100 Years Standing Up for American Enterprise

U.S. CHAMBER OF COMMERCE

Technical Barriers to Trade (TBT) and Sanitary/Phyto-Sanitary (SPS) Concerns in an EU-U.S. Trade and Investment Agreement

The U.S. Chamber of Commerce strongly supports the inclusion of ambitious regulatory provisions as part of a possible U.S.-EU trade and investment agreement. These regulatory provisions must include in the first instance well-developed chapters on Technical Barriers to Trade (TBT) and Sanitary/Phyto-Sanitary (SPS) that cover, at a minimum, the TBT and SPS chapters of the Trans-Pacific Partnership (TPP). In addition, the regulatory provisions of a U.S.-EU agreement should build on the TPP Regulatory Coherence chapter and go well beyond to provide an additional set of tools to remove unnecessary divergences from the existing stock of regulations and prevent future divergences from developing. Enhancing the transatlantic regulatory environment in both goods and services sectors is essential to eliminate unnecessary regulatory divergences that can only stifle the economic growth our economies need. Therefore a complete package of all three areas – TBT, SPS, and regulatory cooperation – must be included in an agreement. This paper represents the U.S. Chamber's position on TBT and SPS and is intended to be read in conjunction with our position paper on specific regulatory cooperation provisions.

The regulatory piece of a transatlantic economic agreement carries the potential for the greatest gains. An ambitious text will enable an agreement to be truly 'evergreen' and allow benefits to continuously accrue. The U.S. and EU have engaged in several longstanding regulatory dialogues. However, due to statutory, legal and economic challenges, which are often bound to entrenched positions and systemic issues, progress has been inconsistent, and these dialogues have failed to realize their full potential. Ambitious TBT and SPS chapters will help to rectify these concerns and may serve to reinvigorate ongoing dialogues.

Many of the systemic measures sought for the TBT and SPS chapters of a U.S.-EU agreement have already have already been agreed in principle in the June 2011 US-EU Common Understanding on Regulatory Principles and Best Practices[1] and should be relatively easy to formally incorporate in the agreement. Further, the latest publicly available FTA language, from the U.S. and EU free trade agreements with the Republic of Korea, show that the two sides also use very similar text in their trade agreements. The minor differences in language can be easily overcome, on the TBT side, with a commitment to use international standards in accordance with the WTO principles[2] that the U.S. and EU already endorse, and on the SPS side, with a commitment to basing measures on science and risk-based assessments.

We would also expect **TBT and SPS** chapters to strengthen commitments that foster increased transparency and collaboration, including mechanisms that:

[1] Found at http://www.whitehouse.gov/sites/default/files/omb/oira/irc/common-understanding-on-regulatory-principles-and-best-practices.pdf.

[2] *See e.g.* G/TBT/1/REV. 8. Section IX, *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement*.

- Allow interested parties a meaningful opportunity to provide comments and have those comments actively considered when making regulatory, policy or technical changes (often EU decisions are the result of internal discussions among Member States officials, allowing only cursory consideration of comments submitted to the Commission in the open comments period; furthermore, often the Commission's response to comments often serve only to justify why the decision was made rather than incorporating suggestions into a final version of a draft proposal, like in the U.S.);
- Require parties to provide an adequate implementation period for all non-emergency measures;
- Encourage greater collaboration on the development of technical regulations and third country development initiatives;
- Promote the streamlining and reduction of export certification and licensing requirements;
- Reaffirm requirements to choose the least trade restrictive methods possible;
- Strengthen provisions in the WTO requiring adequate time for comment, and whenever possible at least 60 days;
- Notify proposals directly to the other party; and
- Include specific goals and objectives when notifying proposals.

We would expect an agreement to include specific provisions in the **TBT** chapter that:

- Allow national treatment for conformity assessment bodies. Currently only a single government entity in each EU member state can accredit conformity assessment bodies. An agreement must gain assurances that a conformity assessment body meeting certain criteria, such as ISO 17025, can be certified regardless of in-country presence.
- Encourage EU regulators to select the standard that best meets their regulatory objectives. U.S. regulators are currently given the flexibility to choose from a broad portfolio of standards based upon the actual qualities, technical content, and market relevance instead of the geographic source of standards, as is the case in the EU. In many cases, the standards that are referenced in U.S. regulations are developed by European Standards Bodies (e.g. DIN, BSI) or by international standards bodies (e.g. ISO, IEEE, ASTM, NEMA, SAE). The U.S. approach helps to achieve greater regulatory compatibility and is aligned with current widely held global good regulatory practices and avoids wasteful duplication of existing and widely used standards. Allowing for usage of common standards also can leads to gains through development collaboration in third country markets.
- Empower EU regulators to grant a presumption of compliance to products meeting international standards as defined in the WTO TBT principles guidance[3] and that meet the essential technical requirements of EU Directives.
    - To facilitate this process, the agreement should encourage U.S. and EU regulators to create a database of standards deemed interchangeable and extend a presumption of conformity on the EU market to products meeting these standards.

We would expect an agreement to include specific developments in the **SPS** chapter that:

[3] See note 1.

- Reinforce the importance of science-based regulations and decision making.
- Allow the automatic right for backup testing in the event of an adverse test result.
- Use validated scientifically accepted methods to enforce standards.
- Develop measures using science-based international standards.
- Strengthen and elaborate requirements related to risk assessment and risk analysis.

The Chamber thanks you for your consideration. We look forward to working together to develop an agreement that maximizes increased alignment and compatibility.