

UNITED STATES TRADE REPRESENTATIVE

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TRADE POLICY STAFF COMMITTEE

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U.S.-EU TRADE AGREEMENT HEARING

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FRIDAY

DECEMBER 14, 2018

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The Trade Policy Staff Committee met
in the Auditorium of the United States Department
of Commerce, 1401 Constitution Avenue, NW,
Washington, D.C. 20230 at 9:30 a.m., Ed Gresser,
Chairman, presiding.

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:35 a.m.

3 CO-CHAIR GRESSER: Thank you all very
4 much. Welcome to this Trade Policy Staff
5 Committee hearing on the potential U.S.-European
6 Union trade agreement. Thank you all for coming,
7 and thanks to our witnesses.

8 We have a full day of testimony today
9 with six panels of witnesses ahead. That is
10 appropriate given the scale and importance of our
11 trade and investment relationships with the
12 European Union, the largest such relationship in
13 the world and one that is extraordinarily
14 sophisticated, complex, and ripe with ideas for
15 building and improving upon it.

16 Let me say maybe three things before
17 we start. First, on behalf of TPSC, our sincere
18 thanks to the Department of Commerce for
19 providing us with this august venue.

20 Second, to the witnesses, we are
21 grateful for this opportunity to hear your views
22 and your insights. We'd ask you to please

1 respect the five-minute limit on oral testimony
2 because we have a very full day ahead and we
3 would like to have full time for each panel to
4 hear from all of you, to ask questions, and maybe
5 to get some thoughts in response.

6 Finally, let me ask my fellow
7 panelists to introduce themselves one at a time,
8 and then I will turn the mic over to Dan
9 Mullaney, our assistant USTR for Europe.

10 CO-CHAIR MULLANEY: I'm Dan Mullaney,
11 Assistant U.S. Trade Representative for Europe
12 and the Middle East.

13 MS. BOMER LAURITSEN: Sharon Bomer
14 Lauritsen, Assistant U.S. Trade Representative
15 for Agricultural Affairs and Commodity Policy.

16 MR. SPITZER: Bob Spitzer. I'm a
17 Senior Trade Policy Advisor for the Foreign
18 Agricultural Service at USDA.

19 MR. MANOGUE: I'm Bob Manogue at the
20 State Department.

21 MR. MEIER: Peter Meier, Department of
22 the Treasury.

1 MS. BONNER: Sarah Bonner, U.S. Small
2 Business Administration.

3 CO-CHAIR GRESSER: And Dan, let's turn
4 to you.

5 CO-CHAIR MULLANEY: Well, thank you,
6 everybody. Thank you for coming here today. As
7 Ed said, we do have a hugely significant trade
8 investment relationship, the most significant
9 anywhere in the world. We trade over a trillion
10 dollars in goods and services every year. That's
11 about three billion dollars a day. We have
12 almost six trillion dollars in mutually onshored
13 investment.

14 But we are convinced that we can do
15 more to strengthen this trade relationship to the
16 benefit of U.S. and European citizens. And one
17 of the opportunities to do that is through the
18 kind of trade agreement that we're talking about
19 today.

20 We notified Congress of our intention
21 to engage in negotiations with the European Union
22 on October 16th. Now we are in a very kind of

1 unique and special time period in which we are
2 not talking to the European side about this
3 negotiation. And we are not propounding our own
4 objectives, our own goals in this negotiation.

5 This is a unique time period in this
6 process in which we are here to listen to the
7 stakeholders on what it is we should be pursuing
8 in this negotiation to improve lives on both
9 sides of the Atlantic. So we're very much
10 looking forward to it, and it's extremely
11 critical for us that we listen to the views of
12 businesses, workers, farmers, ranchers, and
13 consumers. The input that you provide today is
14 critical to our work as we consider the launch of
15 the free trade agreement negotiations.

16 So thank you very much to our
17 witnesses for the first panel, and also in
18 subsequent panels, for taking time out from your
19 busy day and during this holiday season to
20 present your views. Thank you very much.

21 CO-CHAIR GRESSER: Thank you, Dan.

22 Let's now go to our witnesses. I think we should

1 start row by row, beginning to my right and
2 proceeding to the left and then going to the
3 second row. So we'll start with Don Phillips
4 with the American Sugar Alliance.

5 MR. PHILLIPS: Okay. Well, thank you.
6 The American Sugar Alliance, which is a national
7 coalition of American sugar beet and sugar cane
8 growers, processors, and refiners, very much
9 appreciates the opportunity to present our views
10 and concerns through this august body on stage.

11 Our industry serves two critically
12 important roles. First, we supply American
13 consumers with a safe, reliable, and affordable
14 source of an essential food ingredient. Second,
15 the U.S. sugar industry provides for 142,000 jobs
16 across America and generates nearly \$20 billion
17 dollars annually to the U.S. economy.

18 At this hearing, I just want to focus
19 on a few key points. An effective U.S. sugar
20 import policy is essential to deal with the
21 chronically depressed world dump market for
22 sugar, the market grossly distorted by a wide

1 array of subsidies and other unfair trade
2 practice with prices generally well above the
3 average cost of production of nearly all sugar
4 producing countries.

5 The damage that imports of subsidized
6 and dumped sugar can wreak on our domestic market
7 was demonstrated in 2013 when Mexico unleashed a
8 flood of dumped and subsidized sugar into the
9 U.S. market. Before this situation was remedied
10 by this administration's revision of the
11 suspension agreements, American growers and
12 refiners lost an estimated \$4.5 billion dollars.
13 And for the first time in over a decade, U.S.
14 sugar policy incurred a budgetary cost, \$259
15 million dollars.

16 The existing market access commitments
17 on sugar in the WTO, NAFTA, USMCA, and other FTAs
18 which results in imports of 2.5 to 3 million
19 metric tons annually already creates a risk of
20 jeopardizing the effective operation of U.S.
21 sugar policy, especially in light of the fact
22 that the suspension agreements cannot be regarded

1 as permanent. Thus we strongly oppose any
2 additional market access commitments for sugar.

3 We would like to clear up a few
4 misconceptions about the EU which poses a
5 particular danger to our industry and U.S. sugar
6 policy. Despite the much touted reform of its
7 sugar policy, the EU is by no means an open
8 market; unless imports enter under special
9 preferential arrangements, they are blocked by
10 prohibitive tariffs. Moreover, the EU sugar
11 industry still benefits from substantial
12 subsidies, estimated to be \$665 million dollars
13 in 2019.

14 The lifting of the EU production
15 quotas combined with the support provided by
16 these subsidies has transformed the EU into a net
17 exporter of refined sugar. In 2017-18, they
18 exported 3.6 million metric tons, this year an
19 estimated 3 million metric tons. The need to
20 unload this large surplus production into the
21 world dump market has driven EU prices down to
22 levels below the production cost of almost all or

1 all EU sugar producers. Thus access to the U.S.
2 market is very enticing.

3 It should also be pointed out that the
4 strict regulations and labeling requirements
5 governing GMO products combined with a strong
6 anti-GMO sentiment in the EU would prevent U.S.
7 beet sugar producers and manufacturers of
8 products made with U.S. beet sugar from competing
9 on a level playing field or in fact competing at
10 all in the EU.

