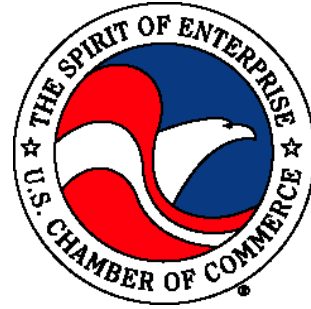


# BUSINESSEUROPE



## **BUSINESSEUROPE-U.S. Chamber of Commerce- submission to the Public Consultation by European Commission – DG Trade on the U.S.-EU High-Level Working Group on Jobs and Growth**

Dear Commissioner De Gucht,

As the world's largest business federations, representing the interests of millions of companies, large and small, in every sector and every region of the European Union and the United States, we welcome the establishment of the High Level Working Group on Transatlantic Jobs and Growth that was set at the last US-EU Summit in Washington on 28<sup>th</sup> November 2011. Our organisations have already submitted various contributions to the work of Group, but we wanted herewith, as a joint contribution to the DG Trade Consultation on this issue, to once again reaffirm our joint call upon you and your counterpart USTR Ron Kirk to be ambitious in your recommendations to Presidents Obama, Barroso and Van Rompuy.

As we stressed in our February 2 [submission](#) to USTR's request for comment on the High Level Working Group, we specifically urge Presidents Barroso, Van Rompuy and Obama, when they next meet on the margins of the May 20 G-8 Summit, to declare their intention to launch negotiations as soon as possible on a comprehensive package to liberalize transatlantic trade and investment. Such a bold announcement would immediately boost confidence and the markets, while a quickly negotiated agreement would have dramatic benefits for growth and jobs.

In our February letter, we noted that the core elements of an ambitious but realistic package should cover trade in goods and services, investment, procurement, protection of intellectual property rights (IPR) and regulatory issues, and specifically:

- goods: eliminate tariffs and significantly enhance electronic customs procedures;
- services: facilitate cross-border provision of services, and the data flows necessary for that, and address visa issues;
- investment: allow for establishment of investments on a national treatment basis (including by removing equity caps, with limited exceptions) across all sectors, provide full protections for such investments, and set up a state-of-the-art investor-to-state dispute mechanism, including a clear and well defined arbitration process;

- regulatory cooperation: establish a mechanism to permit EU and U.S. regulatory counterparts, in consultation with their political oversight bodies, to recognize they have mutually compatible regimes and may thus accept in their market goods and services approved for sale in the other market.
- procurement: ensure each side's non-discriminatory participation in any "Buy National" programs and significantly expand scheduled commitments for national treatment in procurement at all level of government and public entities;
- Intellectual Property Rights: strengthen our efforts to safeguard the global IPR system and promote effective enforcement of IPR in third countries.

We also called upon our governments to continue working closely together to promote the rule of law and market liberalization in third countries, especially in such areas as intellectual property rights (where we see a very real threat of IPR erosion in multilateral fora across all sectors), investment, information and communications technologies and regulation.

We welcome the work that has been done in the intervening weeks by our officials as they have explored the options for strengthening transatlantic economic relations. This letter expands on our previous submission and addresses issues and concerns that have come up in those and other discussions, in the hope that it can assist the High Level Working Group in formulating its recommendations to our leaders so they can declare their intent to launch negotiations in May.

### **Structure of a "Comprehensive Package"**

Given the weaknesses in our economies, businesses on both sides of the Atlantic believe we must act quickly to achieve real results to stimulate jobs and growth. Perceived differences about the structure of the approach should not be allowed to hold up the launch of negotiations; form should follow substance. In general, we believe it should be possible to reach agreement on the goods, services, investment, IPR and procurement elements of a package in the same time frame, while facilitating future mutual recognition agreements in many of the regulatory areas, some of which may take longer to complete (as we discuss further below).

### **Trade in Goods - Agriculture**

Any transatlantic trade agreement must cover agricultural products. At approximately €20 billion a year, bilateral agricultural trade is relatively small, with a significant EU surplus. Over a third of EU and US agricultural tariff lines are already at 0%; tariffs on most other products should be eliminated. Even where either side maintains border measures for a very few sensitive products, there should be significant liberalization.

Agricultural producers on both sides can gain significantly just from tariff elimination, but we must also resolve regulatory differences on sanitary and phyto-sanitary (SPS) issues as quickly as possible to fully liberalize agricultural trade. We strongly urge both sides to use the momentum provided by these negotiations to begin seriously addressing these regulatory barriers now, even before the talks conclude, making full use of such existing mechanisms as the EU-US Veterinary Equivalence Agreement. Our suggestions on additional steps to enhance regulatory collaboration, spelled out below, can further help address these problems.

But we must also be realistic: just as we cannot immediately resolve all other areas of regulatory divergence, we may not be able to resolve some SPS differences in the near-term, and should not hold up conclusion of a comprehensive package for them.

## **Trade in Goods – Industrial Products**

Industrial tariffs should be eliminated immediately, with peak tariffs phased out as rapidly as possible. Custom procedures should be simplified as far as possible and cooperation on security enhanced. Rules of origin should be simple, and, to the maximum extent possible, compatible with other trade agreements we have.

