Regulatory Coherence & Cooperation in the Transatlantic Trade and Investment Partnership (TTIP)

The U.S. Chamber of Commerce believes that five regulatory components are essential to achieve a comprehensive and ambitious Transatlantic Trade and Investment Partnership (TTIP). The first three are commitments with regard to **technical barriers to trade (TBT)**, **sanitary-phytosanitary measures (SPS)**, and **sector-specific regulatory arrangements**.

The differences between the U.S. and EU approaches to technical barriers to trade and sanitary-phytosanitary measures in trade agreements are well understood—as are the longstanding challenges in the transatlantic relationship—even if they aren't easily solved. Sector-based outcomes will vary, depending on existing regulatory frameworks, the level of engagement by interested stakeholders, and past experiences between U.S. and EU regulators.

The other two essential regulatory elements in the TTIP are cross-cutting commitments on **regulatory coherence** and **regulatory cooperation**. The Chamber offers this paper to advance the conversation on these issues from what has been to date a largely conceptual one that is excessively focused on the differences between how the U.S. and EU approach regulation. This paper:

- Defines "regulatory coherence" and "regulatory cooperation."
- Explains what these concepts mean—and don't mean—in the context of the TTIP.
- Details the elements the Chamber believes must be included with regard to these two components as well as the rationale for them.

Defining "Regulatory Coherence" and "Regulatory Cooperation"

It is important at the outset to define the terms as they frequently are confused.

"Regulatory coherence" *is about good regulatory practices, transparency, and stakeholder engagement in a domestic regulatory process.*

"Regulatory cooperation" *is the process of interaction between U.S. and EU regulators, founded on the benefits regulators can achieve through closer partnership and greater regulatory interoperability.*

What the TTIP Will and Won't Do

There has been a great deal of confusion—and, in some cases, intentional misdirection—about what such provisions will or will not encompass in the TTIP. It is important to make clear that there are real limits to what even the most ambitious agreement can accomplish.

1. The TTIP will **NOT** be an exercise in taking an already highly interconnected market and forging it into a "single transatlantic market."

2. Regulatory sovereignty will **NOT** be threatened by coherence or cooperation.

3. Regulatory coherence or cooperation provisions will **NOT** guarantee or bind regulatory outcomes. Regulatory coherence is a process critical to design of effective regulations, and regulatory cooperation should be considered, but only implemented where it is both feasible and desirable.

4. Rarely, if ever, will harmonization be the ideal path as it is hardly ever meets that dual threshold. Further, regulations often are already in place or are being considered or reviewed at different times in our respective systems, making harmonization nearly impossible.

5. Instead, regulatory cooperation will take many shapes and forms, from something as simple as information sharing to something more robust such as an equivalence arrangement.

6. No regulatory cooperation arrangement **should ever** result in an outcome that produces a lower level of effective protection for consumer, workplace, or environmental health and safety.

7. The TTIP need not be preoccupied with differences between the U.S. and EU related to "primary" versus "secondary" legislation. Instead, the TTIP should focus on having an impact where unwanted regulatory divergence is most likely to arise.

8. TTIP provisions should be **targeted at the most significant regulations** that impact the movement of goods, services, investment and people.

9. TTIP regulatory cooperation provisions should not extend to purely domestic regulations, such as wage or other labor regulations.

10. The TTIP should ensure that **all** stakeholders' views are included as part of regulatory coherence and cooperation provisions. A wide variety of views should always be solicited and considered, and these should ultimately be judged on their merits.

DEFINING THE SCOPE

There are significant differences in the rule-making processes between the U.S. and the EU that cause challenges. Each system has its pros and cons; both have room for improvement. In a perfect world, the TTIP would end all "unnecessary" regulatory divergences between the U.S and EU. The Chamber believes, however, that the agreement must be pragmatic in scope, focusing on areas where notable trade irritants arise in our respective systems.

This means focusing on measures that are within the authority of the Executive Branch, including independent agencies in the United States, on the one hand and the European Commission on the other.

- In the United States, legislation from Congress tends to be relatively general in nature, while real impacts on trade come from the implementing regulations adopted by the Executive Branch and independent agencies.