11 As long as EU refined sugar prices are
12 driven by the world dump market, and their
13 production is at least partially sustained by
14 domestic subsidies, U.S. producers will be at a
15 marked disadvantage vis-a-vis those of the EU and
16 trade will flow only one way to the U.S. damaging
17 our industry.

18 We would also ask the committee to
19 bear in mind that the EU exports only refined -
20 not raw - sugar. Excessive imports of refined
21 sugar from Mexico were one of the chief causes of
22 the failure of the suspension agreements

1 negotiated in 2014. The revised agreements
2 restored a more appropriate balance between
3 imports of raw and refined sugar.

4 Granting market access to the EU for
5 refined sugar would undermine what was
6 accomplished through these revised suspension
7 agreements and risk creating a serious trade
8 problem with Mexico.

9 Negotiations with the EU are going to
10 prove very difficult. There are very marked
11 differences in the U.S. and EU approaches to
12 standards and regulations. And there's great
13 uncertainty as to the treatment of agriculture.
14 At the same time, the clear intention of the
15 administration is to achieve the timely results
16 that offers real benefits to the U.S. economy.

17 We therefore believe our negotiators
18 should pursue a very targeted approach in
19 agriculture focused on those products where they
20 can expect to achieve fair and equitable trade
21 and tangible benefits to the U.S.

22 Market access negotiations with the EU

1 on sugar do not meet this test. Quite the
2 contrary, granting the EU access to our market
3 for these products would result in serious harm
4 to the U.S. sugar industry and jeopardize U.S.
5 sugar policy.

6 Thank you.

7 CO-CHAIR GRESSER: Thank you very
8 much. Can we now go to Floyd Gaibler of the U.S.
9 Grains Council?

10 MR. GAIBLER: Thank you. Good
11 morning. And on behalf of the U.S. Grains
12 Council, I'm pleased to offer our statement of
13 negotiating objectives in support of a U.S.-EU
14 trade agreement.

15 At the outset, the council believes
16 that it is fundamental that food and agriculture
17 issues are a key component of this bilateral
18 agreement. Council strongly supports the
19 objectives of an agreement similar to our support
20 during the negotiations of the TTIP era. In
21 addition, the recently signed U.S.-Mexico-Canada
22 Agreement contains provisions we believe that

1 should serve as foundational language for
2 negotiations in a U.S.-EU trade agreement.

3 The EU limits the entry of lower
4 priced grains from non-EU countries through
5 quotas and a reference price system based on U.S.
6 exchange prices and transportation costs. In our
7 view, the U.S. government should demand the EU
8 eliminate the price reference system and continue
9 to maintain zero duties on U.S. corn, barley,
10 sorghum, dried distiller grains and co-products.

11 The EU main tariffs on ethanol for
12 fuel use depending on the ethanol content level.
13 In addition, the U.S. continues to be subject to
14 an antidumping duty on ethanol that we believe
15 should be removed as well as the tariffs.

16 The asynchronous approval process of
17 biotech between the U.S. and the EU severely
18 limits our ability to provide our traditional
19 customers with corn and co-products irrespective
20 of competitive factors such as price and quality.
21 The EU risk assessment process by the European
22 Food Safety Authority now takes nearly four and a

1 half years, far beyond the 19 to 22 months
2 prescribed by EU law and regulation. Continual
3 complication is the EFSA risk assessment process
4 of stacked events. In addition, the absence of a
5 workable EU standard on low level presence is a
6 further impediment.

7 For this agreement, we would endorse
8 the adoption of the biotechnology provisions that
9 were included in USMCA. In particular, USMCA
10 included recognition of modern biotechnology not
11 only for traditional rDNA but also new plant
12 breeding innovations. Given the uncertainty of
13 how the EU will regulate these new breeding
14 techniques, particularly given the recent
15 European Court of Justice opinion, we believe
16 these provisions would enable efforts of the
17 parties to work cooperatively on policies for
18 these new products.

19 We would also request the
20 administration reconsider a previous request in
21 other trade agreements for language supporting a
22 mutual recognition agreement on the safety

1 determination of biotech crops intended for feed,
2 food, and further processing. We believe this
3 would provide the EU another alternative as they
4 move to a more synchronous approval process.

5 Developments in EU policies and
6 regulations pertaining to crop protection
7 products have the potential to negatively impact
8 U.S. grain exports to the EU in the future. The
9 hazard based approach to renewing the
10 authorization of existing pesticides in Europe
11 has resulted in an increasing number of active
12 ingredients losing their authorization.

13 This may lead to the reduction or
14 removal of maximum residue levels and import
15 tolerances of long use products. And we could
16 see that this could potentially have devastating
17 effects on exports of our products.

18 Again, to help address these issues,
19 we would strongly advocate the inclusion of the
20 provisions of the SPS measures that were in
21 USMCA. I won't go through them. You know them
22 well. We would also support for the national

1 treatment of goods and a list of issues that we
2 provided in our formal statement.

3 We would also advocate strong chapters
4 for technical barriers to trade, good regulatory
5 practices, and customs and administration and
6 trade facilitation, again that were the basis of
7 the USMCA agreement.

8 In summary, the council strongly
9 supported the completion of TTIP in an effort to
10 remove existing tariffs and quotas, the anti-
11 competitive price reference system and
12 fundamentally address the regulatory challenges,
13 particularly the long-term asynchronous
14 biotechnology approval process and the lingering
15 import for ethanol antidumping duty.

16 In addition, the most recent
17 challenge, increasing regulatory obstacles facing
18 pesticides, will have major repercussions on U.S.
19 feed grains and products. The U.S. and the EU
20 need to reconsider a systematic approach to
21 normalize trade. Agriculture has to be included
22 in these negotiations to meet that objective.

1 Thank you very much.

2 CO-CHAIR GRESSER: Thank you. Mr.
3 Nash?

4 MR. NASH: Good morning. My name is
5 Robert Nash and I'm the director of government
6 relations for American Pistachio Growers. On
7 behalf of APG's members, I want to thank the
8 Trade Policy Staff Committee for holding this
9 hearing to gather our insights so we may help the
10 U.S. negotiate a fair and balanced trade deal
11 with the European Union.

12 The European market is very important
13 to the U.S. pistachio industry and it's the
14 second largest market for our exports. Since
15 1997, the U.S. has been the top supplier to the
16 region.

17 I've submitted to you APG's 2018 World
18 Pistachio Trade Report page which provides total
19 U.S. exports to all the European countries. As
20 you will read, there is great demand by European
21 consumers for U.S. pistachios. Our industry
22 greatly values the trade relationships we share

1 with the EU but recognize a number of areas that
2 should be addressed when negotiating this trade
3 agreement, namely tariffs, the European
4 Commission's pesticide measures, and its
5 aflatoxin program.

6 While the European tariffs on raw
7 pistachios is considerably low, the presence of
8 the tariff itself still reflects an impediment to
9 trade. The U.S. is heavily invested in the
10 development of the European market over the last
11 12 years and has increased raw pistachio exports
12 by 57 percent.

13 In 2017, the U.S. exported 59,200 tons
14 of pistachios to Europe valued at \$462 million
15 dollars. This represents \$7.4 million dollars in
16 duties paid. That \$7.4 million dollar cost to
17 EU's importers could be used in a few ways to
18 increase U.S. exports to Europe, including
19 generic advertisements, increased promotion of
20 the product as a healthy, nutritious alternative,
21 additional product research, or simply to lower
22 the price of the product for consumers.

