EU-U.S. REGULATORY COOPERATION

U.S. CHAMBER OF COMMERCE
International Affairs

Transatlantic Trade and Investment Partnership (TTIP) Overview

With total commerce surpassing $6.5 trillion, the United States and the European Union enjoy the broadest and most successful economic relationship in the world. Nonetheless, there are substantial benefits to be gained from still closer cooperation. Deepening our commercial ties with the EU has the potential to ignite significant new trade flows, accelerate economic growth, and generate high-quality jobs.

In addition to eliminating tariffs, which will yield important bilateral benefits, the TTIP is envisioned as a comprehensive, ambitious, high-quality agreement that addresses a variety of issues: trade in industrial goods, agricultural products, services, investment, procurement, protection of intellectual property rights, and cutting-edge topics in digital trade. The TTIP must develop solutions to long-standing issues in food and agriculture and will serve to set global benchmarks on competition policy and the treatment of state-supported enterprises and localization requirements.

However, the real gains from the TTIP will be realized by removing non-tariff barriers, or the behind the border regulatory differences. This will be achieved through innovative regulatory cooperation provisions.

Regulatory cooperation belongs in trade agreements.

The goal of trade agreements is to spur jobs and growth by eliminating barriers to trade, giving workers, farmers, and companies better access to overseas markets. Chief goals of international regulatory cooperation are to prevent regulatory differences from becoming unnecessary behind the border barriers to trade while enhancing regulators' ability to protect our citizens. Nowhere is this more important than between the United States and the European Union, which enjoy the world's largest commercial relationship.

Regulatory cooperation may sound theoretical and complex, but in fact it is eminently practical and based on common sense. For example, the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS), which oversees organic food labeling in the United States, reached an arrangement in 2012 with the EU that allows organic products certified in Europe or the United States to be sold as organic in either region. This decision was based on extensive study by U.S. and EU regulators demonstrating that their requirements, regulations and supervision for organic products provide the same level of safety and assurance to consumers and producers.

According to USDA, this arrangement has resulted in expanded market access, fewer duplicative requirements, and lower certification costs for organic products, without sacrificing consumer protection. Previously, businesses that wanted to trade organic products had to obtain separate certifications for both the United States and EU, which meant a second set of fees, inspections, and paperwork. While progress has been made, the TTIP represents an opportunity to greatly accelerate benefits by creating new tools and methods for enhancing regulatory cooperation across all sectors.

The TTIP needs to address both regulatory coherence and regulatory cooperation.

Regulatory coherence refers to efforts to ensure that a domestic regulatory process follows regulatory best practices related to transparency, stakeholder input, and quality impact assessments that are based on sound science, a risk-based approach, and an objective assessment of the costs and benefits of a proposed regulation. It also refers to coordination between domestic agencies with overlapping responsibilities and authority. Regulatory cooperation refers to regulators working with counterparts from

foreign jurisdictions and includes methods that encourage and improve this cooperative work. The TTIP needs to develop meaningful and binding obligations that enhance both regulatory coherence and regulatory cooperation by building on previous understandings on regulatory best practices and cooperation reached between the United States and European Union in 2002 and 2011.

Regulatory cooperation represents a range of activities between regulators in different jurisdictions; it rarely amounts to complete harmonization.

Regulatory cooperation refers to the numerous activities that can be leveraged to increase regulators' efficiency and effectiveness, share regulatory burdens, and eliminate or avoid trade barriers. Regulatory harmonization involves creating an identical regulation, which may make sense in select cases and for certain sectors. But it is frequently not desirable or even possible in other instances. Harmonization is just one end on the spectrum of regulatory cooperation. Other options include mutual recognition, using common data sets, information sharing, recognizing common testing procedures, common labeling, joint compliance and enforcement, referencing and developing common standards, and sharing joint regulatory development plans.

Americans and Europeans share similar values and expect similar regulatory outcomes.

Millions of travelers shuttle back and forth between Europe and the United States for work and vacation without any concern for the health and safety of the products and services they buy on the other side of the Atlantic. While Americans and Europeans travel with relative ease, the same cannot be said for the goods and services they produce, which are often held captive by the tyranny of small differences in regulation. A Pew Research Study conducted in 2008 found that 76% of Americans and 80% of Europeans support making regulations for products and services between the United States and Europe as similar as possible. The TTIP can help achieve this outcome.

