 strong, healthy, and competitive insurance market of  
13 the kind we currently have in the U.S. and the EU.

14           Generally speaking, these markets function  
15 today pretty well. They interact pretty well, and  
16 they provide the kind of security that the public on  
17 both sides of the Atlantic needs. But there is a  
18 storm cloud on the horizon, and that storm cloud is  
19 something called Solvency II equivalent, a process  
20 under which a country like the U.S., if it is not  
21 deemed equivalent to European standards, our  
22 companies would be discriminated against in Europe,

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1 and that in turn would invite retaliation on the  
2 part of the U.S. against European companies.

3           So you would have this almost bizarre  
4 situation where well-functioning markets in fact see  
5 themselves actually deteriorate as a result of  
6 developments in the future. So that's why we think  
7 the TTIP is terribly important to remove this cloud  
8 from an otherwise bright horizon of two  
9 well-regulated insurance markets with financially  
10 strong companies protecting the security of the  
11 people that rely upon them.

12           I want to make a couple of additional  
13 comments this morning. First, there are some  
14 existing regulatory dialogues, and we hope that they  
15 will continue. But we do have an "ask." And the  
16 ask from the United States standpoint is that the  
17 U.S. be deemed equivalent, because in fact and based  
18 upon any objective outcomes measure, our regulatory  
19 system functions as well as the European system,  
20 although different. We have a state-based system  
21 and things are done differently here. But we do  
22 believe that our system is outcomes-based, and it

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1 will take a high-level, political, and legal  
2 determination to establish either that the U.S. is  
3 equivalent or that U.S. should be exempt from  
4 equivalence.

5           Secondly, we have already said that there  
6 are some opportunities to provide efficiency and  
7 particularly in the area of Solvency II equivalence,  
8 so I don't need to say much more about that.

9           Third, the notion of cross-border data  
10 flows. Data is the lifeline of the insurance  
11 industry in order to conduct its underwriting and  
12 claims settlement. It is important that we be able  
13 to use this data. We have an excellent record of  
14 protecting the data that is entrusted to us and  
15 intend fully to do so in the future.

16           However, when you scatter as a result not  
17 of technical IT security provisions, but rather as a  
18 result of political determinations, you scatter the  
19 data around the world, you in fact actually increase  
20 the risk of breach and, of course, increase the cost  
21 to insurers and ultimately their policyholders. So  
22 that's a very important issue to us.

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1           So you see there are some things in common  
2 that we have with the prior speaker. There is one  
3 major difference, however.

4           In 2009, the USITC issued a very, very  
5 important report on the barriers to trade arising in  
6 the property and casualty insurance sector, the  
7 sector that I am representing this morning. The  
8 reality is that those barriers to trade all arose  
9 out of regulations. So, in our view, it is not an  
10 issue of two tracks. In our view, regulation and  
11 market access are inextricably intertwined due to  
12 the comprehensive nature of insurance regulation.  
13 So we don't believe that there are two tracks. We  
14 would argue that there is one track and that track  
15 is mutual recognition.

16           Thank you very, very much for your  
17 attention this morning, and I would be pleased to  
18 answer any questions that you have.

19           CHAIRMAN BELL: Well, thank you very much,  
20 Mr. Snyder.

21           Dan, why don't you start us off with a  
22 question?

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1 MR. MULLANEY: Sure. Thank you,  
2 Mr. Snyder, for your testimony. As you noted, the  
3 2009 ITC report noted the significant losses in your  
4 industry as a result of firms -- a significant part  
5 of that are the result of firms foregoing a  
6 particular market because of barriers to trade.

7 Given the importance of the insurance  
8 sector in terms of economic growth, could you  
9 describe the overall gains that you would see from  
10 liberalization from removing some of these barriers?

11 MR. SNYDER: Right. We're a somewhat  
12 unique case in that we are not seeking particularly  
13 increased market access in Europe. Their market is  
14 fairly open, likewise the U.S. market is open to  
15 European insurers, and we already have a well-  
16 functioning transatlantic insurance market.

17 Our concern is this Solvency II  
18 equivalence which might, in fact, create a new  
19 barrier that doesn't exist today. So we're looking  
20 at TTIP as not only a one-time effort to achieve  
21 mutual recognition, but a process for ongoing mutual  
22 recognition so that as our two regulatory systems

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1 continue to do their jobs, and somewhat differently  
2 in Europe than the U.S., that we reduce friction  
3 between the two systems and we not allow new  
4 barriers to be created.

5           And that is our concern that we wanted to  
6 share with you this morning and our major concern.  
7 And we think the real value in TTIP would be a way  
8 to resolve once and for all the equivalence issue,  
9 ultimately to deem the U.S. equivalent so that we  
10 prevent the erection of trade barriers that first  
11 will cause discrimination against U.S. companies  
12 based in Europe, and then undoubtedly result in  
13 retaliation from the U.S. to European companies, the  
14 net effect being that not only the companies but  
15 consumers are harmed because a market that is  
16 functioning now actually has challenges and  
17 difficulties that arise in the future that we hope  
18 TTIP can help us prevent.

19           MR. MULLANEY: Thanks very much. You also  
20 I think had mentioned the importance of cross-border  
21 data flows.

22           MR. SNYDER: Yes.

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1           MR. MULLANEY: I think you hit on this a  
2 bit in your testimony. What would you see as the  
3 major factors inhibiting those flows? I think you  
4 mentioned globalization requirements or requirements  
5 that processing take place in particular  
6 jurisdictions. Are there other things that impede  
7 the cross-border flow of data?

8           MR. SNYDER: Again, it's an example of  
9 where the system is functioning pretty well today,  
10 but there is consideration on the other side of the  
11 Atlantic of some fairly severe restraints  
12 potentially on data flows. And we need data in  
13 order to underwrite so that we charge companies and  
14 individuals what they ought to be charged based upon  
15 their risk, large numbers, etc., etc. It's an issue  
16 of efficiency for the companies, which ultimately  
17 translates in lower costs for consumers.

18           But it is also an issue of data security.  
19 Interestingly enough, if we are able to collect and  
20 store and otherwise protect data in a relatively few  
21 number of locations to provide the necessary  
22 redundancy, but ones with full maximum security,

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1 that data is actually more secure than if it is  
2 required to be diffused and localized in different  
3 parts around the world where it may be more  
4 difficult to protect against intended or unintended  
5 breach or hacking.

6           So for all of these reasons, again, we  
7 view this as an opportunity to bring the European  
8 and American regulators and industry together for  
9 the common good of the public that we both very well  
10 serve today.

11           You know, the insurance industry, despite  
12 the financial crisis, despite years of recession,  
13 and despite unprecedented natural catastrophes, is  
14 actually better capitalized than it was before the  
15 financial crisis. And that's a real positive  
16 message for our regulators on both sides of the  
17 Atlantic. And there is extensive insurance commerce  
18 across the Atlantic, and we just don't want anything  
19 to interfere with that, even as we maintain the  
20 solid regulation that has created, helped us create  
21 the kind of markets that best serve our consumers on  
22 both sides of the Atlantic.

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1           CHAIRMAN BELL:  You focused on the  
2 Solvency II requirements that the Europeans are  
3 considering.  Are there any domestic developments,  
4 whether it's Dodd-Frank or state-based reforms, that  
5 you see complicating your business environment as  
6 well in the same way that you are concerned about  
7 Solvency II?

8           MR. SNYDER:  Well, as I said a minute or  
9 two ago, both systems are evolving, Europe through  
10 its Solvency II system, the U.S. through Dodd-Frank.  
11 We are able to function well in different regulatory  
12 systems.  But the problem that we see is that, and  
13 we want to prevent and we hope that TTIP can help us  
14 do that, is preventing one side of the Atlantic from  
15 trying to impose its system on the other.

16           So that's why the notion of equivalence is  
17 not a bad notion, but it should not be the details  
18 of regulation, but rather the outcome in terms of  
19 protecting consumers.  And we feel that if that were  
20 the standard, the U.S. would do quite well and  
21 Europe would do quite well under our system.  So  
22 that's why our focus is really on mutual recognition

1 and support for making it easier for regulators to  
2 share data about companies so that they can better  
3 regulate.

4           We don't want gaps in regulation. We  
5 don't want a repetition of the financial crisis in  
6 any way, shape, or form. So this isn't about in any  
7 way interfering with regulatory progress on both  
8 sides of the Atlantic. It is about how to make  
9 those two systems interact with as least controversy  
10 as possible and so that consumers can be assured  
11 that they have a strong financial security when they  
12 buy insurance.

13           CHAIRMAN BELL: Well, thank you very much,  
14 Mr. Snyder. I think we'll conclude your testimony,  
15 and we'll move to the next person.

16           MR. SNYDER: Thank you.

17           CHAIRMAN BELL: We have the representative  
18 for the Coalition of Service Industries.

19           MR. ALLGEIER: Thank you very much. My  
20 name is Peter Allgeier. I am the President of the  
21 Coalition of Services Industries. And I would like  
22 to express our appreciation for this opportunity to

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1 present the views of our members with regard to the  
2 Transatlantic Trade and Investment Partnership.

3           CSI members strongly support U.S.  
4 participation in the TTIP. We believe that a  
5 comprehensive TTIP would provide a major impulse to  
6 the long-term prosperity of the United States and of  
7 Europe and would strengthen the strong economic  
8 relationship that we have. Such an agreement also  
9 would be a major contribution to global economic  
10 growth by providing an unprecedented market for all  
11 countries' goods and services.

12           Now, with respect to services, the trade  
13 in services between the United States and Europe  
14 accounts for 36 percent of the total trade. And  
15 that actually understates the trade in services  
16 because it doesn't count the services that are  
17 embedded in trade in manufacturing goods and in  
18 agricultural goods.

19           The European Union exports, of its  
20 services, exports 25 percent go to the United  
21 States. In the case of the United States,  
22 30 percent of our services exports go to Europe, and

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1 we run a \$44 billion surplus in trade in services.

2 Now the details of our members' positions  
3 on the TTIP are included obviously in the written  
4 submission that we made, and so I will not go over  
5 those, simply to say though that that submission had  
6 three categories, market access, new rules, and  
7 regulatory cooperation.

8 What I'd like to do is to spend the rest  
9 of my time identifying the characteristics of what  
10 we would consider a generational contribution to the  
11 economy that could result from a TTIP.

12 The first characteristic is it needs to be  
13 a comprehensive agreement. And that means that it  
14 must cover all services, including financial  
15 services. And it must cover all methods of  
16 delivering the services.

17 Secondly, it is important that it be an  
18 agreement that reflects today's world. The last  
19 comprehensive negotiation for the rules on services  
20 was the GATS, which was more than 20 years ago.  
21 And, obviously, there have been dramatic and  
22 historic changes in the world since then as a result

1 of technology, as a result of changing business  
2 practices. So it's very important that the TTIP  
3 negotiators deal with these new issues, and among  
4 those are the issues created by the digital  
5 revolution and cross-border data transfer that a  
6 number of the presenters have already discussed,  
7 supply chains, state entities competing with  
8 commercial entities and commercial services, the  
9 clustering and integrating of services across  
10 services sectors, but also with agriculture and  
11 manufacturing.

12           The agreement should also contribute to  
13 the multilateral system. I mean given the  
14 importance of the U.S. and the European economies,  
15 in terms of the solutions that they come up with for  
16 addressing these 21st century issues, those are  
17 likely to become de facto the standard  
18 internationally. And so it is very important that  
19 as the TTIP negotiators work on these new issues,  
20 that they don't just try to solve the immediate,  
21 bilateral dimensions of these new issues such as  
22 data transfer, but that they look at what makes

1 sense in terms of if that were to be the  
2 multilateral standard. So I think this is a really  
3 great opportunity, but it's a great responsibility  
4 also for the negotiators.

5 I mentioned the integration of services  
6 with other sectors, with agriculture and  
7 manufacturing. As the negotiators in those areas  
8 deal with market access for manufacturing and  
9 agriculture, it is important that they think about  
10 and deal with, well, what about the complementary  
11 services and are we getting the market access and  
12 the rules for those complementary services.

13 Regulatory cooperation is perhaps the  
14 TTIP's greatest potential contribution. And there  
15 our feeling is that it is very important, it is  
16 essential that all sectors be included in regulatory  
17 cooperation, especially financial services. And  
18 this can be done without impinging upon the  
19 regulator's authority to regulate for their  
20 particular responsibilities.

21 Very quickly, timing, get the right  
22 balance between ambition and speed. We don't want

1 to relive DOHA, on the one hand, but we also don't  
2 want to have arbitrary deadlines.

3           The last point is one that was made  
4 earlier, the coherence with TISA. TISA provides  
5 opportunity to set the rules for the next decades.  
6 And it is important that the TISA and the TTIP be  
7 coordinated in terms of the negotiations so that one  
8 is reinforcing the ambition of the other.

9           So thank you very much for this  
10 opportunity to present these views, and let me  
11 assure you that members of the Coalition stand ready  
12 to assist in whatever way you deem appropriate.  
13 Thank you.

14           CHAIRMAN BELL: Thank you very much,  
15 Mr. Allgeier. I think your comments on DOHA  
16 resonate in particular, so it goes to heart. Well,  
17 I've read a lot about it. Apparently, it has  
18 languished.

19           Thank you very much. We do have a number  
20 of questions for you. Maybe if Dan would like to  
21 start off, that would be good?

22           MR. MULLANEY: Thank you, Mr. Allgeier,  
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1 for your testimony and for your detailed submission.  
2 In the submission, you propose that we seek in TTIP  
3 new market access commitments and high standard  
4 trade and investment rules, along with the  
5 discussion of regulatory compatibility.

6           Where do you see the greatest possibility  
7 for new market access for services in a bilateral  
8 agreement with the EU?

9           MR. ALLGEIER: Well, I think that it is,  
10 in some ways, it is less a case of the sort of  
11 traditional listing of categories, although that's  
12 very important that there be a really comprehensive  
13 listing of the categories of services provided.

14           But I think that the challenges are,  
15 number one, doing that in a way that as innovation  
16 takes place in the way in which services are  
17 delivered and, therefore, the services that can  
18 actually be delivered, that somehow that be written  
19 in a way that we don't have to keep going back and  
20 saying, well, this was a service that just didn't  
21 fit any of the categories. So they should be very  
22 broad categories and very open categories.

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1           The other thing is to really focus on the  
2 new ways in which services are delivered. And we  
3 have already heard the importance for the insurance  
4 industry of the data flows and preserving the  
5 flexibility to move data and to store it wherever is  
6 appropriate. That is not a specific insurance  
7 requirement. That is something that all of our  
8 members -- probably, that's their number one issue,  
9 whether it is express delivery or whether it is  
10 insurance or whatever the service, they need to be  
11 able to move the data.

12           The other one is moving people. Again,  
13 this is not just for one service area, but all of  
14 these companies move people internationally because  
15 they are truly global companies. And so that's the  
16 other area that would be very, very important.

17           MR. MULLANEY: And you had also mentioned  
18 new trade rules. I think during your testimony, you  
19 said we should be focusing on sort of the modes of  
20 supply made possible with newer technologies. What  
21 kind of new trade rules do you recommend we pursue  
22 in these negotiations?

1           MR. ALLGEIER: Well, obviously, the rules  
2 that would allow the flexibility to move data. But  
3 the other area that is very important is the  
4 competition between state-owned enterprises or  
5 state-sponsored enterprises and private, commercial  
6 companies that are providing the same service, and  
7 sort of the drift of state-owned enterprises into  
8 this sphere and claiming that these are state  
9 priorities.

10           If you look at express delivery, for  
11 example, and the way some of the postal companies  
12 are moving into the commercial area, to make sure  
13 that they don't have unfair advantages vis-à-vis  
14 private companies.

15           MR. MULLANEY: You mentioned also in your  
16 testimony the importance of coherence with TISA and  
17 that the bilateral negotiations should reinforce  
18 TISA. And that also even in connection with the  
19 bilateral negotiation, that there should be one eye  
20 on the multilateral aspects, not just fixing the  
21 bilateral but having an eye on the multilateral  
22 aspects.

1 I wonder if maybe some of the issues  
2 discussed already fit into those categories, but I'm  
3 wondering if you could maybe elaborate specifically  
4 on how a TTIP negotiation might best reinforce a  
5 TISA be sort of the multilateral trading system?

6 MR. ALLGEIER: Yeah. Well, I think the  
7 one example would be in terms of how one deals with  
8 state enterprises.

9 MR. MULLANEY: Yeah.

10 MR. ALLGEIER: And one might look and say,  
11 well, all right, we've got a problem with, I don't  
12 know, Deutsche Post or somebody, so let's figure out  
13 how we work with that. But I think it would be  
14 important to think there is a much broader range of  
15 state enterprises than just those that are involved  
16 in the, say, express delivery. And so to put down  
17 more general rules on how the competition between  
18 state enterprises and private enterprises would be  
19 governed would be a really important contribution  
20 from the TTIP.

21 MR. MULLANEY: Thank you.

22 CHAIRMAN BELL: I think the Department of  
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1 Commerce also has a question.

2 MR. JONES: Thank you, Doug.

3 Peter, you mentioned in the context of the  
4 SOEs the need for new rules and you also talked  
5 about DOHA language. And one of the concerns  
6 generally that people have with SOEs is the  
7 possibility for subsidization in some form of a  
8 state-owned enterprise by the government. And that  
9 was one area of the DOHA negotiations that also  
10 languished pretty much, was the subsidies in  
11 services discussions.

12 Have you addressed in your remarks or can  
13 you address that in the follow-ups to the remarks?

14 MR. ALLGEIER: In terms, I'm sorry, of the  
15 forced?

16 MR. JONES: Of the subsidization of  
17 services. There are no current good --

18 MR. ALLGEIER: Right.

19 MR. JONES: -- disciplines that exist for  
20 services subsidies.

21 MR. ALLGEIER: Well, obviously, we feel  
22 that that is one of the big financial advantages or

1 one of the big advantages that state enterprises  
2 have. I mean they have both financial advantages  
3 often because they are, you know, they don't have to  
4 go out in the market and raise their money, but they  
5 also have a lot of non-financial advantages. They  
6 may be subject to different regulations than the  
7 private firms with whom they are competing. And so  
8 we would want to look at both the financial and the  
9 non-financial advantages that state enterprises can  
10 have or do have in many cases.

11 CHAIRMAN BELL: Let me just conclude with  
12 one question. So I'm sure you're familiar with  
13 OECD-WTO recent exercise in value added, which I  
14 think one of the takeaways was quite striking in  
15 terms of, and you kind of alluded to this, the rule  
16 of services and manufacturing in particular.

17 I'm curious, you know, you have mentioned  
18 the desire to make sure we are comprehensive. Have  
19 you or your organization given any thought to kind  
20 of how we might systematically break some of that  
21 down so that we are ensuring that we are capturing  
22 all the different elements of the services and how

1 it is bundled into these things?

2           Clearly, that's an area where the United  
3 States is very competitive and one that we should be  
4 fully exploiting.

5           MR. ALLGEIER: Yes. Well, actually, I'd  
6 say two things. One, some of our members already  
7 have started to do that particularly with respect to  
8 the Trans-Pacific Partnership, and looking at supply  
9 chains, for example, the express delivery people can  
10 tell you very well all of the different elements  
11 that need to work for them to delivery somebody's  
12 goods, whether it is a manufactured good or an  
13 agricultural good to the consumer. And the retail  
14 people also have done that because they know all of  
15 the legs in their supply chain.

16           So I think that it's the type of thing  
17 where there could easily be a dialogue. And what we  
18 would like to do actually is to engage the  
19 agriculture people and the manufacturers and say,  
20 okay, if you're an auto company, what do you need  
21 all along to make sure that you're able to  
22 manufacture that product and get it into the market.

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1           But you're right, the WTO and the OECD  
2 have really shown how services are so embedded in  
3 manufacturing and in agriculture, and we'd be happy  
4 to spell that out with negotiators at any time.

5           CHAIRMAN BELL: I think that would be  
6 quite welcomed. I think we have concluded our  
7 questions. Thank you very much for your time.

8           MR. ALLGEIER: Thanks for the opportunity.

9           CHAIRMAN BELL: All right, if we could now  
10 have the Securities Industry and Financial Markets  
11 Association representative?

12          MR. BENTSEN: Thank you.

13          CHAIRMAN BELL: Please, go ahead, identify  
14 yourself.

15          MR. BENTSEN: Good morning. My name is  
16 Ken Bentsen. I'm the President of the Securities  
17 Industry and Financial Markets Association. I want  
18 to thank you all for holding this hearing today and  
19 allowing us to comment.

20                I'd like to focus my comments on three key  
21 issues: the importance of ensuring financial  
22 services is fully included in the market access and

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1 regulatory dialogues of the Transatlantic Trade and  
2 Investment Partnership when negotiations begin in  
3 July; the opportunity this agreement presents to  
4 create a framework and process for discussing  
5 important regulatory issues; and addressing  
6 arguments that have been made for excluding the  
7 financial services sector.

8           SIFMA strongly supports efforts to  
9 negotiate a comprehensive trade and investment  
10 agreement because it presents a unique opportunity  
11 to enhance the efficiency of the transatlantic  
12 financial markets, facilitate trade, create jobs,  
13 and result in lower cost products to investors and  
14 issuers.

15           By nearly every metric, the U.S. and EU  
16 economies in capital markets are inextricably  
17 linked. The U.S. and EU comprise the world's two  
18 largest economies, and its capital markets are the  
19 most efficient, deep, and liquid in the world.  
20 Cross-border portfolio flows between the two areas  
21 total nearly \$32 trillion annually or around \$87  
22 billion daily. Perhaps more impressive, the U.S.

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1 and EU economies account for cross-border direct  
2 investment of \$3.7 trillion in annual trade in goods  
3 and services of nearly \$1 trillion each year.

4           In order for the agreement to deliver its  
5 full potential, a regulatory framework for financial  
6 services measures must be an integral part of the  
7 partnership. Inclusion of these financial services  
8 issues would be a recognition of the integrated  
9 nature of the transatlantic financial markets and  
10 the essential role they play in supporting trade and  
11 investment flows between the two regions.

12           To improve transatlantic financial  
13 regulatory cooperation, we are asking for a more  
14 coordinated transparent process for addressing the  
15 development and implementation of financial  
16 regulations.

17           In particular, we are concerned about  
18 duplicative, incompatible, or conflicting  
19 requirements, regulatory uncertainty, and the impact  
20 these proposals will have on competition and  
21 consumer choice. Fragmented or conflicting  
22 regulation, even when the policy objectives are the

1 same, negatively impact the ability for market users  
2 and participants to raise capital, manage risk, and  
3 contribute to economic growth.

4           The agreement offers the opportunity to  
5 create a critically needed forum in which the  
6 framework can be established to coordinate the  
7 extensive, but often, too often disparate array of  
8 regulatory efforts on both sides of the Atlantic.  
9 It also provides the best opportunity to take  
10 ongoing, cooperative work with the EU further and  
11 address regulatory issues by creating a process for  
12 discussing them at an early stage with mechanisms to  
13 help resolve or at least mitigate the impact of  
14 regulatory differences.

15           We believe the establishment of a process  
16 and framework for developing regulations having a  
17 transatlantic impact on financial services would  
18 significantly enhance the efficacy of the financial  
19 reforms being adopted in conformity with the G20  
20 commitments.

21           A financial services regulatory framework  
22 between the U.S. and EU would also provide an

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1 important and unique opportunity to facilitate and  
2 guide efforts to promote consistent high-quality  
3 regulatory standards in global markets, particularly  
4 among faster growing developing markets.

5           We are concerned that U.S. authorities  
6 appear to be reluctant to embrace the regulatory  
7 cooperation elements of the TTIP for financial  
8 service, despite the fact that they will likely be  
9 extended to virtually every other sector of the  
10 economy.

11           Finally, we would like to address the  
12 arguments that have been made for excluding  
13 financial services from the regulatory portion of  
14 the agreement.

15           First, the financial services regulatory  
16 provisions in TTIP would facilitate rather than  
17 replace the regulatory coordination in the U.S.-EU  
18 financial markets regulatory dialogue, G20,  
19 Financial Stability Board, and other international  
20 standard-setting bodies.

21           Second, the level of coordination needed  
22 to minimize and avoid conflicts and differences in

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1 regulation would be guided by the U.S. and EU  
2 financial regulators and would not address issues  
3 unrelated to the ability of the U.S. and EU firms to  
4 operate in the two markets.

5 Third, the financial services regulatory  
6 provisions, as with other financial services  
7 commitments in TTIP, would be subject to the  
8 prudential measures exception which protects the  
9 regulatory prerogatives related to financial  
10 stability and investor protection.

11 Importantly, the writing of regulation and  
12 all decisions regarding consistency of regulation  
13 and recognition would remain with the U.S. and EU  
14 financial sector regulators.

15 Thank you for the opportunity to testify,  
16 and I would look forward to answering your  
17 questions.

18 CHAIRMAN BELL: All right, well, thank you  
19 very much, Mr. Bentsen. I'd like to turn to my  
20 Treasury colleague to start us off.

21 MR. BUCKLEY: Thank you, Mr. Bentsen, and  
22 thanks for coming today and your testimony. My

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1 first question is with respect to market access. Do  
2 your member firms or do firms headquartered in the  
3 EU or EFTA member states receive preferential access  
4 with regard to establishment or operation as  
5 compared to U.S. firms or your member firms?

6 MR. BENTSEN: Well, first of all, let me  
7 state SIFMA's member firms are both, are U.S. and  
8 non-U.S. domiciled firms who operate in the U.S.  
9 capital market, so we represent a broad array of  
10 firms, not just U.S. domiciled firms.

11 And if I understand your question  
12 correctly, you're asking do non-U.S. firms have a  
13 preferential treatment in operating in the U.S.  
14 market?

15 MR. BUCKLEY: In the EU market. Do EU  
16 headquartered firms receive preferential treatment  
17 vis-à-vis their U.S. competitors in terms of either  
18 establishment or operation? And include kind of  
19 EFTA maybe in there, too.

20 MR. BENTSEN: Well, you know, I might want  
21 to get back for the record in terms of specific  
22 licensing or registration requirements. Generally,

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1 I think we have found that non-EU firms have been  
2 able to, in most cases been able to set up  
3 operations and access that market. And, frankly, we  
4 see in both jurisdictions non-domiciled firms who  
5 are actively engaged.

6           Where there have been at times concerns  
7 with EU regulations that might, particularly in the  
8 private funds space, that could appear to be  
9 discriminatory, that has been meted out over time  
10 through negotiations between the U.S. and the EU on  
11 a case-by-case basis. We saw that recently with the  
12 credit rating issue where there was a conflict with  
13 the EC proposal. And I think this goes to our  
14 argument in favor of adding a provision in this  
15 trade agreement that creates a process by which  
16 these issues can be negotiated out on a regular  
17 basis, as opposed to a one-off basis, which has been  
18 the case.

19           Importantly, I would add, though, that we  
20 exclude -- we're not asking that the prudential  
21 issues be brought into this, because those were  
22 largely handled through the Basel agreements and by

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1 extension through the FSB. Arguably, though, there  
2 are conflicts that are occurring in the prudential  
3 space between the U.S. and the EU in areas related  
4 to application of Basel and areas related to  
5 treatment of capital by subsidiaries. But those  
6 were issues which because there is a Basel  
7 framework, we have decided to leave out.

8 MR. BUCKLEY: So, I'm sorry, your view is  
9 that if there are issues that are being addressed in  
10 a Basel or similar framework, they should not be  
11 subject to --

12 MR. BENTSEN: Prudential -- we are not  
13 arguing, in fact, we are saying that we think  
14 prudential issues, prudential regulations should not  
15 be included in TTIP. What we are rather arguing for  
16 is that functional regulatory issues for the  
17 securities markets and commodities markets should be  
18 included in TTIP. And the reason for that is  
19 because there is a forum already through Basel and  
20 the FSB to deal with the prudential issues.

21 MR. BUCKLEY: Let me ask you about  
22 cross-border supply of services of interest to your

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1 member firms. To what extent should they be  
2 addressed in a trade agreement, and maybe if you  
3 could give some specific examples?

4 MR. BENTSEN: Well, I think that, you  
5 know, I think where we are right now is we are  
6 seeing a pretty fluid transatlantic financial  
7 market. But, again, this goes back to where we  
8 think that this is, in order for services to flow  
9 freely between the two jurisdictions, given the  
10 highly regulated nature of the markets and the  
11 advent of a tremendous amount of new regulatory  
12 architecture both in the U.S. and the EU, that that  
13 creates a potential, it is actually creating  
14 fragmentation in the application of the new rules.  
15 And that fragmentation, in our view, will impede the  
16 free flow of services in various aspects of the  
17 securities market.

18 MR. BUCKLEY: Just one final question.  
19 Some previous speakers had talked about the  
20 importance of the cross-border data transmission and  
21 processing obligations. Do you have any views on  
22 that?

1 MR. BENTSEN: Yeah, now again we think  
2 that that is a critical provision that this  
3 agreement should take under consideration, that data  
4 transmission is not treated in such a way that would  
5 preclude, you know, that would require firms to  
6 restructure to move operations into one jurisdiction  
7 or another, that they would be able to have a free  
8 flow of that information. So we do think it is an  
9 important -- should be an important component of  
10 this agreement.

11 MR. BUCKLEY: No further questions.

12 CHAIRMAN BELL: Mr. Bentsen, thank you  
13 very much for your time.

14 MR. BENTSEN: Thank you.

15 CHAIRMAN BELL: We will now move to the  
16 representative from Home Instead, please. If you  
17 can please identify yourself, that would be  
18 appreciated.

19 MR. BAUMGART: Good morning. I want to  
20 thank you for the opportunity to testify this  
21 morning before the TTIP Committee. My name is  
22 Roger Baumgart. I am testifying on behalf of Home

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1 Instead Senior Care, which I serve as the Chief  
2 Executive Officer.

3           Our company is headquartered in Omaha,  
4 Nebraska, and is a world leader in providing  
5 non-medical home care services for seniors. We have  
6 nearly 1,000 franchises in the United States, in 16  
7 countries, including 7 EU countries. The network  
8 employs nearly 65,000 trained caregivers who provide  
9 about 50 million hours of elder care services  
10 annually.

11           As you enter into negotiations for a TTIP  
12 agreement with the European Union, Home Instead  
13 would formally request that the USTR focus on two  
14 particular home care related issues as you  
15 negotiate. The first issue deals with the EU  
16 value-added tax. The second matter deals with  
17 inflexible labor laws related to home care in  
18 the EU.

19           Our concern focuses on the impact of the  
20 VAT on home care services in the EU, which  
21 substantially inhibits our successful entry into  
22 many EU markets and dampens the prospect for normal

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1 business development by increasing the cost of care  
2 beyond the financial means of many families.

3 VAT rates vary substantially within the EU  
4 on our services, but are as high as 24 percent and  
5 as low as 19 percent. High VATs on home care have  
6 the following impact on Home Instead and other home  
7 care agencies. They raise the barrier of entry into  
8 the EU markets. They really cripple the ability of  
9 master franchisees to expand through the  
10 sub-franchises.

11 To illustrate the impact of the VAT, I'd  
12 like you to consider the following example. Home  
13 Instead has franchises in both Switzerland and  
14 Austria which are operated by the same individual.  
15 And until recently Switzerland did not assess a VAT  
16 on senior care services and its labor regulations  
17 were accommodating. As a result, the Swiss business  
18 flourished, generating nearly \$17 million U.S.  
19 dollars in 2012.

