

THE U.S. CHAMBER OF COMMERCE

December 29, 2004

Ms. Anita Thomas
Attn: Transatlantic Economic Relationship Written Comments
Office of Europe and the Mediterranean
Office of the U.S. Trade Representative
1724 F Street, N.W.
Washington, D.C. 20508

**Comments transmitted by e-mail to: FR0439@ustr.eop.gov
Re: Enhancing the Transatlantic Economic Relationship**

Dear Ms. Thomas:

The U.S. Chamber of Commerce (Chamber), the world's largest business federation, representing more than three million businesses of every size, sector, and region, is pleased to provide the following comments concerning the Office of the U.S. Trade Representative's "Public Dialogue on Enhancing the Transatlantic Relationship."¹

The Chamber welcomes this opportunity to present its views on enhancing the transatlantic economic relationship. The Chamber commends the office of the United States Trade Representative (USTR) and the European Union (EU) Commission for launching the consultation process that we believe should lead to strong mutual commitments. As we have testified before the U.S. Congress, the Chamber believes that now is the time for the U.S. government to start discussing with the EU a bilateral agreement, or treaty to safeguard and enhance transatlantic economic relations.²

¹ *Federal Register* 69(158):51139-51140 (August 17, 2004).

² U.S. Chamber of Commerce Statement of U.S.-EU Regulatory Affairs before the Subcommittee on European Affairs of the U.S. Senate Committee on Foreign Relations, October 16, 2003.

In its submission to USTR, the Chamber outlines comments and suggestions on enhancing the transatlantic economic relationship within the following five sections:

- I. Political Leadership and the Need for a New Transatlantic Bilateral Framework
- II. Building on the U.S.-EU Regulatory Cooperation Roadmap
- III. Mutual Recognition Agreements
- IV. Institutional Reforms at Home
- V. Selected Specific Requests

The Chamber is aware that the Transatlantic Business Dialogue (TABD) has communicated comments to your office concerning this issue. The Chamber supports TABD's comments, which include input from the Chamber and several of its members. The Chamber concurs with TABD that there is an urgent need for bold and forward-looking political leadership to drive progress towards a Barrier-Free Transatlantic Market, and a fresh start in transatlantic regulatory cooperation.

The following comments are based on the premise that European economy's wellbeing is essential to our economic prosperity. American openness to European investment, research and development, and human capital is contributing to U.S. economic growth. For U.S. business, Europe remains the most important commercial partner in the world. Europe is a critical, growing and highly profitable source of revenue. It is also a key supplier of capital to U.S. business with European investors investing billions of dollars in our economy year after year. Today, U.S. and European companies invest more in each other's economies than they do anywhere else in the world. Europe's investment stake in America doubled between 1998 and 2002, and accounts today for nearly three-fourths of all foreign investment in the U.S.³ European companies are a key source of employment throughout the country, with millions of "insourced" workers who enjoy high wages, and high labor and environmental standards.

Over the last 50 years, the U.S.-EU economic relationship has grown to be mature and fairly well balanced. With a share of more than 50% of world trade (and 60% in trade in services), worth \$500 billion a year, the U.S. and the

³ *Partners in Prosperity: The Changing Geography of the Transatlantic Economy* by Daniel S. Hamilton and Joseph P. Quinlan, Center for Transatlantic Relations, John Hopkins University, 2004.

EU have formed a highly integrated marketplace, in which each actor has an enormous stake in the success of the other.

U.S. and European economies and commercial relations have evolved to become less about the exchange of goods that are produced on either side of the Atlantic, and more about investment flows. Combined sales by U.S. affiliates in Europe and by European affiliates in America, and transatlantic capital flows, represent 80% of the transatlantic economic relationship.

Continuing European economic commitment to the U.S. market is a sign of its economic strength and competitiveness. It is also a direct consequence of U.S. equal commitment to Europe. With U.S. assets worth \$3.3 trillion in Europe (about 60% of all U.S. foreign assets), U.S. business has a vital stake in Europe's economy, and its future. The U.S.-EU *de facto* "common market" generates roughly \$2.5 trillion in total commercial sales a year.

As formidable as U.S.-EU mutual economic interdependence is, it is not safe from friction and tension. Chamber members believe that the transatlantic marketplace needs to be secured as an integrated market, where economic actors share the same fundamental values and are guided by similar or compatible principles. The transatlantic market rests on the same pool of consumers, producers, and investors, but has distinct sets of regulators, who should be mandated and empowered to take into account the reality of the transatlantic marketplace when proposing new rules or enforcing existing ones.