- In Europe, trade irritants more often arise at the EU and Member State level rather than at the provincial or state level within Member States. Such irritants are likely to come from either Commission-initiated Regulations or Directives (legislation) and from follow-on implementing measures and delegated acts (secondary measures, akin in the U.S. to "regulation") as EU Regulations and Directives are often fairly detailed in the level of commitments. For this reason, the TTIP, at a minimum, needs to cover both legislative and regulatory measures that emanate from the EU Commission.

Many in Europe have argued that such a scope of coverage would not be balanced or fair. This is not an accurate assessment based on where trade irritants arise. In addition, it is highly unlikely that legislators on either side of the Atlantic, whether in Congress or the European Parliament and Council, would agree to constrain their

"democratic room for maneuver" in the TTIP. Therefore, a focus on actions of the EU Commission, and the U.S. Executive Branch and independent agencies, while perhaps not ideal, is realistic and in fact addresses the primary sources of difficulty.

A FIRM FOUNDATION

With the TTIP, the U.S. and EU are not starting from scratch. Regulators have been working together for years, and those efforts form a useful basis for framing regulatory coherence and cooperation commitments. The TTIP should signal up front the importance that both the U.S. and EU place on sound regulatory policy, coherence, coordination and cooperation. The preamble to this section of the TTIP should plainly state:

- The important role of regulation in achieving public policy objectives, such as protecting the environment, worker protections, and public health and safety.

- The right of each Party to set its regulatory priorities and to propose and implement regulatory measures to address these priorities, at appropriate levels, while indicating that such measures should be no more trade restrictive than necessary to achieve a legitimate objective.

- The need to sustain the benefits of the TTIP through provisions on regulatory coherence and cooperation, particularly in terms of facilitating increased trade in goods and services and increased investment between the Parties.

- The importance of transparency and openness between the Parties as well as with a wide range of stakeholders, taking into account their input in the development and implementation of regulatory measures.

- The value of cooperation in enhancing regulator efficiency and effectiveness and improving the quality of outcomes as regulators fulfill their respective mandates, while reducing, eliminating, or preventing unnecessary differences that limit trade, competition and economic growth.

- That the TTIP builds upon previously agreed 2002 Guidelines on Regulatory Cooperation and Transparency as well as the 2011 Common Understanding on Regulatory Principles and Best Practices.

REGULATORY COHERENCE

Both Europe and the United States boast democratic systems that help ensure that the desires of our citizens are translated into our respective legal and regulatory systems. Both aim to ensure that legislators and regulators find the appropriate balance between the costs to society of imposing regulation and the benefits our citizens desire. Our political systems recognize that finding the appropriate balance depends on having the greatest amount of information available on the costs and benefits of each decision. This is the function of regulatory "coherence," an approach that ensures the greatest possible transparency about measures under consideration, solicits as much input as possible, and ensures that all parts of government are engaging with one another.

In this sense, the regulatory coherence portion of the TTIP should in general reflect what both sides already believe is in fact good domestic regulatory process, but also bind both parties to such practices.

Transparency and Stakeholder Involvement

Regulatory coherence begins with commitments to transparency and stakeholder involvement, as such inputs provide regulators the breadth of information they need to appropriately balance costs and benefits. It is critical that the TTIP agreement include commitments on improving participation, transparency and accountability in both the U.S. and EU rule-making processes. Such commitments form the bedrock for greater regulatory compatibility and cooperation. **It is impossible to spur cooperation without agreement on the importance of coherence and adherence to good regulatory practices.** The reason is clear: It is difficult to cooperate if the regulations are developed through analysis that relies on fundamentally different information sets. When this happens, regulatory cooperation becomes a bridge too far. As a base-line, therefore, transparency and solicitation of stakeholder inputs are essential for regulators to achieve better-informed decisions.

The TTIP regulatory coherence transparency provisions should oblige regulators to:

- Provide appropriate public access to regulatory measures and their supporting documentation, analyses and data, making this information available online for viewing and reproducibility by all stakeholders, including those outside the regulated jurisdiction.

- Publish and publicize draft proposals as early as possible in the process, and definitely before action is taken beyond drafting.

- Explain the objective and rationale for a proposal and provide all information, data and related impact assessments used to develop the proposed measure.