20 And in a stark contrast, Austria applied a  
21 20 percent VAT on senior care services and had some  
22 burdensome labor regulations. The combined impact

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1 has been to cripple the ability of Home Instead to  
2 establish a successful business in Austria, where  
3 operations have now been suspended. A 3-year total  
4 of revenue there was \$245,000.

5 So another example of that would be Italy,  
6 and we have elaborated on that example in our  
7 written testimony.

8 Lastly, I think it is important to  
9 consider that those countries that either have a low  
10 or no VAT tax on home care services, we have seen  
11 tremendous growth. Ireland is a great example of  
12 that. It is one of the smallest EU countries which  
13 exempts senior care from VA tax. And as a result,  
14 our partner there has achieved \$31 million in  
15 revenue, in 2012, which is an 18 percent annual  
16 growth.

17 In addition, some EU countries' global  
18 regulations written to protect full-time employees  
19 grant no exemptions or special consideration for  
20 businesses such as home care where part-time  
21 employment is the rule rather than the exception.  
22 As a result, home care businesses are compelled to

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1 pay full-time wages and extensive benefits and paid  
2 holidays to their employees. France is a great  
3 example of that, which we have elaborated on in our  
4 written testimony.

5           One very important point to consider is  
6 that EU senior care providers enter the U.S. market  
7 dealing with virtually no impediments. Sodexo, one  
8 of the world's largest companies, acquired  
9 ComfortKeepers and entered the U.S. market without  
10 the burden of a VAT or restrictive labor laws. We  
11 believe that the EU can and should treat American  
12 companies who engage in home care in Europe in a  
13 reciprocal open manner to how they are treated in  
14 the U.S.

15           Home Instead requests the USTR to  
16 negotiate on behalf of home care companies in TTIP  
17 in the following two ways: reasonable application of  
18 a VAT as it relates to home care and flexible labor  
19 regulations as it relates to home care. A uniform  
20 application of both modeled on the examples of  
21 Ireland would create a more friendly business  
22 environment.

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1           Thank you very much, and I am open to any  
2 questions.

3           CHAIRMAN BELL: All right, thank you,  
4 Mr. Baumgart. I'll turn to my State colleague to  
5 ask the first question.

6           MR. CRAFT: Thank you, Mr. Baumgart.

7           MR. BAUMGART: Yes.

8           MR. CRAFT: Can I ask you a two-part  
9 question, starting with the labor flexibility point?  
10 Have you seen over the course of the last several  
11 years as a result of the economic crisis in Europe  
12 there being any trend to increase flexibility in the  
13 labor market in any of the countries that you are  
14 operating in? And if you could expand a little bit  
15 on which markets you think have the greatest  
16 potential for your industry to expand, we'd be very  
17 interested in that. Thank you.

18           MR. BAUMGART: Well, I think that Ireland,  
19 again, offers a great example where they have made  
20 some modifications to the VAT tax but also have laws  
21 which recognize part-time employment and accommodate  
22 home care.

1           I think there is great potential, for  
2 instance, in Italy, which is the second oldest  
3 population in the world, but the labor laws there  
4 are quite un-flexible, don't recognize part-time  
5 employment at all, and in the case of the VAT in  
6 Italy, companies that do not employ their workers  
7 but have contract workers are subject to a 4 percent  
8 VAT, whereas companies like ours who employ their  
9 workers are subject to a 21 percent VAT. So what we  
10 are looking for here is some kind of parity to deal  
11 with.

12           CHAIRMAN BELL: Dan?

13           MR. MULLANEY: Yes. Thank you,  
14 Mr. Baumgart. A couple of questions. Am I correct  
15 in assuming that the rules on labor and the value-  
16 added taxes, I mean those affect I guess the local  
17 EU companies equally to you.

18           Do you have a sense as to how your  
19 European-based counterparts view the tax and the  
20 labor rules?

21           MR. BAUMGART: Yes. Again, in Ireland,  
22 they exempt home care services from the VAT. Many

1 of the EU companies work not with an employee model  
2 but with a registry model or a contract worker  
3 model. And in those cases, most are either subject  
4 to no VAT or a reduced VAT.

5 CHAIRMAN BELL: Just to expand on that, so  
6 one of the principles that we try to aspire to in  
7 these agreements is equal treatment in the sense  
8 that if you are competing in the European market,  
9 you're competing on the same basis as European  
10 firms.

11 This alternative registrar model, is that  
12 something that is open to you as well or is it  
13 something that is specific to European companies  
14 that are allowed to do that?

15 MR. BAUMGART: We have the opportunity.  
16 We could operate that way. But our policies are to  
17 employ our people, to provide them training, to  
18 provide oversight, and to provide a value-added  
19 service to the families of the people that we care  
20 for. And most of the American home care models are  
21 the same.

22 And part of our challenge is that, for

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1 instance, in Italy and some of the other countries,  
2 we're the first in the market to really initiate  
3 this concept and professionalize it. So that's a  
4 bit of a challenge as well.

5 MR. MULLANEY: Maybe I could ask one more  
6 question, and maybe you could draw on your  
7 experience in Ireland for this. Often there is to  
8 be a trade-off between VAT taxes and say a corporate  
9 income tax or personal income taxes, a sort of a  
10 trade-off, you lower the one, you may have to raise  
11 the other.

12 MR. BAUMGART: Yes.

13 MR. MULLANEY: Do you have any experience  
14 or view on the effect of these other taxes on your  
15 business as opposed to say the VAT?

16 MR. BAUMGART: Not really. I really don't  
17 have any opinions on any other taxes.

18 MR. MULLANEY: Thank you.

19 CHAIRMAN BELL: All right, well, thank you  
20 very much, Mr. Baumgart. I appreciate you coming in  
21 today.

22 MR. BAUMGART: Thank you for the  
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1 opportunity.

2 CHAIRMAN BELL: We will now move to UPS.

3 MS. LANE: Hi.

4 CHAIRMAN BELL: Great, please proceed.

5 MS. LANE: Good morning, and thank you for  
6 this great opportunity to testify on the benefits of  
7 launching the negotiations for a Transatlantic Trade  
8 and Investment Partnership agreement. My name is  
9 Laura Lane, and I am President of Global Public  
10 Affairs for UPS.

11 And on a very personal note, in my  
12 previous role in government, particularly at USTR in  
13 the mid-1990s, one of my tasks was actually looking  
14 at the economic benefits of negotiating a U.S.-EU  
15 free trade agreement. The agreement then made  
16 tremendous economic sense, and today it makes even  
17 greater sense. And so I am delighted to be here on  
18 a personal level, as well as on behalf of UPS, to  
19 talk about why the time is now to negotiate this  
20 agreement and conclude it as quickly as possible.

21 I am testifying, as I said, on behalf of  
22 UPS, a global leader in logistics, and a member of

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1 the President's Export Council and also as co-chair  
2 of the Transatlantic Business Coalition for Trade.  
3 The subject of today's hearing is of tremendous  
4 importance for UPS. For UPS, it is always about  
5 trade.

6           With well over a century of operations in  
7 the U.S. and EU combined, the transatlantic economy  
8 is one in which we saw our business grow from a  
9 simple messenger service on bicycles starting in  
10 1907 that grew into a tremendous transatlantic  
11 services possibility for us and provider, beginning  
12 in 1985 when we launched our first in-country  
13 operations in Germany, and have since expanded  
14 dramatically across Europe.

15           Our business has flourished, with UPS  
16 becoming one of the world's largest package delivery  
17 companies and a leading provider of specialized  
18 transportation and logistics services.

19           Just to put it in context, in our package  
20 cars, our trailers, our planes, and our sea  
21 containers, we move approximately 2 percent of  
22 global GDP in 220 countries around the world, so

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1 trade matters.

2           For us, the prospect of a Transatlantic  
3 Trade and Investment Partnership presents an  
4 exciting opportunity, and we are hopeful that the  
5 U.S. and EU leaders will be able to formally launch  
6 these negotiations and begin them in earnest in the  
7 early summer.

8           In terms of what it means at UPS, we did  
9 an analysis of what a comprehensive TTIP agreement  
10 would mean for us, and it translates into increased  
11 trade volume for us of approximately 131 million  
12 packages, supporting an additional 24,000 jobs over  
13 the next 10 years. And for us, those aren't just  
14 packages; those are our customers who want to expand  
15 and grow in the transatlantic economy.

16           And I have to tell you those are pretty  
17 impressive numbers of our operations, but we hope  
18 that they end up being conservative projections for  
19 what this trade deal will mean for our company. And  
20 so I am here to express UPS' strong, strong support  
21 for the TTIP.

22           Let me outline three key benefits we see

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1 from the agreement, benefits for our people, our  
2 customers, and global trade. Our people, we build  
3 our organization around our people, and believe that  
4 we do their best when their talents are encouraged  
5 to flourish in a dynamic business environment. With  
6 322,000 employees in the U.S. and over 43,000  
7 employees in Europe, we are a major transatlantic  
8 employer with vested interest in the prosperity of  
9 the economy and the employment markets on both sides  
10 of the Atlantic.

11           From the UPS perspective, the benefits of  
12 the TTIP are so easy to identify. The more trade  
13 there is, the more goods we move through our  
14 network, the more we can invest in innovative  
15 services and technologies and expand our business,  
16 and the more people we can employ in the U.S. and in  
17 Europe. In fact, we have estimated that every 22  
18 packages per day that cross a border supports 1 job  
19 in our UPS package operation.

20           Next, our customers. The TTIP has the  
21 potential to bring immense benefits for our  
22 customers, particularly small and medium-sized

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1 enterprises. Despite uncertain economic conditions  
2 in parts of the world, including the U.S. and the  
3 EU, the e-commerce revolution has allowed companies  
4 to land new customers abroad regardless of size. So  
5 a friction-free trading landscape is now more  
6 important than ever for our customers.

7           Trade facilitation will be a critical  
8 element of the TTIP's success and will be achieved  
9 through the removal of bottlenecks we find in  
10 international and specifically transatlantic supply  
11 chains and customs processes.

12           Let me be specific about what we seek in  
13 the TTIP: a higher harmonized de minimis threshold  
14 of \$800 will improve our customer's ability to take  
15 advantage of cross-border trade, particularly SMEs  
16 who might be looking to export for the first time;  
17 the establishment of a single window for the  
18 clearance of goods; and finally the TTIP provides an  
19 opportunity to develop a coherent incentive  
20 structure for trusted traders.

21           A recent study by the World Economic Forum  
22 suggested that the removal of these kinds of

1 barriers, particularly on the customs side, could  
2 increase global GDP by nearly 5 percent and trade by  
3 nearly 15 percent. We also see great opportunities  
4 for ground handling and healthcare logistics  
5 capabilities to bring down the cost of delivery of  
6 medical devices and pharmaceutical products to  
7 customers in both the U.S. and Europe.

8           And, finally, global trade. We see this  
9 as critically important for raising the standards  
10 for global trade disciplines across a wide range of  
11 areas that would be covered in the agreement. UPS  
12 has estimated that removing the remaining tariff  
13 barriers alone, which are critically important for  
14 our customers, would increase UPS trade volume by  
15 31 million packages over 10 years.

16           We see a U.S.-EU agreement as also  
17 providing important standards to be set in the  
18 negotiation and finalization of the trade  
19 facilitation agreement, as well as the plurilateral  
20 agreement on trade in services, which will be  
21 important to have the U.S. and the EU coming to  
22 agreement on the high standards that need to be set

1 in both those agreements.

2 UPS' vision is to bring businesses  
3 together through synchronized commerce. We want to  
4 leverage our global network to coordinate supply  
5 chains, distribution systems, and order management  
6 cycles, and allow all of our customers, big and  
7 small, to compete in the expanding global economy.

8 We stand ready to provide further  
9 constructive input or answer any questions you may  
10 have in advance of and throughout the negotiation  
11 process to ensure the TTIP's successful completion.  
12 And I would ask, as well, that you refer to our  
13 testimony that we submitted. We wanted to be as  
14 comprehensive and specific about some of the  
15 important commitments that could be negotiated in  
16 the TTIP that would have tremendous benefits not  
17 just for UPS but all of the customers that we  
18 provide logistics services for. Thank you.

19 CHAIRMAN BELL: All right, well, thank you  
20 very much, Ms. Lane. We do have some questions for  
21 you.

22 And we'll start off with Dan, if you'd

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1 like to begin?

2 MR. MULLANEY: Sure, thanks. And thanks,  
3 Ms. Lane.

4 In your written statement, you sketched  
5 out a vision for various measures to facilitate  
6 trade, including particularly mutual recognition  
7 arrangements. Are there specific trade-related, say  
8 as opposed to security-related, elements of the U.S.  
9 and EU trusted trader programs where you think we  
10 would benefit from greater cooperation? And are  
11 there specific entry forms or documents where we may  
12 look for greater coherence?

13 MS. LANE: We have a good foundation in  
14 terms of air cargo security and some of the mutual  
15 recognition that has already been accomplished  
16 between the U.S. and the EU in that area. We'd love  
17 to see more built upon those kinds of cooperative  
18 arrangements.

19 And so with respect to trusted trader  
20 programs specifically, it is achieving those kinds  
21 of synergies that you just outlined, making sure  
22 that the elements for what constitutes a trusted

1 trader in both the U.S. and the EU context are  
2 similar, that the treatment the trusted traders  
3 receive is similar in the U.S. and the EU so that  
4 trusted traders who use UPS for their logistics  
5 needs can move their goods back and forth  
6 frictionless and without unnecessary customs hold or  
7 any unnecessary delays.

8           Norm Schenk on our team can follow up with  
9 the specific elements that we think would be helpful  
10 to have incorporated in trusted trader programs, the  
11 elements of which could be captured in a trade  
12 agreement through the kind of principles that would  
13 be included in a negotiation of commitments. We  
14 would want to see implementation, though, that  
15 results in meaningful coordination between  
16 authorities on both the U.S. and European sides to  
17 have the end result being smooth movement of goods  
18 in and out, particularly for those entities who are  
19 trusted traders, and we can count on them following  
20 the rules and practices in the spirit and letter of  
21 the law.

22           MR. MULLANEY: Thank you. Can I ask

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1 another question?

2 CHAIRMAN BELL: Yes. Actually, I'll ask  
3 one and then let you ask one.

4 Some of the speakers earlier have referred  
5 to the importance of disciplining SOEs in the  
6 services portion of this. I'm curious if you have  
7 any thoughts given that some of those challenges  
8 typically show up in your industry.

9 MS. LANE: Yes. And, in fact, that is an  
10 important aspect of the negotiation, that we hope  
11 there is important disciplines that are negotiated  
12 to ensure that there is a level playing field. A  
13 number of postal entities particularly in the  
14 European Union have certain advantages that we don't  
15 think should be allowed to be used in the parcel  
16 delivery space.

17 We recognize that postal entities have  
18 universal service obligations with respect to the  
19 delivery of first class mail, but we don't believe  
20 that some of the customs benefits or that  
21 preferences or additional subsidies should be  
22 allowed to be used to cross-subsidize the provision

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1 of services in the package delivery space.

2           So it is important that there be a clear  
3 understanding that there has to be a level playing  
4 field. There can't be any kind of benefits afforded  
5 entities that are providing services in one part of  
6 their duties consistent with their universal service  
7 obligations to affect provision of service in the  
8 space where the private sector companies like UPS  
9 and others compete.

10           And so I think there has been some good  
11 progress made on those kinds of issues in the  
12 context of the Trans-Pacific Partnership  
13 negotiations that we would hope could be used as a  
14 baseline and in taking into account the unique  
15 circumstances of the European landscape being built  
16 into this agreement. Because at the end of the day,  
17 we think ultimately the consumer will benefit from  
18 having a more pro-competitive express delivery and  
19 parcel delivery service that isn't affected by  
20 anti-competitive practices by any entity in that  
21 sector.

22           MR. MULLANEY: One of the things I was

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1 interested in, in your written testimony you  
2 referred to some of the difficulties of working with  
3 27 different customs services in the European Union.  
4 Based on your experience with UPS and working with  
5 Europe, what do you think are some sort of realistic  
6 and meaningful changes that could be made to address  
7 that problem?

8           And do you think they could be done  
9 without changing the EU? Could it be done within  
10 the current EU legislative framework, or would it  
11 require different legislation?

12           MS. LANE: Yeah, there are some issues  
13 that will require legislative changes in order for  
14 them to be uniformly applied across all the member  
15 states. But I think there are also other important  
16 areas where just getting consistency between the  
17 member states in terms of how they follow through on  
18 some of the customs processes or some of the  
19 documentation required, just changes in  
20 documentation, for example, and some of the data  
21 elements that need to be included in creating  
22 greater uniformity there would have tremendous

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1 benefits in and of themselves.

2           That said, there are changes that will be  
3 required with respect to classification terms and  
4 requirements with respect to single-window approvals  
5 for products coming in and out of the European  
6 territory that will require legislative changes.

7           We actually think it is in Europe's  
8 interest to move to adopt those. And, in fact, in  
9 their green paper on parcel delivery, they are  
10 making an analysis right now of how to eliminate  
11 some of the frictions that occur at the borders  
12 between member states. And this would be an  
13 important means by which the agreement could  
14 accomplish some of those objectives, because they  
15 see it as an important driver for economic growth  
16 for them if they can facilitate greater e-commerce  
17 capabilities through a more robust express delivery  
18 and logistics capabilities in terms of the providers  
19 across the European landscape being able to meet  
20 those needs.

21           And so I see this being in the European  
22 Union's own interest to advance some of those

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1 region-wide changes with respect to, like I said,  
2 single-window approvals for products, some of the  
3 trusted trader data elements, and then looking at  
4 specific processes of the member state level which  
5 probably wouldn't require directive changes or  
6 regulatory changes, but would be meaningful in and  
7 of themselves just to facilitate the paperwork  
8 required to move things across borders.

9 CHAIRMAN BELL: Well, Ms. Lane, thank you  
10 very much for your time.

11 MS. LANE: Thanks.

12 CHAIRMAN BELL: I think now we'll move to  
13 the Personal Care Products Council representative.  
14 If you could identify yourself, that would be  
15 appreciated.

16 MS. KEMP: Good morning. I am Tonya Kemp,  
17 Director of International Trade Policy Global  
18 Strategies at the Personal Care Products Council.

19 On behalf of the Personal Care Products  
20 Council, I am pleased to testify on how the  
21 Transatlantic Trade and Investment Partnership can  
22 contribute to our industry's goals in providing

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1 global consumers with safe, innovative products, and  
2 expanding international trade and market growth.

3           The Personal Care Products Council is a  
4 leading national trade association representing the  
5 global cosmetic and personal care products industry.  
6 It was founded in 1894, and we have more than 600  
7 member companies in manufacturing, distribution, and  
8 supply the vast majority of finished personal care  
9 products marketed in the United States. Our members  
10 continually strive to uphold and surpass the most  
11 stringent regulatory and product integrity standards  
12 worldwide.

13           The U.S. and European industries are  
14 highly integrated. We have wide robust trade and  
15 investment flows and enjoy growing markets  
16 domestically and abroad. In 2011, the combined  
17 U.S.-EU market for cosmetics exceeded \$150 billion  
18 in retail sales. Two-way trade in cosmetics and  
19 personal care products approached \$6.5 billion in  
20 2011, with EU exports to the U.S. being twice the  
21 amount of U.S. exports to the European Union at \$4.2  
22 billion.

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1           We believe the TTIP offers a unique  
2 opportunity to resolve longstanding regulatory  
3 divergences between the United States and the  
4 European Union that serve as barriers to innovation  
5 and trade without contributing anything to the  
6 health or safety of consumers.

7           The elimination of regulatory divergences  
8 between the U.S. and the EU through alignment and  
9 mutual recognition of regulations would not only  
10 significantly reduce industry costs, but also  
11 facilitate market access and trade, especially for  
12 small and medium-sized companies.

13           Greater alignment of our regulations would  
14 also facilitate future regulatory cooperation  
15 between our two jurisdictions and serve as a model  
16 for future bilateral and multilateral trade  
17 initiatives.

18           Therefore, we support an ambitious agenda  
19 for the TTIP that eliminates existing regulatory  
20 barriers for cosmetics and personal care products  
21 and also establishes new models for cooperation that  
22 will allow U.S. and EU regulators to address

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1 emerging science and technological issues affecting  
2 our industry with a view towards promoting  
3 innovation and avoiding future regulatory  
4 divergences.

5           In considering industry's objectives for  
6 the TTIP, it is important to note that U.S. and EU  
7 regulatory approaches on cosmetics and personal care  
8 products are fundamentally similar. They assure  
9 equal, high standards of safety and quality and are  
10 very much aligned on most, but not all,  
11 requirements.

12           In addition, our regulators' shared  
13 interests in regulatory harmonization, joint  
14 strategies for global engagement, and experience  
15 with regulatory cooperation should facilitate  
16 positive outcomes in the TTIP for mutual recognition  
17 and acceptance of U.S. and EU standards in the  
18 regulatory requirements for cosmetics.

19           Our key objectives for this agreement are:  
20 the harmonization of U.S. and EU definitions for  
21 cosmetics, ensuring that the U.S. definition would  
22 also include non-dosage OTC products such as

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1 sunscreens; mutual recognition of cosmetic  
2 ingredients and conditions of their use;  
3 harmonization of testing requirements; harmonization  
4 or mutual recognition of labeling requirements;  
5 revision of the EU's Annex II and its automatic ban  
6 of ingredients; elimination of requirements for  
7 notification and labeling of nanomaterials; and  
8 enhanced cooperation and implementation on decisions  
9 taken in the International Cooperation on Cosmetics  
10 Regulation, the ICCR.

11           In conclusion, the Personal Care Products  
12 Council appreciates this opportunity to present our  
13 industry's objectives for the TTIP. We believe that  
14 the fundamental similarity of U.S. and EU regulatory  
15 systems, together with the high degree of trust and  
16 confidence by U.S. and EU policy makers and their  
17 consumers in each other's regulations and products,  
18 should serve as a favorable foundation to achieve  
19 further regulatory alignment and mutual recognition.  
20 Thank you.

21           CHAIRMAN BELL: Thank you, Ms. Kemp. We  
22 have a number of questions.

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1 I think we will start off with our HHS FDA  
2 representative. Go ahead.

3 MS. VALDEZ: Thank you, just a couple.  
4 The first one will be kind of a two-part question,  
5 if you would. You noted a number of changes in EU  
6 and U.S. rules that your industry is seeking.

7 What change or changes do you believe  
8 could have the greatest impact on trade? And of  
9 those, how amenable do you think the EU regulators  
10 and the EU industry would be to making the sorts of  
11 changes that you are indeed recommending?

12 MS. KEMP: I think the one area that seems  
13 to -- well, there are two areas that I think have  
14 the greatest impact. Labeling is a big issue around  
15 the globe because, as you know, the labeling costs a  
16 lot of money to companies to create unique labels  
17 for each country. The EU label tends to go wider  
18 around the world than the U.S. label does. But just  
19 to have that harmonized would save millions of  
20 dollars for companies to be able to just use one  
21 label across the borders.

22 The second is the definition. And that is

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1 actually more towards the U.S. side because we are  
2 one of the only countries that make sunscreens an  
3 over-the-counter drug. And so we get various  
4 requests from around the globe wondering why the  
5 U.S. has that policy in place. And that, again, is  
6 another labeling thing, and if drafted, that would  
7 save a lot of time and energy on both sides.

8           And how amenable to these? I think for  
9 the mutual recognition, I think on both sides they  
10 would be open to the discussion. It is still very  
11 unclear how the regulators would react and how open  
12 they would be. For some of the labeling  
13 requirements, the EU is now mandating or starting in  
14 July requiring a nano-ingredient list on its labels.  
15 We don't have that in the U.S. There are no safety  
16 concerns with nano-ingredients. So it becomes a  
17 barrier to trade. And when we did ask DG SANCO  
18 about it, they said it was just to inform consumers;  
19 yet, they also admitted that when they required GMO  
20 to be listed on food products, that those items were  
21 no longer sold in the EU and consumers stopped  
22 buying them. So it has become a big concern for us.

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1 MS. VALDEZ: And one more, if I may,  
2 because you mentioned ICCR. How does it work that  
3 you envision regulators that are undertaking in TPP  
4 actually complement the current work to minimize  
5 trade barriers among the United States, EU, Japan,  
6 and Canada that is taking place under the ICCR  
7 Forum?

8 MS. KEMP: We think it would be a great  
9 complement. We think a lot of the discussions  
10 taking place in the ICCR and the reports submitted  
11 are posted but they are not enacted; we are hoping  
12 that through this bilateral agreement, it will give  
13 more teeth to our efforts and help enact those  
14 policies that we have been working on in the ICCR.

15 MR. MULLANEY: Thank you. Let me ask you  
16 one question. As you mentioned, the trade between  
17 the United States and the European Union in the  
18 cosmetic and personal care products is already very  
19 significant. I think it approached \$6.5 billion in  
20 2011.

21 Do you see -- are the larger benefits of  
22 reducing regulatory barriers and improving

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1 regulatory coherence, are the biggest benefits to be  
2 had in transatlantic trade? In other words, could  
3 we boost those numbers? Or do you think there are  
4 benefits to be had in third-country markets?

5 MS. KEMP: Both. I think our main -- with  
6 the regulatory changes, it is mostly cost savings  
7 between the U.S. and the EU, and regulatory burdens.  
8 That takes a lot of time and effort for each company  
9 to handle and go through the different regulations.  
10 And it is something as the EU makes policies, the  
11 other countries around the globe tend to replicate  
12 the EU. So it would just help us with more  
13 harmonization around the globe. If the two can  
14 agree, then it would broaden us around the world.

15 CHAIRMAN BELL: All right, well, thank you  
16 very much, Ms. Kemp.

17 MS. KEMP: Thank you.

18 CHAIRMAN BELL: We'll now move onto the  
19 Maine Citizen Trade Policy Commission. And if you  
20 could please introduce yourself?

21 MS. TREAT: Good morning. Thank you very  
22 much. I am Maine Representative Sharon Treat, and I

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1 co-chair the Maine Citizen Trade Policy Commission,  
2 and we very much appreciate this opportunity today.

3           The commission was established in 2003 by  
4 statute to provide review ongoing of the impact of  
5 trade policies on Maine's state and local laws,  
6 business environment, and working conditions. It is  
7 a 22-member commission including state legislators  
8 from both parties, multiple state agencies, and many  
9 people representing different interests such as  
10 labor, health, farming, environment, and business.

11           Maine strongly supports international  
12 trade when fair rules of trade are in place, and we  
13 seek to be an active participant in the global  
14 economy. When, however, provisions in trade  
15 investment agreements could undermine Maine's  
16 constitutionally guaranteed authority to protect the  
17 public health, safety, and welfare, under our system  
18 of federalism we do speak up, and we have spoken up  
19 particularly in our written comments on a large  
20 number of issues, including affordable medicines,  
21 procurement, regulation of insurance, environmental  
22 policies, and others.

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1           In these comments, I will limit them to a  
2 couple of the issues. First, we think that  
3 investment policies and investor-state dispute  
4 resolution in particular do not belong in a U.S.-EU  
5 agreement, period. And I am going to quote the  
6 representative from the Maine Attorney General's  
7 Office at our last meeting on Friday when she said  
8 that negotiations, when they commence on the TTIP,  
9 it should not be a given that the investment chapter  
10 is included.

11           Independent, capable, and fair judicial  
12 systems are well established in both the U.S. and  
13 the EU, and there is no reasonable justification for  
14 including investor-state resolution in the TTIP.  
15 Further, the goals set by the TTIP High Level  
16 Working Group to harmonize differences between the  
17 U.S. and the EU to favor the most investor-friendly  
18 side of the Atlantic raised great concerns with us,  
19 both in terms of getting rid of or ignoring changes  
20 in reforms, in the interpretation of these policies  
21 over the years, and also because it would give  
22 greater authority to arbitrators to ignore state

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1 practice and compensate investors based on doctrines  
2 developed by arbitrators and not the courts or  
3 constitutional system, especially with corporations  
4 investing on both sides of the Atlantic to the tune  
5 of \$3.7 trillion. We have great concerns that  
6 corporations, their subsidiaries, would use this  
7 system to challenge rules and regulations in our  
8 state.

9           Second, I'd like to focus on tobacco  
10 regulation, which we believe should be excluded or  
11 carved out of any agreement in language that is  
12 clear, broad in scope, and effective.

13           In particular, tobacco regulation and  
14 enforcement by U.S. states must be protected. The  
15 Maine Citizen Trade Policy Commission has concerns  
16 on several fronts, including investor challenges,  
17 tariffs, and any exception language if it looks  
18 something like what was vetted by the USTR with  
19 respect to the Trans-Pacific Partnership, which did  
20 not protect states at all. It did not protect by  
21 tax, customs, or licensing authorities, and it was  
22 unacceptable and would not work.

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1           On the issue of tariffs, we want to point  
2 out that the pricing of tobacco products is a key  
3 policy for regulation of tobacco in reducing  
4 smoking. In our own state, we reduced youth smoking  
5 by 60 percent over a period of 6 to 7 years largely  
6 because of cost increases in tobacco pricing. And  
7 we urge you not to reduce those tariffs in this  
8 potential treaty.

9           Third, we want to point out that U.S.  
10 states as sub-central entities should be explicitly  
11 excluded from any procurement provisions in trade  
12 agreements. The TTIP should not bind states without  
13 their explicit approval and opt-in so that state  
14 "Buy American," "Sweat Free," and other procurement  
15 rules continue to be enforceable.

16           And I'd just note that in Maine, we had a  
17 law passed in 2009 that provides that our  
18 legislature must pass a law before the governor may  
19 bind the state in any agreement.

20           Finally, the USTR should not seek to fast-  
21 track trade promotion authority for the TTIP and  
22 should increase consultation and transparency in the

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1 trade negotiation process, particularly with respect  
2 to state governments.

3           Currently, state officials have limited  
4 access to vital information about trade policy  
5 decisions and lack a meaningful role in forming U.S.  
6 positions on trade negotiations, even though we are  
7 required to conform our democratically enacted  
8 domestic policies to the constraints and priorities  
9 set in trade and investment pacts such as TTIP. My  
10 participation today as the only state-level  
11 participant in this hearing is the exception that  
12 proves the rule.

13           The Maine Citizen Policy Commission, a  
14 state government authority, has experienced over the  
15 years great difficulty even in scheduling timely  
16 briefings on USTR policies and activities. Most  
17 recently, we have been unable to get USTR officials  
18 to participate in a briefing on possible tobacco  
19 policies.

20           We urge a more transparent and  
21 consultative process, and are ready to participate  
22 in that at your request. Thank you very much.

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1           CHAIRMAN BELL: All right, well, thank you  
2 very much, Ms. Treat, for your comments. I think we  
3 do have some questions for you.

4           Dan, would you like to start off, please?

5           MR. MULLANEY: Yes. Thank you, Ms. Treat,  
6 for your testimony. We saw from the submission that  
7 the commission has taken a strong position against  
8 the inclusion of healthcare pricing provisions in  
9 the trade agreements.