Chamber members believe that the existing U.S.-EU agreements and guidelines do not explicitly, or comprehensively, consider the transatlantic market as an integrated market, nor do they presently envisage the creation of a transatlantic economic community. Our members believe that now is the time to go a step further and to agree on the fundamentals of the transatlantic marketplace. The U.S. and the EU should update their bilateral framework to acknowledge the critical importance of their commercial relations, and to include measures that would:

- (a) Safeguard the foundations of the transatlantic market, and
- (b) Foster the long-term growth of the transatlantic economy.

These goals could be best achieved by negotiating a comprehensive U.S.-EU bilateral agreement or treaty on investment and regulatory cooperation.

I. Political Leadership and the Need for a New Transatlantic Bilateral Framework

There is a growing consensus among transatlantic economic actors that the bilateral framework, which governs the economic relationships between the U.S. and Europe, is not adequate. The obsolescence of our framework has occurred in part because Europe has gone through an historical transformation, and in part because the nature of our economic relationship has dramatically evolved.⁴

The European Union is an ever-deepening federation with increasingly common laws and regulations, common institutions, common currency and converging economic policy. The EU is now empowered to negotiate on behalf of its member-states its commercial relations with the rest of the world.

Any new U.S.-EU bilateral agreement should reflect the new economy and the new European reality and prepare for the future. Together with our European partners, we should seek to cement shared transatlantic values principles and common objectives. We should recognize that the U.S. and EU have created a *de facto* economic community, the Common North Atlantic Market, with common economic actors. We should aim to secure, manage, and grow this economic community.

Redefining the U.S.-EU bilateral framework will require visionary and energetic political leadership at the highest level in both the executive and legislative branches of power in the U.S. and in Europe. In the U.S., the White House, the Office of the U.S. Trade Representative, key relevant departments, e.g., State, Treasury, Commerce, Justice, Homeland Security, Energy, Agriculture, Transport, and key agencies, must be actively involved. U.S. Congress must also participate fully in this process. On the European side, the EU Commission and Parliament should lead the initiative, with full support of the member states' governments and legislatures.

a. Shared Values Translate Into Shared Vision

What makes our economic relations with Europe so special is that beyond the staggering statistics, there is a time-tested community of actors who

⁴ In addition to TABD, other organizations like the Union of Industrial and Employers' Confederations of Europe (UNICE) and the American Chamber of Commerce to the European Union (AmCham EU) concur that if the U.S.-EU existing bilateral framework is not improved or reformed the transatlantic market will never be barrier-free, and will perform much below its potential.

share common values and principles, and who wish that their governments and regulators took each other into consideration when managing and legislating their respective economies.⁵

In the wake of the historic post-cold War enlargement of the European Union, the U.S. and EU need to codify their economic relationship to recognize the evolution of the transatlantic market and set the foundation for its future growth. The U.S. Chamber therefore supports the idea of launching comprehensive negotiations between the U.S. and EU on an appropriate legal instrument, which may be a U.S.-EU “Treaty of Friendship and Cooperation,” or a U.S.-EU “Trade and Investment Enhancement and Regulatory Cooperation Agreement.”⁶

Regardless of the title, this instrument would formally acknowledge our common values and principles as the fundamental basis of our cooperation. A new treaty, or agreement, would also state our common economic objectives, or goals we want to achieve together. No genuine partnership is possible, nor friendship durable, without prior understanding and acceptance of where we want to be in an agreed frame of time.

b. Common Economic Actors

An essential feature of the U.S.-European commercial relationship is that it is increasingly impossible to differentiate the economic actors according to their nationality. As in a genuine common market, geographical and

⁵ Over the last 50 years, the basis of the enduring success of transatlantic economic relationship has been a clear recognition of shared values and objectives, as well as crucial U.S. support for the creation and growth of the European Union. In the words of UK Prime Minister Tony Blair “*what binds us together is a common belief in the values of institutionalized democracy, the benefits of the rule of law, the primacy of the market as the engine of growth, the belief in a strong and inclusive society to correct the market’s injustices, the creative power of individualism, and the ultimate need to protect human rights.*” Prime Minister of the United Kingdom Tony Blair, Speech to the Canadian Parliament, February 23, 2001.