- Provide reasonable opportunities and sufficient time for stakeholders to comment, considering the complexity of the proposal, by making the proposal and supporting information readily available for a reasonable time before the date public comments are due.

- Take into account the comments received from interested persons, including providing feedback on the substance of those comments, incorporating changes prior to adoption, and clearly explaining why certain recommendations of stakeholders were not incorporated.

Core Good Regulatory Practices: Impact Assessments

Transparency and stakeholder involvement are the start of principles that make up meaningful regulatory coherence. The TTIP also needs to address the importance impact assessments play in regulatory design.

The TTIP should identify the traits that comprise a quality impact assessment (IA) on potential new regulations. The TTIP should commit the U.S. and the EU to ensure that, at a minimum, IAs:

- Identify the problem and the policy objective that the regulatory authority intends to address, including an assessment of the significance of the problems and a description of the need for regulatory action.

- Consider whether there is a need to regulate to achieve the policy objective or whether an objective can be met by non-regulatory and/or voluntary means.

- Evaluate potentially effective and reasonably feasible alternatives to achieve the policy objective.

- Assess the costs and benefits of each available alternative, including choosing not to regulate.

- Where appropriate, state the grounds for concluding that a proposed approach achieves the stated objectives in a way that maximizes net benefits, including qualitative benefits.

- Offer an explanation why the alternative selected is superior to the other available alternatives, including a reference to the relative size of net benefits of all alternatives.

- Provide an identification and selection of the least burdensome approach necessary to achieve legitimate regulatory objectives.

- Base decisions on the best obtainable scientific, technical, economic, and other information.

- Take a risk-based approach wherever possible.

- Offer an assessment and consideration for compatibility with other interfacing domestic regulations as well as regulations in other jurisdictions.

Further, the TTIP should acknowledge the importance of an IA being updated throughout the regulatory process. As changes are made to the design of a regulation, the likely impact of the measure also will change. An IA should be publicized at various stages, and there should be an opportunity for stakeholders to comment. The TTIP also should commit regulators to allow sufficient time between publication of the regulation and its entry into force.

Ex Post Assessments

While most of regulatory coherence is dedicated to the domestic process through which regulation is developed, increasingly a premium is being placed on evaluating existing regulations after their entry into force. Such evaluations allow a regulator to see whether the predicted impacts if a regulation have proven accurate. Perhaps the underlying objective wasn't achieved, there was an unanticipated shift in the market, the cost of compliance was greater than anticipated, or the benefit was less than anticipated. Such an *ex post* analysis is not nearly as developed in either the U.S. or EU systems as it ideally might be, but it can play a critical role in situations where regulators are trying to assess equivalence between regulatory regimes.

Therefore, the TTIP should support regulatory "look-backs" by pledging that, as a matter of good regulatory practice and principle, each side will undertake a routine

review of existing measures. Any review should consider whether the initial IA accurately considered international trade impacts. It also should assess the effectiveness of each measure in meeting the originally stated policy objectives and determine whether it should be modified in order to more effectively achieve the policy objective(s). The U.S. and the EU would be well served to establish a process in the TTIP where look-backs are at least in part jointly prioritized. A review should assess whether such measures have become unnecessary or outdated for example as a result of fundamental changes in technology, or if their effectiveness could be enhanced via expansion or greater cooperation.

Regulatory Agenda

In closing out the regulatory coherence section of the TTIP, the U.S. and the EU should agree to publish, on an annual basis, a regulatory agenda which includes any measures that each reasonably expects its regulatory authorities to issue. This is arguably already done and such published priorities should be used as an early warning system to identify opportunities for potential cooperation around the regulations of greatest import to the transatlantic relationship.

Core Good Regulatory Practices: Central Coordination

Too few governments have a central coordination body to ensure that the measures being considered by one agency are consistent and coherent with those promulgated by others. Having the TTIP speak to the importance of a central coordinating body could spur important regulatory reform in other countries. Both the U.S. and the EU can be viewed to have already established a central coordinating body, in the U.S. via the White House Office of Management and Budget (OMB) and its Office of Information and Regulatory Affairs (OIRA) and in the EU via the Secretary General and the Impact Assessment Board. Keeping these bodies in mind, the TTIP should simply affirm that the U.S. and the EU:

- Agree that regulatory coherence can be facilitated through mechanisms that increase consultation and coordination of domestic processes for developing regulatory measures of general application.