10           I was wondering is this opposition based  
11 on a specific concern that inclusion of the pricing  
12 provisions in an FTA could have effects on Maine's  
13 state regulation and public health provision for  
14 medicines, or is it a general policy statement or --

15           MS. TREAT: Absolutely. I mean those  
16 pricing provisions, you know, any policy that is  
17 going to raise the cost of medicines in this country  
18 and in particular in the state where I represent  
19 people is of concern. And particularly when we have  
20 -- even where there are carve-outs that might carve  
21 out some state regulations, for example, in the  
22 Medicaid price negotiation process, we have great

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1 concerns as we are working towards implementing  
2 so-called Obamacare that we will not have basically  
3 affordable medicines in the future.

4           And we have to have policies that  
5 recognize that our current pricing structure is  
6 unsustainable. We cannot subsidize those costs. My  
7 state right now is going through a budget process  
8 where we are trying to cut unbelievable amounts of  
9 money from our budget, mostly coming out of the  
10 healthcare budget, and a lot of that budget is  
11 access to medicines.

12           CHAIRMAN BELL: You had another question?

13           MR. MULLANEY: Let me take advantage of  
14 your presence here to ask are there companies in  
15 Maine that have a particular interest in potential  
16 market access opportunities for goods and services  
17 in the EU? If so, are there any particular  
18 obstacles to trade and investment in the EU that we  
19 should be focusing on?

20           MS. TREAT: I'm sure there are. I mean we  
21 have actually an increasingly active international  
22 trade role as part of our economy. I mean we have

1 very specialized machining tools. We have a focus  
2 on some biotechnology. We have specialty foods, not  
3 just lobster, which is traded already to the EU. So  
4 I think that there absolutely are those issues that  
5 we could certainly consult with the International  
6 Trade Center and get back to you with additional  
7 specifics.

8           I think our concern is not in -- is in the  
9 effort to make things easier to trade, and that is  
10 certainly a positive outcome, we do not step on what  
11 are incredibly important health, safety, even  
12 financial regulations. I chair the insurance  
13 committee in our legislature. Insurance regulation  
14 is primarily left to state governments. And yet we  
15 see an increasing role of these treaties, including  
16 we just heard today about financial regulation  
17 stepping into that policy space and overturning it,  
18 and especially when combined with the investor-state  
19 dispute resolution provisions, which do not have to  
20 abide by our constitutional standards, are not going  
21 through a court system, are relying on arbitrators  
22 and arbitrators' precedent to the extent that they

1 do follow precedent, that raises significant  
2 concerns for us in terms of being able to actually  
3 protect the public health, protect consumers,  
4 protect the environment of which we are so proud,  
5 and so much of our economy is so dependent on the  
6 environment being what it is in the state of Maine.  
7 Thank you.

8 CHAIRMAN BELL: All right, Ms. Treat.  
9 Well, thank you very much for your time.

10 If we can now move to the Armenian  
11 National Committee of America, please, and if you  
12 can also identify yourself.

13 MS. NAHAPETIAN: Hello, good morning. My  
14 name is Kate Nahapetian. I am the Government  
15 Affairs Director of the Armenian National Committee  
16 of America, the largest advocacy -- Armenian  
17 American advocacy organization. We welcome the  
18 opportunity to share our views regarding U.S.  
19 negotiating priorities and the proposed  
20 Transatlantic Trade and Investment Partnership with  
21 the European Union.

22 I will summarize the concerns we outlined

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1 in our joint statement with the American Hellenic  
2 Institute and the Hellenic American Leadership  
3 Council, leading organizations of the Greek-American  
4 community.

5 Our concerns relate primarily to the  
6 Turkish government's stated interest in joining this  
7 agreement, although Turkey is not a European Union  
8 member, as well as public comments by Turkish  
9 leaders and others regarding a possible U.S.-Turkey  
10 free trade agreement.

11 Although the President's notice to  
12 Congress of his intention to negotiate this  
13 agreement made it clear that it would be between the  
14 United States and the European Union and inclusion  
15 of Turkey in this process would require additional  
16 notice to Congress, we wanted to share our concerns  
17 nevertheless.

18 In the course of any talks or negotiations  
19 related to such agreements, we call on the President  
20 to be guided by the Trade Act of 1974, which affirms  
21 our nation's commitment to, quote, "Establish  
22 fairness and equity in international trading

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1 relations," end quote, a principle that the  
2 government of Turkey regularly violates.

3           More specifically, we call upon the Obama  
4 Administration to ensure that the TTIP-related  
5 agreements and any bilateral agreements that may  
6 directly or indirectly involve the Republic of  
7 Turkey require as a statutory precondition that the  
8 Turkish government (1) unconditionally lift its  
9 illegal economic blockade of Armenia; (2) fully  
10 withdraw its unlawful and brutal military occupation  
11 of Cyprus, an EU member; and (3) immediately end all  
12 obstacles to trade, investment, and other forms of  
13 commerce it currently imposes on Cyprus and Armenia.

14           The blockade of Armenia, a land-locked  
15 nation, which has been in force for more than two  
16 decades and prevents an important East-West trade  
17 route, is among the longest standing in modern  
18 history. This blockade is all the more  
19 objectionable since Turkey's active economic  
20 aggression is targeted against the very Armenian  
21 people that Turkey's predecessor state, the Ottoman  
22 Empire, attempted to exterminate during the Armenian

1 Genocide.

2           Within days of signing an agreement in  
3 October 2009 to end its blockade of Armenia,  
4 regardless of any progression in the Karabakh peace  
5 process, Turkey reneged on that agreement and  
6 insisted that it would not end its blockade until  
7 Karabakh was resolved in Azerbaijan's favor.

8           The World Bank, the U.S. State Department,  
9 and European Parliament reports have all outlined  
10 the devastating impact of Turkey's blockade against  
11 Armenia. The traditional railroad linking Armenia,  
12 Turkey, and Azerbaijan could be operational within  
13 days. But instead of allowing this rail system to  
14 run, Turkey is financing the construction of an  
15 entirely new railroad system that would circumvent  
16 Armenia and cost hundreds of millions of dollars.

17           In yet another example of Turkey's effort  
18 to hamper rather than promote free trade, Turkey  
19 invoked the rarely used Article XIII of the  
20 Marrakesh Agreement establishing the WTO when  
21 Armenia joined the WTO in 2002, meaning that it  
22 would not abide by any WTO obligations as they apply



1 to Armenia. Article XIII has been invoked only  
2 eight times, and only three are still remaining, one  
3 of them being Turkey's invocation against Armenia.

4 We are particularly concerned about  
5 Turkey's unwillingness to comply with previous trade  
6 agreements. Since its 2005 Customs Union Agreement  
7 with the European Union, Turkey has refused to  
8 implement the requirements of beginning to normalize  
9 relations with Cyprus, an EU member, and has refused  
10 to open its ports and airports to Cyprus. Turkey  
11 must demonstrate that it no longer flagrantly  
12 violates trade obligations before being granted any  
13 preferential treatment in this negotiating process.

14 The implementation of any provision of  
15 such agreements related to Turkey should be  
16 conditional upon official annual certification by  
17 the President and subsequent confirmation by the  
18 Congress that Turkey has, over the past 12 months,  
19 fully complied with these conditions. These  
20 requirements, if enforced, will support and  
21 strengthen U.S. leadership in promoting a  
22 multilateral, rule of law based trading system, and

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1 more broadly in encouraging compliance by Turkey and  
2 other countries with international agreements to  
3 promote trade.

4           We welcome the U.S. Trade Representative's  
5 commitment to expansion of U.S. trade and investment  
6 based on fairness and equity in international  
7 trading relations that require respect of rule of  
8 law. We hold, however, that in the case of Turkey,  
9 we would not advance our national interest or  
10 promote our core values by rewarding a nation that  
11 so egregiously and flagrantly undermines the  
12 integrity of the global trading system by occupying  
13 a European Union member state, refusing to end its  
14 two decade blockade of landlocked Armenia.

15           Moreover, any inclusion of Turkey in an  
16 already complex process involving multiple EU member  
17 states would create serious complications and  
18 disruptions to that process. We welcome the  
19 opportunity to meet with the Trade Policy Staff  
20 Committee to discuss these priorities in more  
21 detail. Thank you very much for this opportunity.

22           CHAIRMAN BELL: Thank you very much,

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1 Ms. Nahapetian. I think we have a question for you.

2 Dan, would you like to start?

3 MR. MULLANEY: Sure. Thank you very much  
4 for your testimony. I'm wondering, we'd be  
5 interested in hearing your views on any discussions  
6 that Armenia may be having with the European Union  
7 on association agreements or other trade agreements  
8 with the European Union.

9 MS. NAHAPETIAN: Yes. Armenia has been  
10 progressing steadily with its negotiations with the  
11 European Union. They recently enhanced that  
12 process. And it is something that the Armenian-  
13 American community has been very pleased with the  
14 progress that we have seen with the European Union,  
15 but we would like to see more progress on the  
16 U.S.-Armenia front. So it is something that we have  
17 been trying to encourage is a TIFA between the  
18 United States and Armenia. There isn't one in  
19 place, and we think that that would be very  
20 beneficial to the trading relationship. That is  
21 something that we, as Armenian-Americans, are  
22 focused on.

1           And also a tax treaty between the U.S. and  
2 Armenia is something that we have been pursuing but  
3 haven't had much luck with that. So we would  
4 welcome help on that front. We think that that  
5 would improve and help increase trade between the  
6 U.S. and Armenia.

7           CHAIRMAN BELL: Are there other dimensions  
8 in terms of increasing U.S.-Armenia investment in  
9 trade that you would also like to comment on?

10           MS. NAHAPETIAN: Other aspects to promote  
11 trade?

12           CHAIRMAN BELL: Yes, you mentioned TIFA  
13 and the tax.

14           MS. NAHAPETIAN: Yes.

15           CHAIRMAN BELL: Are there others?

16           MS. NAHAPETIAN: I think those are our top  
17 priorities. And what we have seen, there is an  
18 economic task force between the State Department and  
19 Armenia, and they do meet twice a year, only with  
20 top representatives once a year. And we haven't  
21 seen any real tangible results. And we think it  
22 would be helpful to have that trade relationship as

1 part of the USTR, which specializes in trade, rather  
2 than the State Department that doesn't have as much  
3 experience on that front.

4           And we have heard that sometimes Armenia  
5 is hesitant to pursue requests on trade issues  
6 through the State Department-run mechanism because  
7 there is a fear that when they ask for initiatives  
8 that will help promote trade, the response they'll  
9 get back is, well, what are you willing to give on  
10 this political issue in order to get this trade  
11 request.

12           So that's another reason that we really  
13 have been pushing to have this trade relationship be  
14 led by the U.S. Trade Representative, rather than  
15 the task force which hasn't been as successful as we  
16 would have liked.

17           MR. MULLANEY: Thanks. Maybe I'll just  
18 pursue one other question along those lines. Do you  
19 have a sense whether in the context of a TIFA, a  
20 trade investment framework agreement, or others, are  
21 there particular barriers to trade in the United  
22 States or things that are preventing trade and

1 investment increases between the United States and  
2 Armenia that we should be focusing on in particular?

3 MS. NAHAPETIAN: Well, something that we  
4 have heard from people working on trade-related  
5 issues in Armenia is that the tax issue, the double  
6 taxation risk is an issue that has been brought to  
7 our attention. So they have recommended that we  
8 pursue that front.

9 And I guess some people have said the  
10 reason that many people are expressing this concern  
11 that there is a double taxation issue is because  
12 they don't want to bring attention to themselves to  
13 say that they don't want for the issue to actually  
14 -- they fear that by bring attention to it, that  
15 they might then be taxed more. So that even though  
16 you might not be hearing complaints about it, it is  
17 an issue. Thank you.

18 CHAIRMAN BELL: All right, thank you very  
19 much.

20 At this time, can we move onto the Action  
21 on Smoking and Health representative? And if you  
22 could please identify yourself?

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1           MR. BOSTIC: Thank you and good morning.  
2 My name is Chris Bostic. I am the Deputy Director  
3 of Action on Smoking and Health. We're an  
4 anti-tobacco NGO that has been around since 1967.  
5 And I am here today with a very simple proposal.

6           We would like to urge the United States  
7 government to exempt tobacco products from the  
8 Transatlantic Trade and Investment Partnership.  
9 This is in order to retain policy space for all TTIP  
10 partners to address this most destructive cause of  
11 preventable diseases.

12           This is not an anti-trade message. But  
13 the goals and benefits of trade are simply not  
14 compatible with tobacco. Trade has a potential to  
15 improve lives, while tobacco devastates lives,  
16 providing no benefit whatsoever to its addicted  
17 customers.

18           Let me quickly lay out the arguments for a  
19 full exemption, and I won't go through our entire  
20 written comments. First, tobacco is the world's  
21 leading killer. Nearly six million people die every  
22 year, and that number is rising. By the end of the

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1 century, we risk one billion premature deaths in the  
2 world. This is 10 times the total of the 20th  
3 century. And, yes, that is a billion with a B.

4           Second, there is already a global  
5 consensus on how to deal with the tobacco epidemic,  
6 and this is the World Health Organization's  
7 Framework Convention on Tobacco Control. The U.S.  
8 has signed this treaty, and every member state of  
9 the European Union, as well as the European  
10 Commission, has ratified it.

11           Third, the tobacco industry has  
12 consistently abused international trade and  
13 investment rules to stall, block, or roll back  
14 implementation of tobacco regulations. Trade is the  
15 strongest arrow in their litigation quiver, and  
16 TTIP, as it is currently envisioned, is a dream come  
17 true for an industry that kills half of its  
18 customers.

19           Fourth, while health exceptions are built  
20 into many trade systems, those systems did not  
21 envision an industry that would use trade rules to  
22 create legal chill. It is clear from past trade and

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1 investment disputes that the tobacco industry need  
2 not win trade disputes to achieve its goals. The  
3 cost of litigation is, itself, a barrier, and many  
4 small governments simply cannot afford to win these  
5 disputes. We already have examples of countries  
6 that have delayed or discarded plans to advance  
7 tobacco control legislation due to the threat of  
8 trade litigation.

9           Fifth, the incompatibility of trade  
10 liberalization and tobacco is already recognized  
11 under U.S. law. The Doggett and derivative  
12 amendments, as well as Presidential Executive  
13 Order 13913, prohibit federal agencies from  
14 promoting the sale or export of tobacco products.  
15 These laws have been largely ignored in recent trade  
16 negotiations.

17           Sixth, the U.S. has joined the world on a  
18 path to addressing the growing problem of  
19 non-communicable diseases, or NCDs. The leading  
20 risk factor for NCDs is tobacco use. And the U.N.  
21 political declaration on NCDs, which the U.S.  
22 joined, calls for accelerated implementation of the

1 tobacco treaty. By giving the tobacco industry new  
2 tools to block meaningful tobacco regulation, the  
3 U.S. would undermine this NCD initiative.

4           Finally, half measures or weak exceptions  
5 will not address the core problem, which is legal  
6 chill. Complicated legal tests and chapter  
7 exclusions invite litigation and increase this  
8 chill. The easiest and most elegant solution is a  
9 blanket exclusion for tobacco products across the  
10 entire TTIP.

11           Thank you. And I'd be happy to answer  
12 questions.

13           CHAIRMAN BELL: All right, well, thank you  
14 very much for your comments. I'd like to turn to my  
15 FDA colleague to start us off.

16           MS. VALDEZ: Thank you. And let me, I  
17 should have done it the last time, but let me  
18 introduce myself. I am Lou Valdez. I'm the  
19 Associate Commissioner for International Programs at  
20 the U.S. Food and Drug Administration.

21           But, Mr. Bostic, thank you very much for  
22 your eloquent statement. One question, you may

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1 consider it a softball if such, but opponents argue  
2 that special treatment of tobacco would actually  
3 open the door to a number of trade limited  
4 provisions on other products, such as alcohol. So  
5 do you agree with that statement? And if not, what  
6 makes tobacco different?

7 MR. BOSTIC: And thank you for the very  
8 softball question. The slippery slope argument is  
9 one that we have heard quite a bit during the  
10 Trans-Pacific Partnership agreement negotiations.  
11 We have been pushing for a similar exemption in that  
12 treaty. And the U.S. has put forward an exception  
13 that has not been tabled yet in the TPP that  
14 recognizes the unique aspect of tobacco.

15 The main reason that tobacco is unique is  
16 that unlike every other consumer product on earth,  
17 when it is used exactly as intended by the producer,  
18 it kills. Alcohol is a major problem in the world,  
19 but you have to abuse alcohol for it to become a  
20 health problem. There are a lot of other products  
21 that when used unintentionally or against the  
22 intentions of the producer can cause health

1 problems. Tobacco is unique in that respect.

2 CHAIRMAN BELL: Any further questions?

3 No? All right, well, thank you very much for your  
4 time.

5 MR. BOSTIC: Thank you.

6 CHAIRMAN BELL: Next, if we could move to  
7 the American Cancer Society and Cancer Action  
8 Network. If you could please identify yourself?

9 MR. HAIFLEY: Thank you and good morning.  
10 Mr. Chairman and members of the Committee, my name  
11 is Gregg Haifley. I am the Associate Director of  
12 Federal Relations of the American Cancer Society  
13 Cancer Action Network. We are the nonprofit,  
14 nonpartisan advocacy affiliate of the American  
15 Cancer Society, and we support evidence-based policy  
16 and legislative solutions designed to eliminate  
17 cancer as a major health problem.

18 Because of tobacco's devastating health  
19 consequences made possible in part through trade  
20 agreements, we encourage the United States to  
21 negotiate to include in all trade agreements  
22 meaningful provisions that explicitly recognize the

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1 unique status of tobacco products and preserve the  
2 sovereign rights of governments to regulate them.

3           The U.S. Government has developed a  
4 tobacco products general exception proposal to table  
5 in the Trans-Pacific Partnership negotiations, and  
6 we recommend that the U.S. advance a tobacco-  
7 specific general exception in the TTIP negotiations  
8 as well.

9           As others have already said this morning,  
10 tobacco products are unlike any other legal consumer  
11 product. They are highly addictive. They have no  
12 benefits. They are the number one preventable cause  
13 of death in the United States and around the world.

14           Tobacco product use kills 443,000 people  
15 in the United States and nearly 700,000 people in  
16 Europe annually. And as has been mentioned before,  
17 globally, tobacco products killed 100 million people  
18 in the 20th century and will kill 1 billion people  
19 in the 21st century unless governments around the  
20 world take urgent action.

21           There is a unique global consensus  
22 regarding tobacco and what governments should do to

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1 address the regulation of those products. And that  
2 is reflected in the world's first public health  
3 treaty, the WHO's Framework Convention on Tobacco  
4 Control, that has 176 parties, including the  
5 European Union and all of its member states, which  
6 have made binding commitments to enact effective  
7 tobacco control measures pursuant to the FCTC.

8 While regrettably the United States hasn't ratified  
9 the FCTC, we are in the process of implementing it.

10 In 2009, the Congress passed the Family  
11 Smoking Prevention and Tobacco Control Act granting  
12 the U.S. Food and Drug Administration the authority  
13 to regulate tobacco products and the marketing of  
14 those products. And in a variety of jurisdictions  
15 at various levels of government in the United  
16 States, we are implementing effective tobacco taxes  
17 and smoke-free policies.

18 In the European Union, they have in place  
19 a Tobacco Products Directive which was adopted in  
20 2001. And in 2012, the European Commission adopted  
21 revisions to the Tobacco Products Directive.

22 Unlike other areas of trade and regulatory

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1 tensions between the United States and the European  
2 Union, there is significant transatlantic consensus  
3 on how to address the tobacco crisis.

4           As has been stated by previous witnesses,  
5 however, we see the tobacco industry engaging in a  
6 variety of different behaviors, all designed to  
7 undercut our global health efforts regarding  
8 tobacco. These range from resisting sovereign  
9 nation regulations to use of trade agreements and  
10 investment treaties to generate disputes, all of  
11 which serve to belate the trade environment, trade  
12 negotiation environment to the detriment of both  
13 health and trade.

14           Several U.S. business associations  
15 recently injected themselves to the benefit of the  
16 tobacco industry into the European Parliament and  
17 Council deliberations on revisions of their Tobacco  
18 Products Directive. And in their letter, they  
19 specifically raised the possibilities of disruption  
20 of the TTIP negotiations and potential violations of  
21 international trade obligations. The pattern  
22 continues.

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1           Whether in the sovereign tobacco  
2 regulation context, trade agreement negotiations,  
3 trade disputes, so on, the tobacco interests are  
4 intent on blocking effective domestic regulation of  
5 tobacco products to the detriment of public health.

6           We think that this is an opportunity for  
7 the United States and the European Union to secure  
8 protection for both U.S. Food and Drug  
9 Administration regulation of tobacco, as well as  
10 European Union regulation through its products  
11 directives. And we look forward to working with the  
12 United States Trade Rep and other agencies of the  
13 United States government as we pursue effective  
14 tobacco control across the board.

15           I'd be happy to answer any questions.

16           CHAIRMAN BELL: All right, well, thank you  
17 very much, Mr. Haifley, for your comments. We do  
18 have some questions.

19           Dan, would you like to start us off on  
20 this one, please?

21           MR. MULLANEY: Thank you. Thank you for  
22 your statement. I think you had mentioned or

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1 suggested that there are many similarities between  
2 the EU's proposed changes to the Tobacco Products  
3 Directive and the U.S. Family Smoking Prevention and  
4 Control Act.

5 Are there any differences between those  
6 that you feel raise specific, you know, trade issues  
7 that we should be aware of?

8 MR. HAIFLEY: Well, I'm not an expert on  
9 all aspects of European tobacco regulation, but I do  
10 know that, for example, the revised directive does  
11 contemplate planned packaging, which has been  
12 adopted by Australia. It is being contemplated by  
13 New Zealand. Yesterday, there was an announcement  
14 from Ireland. Scotland is also contemplating it.  
15 The United States has not gone down that path to  
16 date, and it would take some exploration of the  
17 current law to see whether that is even a  
18 possibility.

19 The commonality, one commonality between  
20 the United States and the European directive is  
21 their proposal to ban characterizing flavors. The  
22 United States has done that with all characterizing

1 flavors with the exception of menthol, and what to  
2 do with regard to menthol is currently being  
3 deliberated within the FDA under its authority that  
4 Congress gave it in 2009.

5           There is similarity in requirements in  
6 terms of marketing restrictions, warning labels,  
7 health warnings and graphics, and so on. Of course,  
8 we're in a dispute domestically over the graphic  
9 warning labels in the United States.

10           The point of all of this obviously is  
11 anywhere you turn to try to effectively regulate  
12 tobacco, you either end up in litigation or in trade  
13 dispute. So we're hoping that given the common  
14 interest of the EU and the United States in tobacco  
15 control and many of the regulatory approaches, that  
16 we can begin to put an end to some of this  
17 disruption that's being created as governments move  
18 forward.

19           CHAIRMAN BELL: Thank you. All right,  
20 Mr. Haifley, thank you very much for your comments  
21 and perspective.

22           MR. HAIFLEY: Thank you.

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1           CHAIRMAN BELL: Our next witness is for  
2 the Center for Science in the Public Interest. And  
3 if you could please identify yourself as well.

4           MS. SMITH DeWAAL: Good afternoon. I am  
5 glad to see the USTR follows the long tradition of  
6 scheduling the food safety speaker right before  
7 lunch. Thank you for the opportunity to address  
8 consumer interest in the proposed -- in the  
9 Transatlantic Trade and Investment Partnership  
10 talks.

11           I am Caroline Smith DeWaal, Director of  
12 Food Safety for the Center for Science in the Public  
13 Interest. CSPI is a consumer advocacy organization,  
14 and we represent over 800,000 consumers in the U.S.  
15 and another 100,000 approximately in Canada. We  
16 focus primarily on food, food safety, and nutrition.  
17 And I also serve as the co-chair of the Food Policy  
18 Committee for the Transatlantic Consumer Dialogue.

19           International trade in food and the  
20 harmonization of safety standards promises valuable  
21 benefits to consumers. We believe that properly  
22 structured trade agreements can deliver a wide

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1 variety of safe, nutritious food products that are  
2 appropriately labeled to inform consumers about  
3 information they really want to know, things like  
4 ingredients and food additives. But these benefits  
5 to trade will only be secured if our agreements  
6 provide protection to consumer health and safety,  
7 and also that consumers perceive that the standards  
8 are harmonizing upwards and not downwards.

9           We believe it is critically important that  
10 TTIP include public health protections consistent  
11 with the Agreement on Sanitary and Phytosanitary  
12 Measures and the Agreement on Technical Barriers to  
13 Trade.

14           In this regard, consumers have two  
15 overarching concerns as the U.S. and the EU prepare  
16 for TTIP talks. First, we are opposed to an  
17 industry proposal for a rapid dispute resolution  
18 mechanism. If adopted, it could threaten the  
19 ability of border inspectors to take action to  
20 protect consumers. And, second, consumers have a  
21 broad range of interest in trade that cannot be  
22 sufficiently addressed without a consumer presence

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1 in the negotiations. Therefore, we propose that  
2 each party to the TTIP include a consumer advisory  
3 panel as part of its negotiating team.

4 In addition to these overarching concerns,  
5 we have five recommendations for harmonizing  
6 regulations that we hope could be considered as part  
7 of the TTIP negotiations.

8 First is performance standards. In a  
9 number of important areas, the U.S. and the EU have  
10 different food safety performance standards. We  
11 encourage the USTR to seek uniform standards or at  
12 least not decrease U.S. standards governing *Listeria*  
13 *monocytogenes*, *E. coli* 0157:H7, and other STECs, as  
14 these pathogens pose a threat to the food supply and  
15 to our trade interest.

16 In antibiotic resistance, we are very  
17 concerned that antibiotics are losing their  
18 effectiveness due in part to their overuse in  
19 animals raised for food. Our trade agreement should  
20 promote World Health Organization standards that  
21 would preserve the effectiveness of critical  
22 antibiotics. We encourage the Trade Representative

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1 to seek harmonization of policies banning the  
2 non-therapeutic use of antibiotics in food animals.  
3 Today, about three times as many antibiotics are  
4 used in animal production as for human medicine.

5 GRAS substances. In the U.S., food  
6 ingredients can be recognized as Generally  
7 Recognized As Safe without seeking government  
8 review. We encourage the USTR to seek agreement on  
9 a standardized governmental review and approval  
10 process for all food additives, including GRAS  
11 substances, before they can be used in food.

12 Animal ID systems. Identifying food  
13 animals from birth to the table is critical to  
14 managing and controlling animal and human risk from  
15 disease and contaminants. Yet the weak animal  
16 identification system in the U.S. exposes consumers  
17 to contaminants, including chemical residues. And  
18 it also exposes our animal producers to the threat  
19 of dangerous diseases like foot and mouth disease.  
20 We encourage the Trade Representative to support  
21 harmonization of uniform and protective animal ID  
22 systems.

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1           And, finally, rapid alert of recalls. The  
2 EU currently operates a rapid alert system for  
3 notifying member states when food is identified as  
4 being adulterated. We encourage the parties to seek  
5 agreement on protocols for public sharing of  
6 information on food adulteration alerts and  
7 coordinating recall information on trade items.

8           We hope these ideas could bring greater  
9 compatibility between the regulatory systems of the  
10 U.S. and the EU while also promoting public health.  
11 If adopted, we believe they would increase the  
12 public's acceptance both of internationally traded  
13 products and of these agreements in general.

14           Thank you for considering our views. We  
15 look forward to working with the agencies, the  
16 different agencies involved, as well as the USTR as  
17 you move forward. And I am happy to answer your  
18 questions.

19           CHAIRMAN BELL: All right, thank you very  
20 much, Ms. DeWaal. I think you have a couple of  
21 questions.

22           USDA, would you like to start?

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1 MS. HERMAN: Thank you for your testimony.  
2 You mentioned in your written submission that CSPI  
3 expressed concerns about dispute settlement  
4 provisions for sanitary and phytosanitary measures.  
5 Could you share why such provisions should not be  
6 included?

7 MS. SMITH DeWAAL: So the proposal that we  
8 have seen emerge from the industry, we are not, of  
9 course, privy to anything that the U.S. Government  
10 may have tabled, but the proposal that we have seen  
11 from the industry would, in fact, take decisions  
12 made by regulatory agencies potentially out of the  
13 hands of those agencies and submit them to a  
14 separate type of arbitration panel that could be  
15 made up even of governments from other countries.

16 We think this does not respect the rule of  
17 law in this country where we have regulations that  
18 are subject to notice and comment. Regulations that  
19 are enforced by our regulatory agencies as out of  
20 country or a separate arbitration panel would not  
21 seem to fit within the system for protecting  
22 consumers that we rely on here. So we don't believe

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1 that proposal should be advanced, especially as it  
2 is constructed by -- as it was proposed by the food  
3 industry and a number of agricultural groups.

4 CHAIRMAN BELL: Thank you.

5 MS. HERMAN: Thank you.

6 CHAIRMAN BELL: State?

7 MS. BAIRD: Good morning.

8 MS. SMITH DeWAAL: Good morning.

9 MS. BAIRD: Or I should say good  
10 afternoon. I would be interested in hearing a  
11 little bit more how you envision the role of the  
12 consumer advisory panels you were discussing during  
13 the TTIP negotiations.

14 MS. SMITH DeWAAL: Well, thank you. I  
15 understand that we actually did not include this  
16 proposal in our written comments, so I'm very glad  
17 that you asked a question on it. The consumer  
18 advisory panels are actually quite important, and  
19 they should go beyond just the food area.

20 As I sit on the Transatlantic Consumer  
21 Dialogue, I understand the broad range of consumer  
22 products and interests that could be impacted by

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1 this agreement. And we examined the advisory panels  
2 that are currently being used by the USTR. We  
3 believe they are too narrow and they don't -- they  
4 cover a broad number of commercial interests in  
5 considering the various text and language that the  
6 U.S. is tabling and considering in these  
7 negotiations, but it does not provide adequate  
8 representation for consumers. And, again, there is  
9 a broad variety of interests from financial interest  
10 to interest in privacy. It doesn't seem that one  
11 person could really represent all of those  
12 interests.

13           Of course, we think it is very important  
14 to have adequate representation in the food area  
15 because, again, no single representative could  
16 understand the nuance of a number of food issues  
17 that might be on the table.

18           CHAIRMAN BELL: Dan, did you have a  
19 question?

20           MR. MULLANEY: Yeah, if I might, let me  
21 ask a clarification. Nice to see you again.

22           MS. SMITH DeWAAL: Hi, how are you?

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1 MR. MULLANEY: You mentioned at the outset  
2 that you thought there should be certain public  
3 health, I think you said public health protections  
4 in negotiations, and you mentioned, I think, five  
5 things, performance standards, antibiotic  
6 resistance, GRAS, animal ID, rapid alert.

7 Are those the provisions, the protections  
8 that you had in mind, or was there a broader  
9 universe of public health protections that you  
10 thought would be appropriate or a different  
11 universe?

12 MS. SMITH DeWAAL: We tried to identify  
13 areas where we believe the agreement could be used  
14 to harmonize upwards, where we think there is a  
15 superior system either in use in the U.S. or in the  
16 EU that the other trading partner may want to  
17 consider and that we do believe would have a strong  
18 consumer benefit, and with respect to animal ID as  
19 well a benefit to producers.