Note that Mr. Blair’s speech was given before the Canadian Parliament, and that he addressed the “transatlantic relationship” as a whole, including Canada. The Chamber supports including Canada in a transatlantic agreement, as well as other non-EU European nations. The Chamber is encouraged by the proposed Canadian-EU “Trade and Investment Enhancement Agreement,” and the recently agreed “Framework for Regulatory Cooperation,” which could conceivably be extended to include the United States.

⁶ The Chamber understands that a U.S.-EU treaty may raise legal issues, and unforeseen complications, because of the questionable ability of the EU to negotiate a treaty with a sovereign nation. However, we see this challenge as an opportunity for academia and think tanks to come up with solutions and the proposal for an ideal legal instrument to cement our friendship and our pledge to cooperate in as many areas, including commercial, of our relationship as possible.

diplomatic borders are vanishing. Our massive cross-investment and shared interests in our respective countries have created mutual ownership, liabilities, and dependence. Our companies are less and less American or European, and more and more transatlantic. They share the same shareholders, board members, investors, and creditors. And they also share the same customers, auditors, and legal advisors. Companies and consumers may not even be aware of it, but they have all become actors of a shared market, the Common North Atlantic Market.

Government officials, legislators and regulators on each side of the Atlantic must become aware that when they make a decision, it increasingly and almost inevitably impacts companies, shareholders, workers and consumers across the Atlantic. This development represents a huge challenge that the U.S. and the EU must commit to tackle together. A new bilateral agreement would recognize the existence of common economic actors, and their roles and responsibilities in the Common North Atlantic Market.

c. Secure, Manage and Grow the Common North Atlantic Market

Finally, a new agreement or treaty would provide an opportunity for U.S. and European governments and legislators to work out the terms of our economic cooperation. The new agreement or treaty would provide the tools to best answer the essential challenges relevant to our commercial relations:

- 1) How do we secure the foundations of the Common North Atlantic Market?
- 2) How do we best manage this market?
- 3) How do we foster unimpeded growth this market?

II. Building on the U.S.-EU Regulatory Cooperation Roadmap

U.S. and EU governments, legislatures and regulatory agencies must appreciate how critical transatlantic regulatory cooperation is to secure and grow our economic relationship.

a. Build on positive experience

The Chamber fully supports the U.S.-EU Regulatory Cooperation Roadmap issued at the June 2004 U.S.-EU Summit, and welcomes the stated

recognition that transatlantic regulatory differences, not tariffs, comprised the most significant remaining transatlantic barriers.⁷

The Chamber believes that immediate and concrete steps should be taken to implement the existing, but so far not mandatory, U.S.-EU Guidelines for Regulatory Cooperation and Transparency, and then build on the Guidelines and on the Roadmap to improve and expand our regulatory cooperation framework.

The Chamber sees the U.S. Congress' support and oversight of the transatlantic regulatory cooperation process as essential to further progress. More effective and robust regulatory cooperation will simply not happen without political commitment at the highest level. Nor will it succeed without U.S. Congress providing the means and the supervision that regulatory cooperation requires and deserves. The Chamber believes that the negotiations of a new bilateral agreement or treaty would stimulate this vital political support and oversight.

b. Fixing the Problems Without Reinventing The Wheel

The Chamber acknowledges that the U.S. and the EU governments, legislatures and regulatory agencies already have at their disposal a range of tools to cooperate on regulations. In fact, there are many positive examples of ongoing regulatory cooperation in a number of important sectors.

Unfortunately, there are also many examples of ineffective, partial, worsening, or nonexistent cooperation. For the short-term, renewed efforts to implement and improve existing mechanisms and adopt best practices of regulatory cooperation are preferable to reinventing the wheel.

In the process of this present consultation, the Chamber polled members and assessed the positive and negative aspects of U.S.-EU regulatory cooperation. The Chamber found that:

- Established person-to-person contacts between regulators, legislators, and businesses provide the best possible means for mutual understanding, sharing of information and effective cooperation;

⁷ White House Press Release: "U.S.-EU Declaration on Strengthening our Economic Partnership", Shannon, Ireland, June 26, 2004.