Regulatory cooperation must adhere to statutory requirements. Health and safety standards are not being compromised.

Regulatory cooperation helps build bridges where counterpart regulators are providing similar levels of protection and only occurs with assurances that statutorily mandated regulatory objectives are satisfied. This is the opposite of lowering domestic regulatory protections, since regulatory cooperation builds partnerships between regulators that have developed trust and confidence in one another so they can focus limited resources on more important risks. This leads to a more efficient outcome, resulting in greater benefits for regulators, consumers, businesses, and governments alike.

Regulatory cooperation in the TTIP can help regulators obtain statutory requirements for health and safety mandates.

In an August 2013 report by the Government Accountability Office (GAO), U.S. regulators stated that they engage in international regulatory cooperation activities primarily because they are operating in an increasingly global environment and many products that agencies regulate are built using global supply chains. For example, according to the Food and Drug Administration (FDA) Global Engagement Report, the United States imports 80% of active pharmaceutical ingredients, and imports of FDA-regulated products have grown dramatically in recent years. FDA reported that the agency engages in international cooperation activities to ensure that products produced overseas are safe for U.S. consumers. Similarly, according to the Consumer Products Safety Commission (CPSC), the value of U.S. imports under CPSC's jurisdiction has skyrocketed in recent years. In fiscal year 2012, 345 of 439 consumer recalls, or nearly 80%, involved imported products, making imports a critical focus for CPSC.

Regulatory cooperation is not a threat to sovereignty.

The right to pass laws and regulations will not be altered by regulatory cooperation in the TTIP. Rather, regulatory cooperation is about competitiveness. In a global economy where products and services are widely traded and developed with inputs drawn from many countries, it is important that laws and regulations consider extraterritorial impacts and the degree of interoperability with the laws and regulations of other countries.

Regulatory cooperation is already happening. The TTIP needs to boost its frequency, deepen its use, and expand its application.

U.S. and European regulators have long taken advantage of and benefited from cooperation with their transatlantic counterparts. They've done so as they've developed mutual trust, and because it helps them. For example, a 2007 study for the OECD Working Group on Pesticides estimated resource savings of 33% to 40% as a result of joint review of pesticide chemicals by three to five countries, compared with each country working alone.

Numerous regulatory cooperation arrangements and agreements are in place between the United States and the European Union. None have resulted in lowering standards or put consumers at risk. However, many current regulatory cooperation efforts are fairly basic. More sophisticated and advanced arrangements are needed to achieve increasing benefits. Further, the pace of regulatory cooperation is not keeping up with new and at times unnecessarily divergent regulations being adopted in both Europe and in the United States each year. The TTIP will elevate the importance of regulatory cooperation, resulting in better regulatory outcomes.

Regulatory cooperation in the TTIP will not add a burdensome layer to U.S. and EU regulatory processes.

When regulators are already overloaded and expected to do more with less, regulatory cooperation ensures a more efficient allocation of resources and helps them better meet their statutory objectives. When regulators can share compliance and enforcement duties, and work together to leverage standards and best practices, they become more efficient at their jobs. U.S. and EU regulators are already talking to each other, but frequently these conversations and activities can be better coordinated and leveraged.

The TTIP must incorporate both horizontal and sectoral approaches to regulatory cooperation.

The regulatory component of the TTIP should spell out both horizontal principles and practices for regulatory cooperation and promote specific cooperation between counterpart agencies that regulate and oversee different sectors. Ambitious general provisions are necessary to empower regulators and stakeholders to develop new sector-specific cooperation arrangements that may be too complex to finalize during the TTIP negotiating time frame. This ensures that a final agreement is "evergreen" and that benefits continue to accrue over time. These new processes are also necessary to address rapidly evolving technologies or sectors that may not even exist today. Most importantly, many sectors experience the same barriers to greater alignment. Horizontal provisions can be used to efficiently resolve process problems related to promulgation, enforcement, and compliance (such as standards development) that apply across multiple sectors. This will ensure ongoing and improved alignment as opposed to just a one-off agreement that may result in divergences returning over time.

Both the U.S. and the EU impact assessment processes already allow consideration of international trade effects.

While both the EU and the United States encourage regulators to consider the international impact of regulations, in practice it is not routinely done. In addition, no clear methodology exists to help standardize the manner in which international trade effects might be assessed. The TTIP is an opportunity to ensure that such functionality is used and to provide a methodology to evaluate the international trade impact on the transatlantic market.

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