20 So I think those are opportunities for  
21 harmonization that we saw, which I think was part of  
22 the original questions that you asked people to

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1 comment on. I think there might be others, but  
2 these are the ones that we've identified.

3 I'll also note that a number of these are  
4 also supported by the Transatlantic Consumer  
5 Dialogue as well. And we'll be meeting again in the  
6 fall and we adopt proposals at those meetings, and  
7 we may identify additional ones at that meeting as  
8 well.

9 CHAIRMAN BELL: All right, well, thank you  
10 very much.

11 MS. SMITH DeWAAL: Thank you.

12 CHAIRMAN BELL: This concludes the morning  
13 session of our hearing. We're now going to break  
14 for lunch. We're going a few minutes early, so  
15 that's to be applauded, I suppose. I appreciate  
16 everyone's on-time delivery.

17 The group will be -- the hearing will be,  
18 we will be starting up again at 12:00, excuse me, at  
19 1:45 sharp. So for participants, please be sure  
20 that you are here on time.

21 Panel members, I would ask that you be  
22 here 10 minutes earlier, so 12:00, excuse me, for

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1 1:35, so that we can get ourselves organized. And  
2 at 1:45, we will start up again with the next  
3 witness, which is Oceana. Thank you very much.

4 (Whereupon, a lunch recess was taken.)  
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1 Labor.

2 MR. JONES: Skip Jones, International  
3 Trade Administration, Department of Commerce.

4 MR. MULLANEY: Dan Mullaney, Assistant  
5 USTR for Europe and the Middle East.

6 MS. BLEIMUND: Hi, Emily Bleimund, Office  
7 of Global Affairs at the Department of Health and  
8 Human Services.

9 CHAIRMAN BELL: Excellent. Let's go ahead  
10 and get started. If the representative from Oceana  
11 could please come up and identify yourself?

12 MS. SAVITZ: Good afternoon, Mr. Chairman,  
13 members of the Committee. My name is  
14 Jacqueline Savitz. I'm the Deputy Vice President  
15 for Campaigns for the United States for Oceana, and  
16 I am here on behalf of Mike Hirshfield, who could  
17 not be here today.

18 Oceana is an international NGO dedicated  
19 to protecting and restoring the health of the  
20 oceans. We are headquartered in Washington, D.C.,  
21 with offices in Central and South America and  
22 Europe. Because we work on both sides of the

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1 Atlantic, we are very interested in the proposed  
2 Transatlantic Trade and Investment Partnership  
3 agreement. Thank you for the opportunity to be here  
4 to offer comments today.

5           A problem with trade liberalization is the  
6 potential damage to the environment caused by  
7 increased exploitation of natural resources.  
8 Unfortunately, these impacts are not always  
9 controlled by regulation and management. To address  
10 these concerns, Oceana urges the United States and  
11 the EU to include language in the TTIP agreement to  
12 limit fishery subsidies to combat illegal,  
13 unreported, and unregulated fishing, to conserve  
14 shark stocks, and to reduce climate change emissions  
15 from ships.

16           More than a billion people worldwide  
17 depend on fish as a key source of protein, and  
18 hundreds of millions rely on fishery-related  
19 activities for all or part of their livelihoods.  
20 But fish populations and other ocean wildlife have  
21 been depleted. The United Nations Food and  
22 Agriculture Organization concluded that more than 85



1 percent of global fish stocks are either  
2 over-exploited, exploited, depleted, or recovering  
3 from depletion.

4           The EU and the United States are both  
5 leading players in the international trade of fish  
6 and fish products. Together, they account for more  
7 than 16 percent of the global catch by weight, and  
8 they are both in the top five importers and  
9 exporters worldwide. Uniting these two markets in a  
10 trade and investment agreement would have a huge  
11 impact on global fisheries both economically and  
12 environmentally.

13           Global subsidy reform is one of the most  
14 beneficial single actions that can be taken to help  
15 fisheries recover. \$16 billion in capacity-  
16 enhancing subsidies go to the global fishing sector  
17 each year, an amount equivalent to about 20 percent  
18 of the landed value of the world's catch. Subsidies  
19 drive over-exploitation of fish populations by  
20 undermining fisheries management, preventing  
21 depleted fish populations from recovering, and  
22 creating incentives to fish more even when catches

1 are declining.

2           Fishery subsidies also preserve uneconomic  
3 and inefficient practices. For example, EU member  
4 states send large-scale, distant water fleets as far  
5 as Australia, which would simply not be profitable  
6 without high levels of government subsidies.

7           U.S. fisheries would be placed at an  
8 economic disadvantage compared to their EU  
9 counterparts if the TTIP agreement reduces tariffs  
10 but fails to limit subsidies. Subsidies to the EU's  
11 fishing sector totaled about \$3 billion, or nearly  
12 42 percent of landed value. In 13 member states,  
13 the value of subsidies was higher than the total  
14 value of fish landings. TTIP could also lead to an  
15 overall expansion of fishing in response to market  
16 opening. And as a result, tariff reductions for  
17 fisheries products without efforts to curtail  
18 fishing subsidies would be a net loss for the ocean  
19 environment. Limiting harmful fishing subsidies  
20 should be an objective for the United States in TTIP  
21 negotiations.

22           I turn now to illegal, unreported, and

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1 unregulated fishing, or IUU fishing as we call it.  
2 The TTIP should strengthen the ability of the United  
3 States and the EU to fight IUU fishing. The global  
4 illegal catch of fish is estimated at between 11 and  
5 26 million tons a year, compared to FAO's global  
6 marine catch estimate of 79 million tons. The  
7 illegal catch value is between \$10 and \$23 billion.

8           The EU and the United States have already  
9 taken steps to address illegal fishing through  
10 commission regulations and provisions of the  
11 Magnuson Stevens Act, and these steps include import  
12 prohibitions and other measures to prevent the trade  
13 of fish caught by vessels engaged in IUU fishing.  
14 TTIP should build upon these existing domestic  
15 regulations to set the highest international  
16 standards and combat IUU fishing.

17           On shark conservation, sharks play a vital  
18 role in maintaining the health of ocean ecosystems,  
19 and they are vulnerable because of their slow growth  
20 and low reproductive potential. It is important to  
21 include shark conservation in TTIP because of the  
22 continuing trade in shark fins, which is

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1 contributing to overfishing. Globally,  
2 three-quarters of the ocean's sharks and rays are  
3 facing an increased risk of extinction as a result  
4 of that. The EU and the U.S. should be applauded  
5 for their productive approach to this issue and  
6 should use the TTIP as a means to work with other  
7 trading partners to promote the sustainable trade  
8 and management of shark stocks.

9           Finally, a TTIP agreement may promote  
10 growth in the marine shipping industry. And it is  
11 important to make sure that that growth is  
12 sustainable and consistent with the pressing need to  
13 reduce shipping emissions that contribute to global  
14 climate change. Emission standards based either on  
15 operating procedures or technological improvements  
16 are well recognized and can lead to cost savings for  
17 the industry. The U.S. should show leadership by  
18 seeking opportunities in TTIP to reduce climate  
19 change emissions from ships.

20           While the challenges facing the oceans are  
21 enormous, we are optimistic that the United States  
22 and the EU can make progress in overcoming them.

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1 The United States has been a leader in addressing  
2 the environmental impacts on marine fisheries in  
3 trade agreements, and we encourage the U.S. to  
4 continue its ambitious stances from the WTO and the  
5 TPP in negotiations with the European Union.

6 In short, a TTIP agreement should include  
7 limits on fishery subsidies that contribute to  
8 overcapacity and overfishing; strengthen capacity to  
9 combat illegal, unreported, and unregulated fishing;  
10 promotion of sustainable trade and management of  
11 shark stocks; and joint efforts to reduce climate  
12 change emissions from ships.

13 Thank you very much for your consideration  
14 of these comments, and I'd be happy to take  
15 questions.

16 CHAIRMAN BELL: All right, well, thank you  
17 very much, Ms. Savitz. I think I'll start off with  
18 a couple.

19 So turning to the first issue that you  
20 identify, subsidies, fishery subsidies specifically,  
21 and I guess we'd be interested in your assessment of  
22 the ability of this agreement and the willingness

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1 of, in particular, the European Union to address  
2 fishing subsidies.

3 I guess inherent in your comments is a  
4 certain optimism that we are going to be able to do  
5 that. And we'd appreciate your insights and kind of  
6 your reading of the situation and why you think  
7 that's possible.

8 MS. SAVITZ: Sure. Well, we are very  
9 optimistic. I think that it is a very opportune  
10 time to be having this conversation. The U.S. is  
11 already in a good position with regard to fishery  
12 subsidies and has been a leader through the WTO  
13 process, very much so, and also in the TPP process,  
14 which we appreciate.

15 In the EU, fishery subsidies continue to  
16 be a problem, but we are seeing some progress in the  
17 current discussions of the common fisheries policy,  
18 and we hope that that will essentially position the  
19 EU to recognize that it is taking steps, that the  
20 U.S. is taking steps, and that it makes sense to try  
21 to cement that progress so that we can start to  
22 bring the rest of the world up to that standard.

1           CHAIRMAN BELL: I'd also like to turn to  
2 kind of more the second thing. There was a second  
3 issue you raised which was the IUU fishing. And I  
4 guess you mentioned the importance of strengthening  
5 capacity. I guess that implies a certain deficiency  
6 in what's being done now. I guess I would be  
7 curious if you could identify where you think and  
8 why you think existing capacities need to be  
9 strengthened.

10           MS. SAVITZ: Well, what we are seeing,  
11 especially in the EU, for example, is an  
12 overcapacity that is continuing to be subsidized,  
13 and these are subsidies along the lines of ship  
14 building, ship improvements, engine costs, and these  
15 are areas where if there wasn't a government  
16 investment, we would likely not see those activities  
17 and not see that fishing capacity that results from  
18 it.

19           We talk about things like distant water  
20 fleets that are being subsidized, as the example I  
21 gave in Australia, but there are some great  
22 statistics I think in our written testimony about

1 the magnitude of the distant water fleets problem  
2 and the degree to which the subsidies are allowing  
3 that to happen. And if the subsidies were not  
4 there, we would start to see sort of a shrinkage of  
5 the size of that fleet.

6 CHAIRMAN BELL: So what you are saying is  
7 it's the inherent capacity that has been built up  
8 through the subsidies that creates the IUU problem.  
9 Is that going to the causality that you are thinking  
10 of?

11 MS. SAVITZ: Yeah, I mean I think it feeds  
12 the problem because a lot of this fishing wouldn't  
13 be lucrative if it weren't for the subsidies.

14 CHAIRMAN BELL: Right, okay. Good. Well,  
15 I think that concludes our questions, so thank you  
16 very much for your time.

17 MS. SAVITZ: My pleasure. Thank you for  
18 your consideration.

19 CHAIRMAN BELL: Okay. If we could now  
20 move to the Center for International Environmental  
21 Law, please. And if you could identify yourself?

22 MR. TUNCAK: Thank you, Mr. Chair. My

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1 name is Baskut Tuncak, an attorney with the Center  
2 for International Environmental Law based here in  
3 Washington, D.C. Established in 1989, CIEL is a  
4 nonprofit organization that uses the power of the  
5 law to protect the environment, promote human  
6 rights, and ensure a just and sustainable society.  
7 CIEL has been engaged actively on issues relating to  
8 trade and the environment for nearly two decades.  
9 CIEL appreciates the opportunity to comment on the  
10 proposed TTIP at this stage.

11           Without taking further time to restate our  
12 written comments provided on May 10th together with  
13 ClientEarth, CIEL wishes to address certain issues  
14 in other submissions. My comments today are  
15 directed towards why calls for "enhanced regulatory  
16 cooperation" on chemicals regulation between the EU  
17 and the U.S. are of concern to public health in the  
18 United States.

19           By way of background, since the turn of  
20 the century, the European Union has taken  
21 substantial but necessary steps towards ensuring  
22 that chemicals are safe for their intended use. In

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1 contrast, the U.S. EPA remains hobbled by what the  
2 Government Accountability Office refers to as a  
3 high-risk piece of legislation, the 1976 Toxic  
4 Substances Control Act, or TSCA. While the EU's  
5 older laws and policies shared many of TSCA's  
6 fundamental flaws for many years, EU regulation has  
7 recently responded to these fundamental flaws.

8 Elements of the EU's flagship regulation  
9 for industrial chemicals, REACH, enacted in 2006,  
10 have quickly spread to at least 10 countries, mostly  
11 in Asia, including countries that are the biggest  
12 competitors of both the EU and the U.S. in chemical  
13 manufacturing. In the case of Korea's recently  
14 enacted version of REACH, otherwise known as  
15 K-REACH, provisions of the U.S.-Korea FTA were used  
16 to seek revisions to the proposed Korean law, such  
17 as an increase in the de minimis production volume  
18 exclusion from 1/2 ton to 1 ton, a potential  
19 impediment to accessing information about specialty  
20 chemicals, such as manufactured nanomaterials, that  
21 may be manufactured in commercially significant  
22 volumes while still falling below these tonnage

1 requirements.

2           I'll focus on a few issues that further  
3 illuminate the differences between the EU and U.S.  
4 approaches to chemical regulation. A fundamental  
5 difference between the EU and the U.S. approach is  
6 the role of chemical hazard versus risk in  
7 regulatory decision-making. A chemical's risk is a  
8 function of its intrinsic hazards and likelihood of  
9 exposure. The EU approach has been to require the  
10 chemical industry to submit basic information about  
11 a chemical's intrinsic hazards during registration.

12           At present, the European Chemical Agency  
13 lists 138 substances that it considers to be of very  
14 high concern based on intrinsic hazards in what is  
15 referred to as the candidate list. A 2001 white  
16 paper by the European Commission calculated that  
17 1,400 of approximately 30,000 chemicals subject to  
18 REACH may eventually be on the candidate list.

19           According to the European Commission's  
20 assessment of the impact of REACH on innovation,  
21 this hazard-based approach to listing substances of  
22 very high concern in the candidate list is,

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1 quote/unquote, "The driver for change at the  
2 present." In other words, the hazard-based approach  
3 in REACH is driving innovation away from the status  
4 quo mix of existing and dangerous chemicals and is  
5 not an impediment to innovation.

6 By contrast, the U.S. has taken a  
7 risk-based approach which requires projects for  
8 exposure level and other socio-economic  
9 considerations to be taken into account before  
10 chemicals are restricted. In noting discrepancies  
11 between EU and U.S. approaches, the American  
12 Chemistry Council, or ACC, states in its submission  
13 that they identified 13 chemicals that overlap  
14 between the EU's candidate list and the U.S. EPA's  
15 work plan on existing chemicals, 13 out of 138  
16 substances of very high concern today and possibly  
17 1,400 in the coming years as information is made  
18 available.

19 Efforts for scientific cooperation or  
20 cooperation in prioritization should be examined  
21 with a view to whether increasing efficiency  
22 undermines continued progress on efforts to

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1 transition away from the status quo mix of chemicals  
2 and commerce towards safer alternatives with lower  
3 costs for governments and individuals, as well as  
4 downstream users of chemicals.

5           Indeed, measures that continue to be taken  
6 by the EU are beneficial to Americans to the extent  
7 that they reduce or eliminate the use of and  
8 exposure to toxic chemicals such as persistent,  
9 bio-accumulative, and toxic chemicals that travel  
10 long distances from where they are used, eventually  
11 resulting in extremely high and disproportionate  
12 levels of contamination in people and the  
13 environment in Alaska.

14           Regarding the impact of chemical  
15 regulation on trade, during the debate over REACH,  
16 estimates were made by the American chemical  
17 industry about the potential impacts of this  
18 regulation on competitiveness, jobs, innovation, and  
19 the overall American economy. Although the actual  
20 impact of REACH is difficult to estimate, it is now  
21 clear that these estimates were overstated.

22 Potential economic benefits of regulatory

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1 cooperation should be treated with well-warranted  
2 skepticism given the track record of these  
3 estimates.

4           For example, since the enactment of REACH,  
5 both European and American chemical industries have  
6 steadily expanded. Regardless of any potential cost  
7 savings from regulatory cooperation, these savings  
8 pale in comparison to the externalized cost of  
9 chemical pollution on the public.

10           Given the profound implications of  
11 chemicals on public health and externalized costs,  
12 negotiations should ensure that both the U.S. and EU  
13 retains the right to determine their own levels of  
14 health protection from toxic chemicals.

15           To conclude, recent trade negotiations by  
16 both the U.S. and EU with other countries or regions  
17 have been conducted in a manner that does not  
18 satisfy the requirements of transparency in a  
19 constitutional democracy despite profound  
20 implications for public health, well-being, and the  
21 environment.

22           CIEL and our partners look forward to

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1 working with USTR in an open, transparent, and  
2 participatory manner throughout the process. Thank  
3 you.

4 CHAIRMAN BELL: All right, thank you,  
5 Mr. Tuncak.

6 Dan, would you like to start off with a  
7 question?

8 MR. MULLANEY: Sure, thanks, if I might.  
9 Thank you for that testimony. Picking up on your  
10 last point, what suggestions would you have for  
11 strengthening communications between negotiators and  
12 stakeholders such as yourself?

13 MR. TUNCAK: Thank you. Well, first and  
14 foremost, I would suggest that all negotiating  
15 documents and positions be made available to the  
16 public as soon as possible and as soon as they are  
17 available. For example, in negotiations for ACTA,  
18 the Anti-Counterfeiting Trade Agreement, the  
19 document was leaked to the public sector. It was  
20 not made available. So I would recommend that that  
21 practice be changed and documents be made available  
22 for comment throughout the process.

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1           MR. MULLANEY: And in terms of  
2 communications?

3           MR. TUNCAK: Would you mind clarifying  
4 what you mean by --

5           MR. MULLANEY: In terms of communications  
6 back and forth, say between stakeholders and the  
7 trade negotiator.

8           MR. TUNCAK: Well, these hearings are a  
9 welcome first step. I think written comments would  
10 be welcome. Electronic medium would also be  
11 welcome. Thank you.

12           MR. MULLANEY: I think in your written  
13 testimony, you suggested that TTIP include an  
14 obligation for the U.S. and the EU to harmonize  
15 environmental and human health regulations to the  
16 highest standards that either party has established.

17                   How would you recommend deciding which of  
18 the two standards is highest in the case where the  
19 standards are perhaps different?

20           MR. TUNCAK: Well, that's an interesting  
21 question, but I think if you look at the divergence  
22 of chemicals which are listed for priority action by



1 the U.S. EPA versus the chemicals that are listed in  
2 the candidate list, you can see a divergence of  
3 opinion both on the hazards that are of concern,  
4 whether it is endocrine-destructing chemicals or  
5 nanomaterials, which are not yet listed in either.

6           And I think one thing to bear in mind is  
7 what was held by the appellate body in EC-Asbestos,  
8 which it states are free to make their own decisions  
9 when it comes to health protections benefiting the  
10 public. So I think bearing that in mind, enabling  
11 countries to establish standards as high as they  
12 would like to protect their people from hazardous  
13 chemicals would be a step forward in ensuring that  
14 that flexibility remains.

15           MR. MULLANEY: Providing the latitude to  
16 the parties to establish their own --

17           MR. TUNCAK: Exactly.

18           MR. MULLANEY: -- protection.

19           MR. TUNCAK: Yep.

20           MR. MULLANEY: Okay, thank you.

21           CHAIRMAN BELL: All right, thank you very  
22 much. That concludes your presentation.

1           If we can now move to the International  
2 Center of Technology representative could please  
3 come up and identify yourself? Please go ahead.

4           MR. HANSON: Good afternoon. Let me start  
5 by correcting the name of the organization. It is  
6 the International Center for Technology Assessment.

7           CHAIRMAN BELL: Bill?

8           MR. CRAFT: You have me there.

9           MR. HANSON: Okay.

10          MR. CRAFT: I apologize.

11          MR. HANSON: No problem. I just wanted to  
12 correct for the record.

13          MR. CRAFT: The record is corrected.

14          MR. HANSON: And I am Jaydee Hanson, their  
15 Policy Director. The Center was founded nearly 20  
16 years ago, not coincidentally at the time that  
17 Congress decided to shut down its technology  
18 assessment program, to provide careful reviews of  
19 new technologies. The technologies we are currently  
20 assessing include nanotechnologies and synthetic  
21 biology.

22          We advocate that new technology such as

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1 these should be governed by using regulations that  
2 are appropriate to the technology and that we should  
3 take a precautionary approach when the science and  
4 data needed for a precise regulation have not been  
5 well enough developed to adequately assess the  
6 environmental, public health, social, and economic  
7 effects of the new technologies.

8           These are exciting new technologies, but  
9 we have had exciting new technologies before. We  
10 want to put in place ways to make sure that the new  
11 paint with nanotechnology isn't the new lead paint  
12 of the future. We want to make sure that the new  
13 strong carbon nanotubes aren't the new asbestos of  
14 the future. I'm not saying they are. I'm saying  
15 that we need to put in place frameworks that help us  
16 make those decisions.

17           We have worked with worldwide coalitions  
18 of environmental groups, consumer groups, scientific  
19 organizations, religious groups, labor unions, and  
20 public health organizations to develop principles  
21 that we use to look at the oversight of  
22 nanotechnology and synthetic biology. I am your

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1 second panelist today I think that is a part of the  
2 Transatlantic Consumers Dialogue. I am the U.S.  
3 co-chair of their Nanotechnology Task Force.

4           And the Transatlantic Consumers Dialogue  
5 adopted a few years ago several principles that I  
6 think would be useful to be a way for the Trade  
7 Representative's Office to look at these new  
8 technology issues. One that really becomes more  
9 important than some other areas is to agree on  
10 definitions. If you can't agree on what a  
11 nanoparticle is, it becomes harder to agree on how  
12 you are going to jointly regulate it.

13           Second and related to that is to identify  
14 the products. The U.S. and EU should have mandatory  
15 reporting schemes to keep track of the production of  
16 and introduction into the marketplace of  
17 manufactured nanochemicals and exchange information  
18 about products being developed.

19           Our organization has developed an  
20 inventory just in the area of nanochemicals made  
21 from nanosilver. We found 600 consumer products  
22 being advertised on the internet that U.S. consumers

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1 could buy from the U.S., from Europe, from Asia.  
2 And these aren't the industrial products. These are  
3 just the ones advertised to consumers.

4           Interestingly, only one nanochemical  
5 manufacturer has actually applied for registration  
6 of those chemicals in the U.S. and that, not  
7 surprisingly, is a European manufacturer where they  
8 are expected to register in Europe.

9           In order to develop adequate regulatory  
10 frameworks related to the special characteristics of  
11 nanomaterials, it is going to be necessary that the  
12 frameworks be precautionary in nature and take into  
13 account the entire lifecycle of the material.

14           That lead paint that was introduced 100  
15 years ago really did work better than the other  
16 paint. It really was a better paint. What we had  
17 not looked at was the full lifecycle of the product.  
18 And in order to do that, we need to make sure that  
19 the safety data is made transparent and available  
20 for public scrutiny.

21           Because we don't know all of the effects  
22 of these chemicals, it is even more important than

1 for some other products that mandatory labeling be  
2 in place so that we can know later on which  
3 chemicals cause problems. It is awful to have to do  
4 it through epidemiology, but many products get  
5 pulled off the market because we find they harm  
6 people or the environment. If we don't know if they  
7 are in products, we can't do that.

8 CHAIRMAN BELL: Mr. Hanson, I think you've  
9 kind of exceeded your time frame, so if you would  
10 wrap up, that would be appreciated. Thank you.

11 MR. HANSON: Okay. Well, we are concerned  
12 that the trade agreements not undercut these  
13 principles. And we, you know, I, like the last  
14 speaker, would note that Europe is moving much more  
15 quickly than the United States on regulating  
16 nanomaterials into their existing structure.  
17 Efforts are underway to integrate nanochemicals into  
18 the major European chemicals law, REACH. And the  
19 labeling of nanoingredients in cosmetics is already  
20 required in Europe, and food labeling requirements  
21 are on the verge of being implemented.

22 In the United States, amendments to the  
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1 major U.S. law that would regulate nanochemicals,  
2 TSCA, has gone very slowly. The EPA issued good new  
3 regulations on nanopesticides, but they have been  
4 held up at the Office of Management and Budget for  
5 two years now. The U.S. --

6 CHAIRMAN BELL: Okay. I think we're going  
7 to have to --

8 MR. HANSON: Okay.

9 CHAIRMAN BELL: One more sentence, please.

10 MR. HANSON: All right. Well, I would  
11 say, finally, I would urge that text of all the  
12 negotiations related to nanotechnology and other  
13 emerging technologies such as synthetic biology,  
14 like other text, be made available for public  
15 scrutiny.

16 CHAIRMAN BELL: Thank you very much. And  
17 sorry we had to curtail your testimony. I think we  
18 do have some questions.

19 Commerce, would you like to start us off?

20 MR. JONES: Thank you, Doug.

21 Mr. Hanson, you started off by suggesting  
22 that in order to get a handle on the situation, we

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1 might want to have some common definitions of what  
2 nanoparticles and nanotechnology is. Do you have  
3 guidance for us in that direction?

4 MR. HANSON: Well, I would suggest  
5 actually this is an area that the U.S. Government  
6 has done a good job by having different definitions.  
7 The U.S. EPA is using 100 nanometers, which is quite  
8 small. The National Organic Standards Board used  
9 300 nanometers, which is the size of a nanoparticle  
10 that can cross the placenta of a human being or any  
11 mammal. And the Food and Drug Administration says  
12 for drugs, send us anything below 1,000 nanometers.

13 I actually think to some extent it depends  
14 on the product. And having product-specific  
15 definitions may be a better approach than one size  
16 fits all. You would still agree on the definitions,  
17 but they would be based on the kind of products you  
18 are trying to regulate, not the chemical itself.

19 CHAIRMAN BELL: Dan, did you have a  
20 further question?

21 MR. MULLANEY: Yeah, let me ask in your  
22 submission and in your testimony here, you spent a



1 lot of time discussing looking at the safety data  
2 for nanotechnologies and transparency and public  
3 review.

4 Are there examples in other context of  
5 where, in your view, the analysis of safety data and  
6 public review was performed correctly, sort of  
7 models for approaches that you would suggest in the  
8 areas of nanotechnology?

9 MR. HANSON: Well, I would suggest another  
10 new technology, gene transfer in humans. Initially,  
11 the United States said that's a company secret,  
12 whatever happens to that. And then after two rather  
13 well-publicized deaths, the companies doing gene  
14 transfer now release data on the deaths caused by  
15 the gene transfers and on the severe adverse  
16 effects. So actually looking at the severe adverse  
17 effects reporting that is required of gene transfer  
18 experiments is a good example in the U.S.

19 MR. MULLANEY: Great, thank you.

20 CHAIRMAN BELL: All right, Mr. Hanson.

21 Thank you very much for your time.

22 MR. HANSON: Okay, thank you. Have a good

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1 afternoon.

2 CHAIRMAN BELL: All right, well, let's see  
3 if we have the next title correct, the International  
4 Intellectual Property Alliance, please.

5 MR. METALITZ: Right.

6 CHAIRMAN BELL: All right, and if you  
7 could identify yourself, that would be appreciated.

8 MR. METALITZ: Thank you very much,  
9 Mr. Chairman and members of the Committee. I am  
10 Steve Metalitz. I am counsel to the International  
11 Intellectual Property Alliance, which has  
12 represented the U.S. copyright industries in seeking  
13 strong copyright protection and enforcement overseas  
14 for nearly three decades. Our written testimony has  
15 details about our seven member associations.

16 As you will hear from many witnesses  
17 today, the U.S. and the European Union are important  
18 trading partners. These two huge economies also  
19 share a common interest in strong protection of  
20 intellectual property. With respect to copyright in  
21 particular on both sides of the Atlantic, businesses  
22 that depend on copyright protection make outsized

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1 contributions to economic growth, to good and  
2 high-paying jobs, and to international trade and  
3 exports. Both American and European creators  
4 produce music, movies, books, software, and games  
5 that are prized in markets around the world. So it  
6 is no wonder that in the words of the High Level  
7 Working Group report, both the EU and the U.S. are  
8 committed to maintaining and promoting a high level  
9 of intellectual property protection, including  
10 enforcement. The Transatlantic Trade and Investment  
11 Partnership should reflect this shared commitment  
12 through a meaningful intellectual property chapter.

13           However, that intellectual property  
14 chapter should look quite different, at least with  
15 respect to copyright, than the corresponding  
16 chapters of other trade agreements that the U.S. has  
17 negotiated in the past or that it is negotiating  
18 today. The reason is not, as some other witnesses  
19 may tell you, because those chapters in those other  
20 agreements lack balance or are too rigid. The real  
21 reason is simple: Such provisions are not necessary  
22 in the TTIP. Although piracy remains a serious

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1 problem in both the U.S. and Europe, both partners  
2 in the TTIP already have in place modern copyright  
3 law and enforcement regimes that are also harmonized  
4 to a considerable extent. There is, therefore, no  
5 need to use the TTIP to substantially improve the  
6 level of protection provided by our negotiating  
7 partner, nor to bring our respective regimes into  
8 closer alignment with respect to substantive law.  
9 Accordingly, IIPA believes that the copyright  
10 chapter of the TTIP should focus instead on a few  
11 critical areas where such an agreement can be  
12 effective in advancing important shared goals. I'll  
13 mention three of them today.

14           First, the U.S. and the EU already  
15 cooperate extensively in international fora to  
16 advance our shared goals of promoting innovation and  
17 trade through strong protection for intellectual  
18 property. But we must do more and we must do  
19 better. Whether in longstanding formal treaty  
20 organizations like the WTO and the WIPO, or in the  
21 much newer and more diverse multi-stakeholder fora  
22 engaged in the escalating debate over internet

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1 governance, we must be more effective in explaining  
2 and demonstrating how copyright protection fosters  
3 creativity, enriches society, and protects  
4 internationally recognized human rights. In all  
5 these fora, the U.S. and the EU both face strong  
6 challenges from those who, for whatever motive,  
7 argue precisely the opposite. A successful TTIP  
8 will set out ways and means for the U.S. and the EU  
9 to expand our existing cooperation in order to meet  
10 this challenge more effectively.

11           Second, we also face common challenges in  
12 third country markets where copyright is not  
13 respected and where piracy, especially online, is  
14 tolerated and sometimes even welcomed. The U.S. and  
15 the EU work together, today, to address these  
16 concerns, but there is considerable room for  
17 improvement. A successful TTIP will provide new  
18 mechanisms for coordinating, cooperating, and  
19 sharing enforcement expertise in order to help make  
20 critical third country markets more hospitable to  
21 the production, distribution, and licensing of  
22 creative works.

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1           Finally, although both the U.S. and the EU  
2 operate within the same framework of international  
3 copyright and enforcement obligations, there is some  
4 diversity in how we implement those obligations.  
5 There is much to be gained from sharing information,  
6 crafting best practices, and learning from each  
7 other. A successful TTIP should identify key issues  
8 on which both sides could benefit from such  
9 exchanges and look for opportunities to facilitate  
10 more efficient and more consistent execution of our  
11 implementation of common norms.

12           Thank you for inviting me to testify  
13 today, and I'd be happy to answer any questions.

14           CHAIRMAN BELL: Well, thank you very much,  
15 Mr. Metalitz. I think we do have some questions.

16           I'd like first to turn to my State  
17 colleague.

18           MR. WASLEY: Thank you very much for your  
19 testimony. I had a question on your written  
20 submission.

21           You talked about the United States and the  
22 European Union should identify key obligations where

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1 under existing international agreements it could  
2 benefit from more efficient execution. What  
3 obligations are you thinking of? What are the areas  
4 of the existing obligations that we could be  
5 operating, working more intensively on?