1 Another justification for the
2 immediate elimination of tariffs on U.S.
3 pistachios entering Europe is Iran's current
4 comparative advantage in the European market.
5 Europe provides Iran with Generalized System of
6 Preference treatment despite current financial
7 transaction restrictions by the U.S., and other
8 nations' applied sanctions.

9 As such, Iran does not pay a duty when
10 exporting to Europe and has a transportation
11 advantage due to its close proximity compared to
12 the U.S. Despite the low European duty on raw
13 pistachios, the tariff on U.S. exports to Europe
14 must be removed to even the playing field with
15 our largest pistachio trade competitor.

16 Maximum pesticide residue levels are
17 another barrier in Europe. We strongly urge our
18 U.S. negotiators to include this SPS issue as a
19 major trade objective and to persuade the EU
20 towards a more transparent MRL standard setting
21 policy with the U.S.

22 Codex standards were established to

1 protect the public health and minimize disruption
2 of international food trade. And we recommend a
3 negotiating strategy that incorporates the return
4 of Codex MRLs as the gold standard for the global
5 community.

6 Arguably, the greatest obstacle our
7 industry faces when conducting trade with Europe
8 is the European Commission's aflatoxin import
9 program. Our industry has observed the following
10 problems with the European Commission's aflatoxin
11 program.

12 First, we observed that it unjustly
13 penalizes all U.S. exporters by increasing the
14 percentage of required tests when only one or two
15 exporters fail a chemical test and the total of
16 failed tests exceed a certain percentage level.
17 Conversely, the FDA will require increased
18 testing for the foreign shipper failing the U.S.
19 test rather than all foreign shippers.

20 Does the EU impose increased testing
21 on all pistachio producing EU members if one EU
22 members exceeds the aflatoxin percentage? Is

1 this a national treatment violation? In 2016,
2 five percent of U.S. pistachio exports were sent
3 to Italy. Yet Italy was responsible for 42
4 percent of the aflatoxin rejections. This
5 imbalance of reported test results should have
6 caused the European Commission to question
7 Italy's aflatoxin program.

8 Since it is acceptable for the
9 European Commission to conduct an audit on U.S.
10 sampling and testing procedures, it seems
11 rational for either the USDA or the FDA to check
12 the European Commission and its member states'
13 procedures.

14 Finally, EU member states are known to
15 send late test result responses to the European
16 Commission directorate, which impacts the
17 percentage of imported pistachios to be sampled
18 and tested. Each of these issues constitutes a
19 trade barrier creating serious problems for U.S.
20 pistachio exporters to Europe.

21 In closing, the upcoming U.S.-EU trade
22 negotiations have the potential to be as fruitful

1 as the recently negotiated U.S.-Mexico-Canada
2 Agreement. Although negotiations will be
3 difficult, APG is confident the agreement will
4 greatly encourage market expansion by domestic
5 and European business while increasing consumer
6 welfare in both markets.

7 APG requests that the USTR Trade
8 Policy Staff Committee carefully consider the
9 comments provided, and we appreciate this
10 opportunity to provide the committee with our
11 comments. Thank you.

12 CO-CHAIR GRESSER: Thank you very
13 much. Ms. Wilkins?

14 MS. WILKINS: Good morning. I am
15 Nancy Wilkins, Director of Federal Affairs for
16 the Grocery Manufacturers Association, GMA. I'm
17 pleased to be here today representing GMA to
18 outline our priorities in negotiating the U.S.-EU
19 trade agreement.

20 GMA represents the world's leading
21 food, beverage, and consumer product
22 manufacturers. Our industry is the single

1 largest employer in U.S. manufacturing. We
2 directly employ 2.1 million Americans in 30,000
3 communities across the United States, an
4 estimated 16 percent of all U.S. manufacturing
5 employment. These are good, high paying jobs,
6 and employment in consumer packaged goods
7 manufacturing has grown in recent years when
8 other manufacturing employment declined. In
9 addition, our industry indirectly supports 11
10 million jobs from farm to fork.

11 Our industry is a unique driver of
12 economic growth in the United States. Processed
13 food and beverage sales are valued at one
14 trillion dollars per year and contributed \$243
15 billion dollars to the U.S. GDP in 2015. U.S.
16 processed food and beverage manufacturers provide
17 tens of thousands of safe, affordable, nutritious
18 products that consumers rely on every day.

19 Processed food exports to the European
20 Union totaled approximately \$3.2 billion dollars
21 last year, making it the third largest market for
22 U.S. processed foods behind Canada and Mexico.

1 To make the most of this important trade
2 relationship, GMA hopes the U.S. trade agenda
3 will seek to eliminate all tariffs and non-tariff
4 barriers on consumer packaged goods, including
5 ingredients and inputs, and to enhance regulatory
6 cooperation and compatibility. While some
7 sectors enjoy relatively low EU tariffs, many
8 processed food and beverage products face high
9 tariffs averaging 14.6 percent, more than four
10 times the comparable U.S. rate.

11 Many food products like
12 confectionaries and baked goods are subject to
13 the Meursing table, an EU system that charges
14 tariffs based on a product's milk protein, milk
15 fat, starch, and sugar content instead of a
16 standardized product classification. This means
17 that products that are for all intents and
18 purposes the same can receive different rates.
19 Calculating Meursing duties is burdensome and
20 expensive, particularly for innovative American
21 companies seeking to ship new products to Europe.

22 In addition to facing high EU tariffs,

1 U.S. food and beverage companies are
2 disadvantaged by extensive non-transparent and
3 unscientific EU regulations. Unjustified EU
4 regulations can add as much as 102 percent to the
5 cost of heavily protected products like meat,
6 fruits, and vegetables. GMA welcomed commitments
7 achieved in the U.S.-Mexico-Canada Agreement,
8 USMCA, and other previous U.S. negotiations that
9 limit unnecessary technical barriers to trade and
10 require sanitary and phytosanitary measures to be
11 based on science.

12 The U.S.-EU trade agreement should
13 require all regulations to be implemented in a
14 transparent, predictable, and nondiscriminatory
15 manner. We also urge the administration to
16 secure the same commitments made in USMCA to
17 foster transparency on modern agriculture
18 biotechnology measures. In particular, we are
19 concerned that the EU's GMO labeling and
20 traceability requirements are unjustifiably trade
21 restrictive and hope the administration will
22 protect science-based GMO policy.

1 Finally, U.S. tariffs on steel and
2 aluminum and EU retaliation on key ingredients
3 have damaged the U.S. processed food and beverage
4 industry. We urge the United States and European
5 Union to suspend 232 and retaliatory tariffs
6 during negotiation of the U.S.-EU trade
7 agreement.

8 Access to markets in Europe is
9 critical for the U.S. processed food, beverage,
10 and consumer products industry. The U.S.-EU
11 trade agreement is an important step in securing
12 that access, including by removing non-tariff
13 barriers to trade and reducing costs that arise
14 from unnecessary regulatory burdens.

15 We look forward to working with the
16 Trump administration, Congress, and other
17 stakeholders to strengthen U.S. competitiveness
18 so that we can continue to grow our industry,
19 create jobs, and drive the U.S. economy. Thank
20 you for this opportunity to testify, and I look
21 forward to your questions.

