

# NATIONAL FOREIGN TRADE COUNCIL, INC.

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**Comments of the National Foreign Trade Council  
to the Office of the U.S. Trade Representative  
Concerning Promoting U.S. EC Regulatory Compatibility  
October 31, 2012  
(Docket ID: USTR-2012-0028)**

The National Foreign Trade Council (NFTC) is responding to a request for comments published in the Federal Register on September 28, 2012 by the Office of the U.S. Trade Representative concerning Promoting U.S. EC Regulatory Compatibility. The NFTC, organized in 1914, is an association of several hundred U.S. businesses engaged in all aspects of international trade and investment. Comprised of companies representing a broad cross section that drives the U.S. economy, we are dedicated to an open rules-based international trading system.

As the largest economic relationship in the world, all steps to deepen trade and investment between the U.S. and EU pay immediate dividends to U.S. companies, workers, farmers and ranchers. NFTC and its members urge the governments of the U.S. and EU, through its current U.S.-EU High Level Working Group on Jobs and Growth, to move without delay to initiate negotiations toward a comprehensive agreement or set of agreements covering the full range of issues including goods, services, and agriculture, tariff and non-tariff technical barriers to trade, competition, investment, intellectual property, trade facilitation, customs, rules of origin, and the range of new “21<sup>st</sup> century issues” now included in the only current U.S. trade and investment negotiation, the trans-pacific economic partnership (TPP).

The U.S. and the EU have a long history of cooperative fora to build upon in the realm of strengthening regulatory cooperation, reaching back to mutual recognition agreements of the 1990’s, through the current transatlantic economic council, regulatory cooperation roadmap, OMB-EC dialogue on good regulatory practices, the high level regulatory cooperation forum and transatlantic business dialog.

While cooperation is now broader and deeper, decentralized and routine, the launch of negotiations must add the highest level political commitment to translate past and current processes into a new agreement with tangible commitments to reduce regulatory burdens, minimize regulatory divergences and create the highest possible levels of transparency and ease of stakeholder input to the US and EU regulatory environment and to jointly and aggressively cooperate in shaping emerging regulatory regimes in third countries.

Such a negotiation should:

- Maintain strong political commitment to a successful conclusion and oversight of technical negotiations to assure a timely and ambitious result.

- Set clear criteria to “do no harm” that would backtrack on existing U.S. high standards set in U.S.-Korea (KORUS) free trade agreement and other bilateral or multilateral agreements or result in any new barriers to trade and investment between the US and EU or against third parties.
- Bring a “whole of government” commitment to include the range of U.S. and EU independent governmental and sub-federal entities.
- Maximize mutual recognition of industry developed testing and voluntary consensus standards.
- Pursue efforts on key sectors with the most economic impact in the transatlantic relationship including autos, chemicals, pharmaceuticals, medical equipment, financial services and insurance.
- Maximize an evidence based cooperative approach to future regulatory development which enables and encourages the innovation economy.
- Focus on regulatory compatibility which will lead to joint strategies toward third countries and multilateral efforts.

As noted in previous comments, NFTC also believes it is critical to advance common interests with respect to intellectual property rights and international flows of information.

We believe the U.S. and Europe should build upon the shared recognition of the critical value of the global intellectual property rights framework for innovation and job growth. Recognizing the unique nature of the relationship – for example, the symmetry that exists between the United States and Europe with respect to the effective protection of IPRs as well as variations in the way in which the two countries have approached IP historically in separate trade agreements – NFTC urges negotiators to engage on a discrete set of issues to improve the bilateral and global IPR frameworks. We recommend that the U.S. and EU harmonize approaches where appropriate and feasible and, in particular, advance common interests with respect to third countries and multilateral organizations to protect and promote U.S. and transatlantic innovation. We look forward to following up with the U.S. Government to provide additional input on these issues.

The two partners also have an opportunity to advance transatlantic cooperation and global leadership to promote open and secure flows of digital information across borders. Advancing common approaches to security and privacy, and improving understanding, communication and legal certainty where regulatory regimes diverge, will be critical to creating jobs and promoting innovation and growth of the transatlantic digital economy. The U.S. and EU should build on existing efforts, including the EU-U.S. Trade Principles for ICT Services, to improve bilateral commitments where necessary and bolster transatlantic leadership to advance positive outcomes in forums involving third countries.

We urge both governments to redouble efforts to come to agreement on a comprehensive scope and timeline for a future U.S-EU trade and investment agreement which incorporates strong regulatory convergence and compatible approaches.