6 MR. METALITZ: Right. This really  
7 corresponds to my last point about areas where we  
8 can learn from each other and where we have  
9 diversity of approaches and how we implement. I'll  
10 just give a couple of examples.

11 We have different approaches in general to  
12 the issue of national treatment for intellectual  
13 property rights, in particular with respect to sound  
14 recordings. In some case, there are many European  
15 countries don't apply national treatment, but  
16 instead have a regime of material reciprocity. I  
17 think that is an area that could benefit from  
18 discussion.

19 A second one is on camcording, in other  
20 words, outlawing unauthorized recording of movies in  
21 theaters, which is a huge source of internet piracy  
22 of movies. We have somewhat divergent approaches

1 there. The U.S. has a federal law and many European  
2 countries don't.

3           And, finally, I'd say with respect to  
4 online piracy, I think we can learn from each other,  
5 too. There is a diversity of approach. Again, the  
6 general framework is the same, but some European  
7 countries have different approaches in terms of  
8 dealing with businesses that are based upon  
9 widespread copyright infringement online.

10           They have some different tools than we  
11 have to deal with that. They have some different  
12 approaches in terms of notice and takedown  
13 procedures, and in terms of notifying internet users  
14 when it is clear that they are engaging in  
15 infringing activity. And the U.S., on the other  
16 hand, has perhaps gone farther in terms of voluntary  
17 agreements, voluntary arrangements, where I think  
18 the Europeans perhaps could learn something from us.

19           So these are some examples of areas where  
20 I think that kind of dialogue would be useful in the  
21 TTIP context.

22           CHAIRMAN BELL: Dan?

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1           MR. MULLANEY: Thanks. And thank you,  
2 Mr. Metalitz. If I can shift the focus of the last  
3 question which was directed sort of at what we can  
4 do bilaterally on specific issues to ask about the  
5 second objective you identified in your written  
6 submission, which was collaboration with respect to  
7 third country markets.

8           With respect to the third country markets,  
9 are there particular priority issues, substantive  
10 issues that in your mind the U.S. and the European  
11 Union should be working together on?

12           MR. METALITZ: I think there is probably a  
13 lot of overlap in terms of our concerns and that  
14 there are markets -- I mean China, of course, comes  
15 to mind, and another one that has been quite much in  
16 the spotlight on the U.S. side is Ukraine, which  
17 recently was designated a priority foreign country.  
18 In those places I think we have many common concerns  
19 with our European colleagues from the copyright  
20 industries in terms of lack of respect for  
21 intellectual -- for copyright, problems in Ukraine  
22 ranging everywhere from government agencies that use

1 illegal software to serious problems with management  
2 of the collective management organizations that are  
3 intended to collect royalties and serious problems  
4 there.

5 I think these problems are pretty much  
6 common to both European and American creators. So I  
7 think there is a lot of scope for more coordinated  
8 and perhaps better prepared collaboration with our  
9 European colleagues.

10 MR. MULLANEY: In terms of the bilateral  
11 cooperation vis-à-vis third countries, are there  
12 particular mechanisms between the United States and  
13 the European Union that you would recommend or  
14 advocate for third country cooperation?

15 MR. METALITZ: I don't have a specific  
16 recommendation on that, but I think there is more  
17 that could be done to coordinate our approaches.  
18 There may be some countries where U.S. advocacy will  
19 be more effective and in others where European  
20 advocacy would be more effective.

21 So I think there is probably some division  
22 of labor, but there is also some coordination, and

1 to the extent that we can, come into agreement on  
2 which are the top priority markets to concentrate  
3 our efforts on.

4 CHAIRMAN BELL: Thank you very much,  
5 Mr. Metalitz.

6 MR. METALITZ: Thank you.

7 CHAIRMAN BELL: All right, our next  
8 witness is from Knowledge Ecology International.  
9 And if you could please identify yourself?

10 MS. COX: Good afternoon, and thank you  
11 for the opportunity to testify this afternoon. My  
12 name is Krista Cox, and I am the staff attorney for  
13 the nonprofit, nongovernmental organization  
14 Knowledge Ecology International. KEI searches for  
15 better outcomes including new solutions to the  
16 management of knowledge resources.

17 My comments today will cover transparency,  
18 areas of evolving intellectual property standards,  
19 and positive proposals in trade agreements, such as  
20 the provision of accessible format works for persons  
21 who are visually impaired and the supply of public  
22 goods.

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1           I would like to begin my comments today by  
2 requesting greater transparency in the TTIP than in  
3 other trade negotiations such as the currently  
4 negotiated Trans-Pacific Partnership agreement. We  
5 believe that, as a general rule, once the U.S. or EU  
6 has tabled a text, it should be made public, and any  
7 exceptions to this rule should be narrow and limited  
8 to cases where secrecy is justified in a transparent  
9 and persuasive manner.

10           In our view, we cannot foresee of cases  
11 where text dealing with intellectual property  
12 rights, drug pricing, or investor-state dispute  
13 resolution should be secretive, and we object to the  
14 current secretive system that permits hundreds of  
15 cleared advisors to see and comment on the text by  
16 virtue of membership on trade advisory committees.

17           Only when texts are released and made  
18 publicly available are we able to make substantive,  
19 appropriate, and accurate feedback on the proposals  
20 that will affect the general public. We note that  
21 in other fora, including negotiations that take  
22 place in multilateral institutions, there is much

1 more transparency, and negotiating texts are  
2 published and widely distributed to the public.

3           In negotiating the TTIP or any trade  
4 agreement, the USTR should be cognizant of evolving  
5 standards such as the current congressional efforts  
6 to reform particular areas, including intellectual  
7 property. For example, Maria Pallante, the  
8 Registrar of Copyrights, recently testified before  
9 the U.S. Congress advocating for reform of our  
10 copyright laws, including a change in the term of  
11 protection for most copyrighted works. Just two  
12 weeks ago, the U.S. House Judiciary Committee held  
13 its first hearing on copyright review based on the  
14 Copyright Principles Project headed by  
15 Pam Samuelson. In light of efforts to substantially  
16 reform U.S. copyright law, USTR should not propose  
17 text that will tie Congress' hands and prevent  
18 necessary reform and attention to important  
19 proposals such as the reduction in term of  
20 protection or expansion and clarification of  
21 limitations and exceptions to copyright.

22           We note also that intellectual property

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1 rules are subject to interpretation, and our court  
2 systems have been active in shaping our intellectual  
3 property system. Earlier this year, the Supreme  
4 Court of the United States applied a rule of  
5 international exhaustion of rights to copyrighted  
6 goods, permitting parallel importation, a direct  
7 contradiction to the controversial proposal tabled  
8 by USTR in the TPP negotiations. USTR should be  
9 cognizant, therefore, not only of efforts by  
10 Congress to reform certain areas of intellectual  
11 property but also not upset the balance of power  
12 given to our three branches of government by  
13 interpreting laws and tabling text so that it is  
14 potentially inconsistent with current U.S. law.

15           During the briefing on the IP chapter of  
16 TTIP on May 17, 2013, in Brussels, DG Trade and the  
17 Deputy Head of Unit for Intellectual Property and  
18 Public Procurement Pedro Velasco Martins stated that  
19 TTIP will not be an extensive norm setting agreement  
20 and will not attempt to harmonize the level of  
21 protection upwards to the highest levels found in  
22 the United States and European Union. We believe

1 and it is evident that DG Trade agrees that upward  
2 harmonization upsets the balance between right  
3 holders and consumers. Therefore, we urge the  
4 United States to also commit to ensuring an  
5 appropriate balance between the right holders and  
6 consumers, and not contribute to efforts toward  
7 upward harmonization. Instead, the United States  
8 should permit balance in the intellectual property  
9 system by including positive proposals for the  
10 benefit of consumers and users of intellectual  
11 property goods.

12           Next month, the World Intellectual  
13 Property Organization, WIPO, will convene a  
14 diplomatic conference to conclude a treaty on  
15 copyright limitations and exceptions for persons who  
16 are visually impaired or have other disabilities in  
17 Marrakesh, Morocco. According to WIPO, the aim of  
18 the treaty is to improve access to copyrighted works  
19 for the many visually impaired and people with print  
20 disabilities around the world.

21           A critical component of this treaty is not  
22 only ensuring minimum levels of limitations and

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1 exceptions for the benefit of persons who are blind,  
2 but also to permit the cross-border sharing of these  
3 works. Cross-border sharing permits the visually  
4 impaired community to better use its resources and  
5 avoid unnecessary and costly duplication of  
6 copyrighted works into accessible formats. In light  
7 of the upcoming diplomatic conference, the United  
8 States should take this opportunity to make a  
9 positive proposal in TTIP and permit cross-border  
10 sharing of accessible format works between the  
11 United States and the European Union.

12           Finally, the United States and European  
13 Union are both leading suppliers of public sector  
14 research and development, humanitarian and  
15 development, and other types of public goods.  
16 Public goods can cover a wide range of issues,  
17 including knowledge, humanitarian assistance,  
18 security, environment, and others. As developed  
19 countries that supply a large percentage of global  
20 public goods, the TTIP presents an ideal opportunity  
21 to include a chapter on the supply of public goods.  
22 Such a chapter would include a mechanism for a



1 schedule of supply of public goods, providing an  
2 opportunity to make a voluntary but binding offer to  
3 supply certain public goods.

4           We have more fully laid out these and  
5 other issues, including our concerns regarding  
6 access to medical technologies, in our written  
7 submission. Thank you again for this opportunity to  
8 speak here this afternoon.

9           CHAIRMAN BELL: All right, well, thank you  
10 very much, Ms. Cox. We have some questions.

11           I'd like to turn first to my Commerce  
12 colleague. Skip?

13           MR. JONES: Thanks, Doug.

14           Ms. Cox, thank you for your testimony.  
15 You, in both your written testimony and your oral  
16 statement, have identified a number of areas in  
17 which you think we should work or perhaps not work  
18 in our bilateral relationship.

19           And I wondered outside of the WIPO treaty  
20 that you mentioned, are there areas in terms of  
21 third country cooperation where international --  
22 cooperation in international organizations that you

1 might want to draw to our attention in terms of  
2 collaboration?

3 MS. COX: I'm sorry. Is the question  
4 referring to the other negotiations that happened at  
5 multilateral institutions?

6 MR. JONES: Either other international  
7 organizations or in the context of shared concerns  
8 in third countries.

9 MS. COX: Certainly. Well, just last week  
10 and I guess yesterday, as well, the World Health  
11 Assembly was convened in Geneva. And one idea that  
12 was being discussed there is the start of  
13 negotiations for a binding convention on research  
14 and development.

15 And we believe that the United States  
16 greatly contributes to the funding of public goods,  
17 including research and development. And we think  
18 that there are areas that are being discussed at  
19 WIPO, as I mentioned the diplomatic conference on  
20 persons who are visually impaired, there has been on  
21 the agenda at WIPO also limitations and exceptions  
22 for libraries and education, and then as I mentioned

1 at the WHO, a discussion on binding norms and a  
2 convention on research and development.

3 So, certainly, there are areas in various  
4 multilateral institutions where the U.S. is a major  
5 player and in discussions with other countries. And  
6 we would hope that those positive proposals and that  
7 positive agenda is reflected in the United States  
8 trade policy.

9 CHAIRMAN BELL: Dan, did you have any  
10 questions?

11 MR. MULLANEY: Thank you, I do. Thank you  
12 very much for your testimony. If I can ask a  
13 question with respect to online intermediaries,  
14 internet service providers.

15 MS. COX: Sure.

16 MR. MULLANEY: And sort of the safe harbor  
17 with respect to liability for those intermediaries.  
18 What, in your view, would be the appropriate types  
19 of service providers that should be covered by safe  
20 harbor provisions, sort of limitations on liability?

21 In your comment, you mentioned you  
22 shouldn't expand the scope or expand it to different

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1 kinds of persons. I was wondering what sorts of  
2 entities should be included within the safe harbor?

3 MS. COX: Well, certainly. I mean just  
4 from the leaked text of the Trans-Pacific  
5 Partnership agreement, what the USTR proposed there,  
6 something that we noted in comments that we have  
7 submitted to USTR and the Department of Commerce on  
8 the TPP is our concern that in the DMCA, there is a  
9 specific carve-out for universities and institutions  
10 of higher education. That was not reflected in the  
11 TPP text. And we just believe that some of that  
12 type of carve-out should also be explicitly included  
13 in the TPP, especially because the text proposed in  
14 the TPP so closely mirrored the DMCA. It was  
15 concerning to us that it was almost identical, but  
16 there were a few safeguards missing, and that was  
17 one on ISP liability, another was the privacy  
18 safeguards for when a right holder requests the  
19 information of an alleged infringer.

20 MR. MULLANEY: Thank you.

21 MS. COX: Thank you.

22 CHAIRMAN BELL: Okay, I think that

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1 concludes our questions. Thank you very much.

2 MS. COX: Thank you very much.

3 CHAIRMAN BELL: If the representative for  
4 the Program on Information Justice and Intellectual  
5 Property could join us. Please identify yourself.

6 MR. FLYNN: Would it be okay if I have  
7 these for the table, the written part?

8 CHAIRMAN BELL: You can save those, and  
9 then you can leave them on the table in the back  
10 there when you're done.

11 MR. FLYNN: Okay, fine. Good afternoon.  
12 Thank you for having me here today. My name is  
13 Sean Flynn. I am with the American University, the  
14 Program on Information Justice and Intellectual  
15 Property. I'm here in my personal capacity. I am a  
16 coordinator of a global academic network of about  
17 400 or so academics from 40 different countries that  
18 do international intellectual property policy. But  
19 these comments reflect my own views.

20 I didn't submit a written statement, so  
21 I'll highlight a couple of issues that I am going to  
22 cover and be happy to answer any questions on

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1 anything that has come up. But I'll talk mostly  
2 about the intellectual property chapter, but I'll  
3 just state that one of the things I have worked on  
4 in the past is the pharmaceutical reimbursement  
5 chapters on the Australia, Korea, and current TPP  
6 agreements, and I am happy to say a couple of words  
7 on those, if I have time.

8           So the central point of my submission is  
9 that this negotiation should exclude intellectual  
10 property from its ambit. That was the original  
11 proposal and recommendation from the Bilateral  
12 Commission, which stated that the two systems were  
13 just too divergent, that this wasn't the right forum  
14 for bringing them together.

15           But I think there is a series of other  
16 reasons that intellectual property should be  
17 excluded, and the primary among those is that U.S.  
18 trade policy right now lacks a broad-base standard  
19 for harmonization of intellectual property through  
20 this kind of a multilateral agreement. That is the  
21 lesson from the downfall of ACTA, which was rejected  
22 by the European Parliament overwhelmingly, 420-some

1 odd votes to just a handful on the other side. It  
2 is the lesson from the current Trans-Pacific  
3 Partnership negotiation, which has stalled over the  
4 intellectual property issues. It is the lesson from  
5 the Free Trade Area of Americas, which also failed  
6 over intellectual property obligations.

7           It is a lesson that is very important to  
8 draw, that this effort on intellectual property  
9 issues, to export U.S. standards first through  
10 bilateral agreements and then to escalate them  
11 through multilateral agreements, is not working, it  
12 is doomed to fail, that the kinds of standards that  
13 the U.S. proposes in bilateral agreements were  
14 accomplished in those agreements because of the  
15 particulars of the bilateral relationship. But when  
16 they are exported to multilateral agreements where  
17 there is a large number of divergent countries at  
18 the table, those same standards are not  
19 accomplishable. So unless the U.S. goes back and  
20 revisits what it is asking for in these kinds of  
21 negotiations, the intellectual property chapter  
22 would be the one that dooms the negotiation to fail.

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1 And that is the important lesson from these efforts  
2 to achieve extremely high standard harmonization  
3 agreements in plurilateral and multilateral  
4 agreements. There is no path toward success on  
5 these issues.

6           So learning from ACTA, you know -- ACTA  
7 was, to some extent, the second step; the Free Trade  
8 Agreement of the Americas was the first -- to try to  
9 escalate these very high intellectual property  
10 standards from bilateral commitments to multilateral  
11 areas, the FTAA, of course, failed, and the U.S. and  
12 Brazil walked away from that negotiation.

13           ACTA, as you know, met extremely  
14 widespread dissatisfaction, literally uprisings of  
15 hundreds of thousands of people on the street in  
16 Europe. There were issues of both substance and  
17 process. Process, as Krista Cox said before you,  
18 there is widespread opposition to negotiate domestic  
19 intellectual property standards in secret. These  
20 kind of standards are traditionally formed in WIPO  
21 or the WTO where NGOs have fuller access to text and  
22 can participate in the process. When you escalate



1 beyond those open and transparent standards in a  
2 closed and non-transparent agreement, it foments  
3 opposition, and you will foment that same kind of  
4 opposition here, if you go the same way.

5           The opposition, of course, isn't just  
6 people on the streets. There is a large number of  
7 academic letters that were opposing the substantive  
8 standards to ACTA. There were a large number of  
9 officials in Europe and elsewhere who resigned over  
10 ACTA. Parliaments rejected it across Europe,  
11 including Bulgaria, Czech Republic, Slovakia,  
12 Germany, Netherlands, Latvia, Romania, Cyprus,  
13 Estonia, Australia, and finally -- Austria, excuse  
14 me, and finally after that, the European Parliament  
15 itself.

16           The ACTA template has no political  
17 support. And, yet, the ACTA template is what is  
18 being asked of you within this negotiation. So when  
19 offered a failed template, you need to reject it.  
20 You need to find something that you can actually  
21 move forward with.

22           On those issues, the right place to start

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1 is the multilateral agreements, those agreements  
2 that have been negotiated and open with broad series  
3 of stakeholders. That is the right place to find  
4 the kind of agreements that can find broad-based  
5 support, not in the bilateral free trade agreement,  
6 not in the template, and not in ACTA itself. And  
7 that is the important lesson from these series of  
8 failed negotiations.

9           The TPP, as Krista mentions,  
10 unfortunately, demonstrates that United States is  
11 not learning its lesson. There is no evidence that  
12 it has backed off these same kinds of commitments  
13 within that multilateral negotiation. And for that  
14 reason, that negotiation has been stymied.

15           So there are things the U.S. could do. As  
16 Krista mentioned today, the proper model is to look  
17 towards multilateral agreements for the processes in  
18 which multilateral agreements should be negotiated.  
19 So if you look at the treaty for the visually  
20 impaired going on in WIPO right now, every text of  
21 every proposal is literally tabled outside the rooms  
22 where everybody can see it, anybody with access to

1 that table. NGOs --

2 CHAIRMAN BELL: Mr. Flynn?

3 MR. FLYNN: Yes.

4 CHAIRMAN BELL: You have exceeded your  
5 five minutes, so if you could wrap it up, I would  
6 appreciate it. Thank you.

7 MR. FLYNN: Okay, sure. And if anybody  
8 actually has a question, please feel free to just  
9 note and then it'll pop in; but, otherwise, I'll  
10 just go ahead and use my time, if that's okay.

11 CHAIRMAN BELL: Well, no. I have asked  
12 you to conclude. You've been given five minutes,  
13 which you have exceeded. I would appreciate it if  
14 you could conclude your comments.

15 MR. FLYNN: I think the whole time was 10  
16 minutes, right? So do I lose my time, if you don't  
17 ask a question?

18 CHAIRMAN BELL: Well, we will have  
19 questions. And I would appreciate it if you could  
20 wrap up your presentation. We have been very clear  
21 that we have given everybody five minutes, in  
22 fairness to everyone, for your presentations. So if

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1 you could wrap yours up, that would be appreciated.

2 MR. FLYNN: Sure. And as I mentioned, I  
3 would be happy to answer any questions there are.  
4 And seeing none --

5 CHAIRMAN BELL: If you have -- the way  
6 this is structured, you make your presentation and  
7 then we follow up with questions. If you have  
8 concluded your presentation, we'll now ask you some  
9 questions.

10 MR. FLYNN: Okay. I'm ready for  
11 questions.

12 CHAIRMAN BELL: Okay, thank you very much  
13 for your presentation. Would you like to start us  
14 off, please?

15 MR. MULLANEY: Sure. So you mentioned  
16 that you thought the TTIP should exclude  
17 intellectual property and look at ACTA, FTAA, and  
18 some other agreements.

19 In your mind, are there particular  
20 intellectual property issues, for instance, on which  
21 you have somewhat of an agreed view that they could  
22 -- that we could pursue together, where particular

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1 issues that we could sort of constructively advance  
2 protections of intellectual property, aside from the  
3 issue you raised initially, which is the question of  
4 a comprehensive IPR chapter? Are there particular  
5 issues that we could pursue together bilaterally  
6 with the EU?

7 MR. FLYNN: I'm not going to put any of  
8 those issues to the table. So the point I'm making  
9 is a much more categorical one, which is that if you  
10 are seeking to change the other country's  
11 intellectual property rules, then that process has  
12 to be done in an open and transparent fashion that  
13 would be consistent with the way policy is changed  
14 in a domestic regulatory framework.

15 So if you are interested in changing the  
16 legislation in European countries, then it should go  
17 through the European legislative framework. Those  
18 things shouldn't be negotiated through a secret  
19 trade agreement.

20 And if you are looking for a new  
21 multilateral rule, so that the discourse around  
22 ACTA, for instance, was that the goal wasn't really

1 to just bind those countries; it was really to  
2 create a new multilateral framework that would  
3 ultimately be exported to all countries. So if  
4 that's the goal of an IP chapter in this agreement,  
5 then that goal should be --

6 MR. MULLANEY: Thank you. And what about  
7 issues, for instance, where there may not be  
8 differences in legislation say between the United  
9 States and the European Union, but where the two  
10 sides perceive that some collaborative efforts might  
11 be appropriate vis-à-vis other countries? Are there  
12 any issues that would fall in that category that  
13 might be, in your view, appropriate for a  
14 negotiation?

15 MR. FLYNN: Vis-à-vis other countries?

16 MR. MULLANEY: Yeah.

17 MR. FLYNN: Can you explain that?

18 MR. MULLANEY: Issues that the United  
19 States and the European Union agree on in their  
20 legislation and practice that we might want to  
21 encourage other countries to look at closely in  
22 terms of levels of intellectual property protection.

1 MR. FLYNN: Yeah. Let me take that  
2 question in two parts, if I could, separate kind of  
3 what I see as the first part from the second.

4 So one question may arise, well, what  
5 about the issues, excepting the third countries for  
6 the moment, where the U.S. and the EU essentially  
7 agree, so shouldn't we put those standards into the  
8 existing free trade agreement, express those kind of  
9 issues. And then I'll hit the third parties in a  
10 moment.

11 So the current -- this has been the drive  
12 of the intellectual property chapters for quite some  
13 time, the idea that the U.S. would propose items  
14 that don't require changes in its own law, that may  
15 or may not require changes in the third-party law,  
16 but attempt to continue to globalize the standard so  
17 that there could be greater harmonization.

18 The problem with that strategy is becoming  
19 readily apparent, as Krista mentioned, in some of  
20 the policy changes that are being considered right  
21 now. So if you look at the changes in copyright  
22 that are being proposed by the Library of Congress,

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1 being endorsed by the Obama Administration, etc., we  
2 are now in the place where we need to renegotiate  
3 our current FTA commitments in order to make those  
4 possible.

5           So, for instance, when the Obama  
6 Administration endorses a permanent exception to the  
7 anti-circumvention rules in the DMCA for cell phone  
8 unlocking, that would violate a handful of trade  
9 agreements we currently have. At the time those  
10 were fashioned, the trade agreements didn't require  
11 a change in our law, but they do bind us to the  
12 current framework in our law, which forces us into  
13 either renegotiating those agreements or being out  
14 of compliance with them when we consider moderate  
15 policy changes that go outside of that scope.

16           So the lesson there is that our FTA  
17 template, if you will, is way too specific. It may  
18 express an agreement between those two countries as  
19 to our present state of knowledge, but it doesn't  
20 necessarily express what our policy views will be in  
21 the future.

22           And as to the second part of your

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1 question, well, what if we want to bind ourselves to  
2 those in order to prod India to go in our direction?  
3 That's exactly the wrong kind of use of these  
4 agreements. If we are trying to affect India, then  
5 we need to be negotiating with India. If we're  
6 trying to set a template for the world, then we  
7 should be doing this in the global forums that are  
8 appropriate for that purpose. Thank you.

9 MR. MULLANEY: Thank you very much.

10 CHAIRMAN BELL: Well, thank you very much  
11 for your time.

12 The next witness is from the BSA Software  
13 Alliance, and if you could please identify yourself.

14 MR. OHRENSTEIN: Thank you. My name is  
15 David Ohrenstein. I'm Director of Global Trade  
16 Policy for BSA | The Software Alliance. Thank you  
17 for the opportunity to testify today.

18 BSA welcomes the Administration's launch  
19 of the negotiations for the Transatlantic Trade and  
20 Investment Partnership. We believe it provides a  
21 critical opportunity to modernize trade rules for  
22 the realities of the digital economy. It presents

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1 an opportunity to recalibrate our trade policy, much  
2 as we did in 1986 at the outset of the Uruguay  
3 Round. At that time, Congress and the  
4 Administration saw the need to broaden the focus of  
5 trade from manufactured goods to services,  
6 investment, and intellectual property. Today,  
7 information is the lifeblood of the economy, and  
8 trade rules again need to be updated.

9           The software industry is at the forefront  
10 of the digital economy. BSA members provide the  
11 software and hardware tools that power digital  
12 trade. And they themselves are evolving as digital  
13 trade spreads.

14           With that perspective in mind, I would  
15 like to suggest how the TTIP can break new ground by  
16 putting in place rules that liberalize digital trade  
17 between the U.S. and EU and thereby serve as a  
18 precedent for future agreements with other markets.

19           Not long ago, most software came in  
20 shrink-wrapped boxes. Now it can be provided as a  
21 service through the cloud. But this business model  
22 only works in the global marketplace if data can

1 flow smoothly across borders. That is why we are so  
2 concerned about policies many countries are  
3 considering that would restrict flows of digital  
4 information or dictate where servers are located.

5           These policies threaten the business of  
6 companies that provide digital products and  
7 services. They also hurt consumers that use those  
8 products and services to enhance their lives and  
9 enterprises that use them to run their operations  
10 and improve their business productivity.

11           The TTIP should establish enforceable  
12 obligations to ensure data can flow across borders  
13 and to prohibit requirements to use local  
14 infrastructure, such as servers, as a condition for  
15 market access.

16           Now, we recognize there are legitimate  
17 areas where exceptions to those kinds of obligations  
18 should be permitted, such as national security,  
19 public safety, and privacy concerns. But these  
20 exceptions should be limited, and the party invoking  
21 them should bear the burden of establishing that  
22 they are not an unwarranted barrier of trade.

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1           Now, it is important to recognize that  
2 U.S. and EU can foster cross-border digital commerce  
3 without adopting identical laws. For example, each  
4 market has a different approach to data protection,  
5 but both are effective in both protecting consumer  
6 privacy and promoting commerce. Given those  
7 fundamental commonalities, the parties should  
8 preserve the current safe harbor for consumer  
9 privacy or establish a similar mechanism that  
10 ensures both markets' individual privacy regimes are  
11 respected without impeding flows of data and  
12 information.

13           Similarly, we would urge that the parties  
14 continue collaborating on cybersecurity in ways that  
15 support trade. Our markets can follow different  
16 approaches to this issue that achieve compatible  
17 outcomes. The end goal should be a trade agreement  
18 that aims for a form of mutual recognition between  
19 the markets on these issues rather than to-the-  
20 letter harmonization of regulations.

21           In addition to fostering cross-border  
22 information flows, the TTIP can advance other key

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1 elements of a digital trade agenda. For example,  
2 the agreement should take a broad, negative list  
3 approach to services coverage that encompasses  
4 current services offerings and those to be developed  
5 in the future. This will create a trade agreement  
6 that adapts to new technologies, rather than one  
7 that needs to be continually renegotiated to keep up  
8 with technological advances.

9           The agreement also should promote robust  
10 protection of intellectual property, foster open and  
11 transparent government procurement, ensure  
12 state-owned enterprises compete fairly in the  
13 commercial sphere, and promote market-led and  
14 internationally agreed upon technology standards.  
15 These, too, are critical to foster digital trade.  
16 And we have detailed these issues in our written  
17 comments.

18           The TTIP can set important precedents in  
19 these areas and establish new ways for the U.S. and  
20 EU to work together to address them in other  
21 markets.

22           Thank you again for this opportunity. We

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1 look forward to continuing to assist U.S. trade  
2 negotiators in this important effort, and I look  
3 forward to any questions you may have.

4 CHAIRMAN BELL: All right, thank you very  
5 much, Mr. Ohrenstein. We do have a number of  
6 questions.

7 Dan, would you like to start us off?

8 MR. MULLANEY: Sure. Thank you very much  
9 for your testimony. You highlighted the importance  
10 of the ability to transfer data across borders, and  
11 I think you mentioned the requirement that there be  
12 local infrastructure to process the data as one of  
13 the potential barriers which maybe should be a  
14 subject to limited exceptions.

15 Are there other barriers or restrictions  
16 or policies that you've observed in place in Europe  
17 or elsewhere that restrict the ability of your  
18 members to move data around the world and  
19 specifically across borders?

20 MR. OHRENSTEIN: Well, first, I would  
21 mention that primarily we are seeing the largest  
22 concerns in markets outside of the EU. So in our

1 mind, this is an opportunity to lay a framework that  
2 can be then hopefully used in other trade  
3 agreements.

4           In the U.S. and the EU, a lot of the  
5 discussion right now is focused on privacy. And  
6 right now we do have a workable regime in place with  
7 the safe harbor that allows businesses from both  
8 sides of the Atlantic to operate and transfer data  
9 back and forth. But we think that there is a need  
10 for a broader and clearer obligation on this to  
11 provide certainty in the future.

12           What we are trying to do here is we are as  
13 much anticipating a trade problem as trying to solve  
14 one that is directly impacting our businesses in a  
15 major way right now. Our software companies are  
16 increasingly moving toward a subscription,  
17 cloud-based model of providing software that will  
18 over time become a larger and larger part of their  
19 business. And providing some certainty that that  
20 model will work across borders is a priority goal.

21           CHAIRMAN BELL: So some of our other  
22 witnesses have expressed concerns about protecting

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1 privacy and some of these other related issues.  
2 Could you elaborate a little bit on how you see  
3 customers being protected in this kind of  
4 environment that you are seeking to develop where  
5 cross-border data flows for either services or  
6 private information, what kind of work is being done  
7 in that area?

8 MR. OHRENSTEIN: Well, I mean from the  
9 standpoint of U.S. companies, where U.S. companies  
10 hold the data, there is a whole regime in the U.S.  
11 on how we do privacy. It's a mix of legislation,  
12 regulation, self-regulation, as an example the safe  
13 harbor. There is work being done among APEC  
14 countries to all reach a similar, I wouldn't use the  
15 word standard, but a similar level of data  
16 protection and requirements. So a lot of this is  
17 going on through these processes, and we think that  
18 is the best way forward.