22 CO-CHAIR GRESSER: Thank you.

1 MR. THORN: Thank you very much. My
2 name is Craig Thorn, and I'm here representing
3 the National Pork Producers Council.

4 NPPC is a national association
5 representing a federation of 42 state producer
6 groups. It represents the federal and global
7 interests of 60,000 U.S. pork operations. U.S.
8 pork industry is a major value added component of
9 the agricultural economy and a significant
10 contributor to the overall U.S. economy. U.S.
11 producers ship 2.5 million tons of pork valued at
12 \$6.5 billion dollars to over 100 countries in
13 2017.

14 The EU with nearly 500 million mostly
15 affluent consumers is the second largest pork
16 consuming market in the world. You would expect
17 it to be one of our largest export destinations.
18 However, it is also one of the world's most
19 protected markets which is why we sell less pork
20 in the EU than in many smaller countries such as
21 Honduras and Singapore.

22 Tariff and regulatory barriers have

1 limited U.S. pork exports to less than 0.05
2 percent of EU pork consumption. Among the
3 impediments to U.S. pork exports are the
4 following: first, high tariffs.

5 The EU tariff rate quota for pork is
6 only 70,000 metric tons, much lower than three
7 percent minimum access TRQ that WTO members were
8 supposed to have established at the end of the
9 Uruguay Round negotiations. Three percent of
10 consumption in the EU would be about three
11 million tons. The EU also maintains high end
12 quota tariffs -- the out-of-quota tariffs are of
13 course prohibited -- and the licensing system
14 that makes it difficult to adjust to market
15 conditions.

16 Second, the EU bans the import of pork
17 produced with ractopamine, a feed additive that
18 is widely used by U.S. pork producers. This
19 restriction is not science based. In fact, the
20 international food safety standard setting body,
21 the Codex Alimentarius, has declared the
22 substance to be safe and has established the

1 residue standard.

2 Third, the EU requires the United
3 States to conduct trichina risk mitigation such
4 as testing and freezing as a condition for market
5 access. According to the Department of
6 Agriculture's Animal and Plant Health Inspection
7 Service, the risk of trichina in the U.S.
8 commercial pork herd -- pig herd is negligible
9 because of biosecurity protocols and modern
10 production systems that ensure a high level of
11 safety.

12 Fourth, the EU prohibits the use of
13 antimicrobial or pathogen reduction treatments in
14 pork, even though scientific studies have
15 demonstrated the pathogen reduction treatments
16 produce a safer product and even though the EU
17 itself has approved certain PRTs for use in beef
18 production.

19 Fifth, in contrast to most other U.S.
20 trading partners, the EU does not recognize the
21 U.S. meat inspection system as offering a level
22 of safety equivalent to its own system. There is

1 no scientific justification for imposing
2 additional inspection requirements.

3 And finally, the EU is in the final
4 stages of adopting legislation that could
5 prohibit imports of animal products, including
6 pork, from any country that does not impose the
7 exact same restrictions on the use of antibiotics
8 as those the EU put in place.

9 This so called reciprocity provision,
10 if implemented, would mean a complete halt in
11 animal product imports from all EU trading
12 partners, including the United States, unless
13 those trading partners agree to simply adopt EU
14 regulations on antibiotic use. The legislation
15 provides no opportunity for countries to
16 demonstrate that their own use restrictions offer
17 a similar level of protection.

18 We urge U.S. negotiators to make the
19 use of the leverage afforded by these
20 negotiations to eliminate these barriers. Any
21 agreement that doesn't address these problems
22 risks legitimizing WTO inconsistent measures and

1 facilitating their spread to other U.S. export
2 markets.

3 Thank you.

4 CO-CHAIR GRESSER: Ms. Morris, thank
5 you.

6 MS. MORRIS: Thank you. I'm Shawna
7 Morris. I'm here today representing the National
8 Milk Producers Federation and the U.S. Dairy
9 Export Council. I appreciate the opportunity to
10 testify on behalf of America's dairy farmers,
11 processors, and exporters on this issue.

12 Our industry is enduring very
13 difficult times right now, and trade will be a
14 key piece in turning around the present economic
15 conditions in dairy country. We believe the
16 biggest trade opportunities for dairy exporters
17 lie in Asia and other markets that have proven to
18 be reliable net importers of U.S. agricultural
19 exports. Expanding access in these import
20 markets is where we believe U.S. negotiating time
21 and resources can be most effectively deployed to
22 secure significant and positive results for

1 American agriculture, including for the dairy
2 industry.

3 With that said, should the U.S. move
4 forward with an FTA with the European Union, we
5 believe that agriculture must be part of the
6 negotiations and that they must be focused on
7 uprooting the various tariff and non-tariff
8 barriers that constrain or threaten U.S.
9 agricultural exports to the EU.

10 An appallingly high agricultural trade
11 deficit currently plagues trans-Atlantic trade
12 and it is a direct result of the EU's efforts to
13 block U.S. agricultural goods including dairy
14 from entering the European market. Moreover,
15 U.S. companies must contend with EU efforts to
16 export those same trade restricting policies to
17 other markets around the world as well.

18 Europe's high tariffs and non-tariff
19 barriers have put our efficient dairy industry at
20 a disadvantage for far too long. As a result,
21 the U.S. has a \$1.4-billion-dollar trade deficit
22 with the EU last year.

1 To tackle this, any comprehensive
2 trade agreement with the EU must include
3 agriculture and U.S. negotiators must be resolute
4 in their insistence that Europe eliminate its
5 trade barriers and allow U.S. dairy and other
6 agriculture products to enter freely.

7 The administration's strenuous
8 rejection to date of the EU's efforts to exclude
9 agriculture from the scope of the negotiations
10 sends a powerful signal and takes an important
11 step in that direction. Sales of U.S. dairy
12 products in Europe have been blocked by a complex
13 web of policies that together strongly discourage
14 imports. Not the least of which are Europe's
15 overly cumbersome geographical indication
16 requirements that have deprived common named
17 cheese products from the benefits of reciprocal
18 trade between the U.S. and the EU.

19 The EU's clear goal has been to
20 advance its own commercial interests by
21 pressuring its trading partners into imposing GI
22 related restrictions on common food names and

1 putting bans on its own market on the use of
2 those terms. This is intended to award EU
3 companies with the sole right to use many terms
4 that have already entered into widespread common
5 usage around the world.

6 Examples range from restrictions in
7 the EU market for exports like U.S. made
8 Parmesan, feta, asiago, and Muenster cheeses to a
9 growing roster of restrictions on U.S. exports to
10 third country markets where all too often the EU
11 works to dictate to its FTA partners which
12 specific GIs must be adopted.

13 Beyond GIs, Europe's unscientific
14 certification and compliance requirements are
15 likewise problematic. They use an overly
16 prescriptive and onerous approach in this area,
17 which mandates government level assurances of
18 compliance with EU regulations and onerous
19 certification rules for imports and unduly
20 burdens commerce without a genuine food safety
21 basis.

22 Given Europe's tariff and non-tariff

1 barriers, we believe the best method for handling
2 dairy in upcoming negotiations would be a
3 comprehensive system approval approach that both
4 tackles the present problems and guards against
5 future unscientific and protectionist import
6 requirements.