- Believe that engagement on regulatory matters can be enhanced by ensuring that information is centrally collected and widely disseminated.

- Will ensure that each side develop and implement a process to facilitate central coordination and review of regulation domestically and maintains a coordinating body for this purpose.

- Should make publicly available the legal or administrative documents that specify the institutional elements of the coordinating body for promoting transparency and good regulatory practice.

- Agree that in order to enable maximum effectiveness in promoting transparency and good regulatory practice, the coordinating body should be granted sufficient resources and stature to be effective, and have the authority to:

    - Review draft regulations to determine the extent to which the development of such measures adheres to good regulatory practices.

    - Strengthen internal coordination and consultation to minimize overlap and duplication.

    - Prevent the creation of inconsistent requirements and ensure development of coherent regulatory approaches.

    - Make recommendations for systemic regulatory reform.

    - Play an important role in implementing the TTIP transparency provisions.

    - Publicly report on its activities, including its review of specific regulatory measures, any proposals for systemic regulatory reform, and an assessment of its institutional development.

REGULATORY COOPERATION

Protecting the health and safety of consumers, workers and the environment is among the core functions of government. In crafting measures, regulators are required to conduct impact assessments, evaluate least burdensome approaches, and view regulatory decisions through a variety of lenses to ensure that they achieve the best possible balance between the costs and the benefits of regulation. All of these lenses are appropriate to determine optimum regulatory design.

Unfortunately, however, regulators in both the United States and the European Union often fall short when evaluating potential costs and benefits. Regulators for some time have been watching a global economy grow up around them. Most U.S. regulatory agencies and functions were created by Congress decades ago. At that time the connection of our economy to the rest of the world looked much different, and regulators had the luxury of thinking mainly about the U.S. market. Moreover, the size and importance of the U.S. market largely ensured that rest of the world focused on how to comply with or make their regulations interoperable with those in the United States.

Rapid changes in technology and innovation now allow goods and services to make their way around the world with far greater ease. Food can be harvested and safely stored for longer transport over shorter time, component parts can make their way through multiple stops along the supply chain often crossing several borders, money exchanges happen in less than a second, and mobile technologies and the Internet allow for commercial collaboration like never before.

In this more inter-connected world, trying to determine the costs and benefits of regulation, including the implications of such decisions on trade, is an immense challenge. It further exacerbates the problems regulators face in enforcing their decisions, when their resources are already strained. Today, more countries are emerging as economies of size with increased regulatory clout. The U.S. remains a regulatory thought leader, but that leadership is no longer exclusive. In contrast, the EU and its quest for a single market is at its heart an exercise in regulatory cooperation meshing together the regulatory frameworks of EU Member States.

The TTIP should help address these problems. Regulatory cooperation under the TTIP isn't going to bring about a "single Trans-Atlantic market," but it can encourage regulators to proactively consider cooperation, direct the manner in which regulators consult with each other, speak to the importance of assessing significant transatlantic impacts, and where both feasible and desirable, facilitate the regulators' ability to enter into regulatory cooperation arrangements. In doing so, the TTIP will encourage a paradigm shift in the mindset of regulators to consider some of the broader international costs and benefits of what they are doing. Done properly, it will actually enhance the ability of regulators to achieve their mandates, as it will allow them to become more efficient in addressing real risks, and thus effective in enforcing their laws.

As it happens, both the U.S and the EU already allow for trade factors to be considered as part of regulatory analysis, precisely to promote efficiency and

effectiveness. Such requirements are part of the EU impact assessment guidelines and similar guidance has been issued in the United States, including most recently Executive Order 13609 issued by President Obama. Unfortunately, little supporting methodology has been developed to aid regulators in understanding and mitigating trade distortions. The TTIP represents an opportunity to change that by developing a basic methodology that can be applied within U.S. and EU regulatory analytical frameworks.

Creating a Filter

Dozens of regulations are under consideration at any given time, in addition to the thousands that are already on the books. While many of these regulations could or do adversely impact the transatlantic commercial relationship, it would be impractical for the two sides to try to address everything.