## **Investment**

In July last year, BUSINESSEUROPE, the Chamber and numerous other U.S. and European business associations [wrote](#) to the Co-Chairs of the Transatlantic Economic Council spelling out in detail the principles we believe countries should adopt in the treatment of foreign investment. These principles include most importantly non-discrimination based on nationality of ownership for the establishment and management of investments; prompt, adequate and effective compensation in the event of expropriation; free transfers of funds associated with investments; and an effective system for settling investor-state disputes. Our governments should have no difficulty enshrining these strong protections in any agreement between us -- almost all EU member states have investment protection agreements with the United States. Indeed the principles outlined in the business association July letter came largely reflect those outlined in the Commission's own Communication on Investment.

As the two largest global sources of and hosts to foreign direct investment, the European Union and United States should be able to reach an extremely liberal agreement on the establishment of investments in all economic sectors (including services). Any such agreement should include the general obligation to permit investments on a non-discriminatory national treatment basis. Any exceptions to this should be drawn as narrowly as possible. We should also consider removing existing restrictions on establishment, which currently affect primarily some services sectors. Some U.S. telecommunications services providers, for instance, have advocated removing equity restrictions in this sector (in part to be consistent with the [EU-U.S. ICT Principles](#)). In addition, between our two jurisdictions we should be able to remove ownership and control restrictions in the aviation sector. In general, we see no objection to subjecting these obligations to investor-state dispute settlement, as we foresee few problems arising.

A strong EU-U.S. investment agreement could be the basis for a plurilateral agreement in the future. Such an agreement should also work towards the adoption of definition and disciplines on state-owned enterprises.

## **Services**

Freeing up investment between us, including in the services sector, will contribute significantly to transatlantic services trade. It is important to note that service sales by EU companies invested in the United States are over three times cross-border service exports (\$392.6 billion in 2008 versus \$121 billion in 2009, respectively). To further promote cross-border trade in services, we will need to liberalize travel for service consumers and providers, but even more important will be to facilitate further cross-border data flows by service providers.

On visas, we should:

- extend the U.S. Visa Waiver Program to the whole of the Schengen territory and consider it, rather than individual EU member states, as a basis for meeting the VWP criteria for admission to the program;

- provide trader and investor status to business representatives from both sides, to allow qualifying nationals of each to reside indefinitely in the other jurisdiction to pursue their business interests;
- allow temporary movement of professional and highly-skilled service providers, to be extended to semi-skilled service providers and installers of purchased machinery and equipment on the basis of a bonding requirement;
- facilitate intra-corporate transfers, including of third country nationals employed for a specified period (perhaps a year) by qualifying transatlantic firms, especially with respect to fulfilling obligations under service contracts, be it in the services or manufacturing sectors;
- provide an agreed annual number of specific U.S. visas to EU contract service suppliers;
- set up a Transatlantic Business Visitors Card, similar to the APEC Business Visitors card, with dedicated lane at passport controls in Airports.

With respect to cross-border services trade:

The internet has boosted enormously the ability to supply services from a distance, and indeed many services once-considered “non-tradable” are now traded widely. Almost half of the cross-border trade in services worldwide is enabled by information communication technology (ICT). These include not only data processing, back office, telecommunications, computer and related services, but also a large variety of other services. For example financial analysis, supply chain and logistic services, building and equipment designs (architecture, engineering services, etc.), insurance claims processing, education, publishing, medical services and various professional and consulting services that are enabled by ICT today.

Precisely because of this dynamic technology-driven nature of the market for cross-border provision of services, the general rule should be that full market access and national treatment should be granted for the provision of all services supplied cross-border, with any exceptions to this commitment explicitly spelled out (“negative list” approach) at a narrowly defined level. In general such cross-border provision would be on a national treatment basis and therefore subject to domestic regulatory requirements of the jurisdiction where the service is consumed (except where otherwise permitted under specific regulatory cooperation agreements, as described below). Any US-EU arrangement should ensure that such requirements are transparent, objective, and not more burdensome on suppliers from the other party than is necessary to achieve the regulatory objective. The necessity of such requirements should be tested by criteria similar to those included in the 1998 WTO GATS Accounting Disciplines.

As stated in our previous submission, the data transfers inherent in the provisions of these services must be able to flow freely, as they do now. We should be able to incorporate the most liberal approaches to electronic commerce on such issues as e-signatures and trust, and must at all costs avoid undermining this by adopting unnecessarily strict and diverging approaches to privacy, data retention, protection and localization. In order to expand transatlantic e-commerce, consumer protection bodies in the US and EU should be encouraged to enhance cooperation to find ways to accommodate data flows that are essential for business daily activities and consumer and security protection.