7 To address these concerns, the dairy
8 industry has five key priorities in the pending
9 trade talks.

10 First, remove EU imposed restrictions
11 on common cheese names in Europe and other U.S.
12 export destinations while reforming trade
13 distorting EU GI policies.

14 Second, recognize the safety of
15 America's dairy products and production system
16 and reflect this recognition in simplified
17 certification and oversight requirements.

18 Third, establish enforceable
19 commitments for sanitary and phytosanitary
20 standards and technical barriers to trade that
21 provide enhanced certainty to U.S. agricultural
22 trade with the EU.

1 Fourth, simplify and streamline border
2 administration procedures for dairy TRQ
3 management and licensing measures.

4 And fifth, eliminate dairy tariffs in
5 a coordinated manner provided the non-tariff
6 barriers described above have been addressed.

7 In closing, I'd like to note that it's
8 ironic that in recent years Europeans have taken
9 to lecturing on the importance of trade
10 commitment compliance while at the same time
11 continuing to advance new trade impeding
12 regulations that build a fortress around their
13 own market ever higher. The EU would do well to
14 examine its own policies and recognize that its
15 deepening use of regulatory constraints promote
16 protectionism rather than the cooperative spirit
17 that should mark our relationship.

18 Again, we thank you for your ongoing
19 efforts to increase trade and seek equitable
20 treatment for America's dairy producers and
21 manufacturers. We remain excited about what the
22 future holds and stand ready to work with the

1 administration moving forward.

2 CO-CHAIR GRESSER: Thank you. And Mr.
3 Bacus?

4 MR. BACUS: Good morning. My name is
5 Kent Bacus, and I'm here on behalf of the
6 National Cattlemen's Beef Association, the oldest
7 and largest national association of America's
8 cattlemen and cattlemen. I'm honored to
9 provide you with our perspective on the
10 importance of a U.S.-European Union trade
11 agreement and the opportunities it will provide
12 the U.S. beef industry.

13 Without question, a trade agreement
14 between the United States and the European Union
15 holds great opportunity for American beef
16 producers and European consumers. However, to
17 fully realize the potential, the EU must make
18 fundamental changes to their trade policy and
19 embrace science based trade. The status quo is
20 untenable, and we cannot sit by while the EU
21 continues to impose some of the most restrictive
22 tariff and non-tariff barriers in the world.

1 The European Union currently maintains
2 tariff rate quotas on U.S. beef where in-quota
3 duties are high and out-of-quota duties are
4 prohibitive. U.S. beef is sold under the Hilton
5 quota and a separate high quality beef quota.

6 The Hilton quota provides the United
7 States and Canada with access to an 11,500 metric
8 ton quota with a 20 percent tariff on U.S. beef
9 products. That's the in-quota rate. The over-
10 quota rate is 12.8 percent plus a three euro per
11 kilo charge. Separately, the high quality beef
12 quota was created as a temporary solution to the
13 tariffs associated with the WTO hormone decision.

14 After ten years of retaliatory tariffs
15 on EU goods, the United States agreed to
16 temporarily halt over \$100 million dollars of WTO
17 sanctioned tariffs in exchange for duty free
18 access to 45,000 metric tons of beef from non-
19 hormone treated cattle.

20 Although the duty free high quality
21 beef quota was written and designed to benefit
22 U.S. beef producers, this tiny quota was made

1 available to other countries who were not part of
2 the original WTO hormone dispute. The EU
3 continues to allow these countries to benefit
4 from this quota, and that results in U.S. beef
5 producers being undercut or pushed out of the
6 market by countries who had no business
7 participating in this quota.

8 Unfortunately, the EU's non-tariff
9 trade barriers are just as damaging as the tariff
10 barriers. For 20 years, the EU has violated the
11 WTO by continuing to ban the importation of beef
12 from cattle that had been administered growth
13 promoting hormones. The EU's unscientific
14 hormone ban is a major impediment to U.S. beef.
15 And any U.S.-EU trade agreement should bring
16 these standards into compliance with the WTO by
17 removing the ban on the importation of beef
18 produced with hormones.

19 Unfortunately, the hormone restriction
20 is not the only non-science based restriction on
21 U.S. beef that must be resolved in a bilateral
22 trade agreement. It is clear that the United

1 States and the EU take vastly different
2 approaches regarding the use of science and
3 technology in food production.

4 Production practices in the United
5 States are based on rigorous scientific review
6 and are continuously improved to employ the
7 latest advancements in scientific research and
8 animal husbandry with the overall goal of
9 improving production efficiency and lowering our
10 environmental impact.

11 Meanwhile, the EU continues to hide
12 behind the precautionary principle, discouraging
13 the development and use of scientific
14 advancements. For our mutual benefit, we must
15 establish a 21st century agreement based on
16 internationally recognized scientific standards,
17 free from tariffs, free from quotas, free from
18 subsidies, and free from non-tariff trade
19 barriers.

20 With that being said, if the United
21 States and the EU truly want to establish a
22 stronger trade relationship, science based and

1 market driven agricultural policies must be the
2 foundation of this agreement. Otherwise, our
3 differences in agriculture will put a great risk
4 to the growing trade opportunities in a U.S.-EU
5 trade agreement.

6 We recognize the difficult process
7 ahead of us. But NCBA strongly supports
8 negotiations that will provide long term and
9 meaningful market access to the European Union
10 and science must be the basis of any future
11 relationship. Thank you.

12 CO-CHAIR GRESSER: That's all our
13 witnesses. We can now go to questions.

14 CO-CHAIR MULLANEY: Well, thank you
15 very much, everybody, for those great
16 presentations. And thanks very much for being
17 succinct and staying within the time period. I
18 think the testimony we heard today I think is
19 extraordinarily useful. I think various members
20 of the panel on this side will have questions for
21 various witnesses. And I'll start off maybe with
22 Don Phillips of American Sugar Alliance.

1 In your statement, you reference that
2 you anticipated that the EU would be providing
3 approximately \$665 million dollars in subsidies
4 in 2019. And I was wondering whether you could
5 give us insights as to how this number was
6 calculated or where the number was found and how
7 these are notified to the WTO, whether they're
8 green box, amber box, blue box.

9 And I'm also curious if you have the
10 information to know how that level of
11 subsidization compares to that in the United
12 States and how much subsidization disadvantages
13 the U.S. industry's ability to sell domestically
14 and abroad, including in the European Union.

15 I realize that was sort of a bundle of
16 questions around the subsidy issue. I'd be
17 grateful for any clarifications you could offer.

18 MR. PHILLIPS: Okay. Well, first of
19 all, to take up the questions regarding the
20 subsidies, we had a study done a few years ago by
21 a fellow named Patrick Chatenay. He's a CEO of
22 something called ProSunergy which specializes now

1 in sugar and ethanol.

2 Any case, he looked at the EU
3 programs. He's very familiar with those. And
4 the \$665 million dollars reflects about 300
5 million in decoupled supports. EU now has
6 decoupled supports basically they pay to all
7 farmers on a per hectare basis. So what he
8 calculated was the effect that would have on the
9 sugar beet, the extent to which sugar beet
10 farmers benefit from that by virtue of the
11 acreage they have in sugar beets.