The TTIP must allow for development of a filter to identify those measures that have the most significant effect on the bilateral trade relationship. Such a filter likely would identify only a dozen or so regulations under consideration that would rise to the defined level of significance, making regulatory cooperation more manageable and therefore more likely to succeed. A filter should identify:

- Where a proposed regulatory measure could have a significant impact both in terms of economic value and on the trade in goods and services between them, where both levels of "significance" should be defined in the TTIP.

- Where the proposed regulatory measure may have an impact on an existing regulatory cooperation agreement.

- Where by mutual agreement the U.S. and EU believe cooperation is warranted.

Developing such a filter in the TTIP will prioritize cooperation activities, while the regulatory coherence commitments discussed above will otherwise help mitigate adverse consequences of the wider number of regulations. The focus of the filter on measures that directly affect trade is important. Wholly domestic law and regulation will of course indirectly affect trade flows. But these are a matter of domestic competence that while subject to the coherence commitments of transparency, participation and accountability will not be affected by regulatory cooperation arrangements.

Regulatory Compatibility Assessment

If a Party is considering a new regulation that meets the filter criteria outlined above, the TTIP should direct that a Regulatory Compatibility Assessment be conducted as an integral part of the impact assessment of a proposed measure. The TTIP should lay out a base line methodology for such an assessment, but also allow the methodology to evolve based on experience.

Such an assessment at a minimum should compel a regulator to contact its counterpart to determine whether and how the product or service in question is regulated in the other jurisdiction. More specifically, at the outset of considering creation or modification of a "significant" regulation, the TTIP should direct each side to consult the other's regulator to:

- Share and identify priorities and common objectives.

- Consider coordinated collection and analysis of data.

- Compare analytical assumptions and methodologies.

- Examine the possibility of using the same or similar assumptions and methodology as those used by their counterparts to analyze data and determine the magnitude and causes of specific problems.

- Compare judgments about the existing or anticipated problems, their relative magnitude, and their causes, as well as possible regulatory responses.

Further, the regulator should consider whether greater compatibility of a proposed regulation would:

- Provide quantitative and qualitative benefits compared to alternative non-compatible approaches.

- Facilitate achievement of the desired regulatory outcome or increase the levels of regulatory protection as a result of added regulator efficiency.

- Generate budgetary savings and increased regulatory efficiency as a result of shared regulatory responsibility in developing, inspecting, and/or enforcing one instead of two sets of regulations.

- Result in increased compliance and lower transaction costs for the private sector as a result of complying with a single set of regulations compared to the costs of complying with two or more sets of divergent regulations.

- Mitigate adverse extraterritorial impacts.

Any TTIP Regulatory Compatibility Assessment should be made public and open for public consultation as part of an impact assessment.

The TTIP should make clear that Regulatory Compatibility Assessments are strictly informative and do not in any way mandate a specific regulatory decision, as greater compatibility may not always be possible or even desirable. The objective of a Regulatory Compatibility Assessment is to make more information available so that deliberate and informed decisions can be made to pursue regulatory paths designed to maximize interoperability, or to recognize where divergence may be unavoidable or even preferable.

Regulatory Equivalence Assessment

As the TTIP is being negotiated, regulators of certain products and services are seeking to determine whether they can enter into regulatory cooperation commitments that address existing differences. In each of these areas, the regulators are determining whether the desired outcomes of their respective approaches are similar.

However, there are limits to what can be achieved during the course of the negotiations. More evidence may be needed to demonstrate equivalence, or more discussion will be needed to develop the necessary confidence between regulators to produce a regulatory cooperation arrangement. In addition, new regulations will be promulgated after the TTIP is finalized, so the agreement needs to be structured to ensure that future cooperation arrangements can be addressed.

The TTIP needs to establish a process, and ideally a baseline methodology, for evaluating equivalence between existing regulations. As in the case with Regulatory Compatibility Assessments, this Regulatory Equivalence Assessment process and methodology may need to be refined over time.