- Regulators are not systematically given the financial and technical means and incentives to cooperate;
- Lack of political supervision and leadership can derail ongoing technical cooperation. Without top-level political oversight and leadership, there is a high risk of regulators fighting over technical issues that can spill-over into broad mutually-destructive regulatory and policy confrontations;
- Need for transatlantic confidentiality arrangements, under which agencies can exchange information⁸;
- Regulators (mostly from the U.S.) do not know who to cooperate with on the other side of the Atlantic. In some instances, regulators do not have an exact counterpart and lack the mandate for broader cooperation beyond the narrow scope of their agency jurisdiction;
- The lack of explicitly agreed sets of values, principles and standards may result in increasing divergence of regulations, especially in areas of health, safety, consumer rights and environmental protection.

The key purposes of a new bilateral agreement or treaty would be to provide: 1) reference to an agreed set of common values and principles, 2) political leadership and oversight, and 3) institutional, legal, financial, and technological means and incentives to better cooperate.

c. Chamber's Objectives

Ineffective U.S.-EU cooperation results in conflicting obligations, liabilities, uncertainties and waste, the cost of which is borne by companies, their shareholders, consumers and workers. Therefore, the Chamber's principal objective in the area of transatlantic relationship is to ensure that U.S. and EU laws and regulations are mutually compatible and conducive to economic growth and global competitiveness of our companies.

The proposed bilateral agreement or treaty should require that legislators and regulators on both sides of the Atlantic take into consideration the impact of relevant draft legislations and regulations on the Common North Atlantic Market and its economic actors.

⁸ The confidentiality agreement reached between the U.S. Food and Drug Administration (FDA) and the European Medicines Agency (EMA) on September 16, 2004, could serve as a model to reach similar agreements with other key agencies.

The agreement or treaty should stipulate that when regulating their respective markets, U.S. and EU regulators would:

- (i) Assess transatlantic economic impact,
- (ii) Study best practices in both the U.S. and the EU,
- (iii) Apply the existing (but not mandatory) U.S.-EU Guidelines on Regulatory Cooperation and Transparency; and
- (iv) Refer to an agreed upon set of U.S., EU and international standards.

III. Mutual Recognition Agreements

The Chamber respectfully recommends that the office of the U.S. Trade Representative and the EU Commission continue to identify and emulate successful initiatives and agreements, including mutual recognition agreements (MRAs), and expand these efforts in all sectors of the transatlantic economy. The recently signed Maritime Equipment MRA, though narrow in scope, goes beyond previous agreements and should be used as a benchmark for future efforts.⁹

The Chamber believes that divergent standards, licenses, testing requirements, and certificates on each side of the Atlantic result in significant barriers to transatlantic commerce and cost to business. MRAs can eliminate duplicative testing, simplify administrative procedures, reduce the time to introduce innovative products to markets, and lower costs. MRAs allow for freer and quicker movements of goods across the Atlantic, and directly benefit companies, shareholders, workers and consumers. Ultimately, “new generation” MRAs could greatly contribute to the competitiveness of the transatlantic market.

a. Essential Principles Of Mutual Recognition Of Standards

A new U.S.-EU bilateral agreement or treaty could define some essential principles of mutual recognition of standards based on an agreed set of essential safety, public health, and performance requirements. Rather than

⁹ Office of the United States Trade Representative, Press Release, February 27, 2004. This “new generation” MRA allows marine equipment that is certified as acceptable for one market of one party to circulate in the other without the need for additional testing or certification. This is a great improvement from first generation MRAs, which only allowed some products to be tested and certified to the requirements and standards of the destination market before the products are shipped.

trying to “harmonize” all their standards, the U.S. and the EU could agree to mutually recognize their standards – very much like the member states of the European Community agreed to achieve between themselves in the 1980s.

b. Transatlantic Conformity Mark

Mutual recognition of standards raises the question of whether the transatlantic products that meet these standards could be issued a “Transatlantic Conformity” (TC) mark, and could be distributed and sold throughout the U.S. and Europe without further testing and certification by “local” authorities.¹⁰

c. Implementation

Past failures to implement MRAs for lack of resources, incentives and political oversight have undermined the credibility of the overall process and its relevance. The Chamber hopes that genuine efforts to implement existing MRAs are made on both sides of the Atlantic. The Chamber encourages a comprehensive and objective analysis of these failures. There again, the U.S. Congress may have to play a role of political leadership and oversight.