12 Also, a number of countries,
13 particularly in Eastern Europe, also pay coupled
14 subsidies. Now these are direct subsidies to the
15 benefit of sugar beet growers. I think Poland is
16 the largest one there. Poland is a fairly
17 significant producer of sugar.

18 And then finally, they also provide
19 direct payments to a number of the sugar cane
20 producers. These are in the overseas departments
21 of France. So the coupled supports add up to
22 about \$200 million dollars and the coupled for

1 sugar cane, about 163. So these, in total, add
2 up to \$665 million.

3 And he estimated in his report --
4 which I'll be glad to give you a copy of the
5 report. It's actually a very good, well written
6 report. He estimated this would increase their
7 production by 1.5 to 2 million metric tons. And
8 actually, I saw him a couple weeks ago and he
9 thought that they might even be playing more of
10 role in keeping up their production right now.

11 As to how it's notified to the EU, I
12 can't guarantee that I know exactly how that is.
13 But I'm assuming that the decoupled supports
14 would be notified as green box and the others
15 would be recognized as AMS production.

16 As far as the subsidies in comparison
17 with the U.S., we do not get any direct subsidies
18 in the sugar industry. Obviously, we have fairly
19 high tariffs on countries that do not participate
20 in various preferential programs we have. We
21 have a large TRQ under WTO of over a million
22 tons. We have essentially free trade with Mexico

1 which is, of course, now limited or governed by
2 suspension agreements.

3 And then with a variety of FTAs, we
4 have products coming in. Almost all of them come
5 in at zero duty in contrast to what we heard
6 about some of the EU programs having high end-
7 quota tariffs. So these amount to about two and
8 a half, three million tons, about 25 to 30
9 percent of the U.S. market. So we're a pretty
10 open market in that regard.

11 CO-CHAIR MULLANEY: Great. Well,
12 thank you for that. I think it would be useful
13 to have that report since you're offering. My
14 agriculture colleagues may have it in hand. But
15 just to make sure, I'd be very interested.

16 MR. PHILLIPS: We've got a couple
17 copies here for your reading pleasure over the
18 holidays.

19 CO-CHAIR MULLANEY: Well, we'll very
20 much look forward to looking at that. I'm going
21 to stick with you, Don, if that's okay, for a
22 couple more questions. One is you reference

1 standards and regulations in the EU as non-tariff
2 barriers. And I was wondering if there were any
3 in the European Union that impacted the sugar
4 industry.

5 MR. PHILLIPS: Well, first of all,
6 we're a net importer. And we don't have much
7 interest in exporting to the EU. We don't expect
8 we're going to export sugar to the EU. But if we
9 did, beet sugar wouldn't be able to enter into it
10 because of the restrictions on GMO.

11 And with respect to sugar containing
12 products, this is also highly discriminatory for
13 anybody producing beet sugar because they have
14 strict labeling requirements. And even though
15 there is really no difference or no evidence of
16 GMOs in sugar, sugar doesn't have any protein in
17 it. So you really can't -- it's not really
18 carrying anything from a GMO product. That's not
19 recognized by them.

20 But in addition to that, they require
21 labeling of products having any GMOs in it. And
22 they have a very low threshold as I understand

1 it. For what they call low level preference,
2 it's about 0.9 percent. And if you have even
3 that little bit in there, then you've got to
4 label it as a GMO product.

5 So that would be a problem. And many
6 of the processed food products I'm sure have
7 sugar of one sort in them that go to the EU as
8 was mentioned. So that's kind of the ones that
9 affect us directly. But I think you can tell
10 from the rest of the panel which is more involved
11 in exports that there's just a rate. Just about
12 with every product, there is some major problem
13 with respect to regulation from the EU.

14 CO-CHAIR MULLANEY: Okay. Well, thank
15 you very much. Let me turn the mic over to
16 Sharon Bomer Lauritsen.

17 MS. BOMER LAURITSEN: Thank you, Dan.
18 So my questions will be directed initially to
19 Floyd Gaibler of the U.S. Grains Council. And
20 thank you for your testimony, Floyd, as well as
21 what you submitted in writing.

22 In your testimony, you cited the need

1 for a USMCA like SPS chapter which is WTO-Plus.
2 Do you believe that the EU already abides by the
3 current WTO SPS agreement?

4 MR. GAIBLER: Well, in the case as we
5 referenced in our statement, we do believe that
6 with respect to their pesticide regulations and
7 particularly in the reauthorization aspect of it,
8 the fact that they're using hazard based criteria
9 as it relates to mutagenic and endocrine
10 disruptor type products that that hazard based
11 process is in conflict with the WTO. That's what
12 we've been advised by consultants and lawyers
13 that have looked at this issue.

14 And so we think that this is a key
15 issue that needs to be addressed. And we think
16 that having the SPS-plus-plus that's in USMCA
17 would be important to have down to be part of the
18 agreement. And just the fact that it's the gold
19 standard agreement that's really out there right
20 now. It's obviously applicable to everything
21 under the SPS issue. And so we think it needs to
22 be there just in general.

1 MS. BOMER LAURITSEN: Thank you for
2 that. And maybe building on that, again, related
3 to your comments about looking to the USMCA SPS
4 chapter, what provisions in that do you think
5 would serve as a good foundation for U.S.-EU
6 trade agreement? And I'll say other than the
7 biotech provisions which are in the agriculture
8 chapter and separate but keeping it strictly to
9 the SPS chapter.

10 MR. GAIBLER: Well, again, as we
11 mentioned in our statement, there was a whole
12 series of provisions that were in USMCA that
13 dealt with issues under the national treatment of
14 goods, import and export restrictions and
15 performance requirements, import licensing, ag
16 export subsidies. While neither country uses
17 them, it's good language. Domestic supports,
18 safeguards, food security export restrictions,
19 stated trading enterprises.

20 The technical barrier to trade chapter
21 in USMCA was, again, something that we thought
22 was a good chapter. The chapter on good

1 regulatory practices again was another one. And
2 then customs administration to trade
3 facilitation. So there's a lot that we think
4 merits that was in the USMCA that should be
5 applicable to this bilateral.

6 MS. BOMER LAURITSEN: Okay. Thank
7 you. Maybe shifting to your comments on
8 agricultural biotechnology, I have a couple of
9 related questions. You commented on difficulty
10 with asynchronous approvals in the EU. Since the
11 European Union already has time lines in its laws
12 and regulations. And certainly EFSA is not
13 abiding by them, and we certainly have
14 experienced that the Commission hasn't abided by
15 them as well.

16 Do you have any recommendations that
17 would help ensure that EFSA and the Commission
18 adhere to time lines for approvals?

19 MR. GAIBLER: Well, I guess I would go
20 back to what we had advocated under TTIP which
21 was to have provisions put in there that would
22 actually have the requirements for a timely and

1 synchronous process and committing the EU to
2 actually meet their existing time lines for both
3 the EFSA risk assessment but also the risk
4 management process, the two stage process.

5 I will say that the risk management
6 process seems to be working a little better in
7 terms of the time line. But they're still coming
8 out with the same no qualified decision for or
9 against. And so that further delays the issue
10 and forces the Commission to be involved. And
11 then forces the European Parliament to come in
12 and weigh against it.