### **Regulatory Cooperation**

The heart of any comprehensive package to liberalize transatlantic trade and investment must be a robust mechanism to promote regulatory cooperation. As democracies with mature regulatory systems, we each seek similarly high standards of protection for our consumers,

investors and environment. Recognizing this, our regulatory agencies have significantly expanded cooperation with their transatlantic counterparts over the past 15 years in such areas as food safety (under the EU-U.S. Veterinary Equivalence Agreement and now the Organics Agreement), financial services, accounting, pharmaceuticals, motor vehicles, consumer protection, supply chain security systems and the like. This cooperation helps our regulators improve their efficiency and effectiveness in enforcing their standards against higher risk suppliers.

A U.S.-EU agreement should enable further cooperation in as many sectors (goods and services) as possible. This can be achieved by creating a mechanism that allows counterpart regulatory agencies and standards bodies, after suitable study and in collaboration with their political oversight bodies, to formally recognize where they have compatible and functionally equivalent approaches to approving products and services for sale in their respective markets. After such a determination, products and services allowed in one market would be deemed approved for sale in the other. One option for product approvals is self-declaration of conformity combined with enhanced post-market surveillance. Regulators should have the right to disallow individual products or services which they believe unsafe, but would be obliged to immediately consult with their counterpart. In extreme cases, a party should be able to immediately suspend the mutual recognition agreement, and to terminate it within a short period of time, if for some reason the trust and confidence on which it is based evaporates. Agreements between, or with, professional or other non-governmental regulatory bodies should also be accepted under this approach. An example of such an agreement would be the mutual recognition of qualifications and diplomas in certain professional services.

Different regulatory bodies have different levels of cooperation with their transatlantic counterparts, and reaching mutual recognition of compatible regime agreements will take time. In some cases, as in the areas of food safety, organics, and supply chain security, we already have full mutual recognition agreements; in some cases, such as accounting, both sides unilaterally accept the others' approach; in some cases, such as motor vehicles and pharmaceuticals, we have memoranda of understanding and confidentiality agreements that foster collaboration; while in many others we have very active discussions, such as under the Financial Markets Regulatory Dialogue. Transatlantic negotiations will foster and facilitate such cooperation. Therefore, we should strive for as many broad mutual recognition agreements as possible even before negotiations on a comprehensive package finish. We in industry know that the input we and other stakeholders can supply will be essential to facilitate this process.

In the motor vehicle sector for instance, non-tariff measures have a major impact on automotive trade flows between the U.S. and the EU. In this context, aligning existing as well as future automotive regulations and standards becomes important. For existing regulations and standards, the mutual recognition of currently manufactured vehicles is necessary in order to facilitate the existing automotive trade between the EU and the U.S. For future automotive regulations, standards and technologies, close cooperation is needed, by which both the EU and the U.S. would agree to consult each other before introducing new technical legislation. Today the EU essentially applies the United Nations Economic Commission for Europe (UNECE) 1958 Agreement and the U.S. the Federal Motor Vehicle Safety standards (FMVSS). The U.S. and the EU should work on harmonising in future both legislations. This cooperation would be in addition to that already existing in WP29 in Geneva and in the TEC. We encourage the U.S. and the EU to use the ongoing work of the TEC on electric vehicle standards as an example for harmonization in other areas in the future. If the EU and the US can agree on common future standards, this would create a major opportunity for a more international

approach and to invite other countries such as Japan, South Korea, as well as the BRICS and ASEAN countries to join.

But we will also need an institutional process to encourage and guide regulator-regulator cooperation after negotiations conclude. The High Level Regulatory Cooperation Forum, under the guidance of the Co-chairs of the Transatlantic Economic Council, is the appropriate vehicle for this, and should be empowered and equipped to take on this task.

### **Government Procurement**

In the current times of budget constraints, governments at all levels should strive to provide European and American taxpayers the best value for money. They can only achieve this by promoting full but fair competition. Given that our firms operate under broadly similar circumstances, and are often so integrated across the Atlantic that they cannot fulfill “Buy National” criteria, the United States and the European Union should define products and services coming from either as meeting those Buy National criteria (or exempt one another from them). We should also have all levels of government and public entities in both Europe and the United States commit to consider on a fully non-discriminatory basis bids to provide goods and services from firms based in either region. It should also be noted that procurement is also linked to regulation, since even if national treatment and non-discrimination are provided, there is no true market access and opportunity if applicable requirements and standards are different. This should also be taken into consideration in the work of the High Level Working Group.

### **Transatlantic IPR Leadership**

Intellectual Property Rights (IPR) protection is a key instrument to promote research and development, innovation, more jobs, prosperity and growth for the U.S. and E.U. economies. IPR is a critical part of the global trade and investment regime. However, we have witnessed a growing trend in several multinational fora and emerging markets towards a weakening of the overall IPR framework. In this context, closer transatlantic cooperation and IPR leadership are urgently needed, and any future agreement between the US and EU should help strengthen our efforts to safeguard the global IPR system and promote effective enforcement of IPR in third countries.

\*\*\*\*\*

BUSINESSEUROPE and the U.S. Chamber believe a package along the lines described above would be comprehensive, ambitious yet realistic. It would significantly liberalize transatlantic trade and investment, and would have a major impact on growth and jobs in both our economies. Furthermore, we believe it can, and should, be negotiated quickly so that our citizens and businesses benefit from the liberalization as soon as possible.