19 And, as I mentioned, we do have a workable  
20 framework now in place that is allowing U.S. and EU  
21 companies to do this kind of business and provide a  
22 high level of consumer protection and data privacy.

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1           MR. MULLANEY:  If I could move onto  
2 another area, in your written submission, you said  
3 you supported addressing concerns arising from the  
4 divergent application of the levy system in the  
5 European market.  For your members, what is the most  
6 pressing issue with respect to levies that we should  
7 be focusing on with the European Union?

8           MR. OHRENSTEIN:  Well, what they are  
9 primarily concerned about is you have different  
10 schemes in different EU member markets, and some  
11 have arbitrary and non-transparent tariff-setting  
12 processes.  So it's a problem both in the substance  
13 of some of the EU member country markets, as well as  
14 the fact there is not consistency among them.  And  
15 this agreement offers the opportunity to try to  
16 address that.

17           CHAIRMAN BELL:  All right, well, thank you  
18 very much for your time.

19           Our next witness is from the Computer and  
20 Communications Industry Association.  Okay, thank  
21 you.  If you could identify yourself?

22           MR. BLACK:  Good afternoon.  My name is  
            Free State Reporting, Inc.  
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1 Ed Black. I'm President and CEO of Computer and  
2 Communications Industry Association. On behalf of  
3 CCIA, I want to thank you for the opportunity to  
4 address the impact of these important transatlantic  
5 negotiations on digital trade.

6           The significance of the internet to global  
7 trade cannot be overstated. The extensive data in  
8 my written testimony demonstrates that the  
9 internet's role as a commerce facilitating platform  
10 matters to everyone.

11           CCIA has led on free trade issues for  
12 decades. Free trade agreements must promote  
13 openness and the free flow of commerce. FTAs should  
14 not carve out protectionist policies, nor lock in  
15 industrial policy for privileged sectors. That is  
16 contrary to free trade.

17           Let me focus on six key issues.

18           First, the free flow of information.  
19 Today, businesses in our thriving internet industry  
20 principally provide services, yet trade law hasn't  
21 kept up with this transition. It is far easier for  
22 countries to block bits at the border than Buicks.

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1 As the U.S. economy produces more services, we lose  
2 the benefits of liberalized market access that we  
3 have achieved over the years for goods.

4           Numerous governments now engage in  
5 broad-scale online censorship. Even if they  
6 nominally invoke legitimate WTO exceptions, these  
7 trade barriers rarely meet WTO principles of  
8 transparency, necessity, minimal restrictiveness,  
9 and due process. An accord between the world's most  
10 advanced and open economies should reaffirm the  
11 concept of free flow of information and thereby  
12 provide an important beacon for the rest of the  
13 international trade community. We are engaged in a  
14 Geneva TISA process as well, which is seeking  
15 creative solutions in this area.

16           Second, forced localization. As a  
17 knee-jerk reaction to the growth of the internet and  
18 cloud computing, governments are implementing  
19 domestic data hosting requirements. These forced  
20 localization mandates require companies to process  
21 and store data domestically, adding local  
22 infrastructure overhead. This locks out small

1 businesses and causes large enterprises to scatter  
2 IT infrastructure across the globe for non-business  
3 reasons, negating the savings and efficiency of  
4 cloud-based innovation.

5           Third, full market access for digital  
6 products. TTIP should include a strong e-commerce  
7 chapter that ensures that digital products,  
8 regardless of the classification, are not  
9 discriminated against merely because they are  
10 provided and consumed digitally. In this vein, the  
11 TTIP should mirror existing commitments already  
12 agreed to by the U.S. and Australia in the FTA which  
13 prevent discrimination against digital products  
14 regardless of their source country.

15           Fourth, intermediary liability protection.  
16 TTIP should establish minimum protections for online  
17 intermediaries. Intermediaries facilitate a  
18 mind-boggling quantity of transactions daily and are  
19 essential to digital trade. Frequently, foreign  
20 nations seek to blame the messenger for undesirable  
21 communications and transactions. This is  
22 particularly tempting when the intermediary is a

1 foreign company with deeper pockets than a domestic  
2 end-user whose conduct is at issue. Such liability  
3 poses a major barrier to internet commerce.

4 Congress recognized that this would  
5 jeopardize growth and created safe harbors. But we  
6 have seen unreasonable cases of intermediary  
7 liability proliferated abroad. Even though European  
8 law contains intermediary protections, not unlike  
9 ours, EU protections are not adequately applied  
10 often when U.S. intermediaries are on trial against  
11 domestic interest. These liability risks weaken  
12 private sector confidence and impede market entry.  
13 TTIP should establish minimum levels of protection  
14 for intermediaries regarding third-party behavior.

15 Safe harbor should also extend into  
16 copyright, if the TTIP should reach that contentious  
17 issue. The copyright safe harbors in the U.S.  
18 Digital Millennium Copyright Act, DMCA, have been  
19 critical to the growth of the U.S. internet sector.  
20 Both the U.S. and EU have recognized that holding  
21 internet and e-commerce businesses liable for the  
22 wrongful conduct of the users would jeopardize the

1 growth of this vital industry. Thus, if TTIP has an  
2 IP chapter, it should require minimum protections  
3 for intermediaries.

4 Fifth, intellectual property overall. I  
5 will not presume that TTIP will reach IP. It  
6 remains both contentious and divisive in  
7 transatlantic relations, and may not be appropriate  
8 in this agreement. To the extent that IP regulation  
9 is included in TTIP, however, we must reaffirm  
10 limitations and exceptions that U.S. industry  
11 depends upon.

12 A year ago, USTR announced its intention  
13 to include language in TPP that will obligate  
14 parties to seek and achieve, quote, "an appropriate  
15 balance in their copyright systems." Reaffirming  
16 established limitations including issues such as  
17 first sale and a non-protection of facts is as  
18 important to transpacific trade as -- transatlantic  
19 trade as to transpacific trade.

20 Finally, customs harmonization. It is now  
21 common for individual entrepreneurs and small  
22 businesses to use internet platforms like eBay and

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1 Etsy to reach customers around the world.  
2 Unfortunately, for non-bulk shippers, customs  
3 inspections and duties are disproportionately  
4 expensive. By raising and harmonizing the  
5 de minimis customs threshold, the U.S. and EU would  
6 provide leadership in updating global trade rules to  
7 better fit the realities of 21st century economy and  
8 help small businesses in the process.

9 Thank you. Look forward to your  
10 questions. I went a little over.

11 CHAIRMAN BELL: Thank you very much,  
12 Mr. Black. We do have some questions. I think I'll  
13 start off by asking my Commerce colleague, Skip, if  
14 you would like to initiate, please.

15 MR. JONES: Thank you Doug. And thank  
16 you, Mr. Black, for your testimony.

17 Like the previous speaker, you have  
18 singled out some of the restrictions that your  
19 company's member companies are facing with regard to  
20 free flow of information and forced localization.

21 Now, the domestic data hosting  
22 requirements are pretty clear, but I'm wondering if

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1 you could provide some more examples of the types of  
2 specific restrictions that the companies face with  
3 regard to free flow of information?

4 MR. BLACK: Certainly. Well, there is a  
5 wide range of actions a government can take based on  
6 a wide range of claimed harms or things they wish to  
7 limit their citizens from having access to. It can  
8 be cultural, social; it really can be economic at  
9 its base. But countries have increasingly  
10 demonstrated the desire to try to control, do what  
11 governments like to do, control and have some  
12 ability to limit the interaction of their citizens  
13 with the rest of the world, with global companies.

14 Clearly, we have seen wide concept of  
15 defamation characterizations. We have seen cultural  
16 risqué issues crop up. There are a -- privacy is  
17 certainly one that is pervasive as to what  
18 information should be allowed to flow. We have seen  
19 criminal charges brought in some companies against  
20 some companies for actions, really acting as an  
21 intermediary with no real bad conduct seriously  
22 alleged, but simply there.

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1           So I think the concern is there is in  
2 addition over-limitations that may be developed,  
3 that there will be -- there is an attempt to have a  
4 chilling impact, to have a self-censoring process by  
5 companies, so that there is a great restriction on  
6 what can happen on the global internet. And,  
7 therefore, ultimately, one of the dangers is a  
8 balkanized internet and a balkanized trade system.

9           We're talking about the value of an open,  
10 global free trading system. And as you have country  
11 after country, for one reason or, and I do not fault  
12 this under the motivations, sometimes I do,  
13 sometimes I don't, but there are some good, positive  
14 motivations that play into this thinking that social  
15 ills of various types can be cured by if we only  
16 restrict it on the internet. We restrict gambling,  
17 restrict guns, restrict prostitution, restrict -- I  
18 mean there's lots of things that we don't like in  
19 society. Limiting it on the internet is not a  
20 solution for most societies, but it is tempting for  
21 people to want to try because it is an area where  
22 they have not traditionally had control and they

1 desire to extend control there.

2           The types of actions can range from  
3 blocking sites totally, cutting off access, imposing  
4 fines, liability on behavior, three strikes policies  
5 for different kinds of behavior, and there is a wide  
6 range, I'm afraid, a very creative activity going on  
7 looking for ways to restrict access. So we have  
8 not, I think, witnessed an exhaustion of that.

9           I think in some places outside the  
10 European world, we see a much more easier alliance  
11 on rather extreme measures. But even in EU, we have  
12 had certainly some strong examples of behavior which  
13 has the effect -- and I think it is important to  
14 understand if you shut down a website, it's not just  
15 that company affected, but anybody who may advertise  
16 there, any company who sells a product through that  
17 site. You have a cascading potential impact on  
18 e-commerce by that action. And you have the other,  
19 the implications, the fears and concerns that can  
20 flow to others from those actions as well.

21           CHAIRMAN BELL: I think we have time for  
22 one more question. Dan?

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1           MR. MULLANEY: I was interested to hear  
2 you in your oral testimony reference customs  
3 harmonization as being something, I think you said  
4 may be particularly useful to small and medium-sized  
5 enterprises. And, of course, there is a lot of  
6 interest on both sides of the Atlantic on increasing  
7 the ability of small and medium-sized enterprises to  
8 participate in the global value chain.

9           The question is, from your view, what  
10 would be the most critical issues to address in a  
11 TTIP negotiation that would best enable small and  
12 medium-sized enterprises to participate in global  
13 trade?

14           MR. BLACK: Well, I mean the harmonization  
15 and customs, I make that a point. In the broader  
16 context, I think small companies will suffer much  
17 more greatly of any kind of governmental regulatory  
18 oversight, and the idea that they could spend money  
19 to penetrate a market, develop ability, and then be  
20 cut off because of what some user does, so it's a  
21 fear I think, it would be a risk of being shut down,  
22 of having localization -- I mean it could be the

1 whole range of everything I mentioned.

2           There is probably not one provision or  
3 focus priority that I mentioned that doesn't have  
4 the small business impact. I think the belief that  
5 the internet is open and global, and not balkanized,  
6 and that it will not be riddled with ever-increasing  
7 regulatory regimes, that's what will, I think,  
8 continually, as it has, stimulated hundreds of  
9 thousands of small businesses to participate in the  
10 internet economy.

11           MR. MULLANEY: Thank you.

12           CHAIRMAN BELL: Well, thank you very much  
13 for your time.

14           MR. BLACK: Thank you.

15           CHAIRMAN BELL: Our next witness is with  
16 the Software Information Industry Association. And  
17 if you could identify yourself, that would be  
18 appreciated.

19           MR. LeDUC: Good afternoon. My name is  
20 David LeDuc, and I am the Senior Director for Public  
21 Policy at the Software Information Industry  
22 Association. Thank you for holding this hearing and

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1 for the opportunity to testify today on behalf of  
2 SIIA.

3 SIIA is the principal trade association  
4 for the software and digital information industry,  
5 representing nearly 500 member companies that  
6 provide digital information and software products  
7 and services and internet-based services.

8 SIIA applauds the Administration's  
9 objectives to negotiate a Transatlantic Trade and  
10 Investment Partnership agreement with the European  
11 Union. This agreement could lead to a substantial  
12 increase in transatlantic trade and investment.  
13 SIIA stands ready to help both the U.S. Government  
14 and the EU reach a timely and comprehensive  
15 agreement.

16 With my remarks today, I'd like to make  
17 five major points, and I apologize if some of these  
18 are redundant based on my colleagues who have  
19 testified just before me.

20 First, it is critical to lower barriers to  
21 trade in digital services as this is an increasingly  
22 important part of U.S. exports. In 2008, SIIA

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1 conducted a study of software information industries  
2 demonstrating that they are key drivers of the new  
3 global knowledge economy, growing and producing high  
4 wage jobs at a rate much greater than most other  
5 industries. The recent developments in cloud  
6 computing or internet computing and data-driven  
7 analytics reinforce and expand upon this growth.  
8 The continuation of global economic integration in  
9 these markets also means that a new focus on trade  
10 in these services is crucial to understanding the  
11 dynamics and policy needs of this vital market  
12 segment.

13 Further, lowering barriers to trade in  
14 digital services presents a wide range of economic  
15 benefits for all countries around the world,  
16 including increasing domestic productivity;  
17 providing strategically important inputs for all  
18 non-IT sectors, for instance, enhancing the  
19 provision of banking and financial services,  
20 education, tourism, healthcare; increasing consumer  
21 choice, which promises to maximize innovation and  
22 ensure price competition; and encouraging long-term

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1 investment and commitment in local markets.

2           The ability to move information and data  
3 across borders is crucial to the success of software  
4 and digital information businesses around the world,  
5 including the ability to locate computer facilities  
6 where it makes the most economic sense, allowing  
7 them to take advantage of the efficiencies of  
8 digital products and services.

9           Therefore, SIIA strongly supports  
10 proposals that were part of the 2011 EU-U.S.  
11 Agreement on Trade Principles for ICT Services.  
12 These are on cross-border information flows.  
13 Governments should not prevent service suppliers of  
14 other countries or customs of those suppliers from  
15 electronically transferring information internally  
16 or across borders, accessing public available  
17 information, or accessing their own information  
18 stored in other countries. And local infrastructure  
19 requirements, governments should not require ICT  
20 service suppliers to use local infrastructure or  
21 establish a local presence as a condition of  
22 supplying services.

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1           Both of these proposals are necessary for  
2 businesses, large and small, to harness full  
3 benefits of the internet and for countries to  
4 prepare all of its citizens and enterprises for the  
5 global 21st century economy.

6           Second, the primary goal of the TTIP  
7 negotiations should be to ensure that privacy rules  
8 do not act as an unnecessary barrier to cross-border  
9 flows of information. SIIA does not endorse the  
10 idea of negotiating the specifics of the U.S. or EU  
11 privacy regimes as part of TTIP. These privacy  
12 regimes are different but compatible attempts to  
13 achieve the same protective results through  
14 different means. A trade agreement is not the place  
15 for the U.S. and/or EU to set substantive domestic  
16 privacy rules.

17           Still, it is crucial to understand that  
18 privacy rules can have an effect on trade and should  
19 be carefully crafted to minimally impede cross-  
20 border flow of data. The standard that local rules  
21 should be crafted so as to be least restrictive of  
22 trade is well established in trade law and policy,

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1 and this standard specifically applies to privacy  
2 rules. Article 15 of the General Agreement on Trade  
3 in Services, for instance, permits, among other  
4 things, domestic measures necessary to secure  
5 compliance with local privacy rules.

6 In this regard, SIIA urges USTR to  
7 recognize that a complete ban on the transfer of  
8 data across borders is not necessary to secure  
9 compliance with local privacy rules. If a company  
10 participates in an international agreement such as  
11 the U.S.-EU Safe Harbor agreement, then its data  
12 should be allowed to flow seamlessly across borders.  
13 In a similar fashion, a company that is in  
14 compliance with an enforceable privacy code of  
15 conduct or subjects itself to binding corporate  
16 privacy rules or has a contract with a data  
17 protection authority regarding privacy should be  
18 able to transfer information across borders.

19 TTIP need not constrain the specifics of  
20 privacy rules, but it should reaffirm the obligation  
21 to provide companies with a usable means to  
22 demonstrate compliance with local privacy rules so

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1 the information can flow across borders.

2           Third, TTIP should focus on making sure  
3 that digital products, regardless of classification  
4 as a good or service, receive market access,  
5 national treatment, and most-favored nation  
6 treatment, and other benefits of open markets. The  
7 U.S.-created free trade agreement ensures  
8 nondiscriminatory and duty-free treatment of all  
9 digital products whether imported in physical form  
10 or delivered over the internet. This includes  
11 freedom from customs duties fees or other charges,  
12 or in connection with the importation or exportation  
13 of digital products.

14           The fourth point is that U.S. trade policy  
15 must continue to seek high standards for the  
16 protection of enforcement of IP rights. And,  
17 finally, the U.S. and EU should make their cross-  
18 border commitments on a negative list basis, such as  
19 any service not specifically excluded is covered  
20 allowing for innovation.

21           That concludes my remarks, and I'm happy  
22 to take any questions.

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1           CHAIRMAN BELL: All right, well, thank you  
2 very much, Mr. LeDuc. We have a number of  
3 questions. Maybe I'll start off with one.

4           You have touched upon kind of localization  
5 requirements. Has your group done any kind of  
6 analysis to identify what the economic impact is of  
7 forced localization on the provision of services and  
8 products by your companies and groups?

9           MR. LeDUC: It's something that we've been  
10 looking at. Unfortunately, we haven't come across  
11 any empirical data yet. However, it is our strong  
12 belief that in the long run -- I mean in the short  
13 run, countries seem to be under the impression that  
14 they can actually benefit their economies from  
15 requiring that their industries develop to a certain  
16 level.

17           But what we have seen over time is that  
18 that is not a practical outcome, and it is actually  
19 going to have the opposite effect. We are  
20 continuing to look to see if there are empirical  
21 measures, but it is a hard area to determine and  
22 actually put a dollar figure or number on the amount

1 of, or on the cost or the impact.

2 CHAIRMAN BELL: Well, I think that is  
3 something, as you develop that, we would be  
4 interested in seeing going forward.

5 Dan, did you have some questions?

6 MR. MULLANEY: Yes. You mentioned your  
7 support for the information communication technology  
8 principles that the United States and the EU  
9 negotiated, and suggested in your written testimony  
10 that we might build upon those principles with  
11 respect to cross-border information flows and local  
12 infrastructure. Have you considered how  
13 specifically it would be useful to have those  
14 principles expanded?

15 MR. LeDUC: We haven't come to any  
16 detailed recommendations on the expansion; but as I  
17 articulated, it is absolutely critical that they be  
18 established. I mean this is a framework. And I  
19 think, as was mentioned earlier, a lot of the  
20 greatest challenges lie outside of the EU, so it's  
21 critical to use this as a framework to set good  
22 policy. And I think that's another area that we

1 could certainly look to provide you further detail  
2 on, on exactly how we could expand those.

3 MR. MULLANEY: If I could ask one more,  
4 what kinds of -- are there specific types of  
5 localization barriers to trade that most impact your  
6 member companies in general around the world, one  
7 subpart of the question?

8 And then the EU in particular, is there a  
9 particular type of localization rule that has the  
10 greatest impact on your members?

11 MR. LeDUC: Well, fortunately, most of the  
12 challenges lie outside of the EU. The examples of  
13 what we have seen are really requirements for  
14 information to be stored locally for infrastructure,  
15 for servers to be located in certain countries,  
16 which I think is two-part. As I mentioned earlier,  
17 these are often driven by an economic development  
18 objective of creating an industry or sustaining an  
19 industry in computing, internet computing, cloud  
20 computing.

21 And the other element is, which is related  
22 but the two are distinct, a desire to retain data

1 locally because it can't be trusted to be stored  
2 somewhere else, which is, you know, again, I think  
3 in the EU, this has been less of a challenge than at  
4 other regions around the world. But it is important  
5 that we establish the framework here and help, I  
6 think, to set the record that data can be stored  
7 safely, and security and privacy can be addressed  
8 very effectively, and there is no benefit to a  
9 localization requirement on where data is stored to  
10 achieve any desired effects in privacy and security.

11           So there are really the two different  
12 areas. One is the economic development, and the  
13 other is the privacy and security, which is, you  
14 know, it's hard to say which one is more problematic  
15 conceptually. I mean they are both very flawed  
16 notions that we need to push back on aggressively.  
17 And they are both very damaging, quite frankly, for  
18 the very rapidly evolving internet-driven ecosystem.  
19 Countries will literally be seeing themselves left  
20 behind if these policies are allowed to continue.

21           MR. MULLANEY: There are basically two  
22 separate justifications for the same measure, which

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1 is requiring that data be stored and processed  
2 locally?

3 MR. LeDUC: Yeah, yeah. Like I said, I  
4 mean there are different terms. Some go under the  
5 term indigenous innovation, the notion that, gee, it  
6 needs to be our technology, needs to be our  
7 companies that provide this to the economic. But,  
8 at the end of the day, the notion that the data can  
9 and should be stored in a certain place, it's just  
10 not practical in this context.

11 CHAIRMAN BELL: Well, good. Thank you  
12 very much for your testimony.

13 All right, we are going to move on next to  
14 the Center for Democracy and Technology. Thank you.  
15 If you could identify yourself?

16 MR. SOHN: Sure, my name is David Sohn,  
17 and I am here representing the Center for Democracy  
18 and Technology. CDT is a nonprofit public interest  
19 group with a mission of promoting policies that  
20 foster free expression and privacy and innovation on  
21 the internet.

22 In the few minutes that I have today, I'd

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1 like to summarize CDT's views on how TTIP should  
2 approach three areas: the free flow of information,  
3 the protection of private, personal data, and  
4 copyright.

5           So, first, free flow of information. This  
6 is an area where CDT thinks that TTIP has some  
7 significant opportunities. Protecting the cross-  
8 border flow of information benefits both the  
9 public's free expression interests, the commercial  
10 interests of internet and online services  
11 industries, and just as important it sets an  
12 important international example for other countries  
13 and for global internet freedom generally.

14           But, of course, free flow of information  
15 is a vague and broad term. So to get a little bit  
16 more concrete about that, first, TTIP should bar  
17 restrictions on online data flows, such as what you  
18 were just talking about with the previous witness,  
19 namely location requirements that aim to force  
20 service providers to store data in a particular  
21 location or to use infrastructure in a particular  
22 location or to establish a local presence.

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1           And, again, as you were discussing, the  
2 U.S. and the EU agreed to some principles along  
3 these lines in 2011, and so I think there is a  
4 strong possibility of using that as a model and  
5 turning those into actual binding trade commitments  
6 instead of just nonbinding principles.

7           Second, TTIP should reaffirm existing U.S.  
8 and EU legal protections for internet  
9 intermediaries. Intermediaries are the conduits,  
10 the forums, and the tools that enable the free flow  
11 of information on the internet, but they simply  
12 can't play that role if the legal regimes put them  
13 on the hook for all of their users' expression and  
14 behavior. And so I think there are some important  
15 principles there to reaffirm.

16           Finally, TTIP should prohibit governments  
17 from burdening internet communications with  
18 ill-fitting legacy regulations like a "sending party  
19 pays" regime for interconnection or like traditional  
20 broadcast media regulation. So in all of those  
21 areas, I think TTIP could help promote and protect  
22 the free flow of information.

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1           Turning to data protection and copyright,  
2 these are areas I think different from free flow of  
3 information where TTIP negotiators need to exercise  
4 considerable caution and restraint. First, both  
5 areas are the subject of very active democratic  
6 debate. There is tons of activity around  
7 potentially comprehensive reform in both areas  
8 currently underway.

9           Also, both areas affect basic individual  
10 rights: in one case, privacy, and in the other, free  
11 expression. And as a result, TTIP interference in  
12 the substance of these areas risks both the  
13 perception and the reality of (1) bypassing or  
14 preempting the legislative process; or (2) weakening  
15 individual rights.

16           To steer clear of that, TTIP needs to  
17 really avoid any effort to try to harmonize or set  
18 substantive rules for privacy or copyright. And, in  
19 addition, the U.S. and EU TTIP negotiators should  
20 recognize that these are areas that demand a  
21 meaningful transparency. The areas are both just  
22 too complex and too multifaceted to be resolved

1 through deals cut behind closed doors. Instead,  
2 they are both areas in which the actual text of  
3 non-final proposals should be released for public  
4 analysis and comment before anything is made final.

5           So turning specifically to privacy for a  
6 moment, the key challenge here, as has been  
7 previously discussed, is that the EU and the U.S.  
8 have markedly different privacy regimes. And  
9 certainly the U.S. should not try to use TTIP to try  
10 to circumvent or weaken the privacy protections that  
11 the EU has chosen to provide for its citizens.

12           But there does need to be some kind of  
13 mechanism to give U.S. companies some certainty and  
14 to prevent the privacy differences from impairing  
15 transatlantic commerce. That's the role the U.S.-EU  
16 Safe Harbor plays right now. But since the EU is  
17 currently revising its privacy regime, TTIP probably  
18 needs to include at least some kind of procedural  
19 commitment to ensure that some safe harbor or  
20 something like it, some comparable solution  
21 continues to be viable going forward.

22           And then finally with respect to

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1 copyright, as has already been mentioned by some  
2 witnesses today, the U.S. and EU both have developed  
3 regimes in this area, so it is not really clear that  
4 a broad, substantive copyright chapter is necessary.

5           And I would submit that in addition to  
6 that, it actually runs the risk of making things  
7 worse. And the reason for that is simply that  
8 public distrust of copyright is already running  
9 high. Nobody benefits when that is the case. It  
10 undermines respect for copyright law. And it really  
11 is against the interest of anyone who would like to  
12 see improved copyright compliance by the public. So  
13 TTIP needs to be very careful to avoid feeding into  
14 this vicious cycle, partly by avoiding too much  
15 substantive involvement in copyright and then partly  
16 by making sure it includes provisions to ensure an  
17 appropriate balance if it does wade into that area  
18 at all. Thank you.

19           CHAIRMAN BELL: All right, thank you very  
20 much for your comments. I think we do have some  
21 questions.

22           Dan, why don't you start us off?

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1 MR. MULLANEY: Well, you mentioned the  
2 importance of free flow of information, free flow of  
3 data. And maybe you answered this in part, but how  
4 or should we address sort of these public policy  
5 concerns you mentioned, such as privacy, when we're  
6 talking about the movement of data across borders?

7 I think you maybe suggested that -- or let  
8 me ask is the way forward on that, in your view,  
9 having some kind of a system where you are not  
10 trying to harmonize privacy rules, but just  
11 recognize privacy rules as equivalent, as in say the  
12 safe harbor provisions. Is that the solution?

13 MR. SOHN: I think that's right.

14 MR. MULLANEY: Serving your first goal of  
15 free flow of information --

16 MR. SOHN: Sure.

17 MR. MULLANEY: And your second goal of  
18 ensuring privacy. Clearly, I have the sense we need  
19 to bring those two things together.

20 MR. SOHN: I think that's right. I mean I  
21 think provisions on free flow of information can be  
22 general and apply to information generally, but

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1 there is this special category of personal, private  
2 data that is subject to special regulation. And I  
3 think TTIP should approach the privacy issue  
4 specifically by looking toward something like a safe  
5 harbor solution.

6           Because the EU is currently revising its  
7 data protection rules, it is unclear exactly what  
8 the future of the safe harbor is, and I think that  
9 TTIP negotiators should discuss that issue expressly  
10 and try to come to at least a procedural agreement  
11 that we're going to try to work out a solution in  
12 that area. And it would probably look something  
13 like the safe harbor, although since the EU is  
14 revising its rules, it might be somewhat different.

15           MR. MULLANEY: Can I ask a follow-up  
16 question, Doug?

17           CHAIRMAN BELL: Sure, go ahead.

18           MR. MULLANEY: I think you mentioned, I  
19 think you called them legacy regulations, sort of  
20 the payment systems. How would you recommend that  
21 we address issues with respect to interconnection  
22 and transit and peering arrangements among network

1 providers that participate in the global internet?

2 MR. SOHN: Sure. I mean I think the key  
3 goal there has got to be to make sure that you don't  
4 end up with governments imposing too heavy a hand on  
5 internet peering.

6 We've got a situation that has largely  
7 worked, largely free of regulation. It is certainly  
8 worth some scrutiny going forward to make sure that  
9 can continue to happen. But what we saw recently in  
10 the ITU meeting in December was proposals by  
11 European telecoms to try to impose from a government  
12 top-down perspective this "sending party pays"  
13 notion, which is something that is drawn from the  
14 phone system. And if you actually start to play out  
15 the implications of that in the internet world, it  
16 just doesn't work and it risks, it really risks  
17 balkanizing the internet.

18 And so that was something that the  
19 carriers were pushing on their governments.  
20 Fortunately, that was not the position taken at the  
21 ITU, but it was a very serious proposal. And it is  
22 appealing to a lot of governments because they think

1 that maybe their nationally owned teleco can use it  
2 to wrest revenues from foreign-owned cloud  
3 providers. So there is a certain appeal to it. But  
4 it is harmful to the structure of the internet, and  
5 so I think TTIP could try to make sure that we don't  
6 go down that path.

7 MR. MULLANEY: Don't go down that path,  
8 okay. Thank you.

9 CHAIRMAN BELL: I think my State colleague  
10 had a question as well.

11 MS. FRERIKSEN: Thank you. And I'm new to  
12 the Panel, so to introduce myself, I am  
13 Leslie Freriksen with the European Bureau at State  
14 Department.

15 My question sort of was follow-up to the  
16 first question dealing with data flows and privacy.  
17 You had mentioned the need for this procedural  
18 commitment, something similar to safe harbor and  
19 based on an equivalency type standard. Are you  
20 recommending that equivalency at a country or  
21 company level?

22 MR. SOHN: I think we're looking for

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1 something, so I think our expectation -- you  
2 certainly had a lot of discussion in the United  
3 States with the possibility of horizontal privacy  
4 regulation here. The Administration has proposed a  
5 Consumer Privacy Bill Of Rights. I think most  
6 observers believe we are still some ways off in this  
7 country from doing the kind of comprehensive privacy  
8 baseline rules that they have in Europe. So I think  
9 we'd be looking at something that can be done on a  
10 company basis, but the details of that remain to be  
11 worked out.

12 CHAIRMAN BELL: All right, well, thank you  
13 very much.

14 MR. SOHN: Thank you.

15 CHAIRMAN BELL: We appreciate your time.

16 Our next speaker is from the Center for  
17 Digital Democracy. If you could identify yourself,  
18 that would be appreciated.

19 MR. CHESTER: Hi, I'm Jeff Chester,  
20 Executive Director of the Center for Digital  
21 Democracy. I want to thank you for inviting us here  
22 today to testify. My full oral testimony is at the

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1 desk. What I will do -- by the way, CDD is a member  
2 of the Transatlantic Consumer Dialogue, one of the  
3 U.S. groups that will be talking to you over the  
4 next two days.

5           Let me make three points. First, we think  
6 the Obama Administration and the European Union can  
7 negotiate a trade deal that promotes the interest of  
8 job creation, investment innovation, but also places  
9 the goals of ensuring consumer protection, civil  
10 liberties, and human rights alongside. That is, I  
11 think, the goal for us.