IV. Institutional Reforms at Home

The transatlantic economy will only grow if both the U.S. and the EU improve their own business environments.

a. Regulators should be required to assess the impact of domestic regulations on transatlantic commerce

A sure way to avoid new regulations that may hurt transatlantic commerce is to require that regulators on both sides of the Atlantic assess the impact of their proposed regulations on transatlantic trade and investment.

In the U.S., an act of Congress could provide the incentives and the means for federal regulatory agencies to take into consideration the realities of transatlantic economy. An act of Congress, e.g., Transatlantic Regulatory Cooperation Act, would require federal agencies to consider the effect of their proposed and existing rules on U.S. trade and investment with our major

¹⁰ A “TC” mark would extend the “CE” mark currently used in Europe. The “Conformité Européenne” or CE mark on a product or machine establishes its compliance with all relevant European Union (EU) Directives.

trading partners, and examine effective regulatory alternatives to minimize negative impact on economic growth.¹¹

An office within the Commerce Department could be put in charge of implementing the Act, monitoring its enforcement by other federal agencies and/or reporting to Congress. That office could be staffed with a Transatlantic Commerce team, which would specifically monitor the transatlantic market and serve as liaison with a similar office within the EU Commission.

In the EU, the Chamber supports the initiatives of business associations that are calling on the EU to prioritize business impact assessments.¹² The Chamber recommends that these business impact assessments also include assessment of impact on transatlantic commerce.

b. Apples and Oranges: Mismatch between U.S. and EU Agencies

The EU must strive to better define and organize the body of regulatory agencies that it is currently creating. There is still much confusion between the regulatory roles and responsibilities between the Commission, the European agencies, and the member states' national authorities.

In addition to the EU Commission, which could be seen as a super regulatory agency, there are more than 25 existing or planned European agencies with some level of regulatory powers. None of these agencies have the same powers and independence, nor do they operate within the framework of a unified body of administrative procedure. Agencies, as important as the European Agency for the Evaluation of Medical Products (EMA), the Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM), the European Agency for Health and Safety at Work (OSHA), the Community Plant Variety Office (CPVO), the European Food Safety Authority (EFSA), the

¹¹ A model to consider is the Small Business Administration (SBA) and its role to protect the interests of small business. Under the Regulatory Flexibility Act of 1980 (RFA), and its amendments including the Small Business Regulatory Enforcement Act of 1996, federal agencies must consider the impact of their proposed rules on small business. The creation of SBA has empowered an office, under the oversight of Congress and the Office of Management and Budget (OMB), to encourage all federal agencies to comply with the RFA.

¹² The Chamber supports the initiative, which was launched following the European Competitiveness Council, held on November 25 and 26, 2004. The "*Alliance for a Competitive European Industry*" urged EU legislative institutions to support the call for consistent use of a clear, transparent impact assessment method right across the process of adopting legislation affecting industry. Union of Industrial and Employers' Confederation of Europe (UNICE) and 11 European industry federations, December 1, 2004.

European Maritime Safety Agency (EMSA), the European Aviation Safety Agency (EASA), the European Network and Information Security Agency (ENISA), and the proposed European Chemicals Agency (ECA), seem to have been created with insufficient consideration for their functional operability.¹³

The Chamber urges the EU, notably the EU Parliament, to study the role and function of its agencies, and develop comprehensive and consistent administrative procedures, perhaps using best-practice examples in Europe and from around the world, including the U.S. Administrative Procedure Act (APA).¹⁴

c. Transparency and Data Privacy Protection

The Chamber fully supports the comments of the American Chamber of Commerce to the European Union (AmCham EU) in the present consultation.¹⁵ We are particularly supportive of the advocacy work it has done to improve the business environment in Europe, and foster transparency in the EU regulatory process.

Uniform laws and standard legal practices governing the access to documents, the access to the process (stakeholder participation), and data protection are essential to a well-functioning market. There is a general consensus among Chamber members that the EU could still much improve in this area. The Chamber recognizes that, through a number of recent initiatives, the EU has demonstrated significant progress in strengthening the efficiency and transparency of its institutions. The Chamber encourages all parties involved to pursue this essential endeavor.

¹³ It does not appear that the proposed EU Constitutional Treaty addresses clearly the functions and responsibilities of European regulatory agencies.

¹⁴ U.S. Code, Title 5, Part 1, Chapter 5 Administrative Procedure.