Procedurally, the TTIP should explicitly establish a procedure for affected stakeholders to initiate a Regulatory Equivalence Assessment process. While current EU and U.S. processes allow petitions for regulatory change, the TTIP should

specifically allow (and indeed encourage) stakeholders to suggest that the regulatory regimes for certain (classes of) product(s) or service(s) achieve similar levels of protection. The stakeholder would be required to provide data to demonstrate this equivalence. The regulators on both sides should consult, and put the petition out for public comment, and perhaps conduct a hearing. Based on the evidence gathered, they should provide a public response, either jointly or separately, on the merits of the stakeholder's claim.

Further, TTIP Regulatory Equivalence Assessments should be conducted on existing regulations where the U.S. and the EU agree, with stakeholder input, that regulatory cooperation arrangements would be desirable. A Regulatory Equivalence Assessment tool created by the TTIP would examine:

- Whether the regulation(s) being examined meet the underlying statutory levels of required protection.

- Whether the compliance structure, the level of adherence, and oversight system are equivalent.

- How a regulatory cooperation arrangement would reduce costs and increase regulatory efficiency without reducing the level of regulatory protection.

- To the extent that the regulation or regulations being examined are not equivalent, whether there is anything short of a full equivalence determination that would be beneficial to the bilateral relationship that would not undermine the level of protection afforded in either regulatory framework.

Any TTIP Regulatory Equivalence Assessment should be made public and open for public consultation under the normal domestic procedures of both parties. The TTIP should also make clear that Regulatory Equivalence Assessments are not binding but that regulators should consider entering into a potential regulatory cooperation arrangement - up to and/or including a full equivalence arrangement - to capture benefits that arise from a completed and bilaterally agreed Regulatory Equivalence Assessment. Equally important, where a Regulatory Equivalence Assessment is unsuccessful in leading to a determination of full equivalence, the TTIP should require regulators to outline the reasons full equivalence could not be reached and identify what would need to change in order to recognize equivalence while preserving the regulatory standard.

WHAT ELSE DOES THE TTIP NEED TO ACCOMPLISH?

Beyond new tools for coherence and cooperation, the TTIP needs to include provisions that:

- Define the authority and responsibility of regulatory agencies.
- Establish an institutional mechanism to oversee regulatory coherence and cooperation commitments.
- Specify the operational framework to govern bilateral regulatory dialogues.
- Assure regulatory autonomy.

Authority & Responsibility of Regulatory Agencies

The TTIP should direct regulators to deploy both regulatory compatibility assessment and regulatory equivalence assessment tools wherever appropriate. But the agreement must do more than state this goal: It must remove obstacles to such cooperation. Specifically, the TTIP should:

- Encourage and permit regulators to enter into mutually agreeable regulatory cooperation agreements, where this is both feasible and desirable.
- Provide regulatory agencies explicit legal authority to enter into arrangements with their transatlantic counterparts, in consultation with their political oversight bodies.
- Remove ill-founded legal barriers to regulatory cooperation, such as statutory bans on allowing regulators to share resources.
- Encourage negotiation of information sharing agreements, to include confidential information provided by private parties, provided those parties authorize such information sharing.
- Encourage regulators to work cooperatively in international regulatory fora to promote the TTIP regulatory coherence and cooperation objectives.

- Press regulators to evaluate the merits of including or joining regulatory cooperation agreements entered into with a third party.

Institutional Mechanism

The TTIP needs to create a body to oversee adherence to the regulatory coherence and cooperation provisions and to address issues that arise during and after implementation of the agreement. This body would be an elevated form of the existing U.S.-EU High Level Regulatory Cooperation Forum and provisions governing its composition and activities would be outlined in the agreement. At a minimum the TTIP must establish:

- The composition of the oversight body, which must be comprised of senior political and regulatory officials from both the U.S. and the EU.

- The leadership role and relationship regulatory agencies play vis-a-vis the oversight body.

- A means by which stakeholders can petition to consider the viability of cooperation arrangements governing specific regulations or sectors. This would be critical to the development of future sectorial arrangements after the TTIP negotiations conclude and would trigger a Regulatory Equivalence Assessment.

- A requirement that all stakeholder petitions receive responses from the appropriate regulatory agencies, including explanations for rejected petitions.

- An obligation for the oversight body to meet regularly to review progress, engage with stakeholders, and issue an annual report.

