TESTIMONY OF CALVIN M. DOOLEY
ON BEHALF OF THE AMERICAN CHEMISTRY COUNCIL
BEFORE THE COMMITTEE ON ENERGY AND COMMERCE SUBCOMMITTE ON COMMERCE, MANUFACTURING AND TRADE

July 24, 2013

Chairman Terry, ranking member Schakowsky, and distinguished Members of the Subcommittee, my name is Cal Dooley. I am President and CEO of the American Chemistry Council. Thank you for the opportunity to speak today.

The American Chemistry Council represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The business of chemistry is a $770 billion enterprise providing approximately 788,000 high-paying jobs in the United States. The American chemical industry produces 15 percent of the world's chemicals and represents 12 percent of all U.S. exports.

ACC represents chemical manufacturers of all sizes, from SMEs to large multinational corporations. Reducing or eliminating tariff and non-tariff barriers to trade with the EU would create new commercial growth and export expansion opportunities for U.S. SME manufacturers and large enterprises alike. A recent study by the Centre for Economic Policy Research estimates that an ambitious and comprehensive TTIP that addresses both tariff and non-tariff barriers could boost U.S. exports to the EU by an additional $123 billion. In addition, a successful TTIP could potentially break the deadlock over the World Trade Organization Doha Development Round by serving as a template for addressing difficult trade issues. While the TTIP negotiations will not be easy, the potential benefits in terms of growth, productivity, and influencing international trade rules are substantial.

As one of the nation's largest export sectors, the U.S. chemical industry has long been a strong supporter of free and open, rules-based international trade. Europe is one of the largest markets for U.S. chemical manufacturers, with two-way trade totaling more than $51 billion last year. The reduction or elimination of trans-Atlantic barriers to trade in chemicals would result in a significant expansion of U.S. chemical exports, capitalizing on the enhanced competitiveness of U.S. chemical manufacturers due to increased supplies of low-cost shale gas. Since over 96% of all manufactured goods rely on the business of chemistry, this would provide a major boost to overall economic growth and job creation, enhance U.S. competitiveness, and expand consumer choice.

Current tariff barriers on trans-Atlantic trade in chemicals are low, averaging around 3%. Due to the high volume of trade, however, the benefits of removing the remaining tariff barriers would be significant, resulting in savings of around $1.5 billion per year, over a third of which would be intra-company trade. These savings would immediately reduce the costs of production for business, and the benefits would be reflected throughout the economy.

The potential savings from reducing – and where possible eliminating – regulatory barriers to trade are even greater. Enhanced regulatory cooperation has the potential to significantly reduce costs for governments and industry alike, while maintaining high levels of protection for human health and the environment. The goal of stronger U.S.-EU regulatory cooperation is not to weaken regulatory mandates, but rather to ensure that those mandates do not result in unnecessary barriers to trade. A more efficient and effective trans-Atlantic regulatory environment would provide a significant boost to innovation, growth and jobs, while ensuring that regulatory objectives are achieved.

Enhanced U.S.-EU regulatory cooperation should include the implementation of previous agreements and principles between the U.S. and EU for promoting regulatory coherence. Horizontal issues that might be addressed in the context of TTIP include assessing current areas of regulatory divergence and options for narrowing them; developing mechanisms to ensure that potential future areas of regulatory divergence are identified and addressed; determining whether

differing regulatory approaches are equivalent in meeting a similar regulatory objective; and promoting greater regulatory transparency, including in regulator-to-regulator discussions.

The U.S. and EU regulate chemicals in different ways. That is not going to change as a result of the TTIP. In fact, the evidence shows that risk-based approaches to chemicals management continue to attract strong bipartisan support in the U.S. Where the TTIP can add value is in ensuring that these differing regulatory systems operate as coherently as possible, promoting efficient and effective regulatory approaches and exploring opportunities for cost reductions and burden sharing. In our view, the chemical industry is well placed to be a priority sector for enhanced regulatory cooperation under TTIP.

Even though approaches to regulating chemicals in the U.S. and Europe differ, there are common elements and issues in their efficient and effective operation. These issues are fundamental to consideration of chemical regulatory cooperation under the TTIP, and include:

- Data and information on which regulatory decisions are based.
- Processes for identifying priority substances.
- Approaches for characterizing risks and hazards.
- Transparency in regulatory processes
- Rules to protect commercial and proprietary interests.

