

**National Association of Manufacturers
Washington, DC**

**Public Comment on
Promoting U.S. and European Commission
Regulatory Compatibility**

October 31, 2012

On behalf of the National Association of Manufacturers (NAM), we welcome this opportunity to provide comments for public consultation on the future of EU-U.S. trade and economic relations. The NAM is the largest industrial trade association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states.

The NAM has been a leading business advocate in urging the United States and European Union (EU) to launch comprehensive free trade agreement negotiations, aimed at fostering mutual economic benefits and job creation on both sides of the Atlantic as well as the elimination of barriers to transatlantic trade and investment. Since 2008, the NAM has been urging the U.S. and European governments to consider a broad free trade agreement – a Transatlantic Partnership Agreement (TAP) – that would be comprehensive in scope, eliminate tariffs and non-tariff barriers, and foster greater regulatory coherence and convergence.

The United States and the EU already have the world's largest commercial relationship but major opportunities for increased trade, investment and cooperation remain. A trade-liberalizing TAP could demonstrate the strong leadership of the United States and the EU to the rest of the world and put both our economies in a stronger position in the global marketplace.

The NAM supports the launching of formal trade agreement negotiations between the United States and the EU and supports the negotiation of an agreement that achieves the following objectives:

- Eliminates all tariffs immediately;
- Promotes and improves efficiency in U.S.-EU trade and investment;
- Stimulates economic growth and creates jobs, focusing in its first stages on where that growth and those jobs can be most quickly generated;
- Reduces costs of business operations and processing both for companies and governments through improved and coordinated customs facilitation;
- Promotes cooperation on border security, especially the facilitation of legitimate business travel and the consistent and intelligent monitoring of cargo facilities and ports;
- Opens further services trade that supports manufacturing, including distribution, finance, and conformity assessment;

- Enhances the protection of investment and opens the transatlantic market further to U.S. and European investors;
- Encourages the development of efficient, cost-effective and secure supply chains that reflect modern business practices, facilitate business' ability to meet market demands and enhance rather than impede trade;
- Addresses the emerging issues raised by expanding digital trade and e-commerce, including issues surrounding privacy, data protection and cross-border data and information flows; and
- Provides stronger protections for innovations and intellectual property, including identifying new ways to cooperate in effectively addressing illicit trade, piracy and counterfeiting.

Regulatory Cooperation

A key objective for the NAM in a TAP negotiation is promoting regulatory cooperation and coordination between the United States and EU in order to remove regulatory barriers to trade and reduce unnecessary divergence between EU and U.S. regulations and directives. Such barriers and divergences not only limit market access on both sides of the Atlantic and limit consumer choice, they substantially increase costs for U.S. and EU manufacturers, undermining their global competitiveness. To eliminate these barriers, it is vital that U.S. and EU negotiators seek to address both existing regulatory differences and the processes for developing new regulations.

With respect to existing standards, a TAP agreement should harmonize, converge or eliminate duplicative and redundant technical regulations, standards and conformity assessment procedures. The NAM urges that any TAP use the inclusive definition of "international standards." Both the United States and the EU must adopt the broad World Trade Organization (WTO) Technical Barriers to Trade (TBT) view of "international standards" as those which are used in more than one country, rather than limiting the definition only to standards developed by the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), or International Telecommunication Union (ITU). The ISO, IEC and ITU are just a few of the high-quality international standards the United States recognizes.

In order to prevent redundancies and duplication in regulations, the NAM also strongly urges negotiators to work towards establishing a coherent, cooperative U.S.-EU process for the development of new regulations going forward, especially for emerging technologies and new innovations. In addition, a newly-established process should provide for consideration of new disclosure requirements being promulgated on both sides of the Atlantic with the goal of minimizing duplication and avoiding requirements that result in companies having to meet two different disclosure standards. Any new cooperative processes resulting from the TAP should be characterized by the utmost transparency and openness to provide accountability for private sector stakeholders.

The United States and the EU should strive to simplify regulatory processes and promote greater efficiency, including by sharing information, data sets, terminology and definitions wherever possible.