- The oversight body is authorized to:

    - Convene a conversation about compatibility concerns over emerging areas of regulation.

    - Request a Regulatory Equivalency Assessment for existing regulation to determine what, if any, regulatory cooperation arrangements can be made.

    - Review submitted stakeholder petitions with relevant regulators.

- Issue additional guidance for how to conduct Regulatory Compatibility Assessments or Regulatory Equivalency Assessments.

- Review progress, facilitate dialogue and coordinate bilateral regulatory dialogues and joint regulatory activities when necessary.

- Create bilateral regulatory dialogues.

- Update criteria used as a filter to define a "significant transatlantic impact".

- Develop other processes to ensure continued effectiveness of regulatory cooperation agreements through consistency of enforcement and implementation.

Bilateral Regulatory Dialogues & Registry of Agreements

U.S. and EU regulators have been talking and working cooperatively for years. In fact, there are several standing bilateral dialogues. The TTIP needs to catalogue existing dialogues and allow for others to be established on either a sector-by-sector on agency-by-agency basis. The TTIP also should:

- Define the relationship between these bilateral dialogues and the broader oversight body.

- Require that each bilateral dialogue adhere to a series of best practices including:

  - Issuance of a public notice on the timing and purpose of a meeting;

  - An opportunity for stakeholder input regarding the issues to be discussed;

  - Ways to include stakeholders, upon occasion, for a portion of a bilateral meeting; and

  - Regular and timely updates and follow-up regarding outcomes and next steps.

- Mandate an annual public report from each bilateral regulatory dialogue on the activities of the preceding year and planned areas of work going forward.

- Require maintenance of a central public listing of all regulatory cooperation arrangements entered into with any country.

Regulatory Autonomy

Horizontal regulatory coherence and regulatory cooperation provisions in the TTIP cannot and should not dictate or guarantee specific regulatory outcomes. The development of new tools to assess regulation does not translate into a requirement to harmonize or better align our regulations. Instead these tools will give regulators the necessary information about the impacts of their decisions on the transatlantic economic relationship so they can decide consciously whether to pursue cooperation or to allow for divergence. Even where regulatory cooperation is both possible and desirable, it will be important for the TTIP to provide the necessary flexibility to withhold the benefits of regulatory cooperation arrangements, suspend and ultimately cancel such arrangements, or take action under urgent circumstance.

To do this the TTIP should ensure that:

- Nothing as it relates to the regulatory coherence and regulatory cooperation provisions in the TTIP directs the final outcome of any given regulation.

- A regulator is able to suspend the benefits of any regulatory cooperation arrangement **to a specific product or service**, provided it articulates clearly the reasons such benefits are being temporarily withheld and, following suspension, allows those affected to respond to the stated concerns.

- A regulator is able to suspend for **all products or services** any regulatory cooperation arrangement, provided that an explanation accompanies such an action. In such an instance, the TTIP should provide a consultation period following the suspension of an arrangement to detail the need for the suspension and to consider what steps might be taken to re-establish the arrangement. Stakeholders' input should be solicited and considered as part of the consultation period.

Conclusion

The success of the regulatory components of the TTIP will be judged on whether: TBT and SPS commitments bridge long-standing differences; sector related commitments produce immediate deliverables; and perhaps most importantly, whether or not a decade after ratification the regulatory coherence and regulatory cooperation commitments have created a trajectory for greater success. That success will be measured in deeper levels of trust and understanding between our regulators, more deliberate and informed decisions to diverge, avoidance of unwanted divergences, increased consumer confidence, and the more seamless flow of goods and services as a result of streamlined compliance.

There is nothing in the suggestions above that in any way restricts the ability of legislators and regulators to do what they believe to be in the best interest of their citizens. Nor is there any suggestion that the TTIP regulatory coherence and cooperation should ever lead to a "lower" level of protection. Our focus is strictly on ensuring that legislators and regulators act with the greatest amount of information possible and with a conscious eye to the impact of their decisions on our largest trading and investment relationship.

The question is not whether the U.S. or EU will continue to improve our respective regulatory processes and continue to cooperate where it is both feasible and desirable. Today, we are already doing so. The real question is whether the TTIP can accelerate the path we are already on.