These are areas where the U.S. and EU can seek efficiencies within current regulatory structures, while maintaining high levels of protection for human health and the environment.

Enhanced U.S.-EU regulatory cooperation in the chemical sector should not only address actual and potential areas of regulatory divergence that impose barriers and increase costs of trans-Atlantic trade. ACC calls on negotiators to seek efficiencies within and between regulatory systems, and where appropriate, explore opportunities for burden sharing. The scope of this enhanced cooperation should be forward looking, and focused on addressing and mitigating the potential for creating new regulatory barriers. But it should also seek to identify areas where addressing existing regulatory barriers would reduce costs for industry and governments alike.

The overriding principle behind enhanced regulatory cooperation on chemicals is that both sides should agree to consult and to cooperate when developing new chemicals regulations. Even where regulatory approaches differ, opportunities should be pursued to minimize divergence in regulatory outcomes and reduce costs of compliance. Understanding the data used and process employed for science-based decision-making will be key in this regard.

Enhanced U.S.-EU regulatory cooperation on chemicals issues should focus attention on the following priority areas, which are of particular interest ACC and its member companies:

Enhanced Scientific Cooperation

A mechanism to promote stronger trans-Atlantic scientific cooperation and enhanced coordination on scientific assessments could help minimize the potential for imposing additional regulatory barriers when revising or developing new regulations. For example, discrepancies in chemical assessments (risk assessment versus hazard assessment) could impose barriers either directly or through secondary regulations, e.g. on cosmetics and food packaging. Enhanced scientific cooperation could include:

- Developing criteria for the reliability and quality of scientific data underpinning regulatory decisions;
- Providing opportunities for stakeholder input on emerging scientific issues; and,
- Considering the impact of new scientific developments on regulatory decisions.

An example of a current regulatory issue with potential for significant impact on trade and where enhanced scientific cooperation could help minimize the potential for regulatory divergence is the identification of endocrine disrupting chemicals of regulatory concern. At present it appears possible that approaches to identifying endocrine disrupting chemicals in the US and EU will differ significantly. It is critical that regulatory approaches in this area focus on screening and testing substances that may have endocrine disrupting properties in an effort to determine whether endocrine activity linked to these substances leads to adverse effects. Any approach that seeks to identify potential or suspected endocrine disrupting chemicals, without hazard characterization and clear scientific evidence of adverse effects, could precipitate

decisions to stop using these chemicals or products containing them, or could promote the switch to alternatives whose health effects may be less well understood.

A lack of regulatory compatibility with respect to endocrine disrupting chemicals could have a significant impact on trans-Atlantic trade, on agricultural as well as industrial goods. Regulatory compatibility is desirable not only with regard to criteria and methodology for reviewing substances of regulatory concern, but is also desirable when it comes to questions of thresholds. Should the EU, for example, proceed to regulate endocrine disruptors in a way that does not differentiate between products that contain significant quantities of a given substance and those that contain only an incidental amount, the cascading effect on a large number of industry sectors important to both the U.S. and EU would be enormous. The EU may well decide in the coming weeks not to include such a threshold, imposing major unintended consequences on a wide range of industries, markets and consumers on both sides of the Atlantic.

The potential divergence between regulatory approaches in the U.S. and EU highlights the need to assess the impact of chemical regulatory proposals on trans-Atlantic trade as part of overall regulatory impact analysis. In the context of TTIP, U.S. and EU regulators should explore the potential for minimizing regulatory divergence in this area, including developing a common understanding of criteria for reviewing substances of regulatory concern, testing and assessment methods, and a thorough investigation of whether adverse effects exist, and at what thresholds.