13 And we had also asked at that time
14 for, again, trying to deal with a more simplified
15 process on stacked events, a more workable, low
16 level presence beyond the so called technical
17 solution and in a formal working group. So I
18 think those are all good foundational things.

19 But USMCA is much better because,
20 number one, it's binding. Number two, it deals
21 with how -- it provides a process for low level
22 presence. And it encourages a working group to

1 deal with a lot of these issues like low level
2 presence, thresholds. Again, our idea of
3 assessment sharing of risk assessments is a way
4 that the EU could utilize to help get them to a
5 synchronous situation.

6 And then most importantly, the
7 inclusion of not only traditional biotech but
8 rDNA -- I mean, the new breeding technology,
9 given the ECJ opinion on how to regulate that.
10 We feel that having these provisions in there
11 would be much more helpful than what our original
12 process was under the TTIP negotiations.

13 MS. BOMER LAURITSEN: Thank you. I
14 have one more question. I apologize if this gets
15 in the so called weeds. You reference stacked
16 events. My understanding is that the EU's
17 regulatory review for stacked events is
18 significantly different and leads a lot of the
19 asynchrony of the approval system in the EU. Do
20 you have information as to how the EU system
21 compares to the U.S. system for stacked events?

22 MR. GAIBLER: How it what?

1 MS. BOMER LAURITSEN: How it compares
2 to the U.S. system?

3 MR. GAIBLER: Well, under the U.S.
4 system, the process is much more timely. The
5 process is more like 12 to 15 months. And so
6 right away, we have a process that works much
7 more quickly than the EU and it puts us at a
8 disadvantage obviously with other export markets.
9 Japan, for example, pretty much follows a similar
10 process.

11 And so the EU always is -- with its
12 delay, is always going to put us most likely in
13 an asynchronous point situation at any given
14 point in time -- particular point in time. It
15 puts our potential exports at risk. So again, we
16 feel if they could get to the point where they
17 can operate under their own laws and regulations
18 in terms of time lines and uncomplicate the
19 process that they have in place for a number of
20 events and there are other aspects of their
21 process that we could see a better result.

22 MS. BOMER LAURITSEN: Okay. Thank

1 you. Bob?

2 MR. SPITZER: Okay, thanks. My
3 questions are going to be for the pistachio
4 growers. Thanks for coming and presenting your
5 views to the group here. I wanted to follow up a
6 little bit more on a couple of issues that you
7 raised, in particular on aflatoxin.

8 In your testimony, you mentioned a
9 number of concerns about the way the EU system
10 has been operating. And one of our questions is
11 whether or not you've raised those specific
12 concerns with the EU and if you've gotten any
13 kind of response from them about their practices.

14 MR. NASH: We were always trying to
15 advocate on their behalf with them. The problem
16 that we've run into a lot is a lack of
17 transparency with their aflatoxin program.
18 That's been the biggest issue. Going back five
19 years, it's hard to find data on how they're
20 treating their own member nations. So for us,
21 that's the biggest issue is having access to that
22 data and having a more transparent process and

1 how they are choosing to deal with the issue.

2 MR. SPITZER: Okay. Thank you. I
3 noted that in cooperation with USDA, the group
4 has established the pistachio export aflatoxin
5 reporting program in the last few months. And
6 some exports have started under that program. I
7 just wondered if you could update us on where
8 that is and whether that's having any impact that
9 you're able to tell at this point in time.

10 MR. NASH: At this point, I don't have
11 that data off the top of my head. But I can look
12 into that a little further and get back to you.

13 MR. SPITZER: Okay. Thank you. On
14 pesticides, are there particular pesticides that
15 the pistachio industry is focused on?

16 MR. NASH: One example would be
17 buprofezin which the EU has set an MRL at 0.01
18 parts per million where the U.S., for example, is
19 at 0.05 parts per million. The issue we're
20 seeing with them is that rather than a risk based
21 approach, they're taking a presumption of a
22 hazard. And if they think that it could

1 potentially be hazardous, they won't renew or
2 they'll set it at an impossible standard to meet.

3 MR. SPITZER: Okay. Yes, we're
4 hearing that quite a bit. One final question for
5 you. Just looking at the trade statistics that
6 you presented to the group. And there's in 1997
7 -- sorry -- 2017, a notable jump in exports to
8 Germany in particular. And I wondered if you
9 could provide a little bit more information about
10 what's behind that and whether that's sustainable
11 going forward.

12 MR. NASH: I think overall, we're
13 seeing an increase in exports everywhere. I
14 would attribute it to our marketing. I know we
15 focus pretty heavily on EU. As an association,
16 we have a marketing department that does a lot of
17 promotion there. Other than that, I think people
18 are just seeing the benefits of pistachios and
19 there's more and more availability as our acreage
20 grows. We have more crop and we're just finding
21 new markets for it.

22 MR. SPITZER: Okay. Thank you very

1 much. I'm going to ask a few additional
2 questions now with the Grocery Manufacturers
3 Association. Thank you, Nancy, for coming and
4 presenting your views. I wanted to dig a little
5 bit deeper into the written testimony where you
6 talked about food flavoring as an area where the
7 U.S. and EU should seek mutual recognition. Has
8 GMA approached EU regulatory authorities on this
9 matter and is there any receptivity there to
10 working in this area?

11 MS. WILKINS: Thank you for that
12 question. We're always in conversation with our
13 trading partners to the extent we can be. Just
14 for additional context, the United States and EU
15 regulated and approved flavorings using almost
16 identical protocols. But there's no mutual
17 recognition of determinations under U.S. and EU
18 frameworks.

19 So what we'd like to see is an
20 elimination of the duplication that goes on in
21 terms of flavoring approval processes. There's
22 no scientific or safety based reason to have two

1 different systems.

2 MR. SPITZER: Is there any way you can
3 assign a result or value in terms of U.S. exports
4 that would result from reaching that kind of a
5 mutual recognition?

6 MS. WILKINS: Unfortunately, I don't
7 have that data in front of me. But I'm happy to
8 dig a little deeper and see what kind of economic
9 benefits would be.

10 MR. SPITZER: That'd be great. Other
11 than biotech labeling, you didn't mention any
12 other labeling issues. And I wonder if there's
13 any of those that are of concern for the
14 organization, particularly in relation to trade
15 with the EU.

16 MS. WILKINS: I think our primary
17 concern is the GMO labeling. And yes, I'm sure
18 there are other labeling concerns, but that's our
19 primary concern is to that.

20 MR. SPITZER: Okay. One final
21 question. One of the elements that's been
22 important in recent trade negotiations for the

1 United States is the impact on trade for small
2 and medium sized enterprises. And I would
3 imagine many of your members are of that ilk.
4 And if you have any ideas in terms of what
5 provisions in the trade agreement might be more
6 beneficial to those kinds of exporters.

7 MS. WILKINS: That's a great question.
8 We do have some small and medium sized businesses
9 among our membership. One thing that I can point
10 to is the Meursing table that determines how
11 tariffs on confectionary and baked goods and
12 other miscellaneous food products are calculated.

13 Those tariff rates are difficult to
14 calculate in advance. Oftentimes, the actual
15 tariff rates are much higher than they first
16 appear. And finally, most important for small
17 and medium sized companies, the unpredictability
18 really makes it difficult in terms of cycling
19 innovation and prevents introduction of new
20 products into the European market.