12           So there are three points, and the first  
13 point I think will overlap what David from CDT just  
14 said in part. The U.S. should not seek data  
15 protection in the TTIP. The U.S. system for privacy  
16 is really at a very nascent level. The Europeans  
17 are far ahead of the U.S. I should say that what we  
18 do is we look at the digital consumer marketplace  
19 mostly in the United States but all across the  
20 world, and especially the relationship of U.S.  
21 companies in the EU and Asia-Pacific. So we track  
22 what they are doing very broadly, not just the data

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1 collection, but the business practices and the  
2 business techniques.

3           Here, as David also mentioned, what you  
4 have is you have the proposed introduction of  
5 legislation from the Obama Administration, but no  
6 draft yet, no co-sponsors. It is unlikely there is  
7 going to be any legislation whatsoever.

8           The proposed U.S. framework of using  
9 multi-stakeholders, basically industry-led groups,  
10 to develop consensus on privacy regulations isn't  
11 working. For the last two years, I and actually CDT  
12 have been members of the World Wide Web Consortium  
13 Do Not Track Group, a modest proposal that would  
14 allow an individual to block some data collection  
15 from third parties; we can't come to really any  
16 agreement, and it may soon flounder next month.

17           For over a year, the Commerce Department  
18 has been struggling through its multi-stakeholder  
19 process for one of the simplest aspects of the Obama  
20 Administration privacy plan. And while we may end  
21 up with something in writing, it is unlikely  
22 consumer groups will participate -- many consumer

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1 groups will continue to participate.

2           In the United States, we face daily  
3 growing threats with our privacy from mobile devices  
4 and social media and geo-location targeting. So we  
5 have a real privacy problem. And until we address  
6 that privacy problem, we should not try to seek any  
7 kind of renegotiation with the Europeans. Indeed, I  
8 think it makes a safe harbor very problematic.

9           So we don't have a baseline approach. The  
10 Europeans have a human rights approach. We have a  
11 consumer protection approach. And we should not try  
12 to incorporate data protection.

13           Now, on data flows and the free flow of  
14 information, what really needs to happen there is  
15 much more independent fact-finding about what the  
16 implications are. You cannot separate out the data  
17 protection and the consumer protection issues from  
18 the data flow issues because this is all about  
19 collecting data on individuals and then subsequently  
20 targeting them for subsequent services.

21           So what I urge you to do is to convene  
22 expert stakeholders who can look at the range of

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1 e-commerce issues that the Administration wants to  
2 tackle, and we can bring to the table the research  
3 necessary to identify what can be done and what  
4 should be done.

5           And, for example, there is a U.S.  
6 objection to localized services. Well, you know,  
7 the internet has never been more local than ever.  
8 Think about what they are able to do with your  
9 smartphone data today. They know where you are,  
10 what you did, and they run predictive analytics to  
11 figure out what you're going to do next.

12           Information targeting happens not just in  
13 the block, but in the household on the block.  
14 Therefore, it is very natural, I think, for  
15 countries and for regions to want to impose  
16 reasonable requirements promoting localized consumer  
17 protection over digital products and services.

18           And I should say that despite the  
19 objections of many in the U.S. online industry to  
20 what they call the rigorous e-regime, when you look  
21 at what they're doing in Europe, they're doing very  
22 well. They are expanding their business. They are

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1 the leaders in e-commerce across Europe. So I think  
2 that they protest too much, but they are perfectly  
3 happy to live with a stronger set of rules, if it is  
4 in fact required.

5           Finally, transparency participation and  
6 accountability. We support the call by TACD and  
7 other groups, including from industry, to ensure  
8 meaningful transparency of the process. We want all  
9 the drafts, text, proposals, documents made public.  
10 This is essential to ensure meaningful participation  
11 from stakeholders.

12           We also, as TACD has urged, ask the USTR  
13 to develop a formal consumer advisory board. They  
14 can provide you with input and advice to make sure  
15 that the TTIP process is a success.

16           So I want to answer your questions now.  
17 Thank you. I won't presume that I have five extra  
18 minutes, if you don't have any questions, but I just  
19 thought I'd throw that in as a joke.

20           CHAIRMAN BELL: Just give us one minute  
21 here.

22           MR. CHESTER: Hi.

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1 MS. FRERIKSEN: Hi, thank you. I did have  
2 just a sort of a clarification question --

3 MR. CHESTER: Yeah.

4 MS. FRERIKSEN: -- following your  
5 testimony. You had mentioned that you support not  
6 having data privacy within the agreement, but that  
7 data flows, that they are linked to data privacy, so  
8 therefore you're suggesting that we convene an  
9 expert stakeholders global. Are you talking about  
10 within the TTIP structure itself, as part of the  
11 agreement, or are you saying as a separate --

12 MR. CHESTER: No, I think you need to do  
13 it within the TTIP structure. I mean it's all good  
14 and well to say we promote digital trade, digital  
15 commerce. Who doesn't? But the devil is in the  
16 details. And the fact is if you look at how these  
17 products are created, right, it's about not only  
18 collecting data from individuals, but then using  
19 that data to impact those individuals in the moment  
20 and subsequently with social media, it's not just  
21 individuals now, it's your friends through social  
22 media. So there are consequences here.

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1           And in looking at what U.S. industry wants  
2 to do around digital trade, we need to put it  
3 through a lens about how it actually impacts  
4 individuals. Now, that is something that we, and  
5 there are academics out there actually do it for a  
6 living, we look at really what happens, not the  
7 rhetoric that you might get from lobbyists, but what  
8 actually happens in the marketplace. That's the  
9 lens you need to use. This can be done right, but  
10 it needs to be done right, and you need some help, I  
11 think, in doing it.

12           It's probably one of the most complicated  
13 issues, I think, maybe not as complicated as  
14 nanotechnology, although the bits are smaller  
15 perhaps, but it's very complicated and needs to be  
16 done right. There are huge consequences to the  
17 public health and the public welfare, because when  
18 you think about how people access the internet and  
19 use the internet, increasingly so, and let's  
20 remember smartphones, so it's a 24/7 process. It's  
21 health decisions. It's how you are applying for a  
22 credit card and loans. It's how you are learning



1 about political information. It's all of these  
2 things and much more.

3           So we have to do this right and be very  
4 thoughtful about what does a 21st century set of  
5 consumer protection and market innovation and  
6 economic growth principles look like. It can't be  
7 rushed, especially because privacy is a problem.

8           I mean the Europeans have the right  
9 framework. I'll agree that they haven't had the  
10 level of enforcement we'd like to see. Our  
11 enforcement level, by the way, is not good. I did  
12 leave out, and I should add, that despite the fact  
13 there are 20-year consent decrees by the FTC with  
14 Facebook and Google, every day both those companies  
15 expand their data collection practices.

16           I sit at my desk with my mouth open,  
17 right, about what goes on here. So these are not  
18 easy issues, but they need to be done right, and you  
19 need some help, I think, in doing it. And I think  
20 you need to bring in the independent academics who  
21 look at this market and bring in the NGOs that look  
22 at this market. Anything else?

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1           CHAIRMAN BELL: Dan, do you want --

2           MR. MULLANEY: One follow-up. I mean you  
3 had mentioned, I think you cited what you saw as the  
4 deficiencies on the legislative front, on the U.S.  
5 side. And you then concluded safe harbor is  
6 problematic. But I mean we've heard a number of  
7 people testify today that the idea that one perhaps  
8 shouldn't try to harmonize the privacy protections,  
9 but to the extent that one party wants to recognize  
10 that say a particular company offers assurances of  
11 privacy that are essentially equivalent, why is that  
12 problematic?

13           MR. CHESTER: That may be a way to go.  
14 And I know in the EU they have these corporate  
15 binding rules. That may be one way to go on this.  
16 It would be interesting to see if, in fact, after  
17 the EU revises its directive, which U.S. companies  
18 are helping lobby against because it would give  
19 individuals control over their data profiles, which  
20 is the heart of the business frankly, right, whether  
21 or not there would be any companies that would, in  
22 fact, muster approval.

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1           Right now the research that has been done  
2 on the 1990 Safe Harbor is that it is not working  
3 well. And that's the World Privacy Forum report,  
4 and there are other reports as well. So we would  
5 have to completely look at this again because the  
6 threat is so much more extreme now. It's a 24/7.  
7 Not only is it collecting every bit of your data,  
8 it's analyzing that data.

9           And as you may know, and this is one of my  
10 concerns, the United States has exported to Europe  
11 what I consider privacy threatening technology, ad  
12 exchanges. We've pioneered it, and now you are  
13 bought and sold in 20 milliseconds to the highest  
14 bidder. You have no knowledge of it. You have no  
15 control of it. That is now the global standard that  
16 we have created. That's a privacy problem.  
17 Frankly, that's a civil liberties problem. And it  
18 is an example of something we need to look at as we  
19 try to develop what potentially can be a compatible  
20 approach to data flows between the United States and  
21 the EU.

22           The EU has the right critique on this.

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1 The United States so far is silent on this very  
2 troublesome aspect of online data collection.

3 MR. MULLANEY: Thank you.

4 MR. CHESTER: All right, thank you.

5 CHAIRMAN BELL: Thank you for your time.

6 If the representative from the Coalition  
7 for Privacy and Free Trade could join us, please.  
8 And if you could identify yourself for the record,  
9 that would be appreciated.

10 MS. PEARSON: Good afternoon. My name is  
11 Harriet Pearson. I am a partner at Hogan Lovells.  
12 I am joined by my partner Warren Maruyama. We are  
13 counsel to the Coalition for Privacy and Free Trade,  
14 and we thank you for the opportunity to appear  
15 before you today. Can we start? Great.

16 The Coalition for Privacy and Free Trade  
17 welcomes the opportunity to provide a statement to  
18 the TPSC regarding the Transatlantic Trade and  
19 Investment Partnership. My name, I already shared  
20 with you. Warren is here with me. The Coalition  
21 that we represent is a multi-sectorial global of  
22 businesses that are interested and believe that the

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1 issue of cross-border personal data flows and  
2 privacy are vital to the trade negotiations that are  
3 about to begin and are vital to the growth of the  
4 economies on both sides of the Atlantic and to jobs.

5 We believe that the TTIP represents a  
6 historic, once-in-a-generation opportunity to  
7 advance the interoperability of data privacy  
8 frameworks in ways that support cross-border data  
9 flows and recognize the importance of individual  
10 privacy.

11 We have two main points to make this  
12 afternoon. One is that trusted cross-border  
13 personal data flows are vital to trade. The ability  
14 of U.S. and European companies to transmit and  
15 access data across borders subject to necessary  
16 protections to safeguard personal privacy is  
17 essential to future U.S. and European growth and  
18 jobs, both large company as well as small businesses  
19 that seek to engage in international commerce and  
20 digital trade across borders. We believe it is  
21 important to more than the 800 million people in the  
22 U.S. and European Union that rely on the digital

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1 economy and digital trade for access to information,  
2 goods, and services.

3           Modern international trade, economic and  
4 employment growth, and industrial competitiveness  
5 depend increasingly on the ability of U.S. and  
6 European companies to manage digital trade and  
7 cross-border data flows. The stakes go far beyond  
8 the internet software and high tech industries. The  
9 future competitiveness of European and U.S. banking,  
10 pharmaceutical, life sciences, retail, insurance,  
11 healthcare, automotive, and manufacturing sectors  
12 also depend on their future capability to manage  
13 cross-border data flows to provide goods, services,  
14 and information to customers worldwide.

15           The role of interconnected IT means that  
16 international commercial activity of all kinds now  
17 involves cross-border data access, sharing,  
18 management, and analysis. Unfortunately, the  
19 variable and often costly and redundant regulation  
20 of cross-border data flows unnecessarily complicates  
21 multinational operations. The TTIP has the  
22 opportunity to look at those kinds of barriers and

1 realize a vision where those kinds of barriers are  
2 removed and minimized.

3           Now, of course, personal data is  
4 absolutely part of the picture here when you talk  
5 about digital data. Digital trade frequently  
6 includes personal data. So in order to enable this  
7 global free flow of information, it is essential for  
8 governments to strike an appropriate balance between  
9 supporting the movement of data across borders while  
10 ensuring respect for data protection and privacy.

11           So, importantly, this is not a question of  
12 making privacy and data protection laws uniform on  
13 both sides of the Atlantic, nor are we suggesting  
14 that the TTIP be used as a vehicle to restructure  
15 national privacy frameworks. That is not the place.  
16 But the Coalition is concerned that unduly  
17 restrictive government policies in this area, when  
18 it comes to cross-border, would impede the TTIP's  
19 ability to support future U.S. or European economic  
20 growth, industrial competitiveness, and job creation  
21 at a time when both U.S. and European economies are  
22 struggling to recover from a recession that has

1 already cost millions of jobs.

2           So that's our first point that this issue  
3 is important. It is vital to economic progress and  
4 needs to be addressed.

5           MR. MARUYAMA: Mr. Chairman, our second  
6 point --

7           UNIDENTIFIED SPEAKER: Mike is not on.

8           MR. MARUYAMA: Our second point is that  
9 despite some of the concerns that have been  
10 expressed, TTIP can make an enduring contribution to  
11 global trade and the evolution of the internet by  
12 pioneering practical mechanisms and interoperability  
13 that recognize, respect, and seek to reconcile  
14 differences between the U.S. and EU privacy regimes.

15           There are broad similarities in the U.S.  
16 and European privacy regimes, despite certain  
17 differences in approach. Both are based on the  
18 OECD's Guidelines on Protection of Privacy and  
19 Transborder Flows of Personal Data. That means that  
20 both focus on empowering individuals to exercise  
21 control over their personal information, both  
22 emphasize the importance of appropriate measures to

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1 achieve adequate data security, and both expect  
2 accountability from organizations that collect, use,  
3 and otherwise manage personal data.

4           To address such challenges, our Coalition  
5 recommends that USTR and the TPSC seek to negotiate  
6 trade disciplines in TTIP that promote a single,  
7 integrated global digital information marketplace,  
8 complete with necessary protections for personal  
9 privacy. Such rules and disciplines would benefit  
10 U.S. and EU businesses and consumers by addressing  
11 inconsistent and redundant regulation of cross-  
12 border data access, sharing, management, and  
13 analysis. And that can only be accomplished if  
14 cross-border data flows and privacy regulations are  
15 part of the TTIP negotiations.

16           Accordingly, we urge USTR and the TPSC to  
17 adhere to certain principles in TTIP: Specifically,  
18 TTIP should first promote a single global digital  
19 information marketplace by safeguarding cross-border  
20 data flows. It should respect privacy and make  
21 interoperability mechanisms available to U.S. and EU  
22 entities. It should enable the U.S. and EU to work

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1 together to strengthen cross-border enforcement. It  
2 should ensure that substantive and procedural  
3 commitments by both the U.S. and EU are durable over  
4 time to increase regulatory predictability and  
5 business certainty and make sure that the FTA is  
6 meaningful. And, finally, it should ensure that  
7 privacy regulation and enforcement is consistent  
8 with the basic nondiscrimination principles set  
9 forth in U.S. and EU FTAs.

10 We look forward to working with USTR and  
11 the TPSC during TTIP. And we welcome any questions  
12 from the Committee.

13 CHAIRMAN BELL: All right, well, thank you  
14 very much. We do have some questions. Maybe we  
15 would like to start off with my Commerce colleague.

16 Skip, if you would like to initiate, that  
17 would be good, thank you.

18 MR. JONES: Thanks very much, Doug. And  
19 thank you, Warren, and Ms. Pearson for your  
20 testimony.

21 Now, you have both talked about the  
22 criticality of ensuring the provision of free flow

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1 of data across borders and the tension that exists  
2 there with privacy. Can you tell us how do you  
3 think the TTIP should address public policy concerns  
4 like privacy, in specifics? You both said it is  
5 necessary to address it, but can you be more  
6 specific on how?

7 MS. PEARSON: Sure. Well, I think the  
8 specifics need to be developed, but interoperability  
9 is the word that we would offer as a keystone to  
10 efforts such that. As I said in my statement and in  
11 our comments, the national frameworks in place in  
12 Europe and the U.S. are evolving. They are based on  
13 very similar principles, but they are evolving in a  
14 way that is slightly different. And finding a  
15 mechanism for cross-border data to flow and for  
16 activities of companies that are engaged in digital  
17 trade to be recognized as being okay, to kind of  
18 figure out how the two systems can interoperate in a  
19 way such that privacy can be protected and the flows  
20 can be continued is the goal here.

21 So safe harbor, the U.S. privacy safe  
22 harbor is an example of a mechanism that currently

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1 the Department of Commerce administers that is an  
2 example of something like that, but there are other  
3 methods as well. And I think the work of the next  
4 months is to identify some of those.

5 MR. JONES: Okay, thank you. Going a  
6 little further into the interoperability, so do you  
7 see a specific set of procedural commitments that  
8 you would recommend to include, to provide  
9 businesses greater certainty on this  
10 interoperability front?

11 MR. MARUYAMA: We're still in the process  
12 of working through these issues. You know,  
13 obviously, it is an issue that governments have  
14 struggled with. In the end, it is going to require  
15 an appropriate balance between supporting cross-  
16 border data flows and protection of privacy since  
17 both the U.S. and EU recognize that that is  
18 important.

19 In the end, I think it is likely that  
20 there is not going to be a single silver bullet that  
21 addresses these issues, and it is probably going to  
22 require a range of solutions. But we are still in

1 the process of working our way through that, and it  
2 would be premature to get into it right now.

3 MS. PEARSON: Particularly since the  
4 solutions here, I think, need to work across  
5 industries. And what we are working with and on  
6 behalf of is again a cross-sectorial viewpoint.

7 MR. JONES: Well, obviously, we will look  
8 forward to continuing the dialogue on that front.

9 MS. PEARSON: Yeah.

10 MR. JONES: A third question. Warren, you  
11 mentioned when you wrapped up the things that TTIP  
12 should be doing, one of the things was to strengthen  
13 cross-border enforcement on data privacy. Are there  
14 things that you think should be specifically  
15 included in the agreement to strengthen, or  
16 Ms. Pearson, to strengthen cooperation on  
17 enforcement of data privacy?

18 MS. PEARSON: Yes. I think the U.S.  
19 Federal Trade Commission, as an example, has done  
20 exemplary work in interacting internationally and  
21 working with its peer agencies. And the record of  
22 enforcement in the U.S. has been quite active and

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1 leading internationally in terms of the number of  
2 actions brought and the kinds of changes brought by  
3 those enforcement actions.

4 We believe that such coordination, such  
5 activity needs to continue and that those kinds of  
6 lessons learned and applied as we go on need to be  
7 continued. So that's an example.

8 MR. MARUYAMA: And also, I mean, there is  
9 a fundamental issue here, which is if either  
10 country, us or the EU, lets data across its borders,  
11 you are going to expect that it is subject to  
12 privacy protections, and that will require some  
13 level of cooperation on enforcement.

14 CHAIRMAN BELL: We have one more question.

15 MR. MULLANEY: Recognizing you kind of  
16 addressed this by saying you're still working on it,  
17 I'm curious Warren had mentioned that you might be  
18 looking at a variety of tools. The example safe  
19 harbor was given as one possible outcome. I think  
20 you had suggested maybe even harmonized rules  
21 possibly.

22 Have you found in talking to different

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1 members of the Coalition that there is a difference  
2 among different sectors, just preliminarily, as to  
3 their approach to this issue, or certain sectors  
4 feel that a mutual recognition approach is  
5 appropriate, others feel that a different approach  
6 is appropriate?

7 MS. PEARSON: No.

8 MR. MARUYAMA: One thing, I think, the one  
9 thing that everyone agrees on is harmonization is  
10 probably not a practical alternative. But beyond  
11 that, I think everything would be on the table. And  
12 there have been a variety of mechanisms that have  
13 been used in trade agreements and in privacy and  
14 other areas to try and get a handle on this. And  
15 that's what we are going to walk our way through. I  
16 would fully expect that different sectors are going  
17 to have different interests.

18 MS. PEARSON: Yep.

19 MR. MULLANEY: Okay.

20 MR. MARUYAMA: We're still working our way  
21 through that.

22 MR. MULLANEY: We'll look forward to a

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1 continued dialogue on this. It's an important  
2 issue.

3 MS. PEARSON: Thank you.

4 CHAIRMAN BELL: All right, well, thank you  
5 very much.

6 MS. PEARSON: Thank you, appreciate it.

7 MR. MARUYAMA: Thank you.

8 CHAIRMAN BELL: All right, our next  
9 witness is from the Electronic Privacy Information  
10 Center. If you could please identify yourself, as  
11 well?

12 MR. JACOBS: Sure. Hi, my name is  
13 David Jacobs. I'd like to thank you for the  
14 opportunity to participate in today's public  
15 hearing. My name is David Jacobs, and I am  
16 representing the Electronic Privacy Information  
17 Center. EPIC is a public interest research center  
18 located in Washington, D.C., that focuses on  
19 emerging privacy and civil liberties issues.

20 I want to make three brief points today.  
21 First, the TTIP should not address substantive  
22 privacy rules and protections. Second, any TTIP

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1 provisions related to cross-border information flows  
2 must avoid undermining the development of  
3 substantive privacy law, particularly in the  
4 European Union. And, finally, the TTIP negotiations  
5 must emphasize transparency and provide for regular  
6 civil society involvement.

7           So to the first point, TTIP negotiations  
8 should exclude substantive privacy and data  
9 protection rules. The development of privacy law is  
10 a highly contentious process that implicates  
11 important rights of individuals in the United States  
12 and the European Union. Both parties are currently  
13 revising their privacy frameworks.

14           The United States lacks a general privacy  
15 law, but the Administration has articulated strong  
16 principles in the form of the Consumer Privacy Bill  
17 of Rights, and the Commerce Department is working on  
18 draft legislation to implement these principles.  
19 Similarly, the European Union is developing its  
20 General Data Protection Regulation, which is a  
21 comprehensive update of its 1995 directive. Given  
22 these ambitious developments and the important

1 values at stake, a trade agreement is simply not an  
2 appropriate vehicle for setting substantive privacy  
3 rules.

4           Second, any provisions related to cross-  
5 border data flows must avoid undermining existing  
6 privacy laws or preventing the development of  
7 stronger protections. This is not to say that  
8 information should never be transferred across  
9 borders. And, furthermore, many liberalization  
10 measures might be privacy neutral, such as bans on  
11 "sending party pays" fee regimes or forced  
12 localization requirements, but cross-border data  
13 flows provisions must not enable the circumvention  
14 of substantive privacy standards.

15           In particular, the European Data  
16 Protection Regulation contains provisions that are  
17 stronger than current U.S. law, which raises the  
18 possibility that these protections will be reduced  
19 in the name of interoperability or regulatory  
20 harmonization.

21           And, finally, draft text of the agreement  
22 should be made publicly available, and a mechanism

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1 for regular civil society involvement should be  
2 created. Transparency is necessary for the  
3 legitimacy of the negotiation process and the  
4 ultimate agreement. Although some level of secrecy  
5 may facilitate negotiation, other multinational  
6 institutions have conducted negotiations with a  
7 relatively high degree of transparency. The World  
8 Intellectual Property Organization, for example,  
9 publicly releases negotiating texts often on a daily  
10 basis.

11           And, furthermore, withholding the draft  
12 text is likely to be counterproductive. First, such  
13 secrecy prevents USTR from receiving meaningful  
14 input from the public. And, second, excessive  
15 secrecy fuels rumors and speculation which undercut  
16 the negotiation process.

17           Several mechanisms for regular public  
18 involvement have been proposed by other consumer and  
19 privacy organizations. One example is a consumer  
20 advisory committee, and this is one partial  
21 solution. But USTR should also use additional  
22 communication channels, such as the internet, to

1 accept regular comments and keep the public informed  
2 about the status of the agreement.

3 Thank you very much, and I would be  
4 pleased to answer your questions.

5 CHAIRMAN BELL: All right, well, thank  
6 you, Mr. Jacobs. I'll ask my colleague from the  
7 State Department to pose the first question.

8 MS. FRERIKSEN: Thank you. Thank you for  
9 your testimony. You had stressed that the TTIP is  
10 not the appropriate vehicle or mechanism for  
11 discussing data privacy. Do you have suggestions  
12 for what you consider another appropriate venue for  
13 dealing with these issues that have been raised  
14 throughout the day?

15 MR. JACOBS: Right. I mean I think that  
16 there are a number of international frameworks or  
17 treaties that relate to privacy that might be a more  
18 appropriate vehicle. I mean you have the Madrid  
19 Declaration, the Council of Europe Convention 108,  
20 and so on. So I think there are international  
21 opportunities related to privacy that the point is  
22 not to sort of set the substantive standards or try

1 and set them through a trade agreement like TTIP.

2 CHAIRMAN BELL: Dan, do you have a  
3 question?

4 MR. MULLANEY: Yeah. Thank you for your  
5 testimony, Mr. Jacobs. You have identified a couple  
6 of things, two things that you think the TTIP  
7 negotiation should not do, no negotiation of  
8 substantive privacy rules, cross-border data flows  
9 shouldn't interfere with privacy legislation.

10 Given the interest in doing something in  
11 an agreement that assures flow of data, and I think  
12 you were here for some of the earlier testimony, how  
13 could the negotiators frame some sort of a  
14 commitment that both ensures the free flow of data,  
15 respects privacy policies without -- with having  
16 some safeguard to prevent policies from becoming  
17 disguised barriers to trade or simply devices for  
18 trying to encourage domestic business or services  
19 businesses?

20 MR. JACOBS: Right. Well, I mean I think  
21 that is one of the key challenges of the negotiation  
22 process. Some have mentioned the creation of some

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1 kind of mechanism to ensure adequacy or equivalence  
2 and that this would facilitate cross-border data  
3 flows, and I think that in principle that could be  
4 an option.

5           It's sort of too early now for me to sort  
6 of spell out the specifics, but there have been  
7 developments on this front. I know that the Article  
8 29 Data Protection Working Party recently had a  
9 press release in March announcing a cooperation on  
10 data transfer systems between Europe and the  
11 Asia-Pacific Economic Cooperation.

12           So depending on how that goes and what is  
13 developed out of that process, that might provide a  
14 model or at least some information that might be  
15 useful for you in the TTIP.

16           CHAIRMAN BELL: All right, Mr. Jacobs,  
17 thank you very much for your time.

18           MR. JACOBS: Thank you.

19           CHAIRMAN BELL: I think our next witness  
20 is Ms. Aaronson from the George Washington  
21 University.

22           MS. AARONSON: I'm here. Thank you so

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1 much for this opportunity to comment on the TTIP.  
2 I'm so glad to see the winner of the 2012 Nobel  
3 Peace Prize and the 2009 Nobel Peace Prize hooking  
4 up. Because I believe that the regulatory coherence  
5 objective of the trade agreement has significant  
6 implications for the future of democracy, how we  
7 negotiate is as important as what we negotiate.  
8 Thus, I will focus the bulk of my remarks on the  
9 regulatory coherence portion of the negotiations, on  
10 that strategy, and then I'd also like to focus on  
11 the internet and internet-related provisions.

12           So, as you know, one of the goals of the  
13 TTIP is to encourage regulatory coherence. The  
14 purview of the negotiation includes many areas of  
15 governance directly affecting citizens, such as food  
16 safety, environmental and labor standards, or data  
17 privacy. These regulations are essentially the  
18 stuff of domestic policies. If negotiators try to  
19 achieve coherence without consistent public input,  
20 the public in both the EU and the United States  
21 could see these efforts as illegitimate.

22           In an attempt to build public support and

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1 foster transparency, both the EU and the United  
2 States have called for public comments, such as  
3 today's discussion, and that's great, but clear  
4 divisors will have continuous input. And USTR has  
5 not shown how trade negotiators will incorporate  
6 public comments as the negotiations proceed. They  
7 have also not met promises made by the Obama  
8 Administration for transparent, accountable  
9 governance.

10           In fact, the U.S. has not changed its  
11 approach to making trade policy since the Clinton  
12 Administration. So the U.S. still has broad issue  
13 advisory committees and industry advisory  
14 committees, but the advisory committee structure is  
15 focused on U.S. commercial and economic interest,  
16 rather than a broader conception of the national  
17 interest in opening markets and expanding trade.  
18 And so I suggest a broader advisory process could be  
19 especially helpful as the U.S. works towards  
20 regulatory coherence.

21           Now, although the scope of the trade  
22 agreement may be 21st century, trade policy making

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1 remains stuck in a 19th century time warp of secrecy  
2 that I believe undermines trust and public support.  
3 In order to achieve such support, the  
4 Administration, through USTR, through the State  
5 Department, through other affiliated agencies,  
6 should work to build education and dialogue and seek  
7 continuous public input. And I'd like to tell you  
8 how they can do it.

9           Use the website. Right now, the website  
10 is simply used for dissemination purposes, okay, but  
11 not for civic participation. So why not delineate  
12 the objectives and status of the negotiation for  
13 each chapter, in particular the regulatory coherence  
14 portions, and USTR should seek input and clearly  
15 explain how it will use this input, and if it won't  
16 use it, why will it not use it.

17           Other U.S. Government agencies have begun  
18 to crowdsource, to seek advice as to what they are  
19 doing. And I'd just cite as example for you the  
20 patent administration -- the Patent Office, I  
21 misspoke there.

22           Now, I also want to suggest that much of

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1 these negotiations have traditionally proceeded in a  
2 secretive manner, but I just wonder if that needs to  
3 happen in the 21st century. I can certainly  
4 understand why business confidential-related  
5 negotiations such as on tariffs need to be  
6 secretive. But I don't see why we need to have  
7 secretive negotiations, for example, data  
8 protection. How is that in any way business  
9 confidential? Okay, so that same secrecy, I  
10 believe, may undermine trust and public support.

11 Now, I'd like to briefly comment on the  
12 internet-related provisions, specifically the cross-  
13 border data flows. So my research has looked at  
14 this in recent years with research funded by the  
15 MacArthur and Ford Foundations. And in my research,  
16 I have compared how the U.S., EU, and Canada try to  
17 use trade regulations to address internet  
18 governance.

19 In general, a couple of findings worth  
20 noting, I found that they haven't figured out how to  
21 balance internet openness, which is policies and  
22 procedures that allow netizens to make their own

1 choices about services and content and internet  
2 stability, which is so important today in this era  
3 of cybertheft, spam, hacking, etc.

4           So we have got to find that balance, and  
5 that balance is always going to change over time.  
6 It isn't going to be easy to do this in trade  
7 agreements. Hence, I think when we make provisions  
8 related to the internet, they should not be done in  
9 bureaucratic silos of intellectual property here and  
10 server location here without weighing the collective  
11 effects of these policies on internet openness and  
12 freedom. If we want the one global internet to  
13 flourish, we can't think about the internet in a  
14 piecemeal way.

15           Do I have a minute? Okay. So I'm just  
16 going to make a suggestion, thank you, that if we  
17 want to include language on the free flow of  
18 information, we should also focus on the regulatory  
19 context in which the internet functions. So things  
20 like free expression, fair use, rule of law, these  
21 things have been included in other aspects of trade  
22 agreements the U.S. has signed. We should do the

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1 same.

2           Moreover, in the internet-related  
3 provisions of this agreement, the United States and  
4 the EU should perhaps report on why and when they  
5 block information. If Google can do it, so can the  
6 U.S. Government and the EU government.

7           Thank you so much for letting me share my  
8 point of view.

9           CHAIRMAN BELL: All right, well, thank you  
10 very much, Ms. Aaronson. Dan, would you like to  
11 start us off?