¹⁵ “*Position Paper on Enhancing the Transatlantic Economic Relationship*”; American Chamber of Commerce to the European Union, December 6, 2004.

V. Selected Specific Requests

The negotiation of the proposed U.S.-EU bilateral agreement or treaty offers an ideal opportunity to work out a number of specific problems brought to our attention by Chamber members.

a. **Environment, health, food safety and animal welfare**

Recent transatlantic trade disputes have frequently stemmed from diverging views on risk assessment, precaution and the role of science, and more generally on the protection of public health, animal welfare and the environment. The disagreements encompass genetically modified organisms (GMOs), animal hormones, and health risks posed by chemicals. Without immediate political leadership and commitment, these issues are bound to fester and spoil the transatlantic market, with no clear winners on either side of the Atlantic. A bilateral agreement or treaty should make possible a resolution of these matters.

The Chamber believes that a bilateral agreement or treaty should include an agreement on fundamental principles regarding the regulation of biotechnology and environment. It should also lay out means and processes of cooperation, including early consultation mechanisms between key agencies, e.g., between U.S. FDA and EU Food Safety Authority, best practice analysis, consumer education, mutual recognition agreements and mutual commitment to implement domestic legislation and regulations.

A bilateral agreement or treaty could also envision a transatlantic clearinghouse, or office of transatlantic ombudsman, for regulatory cooperation, which would track on both sides of the Atlantic, regulatory proposals that diverge from an agreed set of principles and values. The Chamber believes that biotechnology, public health and the environment are the sectors, which would benefit the most from this early warning mechanism, and from the creation of a transatlantic clearinghouse for regulatory cooperation.

The Chamber suggests the Office of the U.S. Trade Representative to:

- 1) Continue to engage the EU on the Chemicals Policy Directive (REACH) proposal;
- 2) Monitor the EU environment strategy and product policy approach;
- 3) Monitor the proliferation of EU environment policy approaches in third country markets; and

- 4) Address trade and market access barriers that could arise from implementation of the Kyoto Protocol.
 - 1) Chamber members of all industrial sectors are still concerned by the proposed EU Chemicals Directive (REACH), which, under its current revised draft, will impose significant new risks, especially greater exposure to legal liability, and costs on manufacturers and downstream users of most existing and new chemicals. The Chamber respectfully urges the Office of the U.S. Trade Representative to continue working with stakeholders and the EU authorities to find solutions that address the concerns of the transatlantic business community.
 - 2) New EU regulations, which effectively shift environmental strategy from pollution control to specifying product design and manufacture, will entail increasing costs for U.S. companies in the global marketplace. EU product regulations have significant extra-territorial impacts for U.S. companies, affecting their product development and innovation undertakings, choice of materials used in products and how U.S. companies communicate information about their products. Accordingly, the U.S. government should continue to engage the EU on these issues and agree to cooperate based on an agreed set of principles.
 - 3) Chamber members are concerned that EU regulations are copied in less mature third-country markets, like China, Russia, and India. Members have, for instance, observed clear influence of the EU in recent Chinese regulations on chemicals and hazardous substances, with Chinese officials repeatedly taking EU regulatory language out of European context and implementing it as Chinese law. Such action circumvents the necessity to have a cogent discussion of the scientific and technical merits as well as other stakeholder concerns concerning policy actions, which once implemented, can have significant trade and market access impacts. Thus, the actions taken by the EU to export its environmental priorities, principles and product policies both directly and through international organizations such

as the United Nations Environment Program raise concerns about the potential for hindrance of U.S. business in the global marketplace. The Chamber urges the U.S. government to remain actively engaged in relevant international bodies and to seek where possible transatlantic cooperation instead of a regulatory race in third markets.

- 4) The Chamber believes that there is a necessity for the U.S. government to address trade and market access barriers that could arise from the implementation of the Kyoto Protocol.¹⁶ We urge a close monitoring of EU initiatives to meet its greenhouse gas reduction commitments under the UNFCCC Kyoto Protocol, which could disadvantage transatlantic business and industry in the global marketplace. U.S. companies should not be forced to pay to EU's Kyoto obligations through any market protection instruments, such as border adjustment taxes, or other trade-barriers. The Chamber strongly encourages the U.S. government to enter into dialogue with EU counterparts and discuss and prevent potential trade tensions that could arise in this context.

b. Competition

Transatlantic cooperation is particularly important in the area of competition and antitrust law. Conflicting competition rules and interpretations increase the risk that conduct approved as lawful in one jurisdiction may be deemed unlawful in another. This increased risk leads to greater commercial uncertainty, which inhibits innovation, increases costs, and may actually deter global competition. Moreover, inconsistent competition remedies may force multinational firms to segment their product design, marketing, and distribution activities into separate channels for different jurisdictions. Such segmentation is contrary to the goals of open international trade and makes it more expensive for global firms to participate in multiple markets.