Transparency in Cooperative Activity

Greater transparency in trans-Atlantic cooperative activity between regulators could help enhance stakeholder confidence and support for regulatory cooperation. Industry on both sides of the Atlantic is aware that regulator-to-regulator discussions are occurring, but information on when cooperative activity is taking place, and what issues are being addressed, is typically not made available to stakeholders in advance of the discussions. Increased transparency in cooperative activity between regulators could include:

- Opportunities for stakeholder notice and comment on the proposed agenda for cooperation.
- Opportunities to suggest that particular issues will be addressed.
- Opportunity for stakeholder participation in relevant cooperative activities, where appropriate.
- For the chemical industry, stakeholder input might include consultation with experts in particular chemistries under review on both sides of the Atlantic. This approach would help ensure a common understanding of the technical and scientific information that exists, and could help expedite government assessment of chemicals.

Data and Information Sharing

ACC would like to see a potential US-EU trade agreement include a commitment to address apparent and potential barriers to information sharing on chemicals across the Atlantic, including regulatory barriers, cost considerations, and the protection of legitimate commercial information. Minimizing demand for new information should be a key area of focus for enhanced trans-Atlantic chemical regulatory cooperation, and this can be facilitated by better sharing of data and information. Enhanced data and information sharing would result in significant efficiencies for both governments and industry, including eliminating unnecessary or duplicative generation, testing and submission of data. The ability to share relevant information – both the data itself and information on the *interpretation* of that data – is likely to become even more critical in the future given the emergence of new assessment technologies. The chemical industry would support further efforts under the TTIP to review the potential barriers and mechanisms for facilitating trans-Atlantic data and information sharing on chemicals, including regulatory barriers.

Prioritization of Chemicals for Review and Evaluation

Prioritization of chemicals in commerce for further assessment enables governments and industry to focus attention and limited resources on the substances of highest concern. Enhanced

U.S.-EU cooperation in this area should include an agreement to establish and apply common principles for prioritization that are clear, specific, and transparent. These criteria should:

- Be science and risk-based, considering both the degree of hazard (hazard identification and characterization) and the extent of exposure potential (risk assessment).
- Be based on existing, available information.
- Have the flexibility to incorporate relevant scientific advances (e.g. understanding what emerging science and technology suggests for prioritization).
- Provide an opportunity for stakeholder review and comment at key points in the prioritization process, including the opportunity to provide additional, existing information in advance of final prioritization decisions
- Consider a chemical's uses and applications in the prioritization review process.

The chemical industry would support the development of an agreed process for comparing lists of chemicals prioritized for assessment in each jurisdiction. We would anticipate that the lists would contain a similar set of chemicals if the prioritization process in both jurisdictions takes account of the factors listed above, and could lead to greater efficiencies by sharing the burden of review. For example, a preliminary assessment by the American Chemistry Council indicates that there are at least 13 chemicals in common between USEPA's TSCA work plan[1] chemicals and the REACH list of Substances of Very High Concern (SVHC).

Coherence in Chemical Assessment

An important objective of regulatory cooperation should be to develop a common scientific basis for regulatory decisions. If both jurisdictions have confidence in their respective assessment procedures, there is the potential for additional efficiencies to be identified, and the burden associated with the assessment of priority chemicals to be shared between U.S. and EU regulators. A core objective should be to create certainty in the chemical assessment process on both sides of the Atlantic by understanding how common issues (such as integration of weight-

[1] Information on the EPA Office of Pollution Prevention and Toxics (OPPT) work plan chemicals – the Agency's current effort to identify, prioritize, and assess existing chemical risks – is available at http://www.epa.gov/oppt/existingchemicals/pubs/workplans.html.

of-the-evidence approaches) are addressed. While final risk management decisions should remain sovereign decisions, a common understanding on assessment could significantly reduce costs for both governments and industry by avoiding duplication and unnecessary additional testing, which would accelerate chemical reviews. Achieving greater coherence in chemical assessment processes should be a priority in discussions on chemical regulatory cooperation under the TTIP.

Conclusion

ACC and its member companies strongly support the negotiation of a comprehensive, ambitious Trans-Atlantic Trade and Investment Partnership. For the chemical industry, and for the broader economy, it has the potential to provide a significant boost to growth and job creation, which in turn would promote innovation and strengthen the international competiveness of U.S. exporters. The successful conclusion of negotiations on the TTIP would also send an important signal to the rest of the world at a time when multilateral approaches to trade liberalization have stalled.

Thank you again for inviting me here today. I look forward to your questions