12           MS. AARONSON: Oh, okay, sure. The last  
13 time I testified here on internet stuff, there  
14 wasn't much to --

15           CHAIRMAN BELL: Well, just to clarify  
16 since there was some confusion, the way this works  
17 is you had five minutes for your presentation, which  
18 you gave, and then we reserve five minutes for  
19 questions from the Panel.

20           MS. AARONSON: Sure.

21           CHAIRMAN BELL: So that's the point at  
22 which we are now.

1 MR. MULLANEY: Thanks. Thanks very much  
2 for your testimony. You mentioned free flow of data  
3 across borders as one of the things we are looking  
4 at addressing. And, in fact, a number of the  
5 witnesses testifying today have talked about how  
6 important that is.

7 So how, in your view, do you address the  
8 public policy concerns that you mentioned, such as  
9 privacy concerns and others, in connection with  
10 disciplining or having an agreement on free flow of  
11 data?

12 MS. AARONSON: Right. So it's not just  
13 data; it is all forms of information. And I think  
14 you have to respect the regulatory context, which is  
15 going to differ in each country. So that means  
16 everything from due process rules related to site  
17 takedowns, intellectual property site takedowns or  
18 national security site takedowns, to privacy, which  
19 is so different culturally. You know, we don't have  
20 the right to be forgotten; you may well soon have  
21 that right, right? So we've got to find ways to  
22 make it interoperable, and that is not going to be

1 easy to do.

2           But one thing that has not been made  
3 clear, is this an objective? Is interoperability  
4 the objective, or is harmonization the objective?  
5 And so I put more detail about that in my written  
6 testimony, but I wanted to be quick about it. I  
7 would be pleased to answer more questions on that.  
8 But we have to think about how do you encourage the  
9 regulatory context that is respectful of each  
10 country's or the EU-wide's very different approach  
11 to governing these issues.

12           CHAIRMAN BELL: All right, well, thank you  
13 very much for your time.

14           MS. AARONSON: Thank you.

15           CHAIRMAN BELL: We'll now move to the  
16 Digital Trade Coalition. And if you could also  
17 identify yourself, that would be appreciated.

18           MR. RAUL: Thank you. I am Alan Raul of  
19 Sidley Austin, LLP. I am pleased to present this  
20 testimony on behalf of an informal coalition of tech  
21 and internet companies, so the Digital Trade  
22 Coalition. On behalf of these companies, we

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1 encourage USTR to include privacy, data protection,  
2 e-commerce, and cross-border data flows in the  
3 negotiation and harmonization of the free trade  
4 negotiations between the United States and the  
5 European Union under the aegis of the Transatlantic  
6 Trade and Investment Partnership, TTIP.

7           This digital dimension to international  
8 trade between the world's two largest trading  
9 partners is obviously critical to future economic  
10 growth, opportunities for innovation, and the social  
11 well-being of citizens and consumers on both sides  
12 of the Atlantic. Enhancing regulatory cooperation  
13 between the U.S. and EU on digital trade could  
14 provide very significant benefits to both sides  
15 without compromising substantive protection for the  
16 citizens and consumers of either jurisdiction. The  
17 USTR should, therefore, strive to understand and  
18 ameliorate current and proposed EU privacy and data  
19 protection rules that unfairly disfavor U.S. and  
20 multinational business in cloud computing, social  
21 media, mobile apps, and other internet services.

22           In this testimony, the Digital Trade

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1 Coalition wishes to emphasize a few key points.  
2 First, there is a shared commitment to the  
3 importance of privacy as a fundamental value between  
4 the U.S. and the EU. This is really shared between  
5 the two jurisdictions. In the U.S., privacy rights  
6 are enshrined in the Constitution and numerous  
7 specific federal and state statutes, and privacy and  
8 data protection are further protected through  
9 general laws prohibiting unfair and deceptive acts  
10 and practices and in extensive jurisprudence under  
11 the common law.

12 We also recommend that we seek to achieve  
13 mutual recognition of privacy and data protection  
14 regimes. The U.S. and EU share common objectives to  
15 protect information privacy through effective  
16 regulatory policy and enforcement. The data  
17 protection regimes of both the U.S. and EU should be  
18 accorded mutual respect and recognition.

19 There are great potential benefits to both  
20 sides in achieving greater regulatory cooperation  
21 and in minimizing actual or perceived policy  
22 conflicts. The U.S. and EU should agree to a

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1 process to establish equivalence and mutual  
2 recognition of their respective privacy and data  
3 protection standards. USTR should thus promote  
4 better alignment of regulatory expectations and  
5 should not acquiesce in the current EU view that the  
6 U.S. does not provide adequate data protection.

7           The fact is that U.S. privacy and data  
8 protection policies and enforcement are robust.  
9 Accordingly, the negotiators can draw on numerous  
10 existing U.S. and EU and other international  
11 precedents for promoting mutual recognition and look  
12 for mutually satisfactory regulatory outcomes, in  
13 other words, substantive privacy and data  
14 protections, without insisting on precisely the same  
15 procedures and processes.

16           We also recommend that USTR address the EU  
17 misperceptions about the Patriot Act and U.S.  
18 Government surveillance. Laws in the EU and the  
19 U.S. regarding government access to personal  
20 information in the cloud and elsewhere are, in fact,  
21 more harmonious than many in the U.S. -- in the EU  
22 believe. The United States is not an outlier in

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1 this regard.

2           Europe recognizes and applies the same  
3 imperatives as the United States to access data for  
4 national security and law enforcement purposes while  
5 simultaneously preserving and balancing data  
6 protection and privacy rights. EU concerns that  
7 U.S.-based internet and cloud service providers are  
8 more exposed to government intrusion than EU  
9 providers does not acknowledge the parallels and  
10 substantial overlap between U.S. and EU law in this  
11 regard. Current misperceptions, however, have  
12 worked to the detriment of U.S. tech and internet  
13 companies that face undue hostility in Europe.

14           We also recommend that USTR engage in  
15 efforts to abate discrimination against U.S. tech  
16 and internet companies. Current and proposed  
17 European Union data protection standards impose  
18 distinctly greater burdens on U.S.-based internet  
19 and tech companies, and, indeed, most of the high  
20 profile enforcement actions pursued by the EU to  
21 date have involved U.S. companies.

22           We also recommend that U.S. negotiators

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1 support the EU one-stop shop for regulatory  
2 efficiency and fairness purposes. As you know, this  
3 is included in the current draft regulation that the  
4 EU has proposed. And we suggest that in order to  
5 avoid discrimination and promote regulatory  
6 efficiency, the USTR should support this  
7 recommendation in the trade negotiations.

8 We also believe that the TTIP process can  
9 promote better regulatory impact assessment for  
10 privacy regulations and cost-benefit analysis on  
11 both sides of the Atlantic. Both U.S. and EU policy  
12 makers can do a better job of applying rigorous  
13 regulatory impact assessment and cost-benefit  
14 analysis for privacy and data protection  
15 regulations.

16 Finally, we recommend that the TTIP  
17 process result in the establishment of a U.S.-EU  
18 privacy and data protection working group that can  
19 address many of these issues and work to ameliorate  
20 actual conflicts and minimize divergence in current  
21 regulatory policy. Thank you.

22 CHAIRMAN BELL: All right, well, thank you

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1 very much, Mr. Raul. I'll just start off with one  
2 question. You made a comment a number of times  
3 about what you consider to be European  
4 misperceptions of U.S. privacy standards, the role  
5 of the Patriot Act.

6 I am curious what you view as the source  
7 of those misperceptions. And then secondarily, how  
8 would you suggest addressing those misconceptions?

9 MR. RAUL: Well, I think that the  
10 recommendation that there be established through the  
11 TTIP process a U.S.-EU privacy and data protection  
12 working group should actually also be established  
13 during the TTIP negotiating process so that some of  
14 these issues and the misperceptions can be  
15 confronted head-on.

16 I think the misperceptions have arisen  
17 simply because there was during the post-9/11 period  
18 substantial attention to U.S. Government legal  
19 authorities for accessing data. The Patriot Act  
20 really is the rubric; in fact, it is more likely to  
21 be the Foreign Intelligence Surveillance Act, the  
22 Electronic Communications Privacy Act, and so on

1 rather than the Patriot Act. But, nonetheless, that  
2 is the rubric that has gotten the most attention.

3           The fact of the matter is that European  
4 governments, the member states, all have precisely  
5 the same or very substantially similar authorities  
6 as the U.S. Government does. And as transparency  
7 reports that have been publicized by Google and  
8 others indicate, they make significant use of their  
9 authorities. So there is great overlap and  
10 parallelism between law enforcement and national  
11 security authorities on both sides of the Atlantic.

12           CHAIRMAN BELL: We have some other  
13 questions as well. I'm going to ask the Commerce  
14 representative, Skip, to start us off.

15           MR. JONES: Thanks, Doug. And thanks,  
16 Mr. Raul, for your testimony.

17           A number of speakers have wrestled with  
18 this question of how do we balance the desire to get  
19 cross-border data flows with privacy concerns, and  
20 your answer seems to be mutual recognition  
21 agreements.

22           We have a long and only partially fruitful

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1 experience with mutual recognition agreements with  
2 the European Union. Can you suggest to us how we  
3 might change the paradigm and make this a different  
4 experience than we have had in the past?

5 MR. RAUL: Sure. And thanks for that  
6 question. First, I would say that I do commend the  
7 USTR request for comments and testimony for  
8 including e-commerce along with cross-border data  
9 flows. And part of our testimony in prior comments  
10 is really to encourage this process to expand simply  
11 beyond the concept of trying to promote cross-border  
12 data flows, but actually seeking better regulatory  
13 alignment.

14 Recognizing that mutual recognition may be  
15 an ideal but a difficult one to achieve in practice,  
16 I think it is important again in confronting head-on  
17 with the European counterparts that the objectives  
18 of the two sides to protect privacy while also  
19 achieving innovation and benefits for consumers on  
20 both sides really is very much shared.

21 And going back to the question about  
22 misperceptions, I think addressing the misperception

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1 that the U.S. regime is not adequate would be very  
2 beneficial to, one, the interest of U.S. internet  
3 and tech companies, but also I think would be --  
4 objectively viewed would be fair as well.

5           We don't have, as the Europeans do, a  
6 single comprehensive omnibus statute, but we have  
7 lots of privacy statutes, and we have lots of  
8 enforcement. In fact, in a lot of ways, the  
9 proposed regulation by the EU, which contains a  
10 number of provisions, that I think consumers on both  
11 sides of the Atlantic would be well served to  
12 moderate perhaps.

13           The fact of the matter is that the United  
14 States has long been ahead on enforcement of privacy  
15 matters and on data security in particular. We have  
16 data breach notification statutes. We also have  
17 affirmative data security obligations imposed by  
18 various federal and state statutes.

19           So, again, to address the question, it  
20 would be a matter of confronting the misperceptions  
21 and clarifying for negotiators on the EU side that,  
22 in fact, the existing U.S. regime is strong, it is

1 robust, and interestingly, and I think this is a  
2 significant factor and potentially a helpful one for  
3 the TTIP process, there is a lot of policy  
4 discussion and foment underway on both sides of the  
5 Atlantic right now, and the time actually may be  
6 opportune, as positive as ever really to seek to  
7 mitigate some of the prior conflicts, recognize that  
8 the EU is moving, and perhaps the United States is,  
9 and there may be an opportunity to get closer than  
10 ever before.

11 MR. JONES: Thank you. Just a follow-up  
12 question.

13 You mentioned that one way to try to deal  
14 with these misperceptions would be to stand up this  
15 proposed data protection working group even during  
16 the negotiation process and to start working on a  
17 better understanding of what actually exists on both  
18 side of the Atlantic. Can you provide us with a  
19 sense of how you specifically see that group  
20 working, how it would be constituted, when does it  
21 meet --

22 MR. RAUL: I don't have --

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1           MR. JONES: -- on the agenda, that kind of  
2 thing?

3           MR. RAUL: I don't have the specifics for  
4 you, but I do think that if you viewed it as an  
5 outgrowth of the High Level Working Group on Jobs  
6 and Economic Growth that has been an effort on both  
7 sides to streamline regulations, to eliminate  
8 unnecessary conflicts and redundancies, I believe  
9 that process has held a fair amount of promise and  
10 potential in order to eliminate, again, unnecessary  
11 conflicts. That is where the substantive objectives  
12 are parallel or overlap substantially and where the  
13 differences result in conflicts without any  
14 commensurate substantive protection.

15           My understanding is that that was an  
16 important objective of the High Level Working Group  
17 on Jobs and Economic Growth. It certainly is what I  
18 believe animates President Obama's Executive Order  
19 on International Regulatory Cooperation, and I think  
20 that, again, my sense is that on both sides of the  
21 Atlantic, there is an interest in smarter  
22 regulation, regulation that achieves the same

1 benefits and protections more cost effectively, with  
2 less burdens on both the relevant businesses and  
3 economic impacts on society.

4 CHAIRMAN BELL: All right, well, thank you  
5 very much for your time.

6 MR. RAUL: Thank you very much.

7 CHAIRMAN BELL: Our next witness is from  
8 Public Citizen. And if you could identify yourself,  
9 that would be appreciated.

10 MR. BEACHY: My name is Ben Beachy. I'm  
11 Research Director for Public Citizen's Global Trade  
12 Watch.

13 Public Citizen welcomes the opportunity to  
14 comment on the proposed Trans-Atlantic Free Trade  
15 Agreement, or also known as the Transatlantic Trade  
16 and Investment Partnership. Public Citizen is a  
17 national, nonprofit public interest organization  
18 with 300,000 members that champion citizen interests  
19 before Congress, Executive Branch agencies, and the  
20 courts.

21 Public Citizen believes the advancement of  
22 consumer well-being must be a primary goal of any

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1 U.S.-EU pact. We are skeptical that a deal built on  
2 regulatory convergence as proposed for this  
3 agreement will serve consumer interests. Consumers  
4 have different priorities in different countries.  
5 Differences in regulatory standards between  
6 countries with different constituent priorities  
7 should be expected and respected as the legitimate  
8 outgrowth of trade between democratic nations.

9           However, many comments submitted by  
10 industry groups in this process have advocated for  
11 the elimination of regulatory distinctions for the  
12 sake of narrow business interests. First, it is not  
13 apparent from empirical evidence that regulatory  
14 convergence would result in significant efficiency  
15 gains. Second, it is not at all apparent that any  
16 such gains would outweigh consumers' loss of ability  
17 to set the regulations that affect them or justify  
18 the considerable expenditure of limited government  
19 resources to engage in multi-year negotiations  
20 between parties with already low tariffs. Before  
21 adopting a regulatory convergence approach, the U.S.  
22 and EU should establish a transparent process to

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1 study these critical questions.

2           If negotiations proceed with the approach  
3 of trying to establish uniform standards, then the  
4 established standard should be set as a regulatory  
5 floor, not a ceiling. This approach safeguards the  
6 ability of a country to establish stronger standards  
7 in response to emerging consumer demands or  
8 unforeseen policy challenges and crisis. Given that  
9 trade agreement rules are not easily altered and  
10 that negotiators cannot see into the future, such  
11 flexibility is essential. The U.S. and EU should  
12 exclude from the pact any sector or area where they  
13 cannot agree on this floor, not ceiling, framework.

14           Any standard-setting terms in the deal  
15 also must strengthen consumer protections in  
16 critical policy arenas rather than weakening or  
17 eliminating such safeguards, as industry groups have  
18 openly advocated.

19           To ensure food safety, for example, any  
20 rules implicating food health standards or labeling  
21 must be limited to requiring that policies be  
22 applied equally to domestic and foreign goods. Each

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1 nation must be allowed to set nondiscriminatory  
2 standards and labeling policies based on consumer  
3 demands and priorities alone.

4           To ensure financial stability, any  
5 harmonized standards must set a floor of strong  
6 financial regulation based on the most robust  
7 post-crisis reregulation efforts of the U.S. and the  
8 EU. The agreement must explicitly safeguard  
9 measures such as nondiscriminatory bans on risky  
10 products, facially neutral limits on firm size, and  
11 capital controls, now officially endorsed by the  
12 IMF.

13           To ensure climate security, any agreement  
14 must provide policy space for signatory countries to  
15 respond to the emerging climate crisis with stronger  
16 policies to control greenhouse gas emissions. This  
17 includes allowance for feed-in tariffs, emissions-  
18 based taxation, and performance standards.

19           Consumers' access to an open internet and  
20 affordable medicines, meanwhile, should not be  
21 implicated by this agreement. Overreaching patent  
22 and copyright provisions in past trade agreements,

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1 in the Stop Online Privacy Act, rejected by the U.S.  
2 Congress, and in the Anti-Counterfeiting Trade  
3 Agreement, rejected by the European Parliament, have  
4 threatened such access. The U.S. and EU already  
5 provide robust patent and copyright protections  
6 without the addition of such sweeping terms. To  
7 ensure the protection of these consumer rights, this  
8 prospective agreement must exclude intellectual  
9 property provisions.

10 Any agreement must not include the extreme  
11 investor-state system included in past U.S. and EU  
12 trade in investment deals. The investor-state  
13 mechanism uniquely empowers foreign investors to  
14 directly challenge sovereign governments over  
15 contested public interest policies in tribunals that  
16 operate completely outside any domestic legal  
17 system.

18 The ostensible premise for such an extreme  
19 procedure is that some domestic legal systems are  
20 too corrupt, incompetent, or ill-equipped to hear  
21 foreign investors' claims. Since the U.S.  
22 Government is not likely to assert that this

1 description befits the legal system of any EU  
2 nation, the anomalous investor-state system is  
3 absolutely unacceptable for this deal. So are the  
4 open-ended rights provided to foreign investors but  
5 not domestic firms under the system.

6           Invented tribunals have imputed, for  
7 example, a right of foreign investors to obtain  
8 government compensation for any policy that  
9 contravenes their expectations. The U.S. Government  
10 has rightly argued that such broad terms, which have  
11 enabled a surge in costly investor-state cases,  
12 would cause the government to, quote, "lose the  
13 power to regulate in the public interest."

14           Given that this agreement could implicate  
15 a wide swath of domestic non-trade policies,  
16 including those named here, the respective  
17 legislatures must establishing binding goals for the  
18 negotiations before talks begin and should be  
19 consulted regularly to ensure those objectives are  
20 being fulfilled. Any resulting agreement should not  
21 be signed unless and until the U.S. and EU  
22 legislatures approved the proposed text through a

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1 vote that affirms it has met the established  
2 objectives.

3           Finally, the process must also be open to  
4 the public. Negotiating texts and country  
5 submissions for the agreement must be made publicly  
6 available so that stakeholder groups, including  
7 those not granted preferential access to official  
8 trade advisory committees, can give meaningful input  
9 on the critical policy decisions at issue.

10           Negotiators should consult not just with  
11 the industry groups that have been  
12 disproportionately consulted in past agreements, but  
13 with the more diverse array of stakeholders that is  
14 required to represent the consumer interests that  
15 should stand at the heart of any deal. Thank you.

16           CHAIRMAN BELL: All right, thank you,  
17 Mr. Beachy. We do have some questions.

18           Dan, would you like to start us off,  
19 please.

20           MR. MULLANEY: Sure. Thank you very much  
21 for your testimony. You mentioned the need to  
22 maintain protections for consumers. Can Public

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1 Citizen envision a way that negotiators can maintain  
2 consumer protections while, at the same time,  
3 reducing or eliminating duplicative and unnecessary  
4 regulations? Are those two things inconsistent?

5 MR. BEACHY: I would say if we set aside  
6 the initial question of whether or not the  
7 efficiency gains that this deal would promise would  
8 actually outweigh the loss of an ability to set  
9 standards in a legislature as opposed to through a  
10 trade deal, I would say that there would be an  
11 approach that could be acceptable which would be  
12 upward, rather than downward, and a floor rather  
13 than ceiling, that is convergence around a high  
14 standard of consumer protection on both sides of the  
15 Atlantic so that such, you know, that presumes  
16 duplication would not occur, could succeed in  
17 safeguarding essential consumer protections.

18 The floor, not ceiling, is equally as  
19 important as the up, not down, criteria in that  
20 anticipation of future financial crises or climatic  
21 challenges would be -- to impose a ceiling rather  
22 than a floor would require policy makers to

1 undertake the impossible task of anticipating all of  
2 tomorrow's policy challenges today.

3 MR. MULLANEY: Would there be -- I take  
4 your point about a floor, not a ceiling, but what if  
5 there were focus on simply maintaining the ability  
6 to put in place consumer protections and also have  
7 some method for ensuring that regulations aren't  
8 duplicative or unnecessary; in other words, not  
9 necessarily -- I understand you may be suggesting  
10 that we are actually negotiating floors for consumer  
11 protections. I'm wondering whether you just leave  
12 the consumer protections to each party and yet had a  
13 process in place for making sure that the  
14 regulations weren't unnecessarily duplicative or  
15 unnecessarily inconsistent.

16 MR. BEACHY: Sure. I mean the devil is in  
17 the details, so I guess we would have to see the  
18 particular wording you have in mind. I would say if  
19 this act is simply about the elimination of people  
20 work because of unnecessarily duplicative processes,  
21 that would be a significantly different deal than  
22 that suggested by a number of the comments made with

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1 regard to what a number of industry groups would  
2 hope to expect as the outcome of this deal. And so  
3 we are responding as much to those comments, saying  
4 that the standard setting should certainly be left  
5 up to the legislatures of each country.

6           And if it is simply a matter of  
7 eliminating the paperwork as unnecessary between two  
8 still different standards, I'm sure that is less of  
9 a concern with regard to consumer safeguards. If it  
10 is consumer safeguards themselves, as you suggested,  
11 it should be, we believe, made by the consumers  
12 themselves through the democratic process.

13           MR. MULLANEY: One more question, just  
14 changing topics slightly. Do you have any views on  
15 how we should be conducting communications between  
16 trade negotiators and private sector stakeholders  
17 like yourself and others?

18           MR. BEACHY: Sure, we do. First would be  
19 the negotiating text and the U.S. proposals to the  
20 deal would be made public. The Bush Administration  
21 did this when negotiating the Free Trade Area of the  
22 Americas. The Obama Administration claims to make

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1 advances in transparency, and we would like to see  
2 that fulfilled with regard to trade negotiations.

3           It's really hard. It's very difficult --  
4 we have been in this position for a little while now  
5 with regard to other deals, as you know -- to make  
6 meaningful contributions, to give meaningful input  
7 when we cannot see what is actually on the table,  
8 which is not just U.S. proposals several months  
9 after the date, but actually the negotiating text.

10           And so that would be my first and foremost  
11 suggestion is if stakeholder input is -- if  
12 stakeholders are going to give input on a thing in  
13 which they have a stake, they must see that thing,  
14 which is the negotiating text.

15           And, secondly, I would say regular and  
16 early consultations with a wide array of groups, not  
17 just those that are part of the official trade  
18 advisory system. While there have been moves to try  
19 to expand the representation of different groups on  
20 that system, it still is above 85 percent  
21 representation, explicit representation of --

22           CHAIRMAN BELL: All right, well, thank you

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1 very much, Mr. Beachy.

2 Our next witness is with the Civil Society  
3 Declaration.

4 MR. MAYBARDUK: Good afternoon.

5 CHAIRMAN BELL: How are you?

6 MR. MAYBARDUK: I believe that would be  
7 me. My name is Peter Maybarduk. I also work for  
8 Public Citizen. I have a statement here. I am here  
9 today actually on behalf of 45 civil society groups,  
10 which is why I believe it has been entered into the  
11 record as Civil Society Declaration. So I'll send  
12 this around.

13 Thank you, ladies and gentleman, and  
14 thanks for the opportunity to appear before you and  
15 testify today. As I said, my name is  
16 Peter Maybarduk. I am with Public Citizen's Global  
17 Access to Medicines Program. We primarily focus on  
18 the right of people in developing countries to  
19 access affordable medicines and work in that context  
20 on patent and trade rules affecting generic  
21 competition.

22 But as I mentioned, I am here today on

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1 behalf of 45 civil society groups in the United  
2 States and Europe which have signed a joint  
3 declaration calling for intellectual property to be  
4 excluded from the Trans-Atlantic Free Trade  
5 Agreement, or TAFTA, or TTIP, talks, excluded  
6 entirely. The groups signing onto this statement  
7 include the Electronic Frontier Foundation, Health  
8 Action International, European Digital Rights  
9 Initiative, the American Medical Student  
10 Association, and quite a few more groups. As you  
11 can see, the logos are included on Pages 2, 3, and 4  
12 of the statement. I have placed extra copies in the  
13 back of the room.

14 Many of these groups were very active in  
15 the disputes and the debates regarding the Anti-  
16 Counterfeiting Trade Agreement and quite active in,  
17 from our perspective, bringing that agreement down  
18 in Europe, as well as in the SOPA and PIPA fights  
19 here in the United States.

20 I would like to respectfully read this  
21 statement into the record. I say respectfully  
22 because, as you will hear, it is quite tough and

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1 skeptical of the process we're all here to consider  
2 today. It is, however, brief. And then I shall  
3 take your questions.

4 Last year, millions of Americans told  
5 their government not to undermine the open internet.  
6 We sent the SOPA and PIPA bills down to defeat.  
7 Soon after, hundreds of thousands of people took to  
8 the streets of Europe to protest against ACTA, a  
9 secretive trade agreement that would have violated  
10 our rights online and chilled generic drug  
11 competition.

12 Meanwhile, leaked trade texts revealed  
13 U.S. and EU threats to access to affordable  
14 medicines, which significantly disrupted trade talks  
15 in India and the Pacific. I refer specifically to  
16 the EU-India FTA and the ongoing Trans-Pacific  
17 Partnership talks.

18 On February 13th, of course,  
19 U.S. President Barack Obama, the EC president, and  
20 the Europe Commission president announced the  
21 official launch of negotiations of a Trans-Atlantic  
22 Free Trade Agreement, as we call it, also known as

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1 TTIP.

2           We, the undersigned, are internet freedom  
3 and public health groups, activists, and other  
4 public interest leaders dedicated to the rights of  
5 all people to access cultural and educational  
6 resources and affordable medicines, to enjoy free  
7 and open internet, and to benefit from open and  
8 needs-driven innovation.

9           First, we insist that the European Union  
10 and United States release in timely and ongoing  
11 fashion any and all negotiation and/or  
12 pre-negotiation texts. We believe that secretive  
13 trade negotiations are absolutely unacceptable  
14 forums for devising binding rules that change  
15 national non-trade laws.

16           Second, we insist the proposed TAFTA  
17 exclude any provisions related to patents,  
18 copyrights, trademarks, data protection,  
19 geographical indications, or other forms of  
20 so-called intellectual property. Such provisions  
21 can impede our rights to health, culture, and free  
22 expression and otherwise affect our daily lives.

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1           Past trade agreements negotiated by the  
2 U.S. and the EU have significantly increased the  
3 privileges of multinational corporations at the  
4 expense of society in general. Provisions in these  
5 agreements can, among many other concerns, limit  
6 free speech, constrain access to educational  
7 materials such as textbooks and academic journals,  
8 and in the case of medicines, raise healthcare cost  
9 and contribute to preventable suffering and death.

10           Unless intellectual property is excluded  
11 from these talks, we fear that the outcome will be  
12 an agreement that inflicts the worst of both  
13 regimes' rules on the other party. From a  
14 democratic perspective, we believe that important  
15 rules governing technology, healthcare, and culture  
16 should be debated in the U.S. Congress, European  
17 Parliament, national parliaments, and other  
18 transparent forums where all stakeholders can be  
19 heard, not in closed negotiations that give  
20 privileged access to corporate insiders.

21           The TAFTA negotiations must not lead to a  
22 rewriting of patent and copyright rules in a way

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1 that tilts the balance even further away from the  
2 interest of citizens.

3 In short, and if I may riff for a moment,  
4 we will fight for the users. And with that, I will  
5 take your questions.

6 CHAIRMAN BELL: Thank you very much,  
7 Mr. Maybarduk.

8 Dan, would you like to start us off?

9 MR. MULLANEY: Sure. And thank you for  
10 your testimony.

11 Intellectual property rights covers a  
12 broad range of things. You mentioned some of them,  
13 patent, copyright; there is also trademarks, various  
14 other forms. Is there any area of intellectual  
15 property or any particular issue within any of the  
16 subject matter covered by intellectual property that  
17 you think might be constructively addressed in these  
18 negotiations with the EU?

19 MR. MAYBARDUK: I can only speak in my own  
20 capacity or in my capacity at Public Citizen, not on  
21 behalf of the coalition that has signed the letter.  
22 I think the concern of the coalition, however, is

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1 procedural. It is that based on what we have seen  
2 from prior trade agreements and based on the  
3 influence, the balance of influence of stakeholders  
4 involved, and for example right now I am quite  
5 involved in working on the Trans-Pacific Partnership  
6 negotiations, we're concerned that the content is  
7 unlikely to track proposals in this area that could  
8 be positive. So it's not that there couldn't be a  
9 positive regulation, certain types of harmonization  
10 that would in theory be useful; we simply don't  
11 think it's likely. And we'd be highly concerned  
12 given that we wouldn't have access to text as well.  
13 That would make it difficult to be able to come to  
14 some accord.

15           In my capacity at Public Citizen, there is  
16 certainly a number of proposals that we would see as  
17 pro-competitive in some areas or pro-efficiency in  
18 others, safeguards against abuse, things that  
19 actually facilitate technology transfer that could  
20 be useful. But we have not previously seen them  
21 advanced by USTR in trade negotiations, with one or  
22 two occasional exceptions.

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1           CHAIRMAN BELL: State, did you have some  
2 questions?

3           MS. FRERIKSEN: Thank you. Along sort of  
4 the similar lines of intellectual property inclusion  
5 in the agreement, are there any copyright exceptions  
6 or limitations that were not covered under the TRIPS  
7 agreement that you think should be included in the  
8 TTIP?

9           MR. MAYBARDUK: Copyright limitations and  
10 exceptions not included in the TRIPS agreement. It  
11 is really not my area of expertise. And given that  
12 we are calling for IP out of the agreement entirely  
13 and the prior concerns I have just mentioned, I  
14 think that would be a difficult one for us to  
15 address.

16           I think institutionally we favor robust,  
17 fair use. And one concern for the negotiation could  
18 be ways in which fair use could be limited by Europe  
19 rules, so it would be one U.S. consumer concern.

20           I'm not sure if that adequately addresses  
21 your question.

22           CHAIRMAN BELL: All right, well, thank you

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1 very much.

2 MR. MAYBARDUK: Thank you for your time.

3 CHAIRMAN BELL: That concludes the hearing  
4 for today. We will reconvene tomorrow at 9:30 when  
5 we start up again with a new and different set of  
6 witnesses. For those who will be attending  
7 tomorrow, we look forward to seeing you then. Thank  
8 you.

9 (Whereupon, at 4:47 p.m., the meeting was  
10 adjourned, to reconvene the next day, Thursday,  
11 May 30, 2013, at 9:30 a.m.)

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C E R T I F I C A T E

This is to certify that the attached  
proceedings in the matter of:

PUBLIC HEARING  
BEFORE THE TRADE POLICY STAFF COMMITTEE (TPSC)  
ON THE  
TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

May 29, 2013

Washington, D.C.

were held as herein appears, and that this is the  
original transcription thereof for the files of the  
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CATHY BELKA

Official Reporter

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