Although European competition law varies in certain respects from U.S. antitrust law, there is a growing recognition on both sides of the Atlantic that the proper focus of competition law should be the protection of consumers, not competitors. To this end, U.S. and European competition

¹⁶ The EU Emissions Trading scheme will be implemented in 2005.

authorities should work to ensure that remedies do not sacrifice consumer benefits in the interest of assisting select domestic competitors. Furthermore, the 1991 Comity Agreement between the U.S. and Europe recognizes the benefits of harmonized competition enforcement and establishes a foundation for competition authorities, where appropriate, to take into account the prior competition determinations of their transatlantic counterparts.

The Chamber recommends that U.S. and the EU take steps to further harmonize their enforcement activities in order to minimize the market access barriers that divergent competition remedies may create. The Chamber also respectfully urges the U.S. Department of Justice and the European Commission to build upon the foundation of the 1991 Comity Agreement to avoid, to the extent possible, the imposition of divergent competition determinations and remedies when reviewing essentially similar conduct.

c. Security

Following the terrorist attacks of September 11, 2001, the U.S. and the EU proposed and passed a number of wide-ranging legislative and regulatory acts to meet security challenges at home and abroad. There continues to be “domestic” pressure, both in the U.S. and in the EU, for additional legislation and reforms. The Chamber believes that all efforts must be made by the U.S. and the EU governments, legislatures and agencies to cooperate on security issues, because it is vital for transatlantic commerce, and for the future of global trade and investment.

All government departments and agencies, notably the U.S. Department of Homeland Security and the EU Directorate General Justice and Home Affairs, U.S. Congress, the European Parliament and member states parliaments, with responsibilities in security issues must be included in the transatlantic dialogue.

A U.S.-EU bilateral agreement or treaty must include security cooperation clauses. In particular, the U.S. and the EU must agree on information sharing and privacy principles, law enforcement and judicial cooperation, and borders and infrastructure. Security imperatives should not raise technical barriers to trade and investment between our two continents.¹⁷

¹⁷ For an insightful analysis of the problems and some very good advice, see policy paper “The Post 9/11 Partnership: Transatlantic Cooperation against Terrorism,” The Atlantic Council of the United States, December 2004.

d. Governance

Chamber members have long complained about differences in accounting standards between the two continents, but are now far more concerned by the growing set of diverging securities rules that have emerged as a result of legislative and judicial response to corporate scandals on each side of the Atlantic. While many of the recent corporate implosions revealed how much American and European economies are integrated, the remedies have been developed with little consideration for the transatlantic market. The U.S. Chamber believes that it is important to preserve the competitiveness of the U.S. capital markets as attractive places for listings by international companies. We urge a careful study of concerns expressed by European companies listed in the U.S.

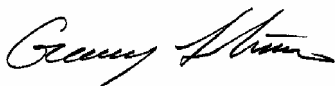
Highest political attention is urgently required to foster convergence and mutual recognition of accounting, auditing and listing rules, and find mutually acceptable solutions to prevent the fragmentation of the transatlantic financial market.

Conclusion

In conclusion, the Chamber recommends the U.S. and EU governments and legislatures should immediately start assessing the economic value of a U.S.-EU bilateral framework agreement or treaty. The Chamber recommends that they quantify the benefits of such an agreement or treaty, not only in terms of value added, but in saved costs. The Chamber believes that a U.S.-EU agreement or treaty would be hugely beneficial to both the U.S. and Europe, and also to the global economy.

The Chamber appreciates the opportunity to express the views of our members about the importance of the transatlantic market. We recognize that this is the beginning of a process. We wish to continue this dialogue, and we will remain available to provide the Office of the U.S. Trade Representative with additional information. The Chamber stands ready to discuss further its ideas, recommendations and concerns.

Yours truly,



Gary Litman, Vice President, Europe and Eurasia