The NAM continues to be very concerned by the proclivity of the European Commission (EC), EU governments and their regulatory authorities to introduce non-scientific, quasi-scientific or even political factors into regulatory policy-making and implementation and the development of regulations and directions through procedures that are not transparent to all stakeholders, including trading partners. The NAM also remains troubled by the establishment of EU regulations that lack technical justification and whose burdens of implementation are not proportionate to intended consumer or environmental benefits. We urge that regulatory policy on both sides of the Atlantic be based solely on the principles of sound science, risk management, risk assessment and transparency. We also recommend that such regulations be developed by processes that are transparent to and include the input of stakeholders.

Conformity Assessment and Harmonization

The NAM believes that any TAP agreement negotiated by the United States and the EU should also enable conformity assessment bodies in one country to provide testing and certification to another country's requirements by being recognized or accredited through the same process that is used for domestic bodies. An agreement must ensure that the EU allows multiple accreditation paths for certification bodies in order to eliminate burdensome accreditation costs across EU member states, which represents a costly and unnecessary barrier to further economic growth between our economies.

Currently, all avenues for obtaining required third-party certification for EU market access exclude U.S. testing laboratories from the final stage of product certification — the evaluation or so-called judgment of test results and the approval of the product. U.S. laboratories are not permitted by EU regulators to exercise "engineering judgment" and must therefore perform redundant, additional tests that European laboratories are not required to perform. This is much different than the treatment of EU certification bodies that are permitted to continue to use best engineering practice in their testing protocols to ensure product safety. This lack of national treatment of U.S. certification bodies contributes to significantly higher testing costs for U.S. product manufacturers, adds substantial time before market introduction, and has effectively required U.S. certification firms to establish operations in the EU in order to remain competitive. Accordingly, the United States and EU should provide full national treatment to U.S. and EU conformity assessment bodies that conduct testing and certifications.

The NAM also urges U.S. and EU negotiators to identify standards areas where greater harmonization, convergence and coherence are possible. As examples, negotiators could consider addressing:

- labeling requirements;

- product-safety requirements;
- technical transparency for CE marking requirements, which indicate conformity with EU standards;
- information- and data-sharing; and,
- cost-benefit-risk assessment methods.

Improving harmonization, convergence and coherence in areas including, but not limited to, those listed above will not only improve efficiency in the development of products and technologies but will also expedite consumers' access to these goods and services.

Negotiators should determine when it might be appropriate and feasible for both the U.S. government and the EC to recognize each other's standards as functional equivalents. Functional equivalency determinations between corresponding U.S. and EU regulations would significantly reduce or eliminate the non-tariff trade barriers that have arisen as a result of numerous divergent safety regulations. Finally, to the extent possible, the NAM strongly urges negotiators to allow for the market-driven development of product standards and conformity assessment.

Conclusion

The above-mentioned non-tariff barrier issues will be among the most complicated, but important, to address in U.S.-EU negotiations. Eliminating redundancies and inconsistencies in regulations, standards, and conformity assessment and certification procedures will concretely lower the costs of doing business for manufacturers on both sides of the Atlantic, and create new market opportunities, thereby enhancing U.S. and EU competitiveness around the world. This is especially important for small- and medium-sized businesses that are often the most disadvantaged by these types of barriers. Cooperation in the development of regulations in the future can also help foster the global adoption of a U.S.-EU standard or regulation, preventing the rise of competing standards that can be used for protectionist purposes.

We recognize that the EU and the United States have attempted to address these issues previously and have encountered significant challenges. It is vital that we continue working together to identify ways of harmonizing and converging standards, regulations and requirements in order to improve efficiency and remove barriers to trade. We support an agreement that would help U.S. and European regulators to get ahead of regulatory issues and find mutually compatible ways to develop and implement technical regulations, rather than devising them separately and then later attempting to overcome the barriers created by that approach. Principles to guide the development of regulations and promote best practices that could be included in a TAP agreement would be a significant development and one that is especially critical for economic growth and job creation at a critical time in the global economy.

The benefits of an ambitious, commercially meaningful, and successful TAP negotiation would be substantial for both our economies, our manufacturing companies

and our citizens. The NAM is committed to working with the EU and U.S. governments to achieve this important result.

Thank you for this opportunity to present the NAM's views.