21 MR. SPITZER: And when you mentioned
22 unpredictability, you're referring specifically

1 to the tariff?

2 MS. WILKINS: Yes, it's a complicated
3 system that is very unpredictable. And I would
4 imagine would pose some burdens, particularly on
5 small and medium sized enterprises.

6 MR. SPITZER: Okay. Thank you.

7 MS. BOMER LAURITSEN: So Craig, you
8 get me. Again, thank you for being here today.
9 So in your testimony, NPPC identified several
10 significant SPS barriers to U.S. pork in the EU
11 and identified the need to eliminate those and I
12 certainly understand that. Yet what is not in
13 your testimony as has been in other testimonies
14 is a suggestion or recommendation to have a SPS
15 chapter in any trade agreement that we may
16 negotiate with the EU.

17 So I'm wondering if the NPPC has a
18 reason for not mentioning that or if there are
19 other mechanisms that the council has thought
20 about other than a chapter that you would find
21 useful or acceptable.

22 MR. THORN: No, NPPC would definitely

1 endorse the inclusion of a WTO-plus SPS chapter.
2 We think that the SPS chapter in USMCA will be
3 very valuable for the whole sector and would like
4 to see something similar included in this.

5 MS. BOMER LAURITSEN: Okay, thank you.
6 You commented on the negligible risk of the U.S.
7 herd for trichina, trichinella, whatever the
8 right scientific term is. Has the EU outlined
9 any milestones to this date or time frames for
10 easing or eliminating its trichina related
11 restrictions on U.S. pork?

12 MR. THORN: No, we don't have a time
13 table for elimination of that restriction. It's
14 a long outstanding issue that there has been no
15 detection in trichina in the U.S. commercial pork
16 herd for well over a decade. And Dr. Gamble, an
17 expert in the field, has estimated that the
18 chance of getting trichinosis through the
19 consumption of commercially produced U.S. pork is
20 about one in 300 million which I think qualifies
21 as negligible risk by any standard.

22 And so we see no reason for this

1 requirement for additional risk mitigation
2 procedures. But we've been talking about this
3 for years, even decades. And we have no time
4 table for looking at those.

5 MS. BOMER LAURITSEN: Okay. And maybe
6 a follow on question to that. I know the Pork
7 Quality Assurance Program is an industry program.
8 And so has NPPC engaged with the Commission at
9 all to explain the program to the Commission,
10 make sure they understand it and the benefits and
11 the outcomes, et cetera?

12 MR. THORN: I will have to get that
13 information to you. I was involved just earlier
14 this week in a discussion of that program. And I
15 know NPPC is working hard to make sure that those
16 data are collected so that we can present them.
17 I don't know of any recent contact between
18 industry and EU officials.

19 MS. BOMER LAURITSEN: Okay. Then my
20 final question for. You comment on pathogen
21 reduction treatments. And I note that NPPC had
22 filed dossiers with the Commission a while back

1 for lactic acid for use in pork which is already
2 approved in the EU for beef and also acetic acid.

3 I understand that EFSA at long last
4 issued its scientific opinion on those two PRTs
5 this week and I'm wondering if you had a chance
6 to review that information and done an assessment
7 of what their opinion says.

8 MR. THORN: I have not personally had
9 a chance to review those studies, those
10 conclusions. And I'll make sure to get back to
11 you with NPPC's reaction.

12 MS. BOMER LAURITSEN: Okay, thank you.

13 MR. SPITZER: Okay. Shawna, thank you
14 for coming and representing National Milk
15 Producers Federation. And thank you for your
16 detailed submission. There's a long list of non-
17 tariff barriers in that submission. One of our
18 questions is whether or not that could be
19 considered a comprehensive list or if there's
20 other significant barriers that need to be taken
21 into account.

22 MS. MORRIS: Thank you. Our written

1 comments do include, to our current knowledge,
2 the barriers that our exporters have to contend
3 with in terms of access in the market and the
4 challenges that they're dealt with. I caveat
5 that, though, however, because one of our
6 concerns with this market in particular has been
7 that it seems as if every few years we're
8 encountering a new issue.

9 And so that situation could certainly
10 change as negotiations move forward. We very
11 much do not have a static regulatory environment
12 when dealing with the Europeans nor do the
13 regulatory changes seem to be driven by sudden
14 shifts in the views of the safety of our
15 products.

16 MR. SPITZER: So you mentioned a
17 potential solution to this is a systems based
18 approach. How would you envision that the EU
19 would actually implement that kind of system
20 based recognition?

21 MS. MORRIS: Sure. So the systems
22 based approach in our view is being recommended

1 to capture the points I mentioned before, both
2 the current challenges and the fact that we
3 continually seem to be encountering new issues
4 when the existing problems have been
5 painstakingly worked through to a certain extent.
6 There could be different models for dealing with
7 this. One that to date seems to have worked
8 well, for instance, has been the recognition in
9 the U.S. Panama Agreement in terms of overarching
10 safety of the U.S. dairy supply system.

11 And so coupled with in the case of the
12 European's streamlined certification
13 requirements, the U.S. has quite minimal
14 certification requirements for dairy products
15 coming into the U.S. whereas the EU's
16 certification requirements are quite detailed and
17 reference specific EU regulations coupled with
18 border administration measures such as when the
19 certificate needs to be dated.

20 MR. SPITZER: Okay. Thank you. And
21 then following up on border measures, you
22 mentioned that the EU can simplify and streamline

1 TRQ administration and licensing. Could you
2 elaborate on what the current complications are
3 that you're facing with EU's TRQ administration
4 and what recommendations you have to improve
5 that?

6 MS. MORRIS: Sure. The challenge our
7 exporters have encountered on that front has been
8 that even in cases where some of the TRQs are
9 offered for dairy products, that it's been
10 challenging for their customers on the European
11 side to consistently acquire commercially viable
12 quantities given how the TRQs have been
13 administered in the past. So that's something we
14 would certainly want to see addressed moving
15 forward.

16 MR. SPITZER: The last question is on
17 the first issue you raised which is about
18 geographic indications. And that's always been a
19 contentious issue with the Europeans. Could you
20 elaborate a little bit more on your
21 recommendations about how that could be addressed
22 in a new U.S.-EU agreement?

1 MS. MORRIS: Sure. A recommendation
2 is that this issue needs tackled in specific
3 discussions focused on removing the impediments
4 to common food name products in the European
5 market so that just as the Europeans can export
6 Parmesan and feta here, for instance. We're able
7 to do the same to their market.

8 We also need to see removals of the
9 restrictions on those types of common named
10 products that the EU has imposed in foreign
11 markets directly as a result of its FTA
12 negotiations and a reform of the geographical
13 indication policies.

14 The restrictions on common food names
15 are the problems and the clear evidence that
16 companies are impacted by these policies. But
17 the chief challenge we're dealing with isn't
18 specific to dairy. It's really the fact that the
19 geographical indication policies in Europe give
20 short shrift to generic terms and have an
21 extremely broad scope of protection that comes
22 along with the registration of any GI.

1 MR. SPITZER: Okay. I don't know if
2 that helped us or not, but thank you for your
3 views. I appreciate it.

4 MS. BOMER LAURITSEN: Hi, Kent. We'll
5 now turn to the Cattlemen's Association. You
6 reference other unscientific restrictions besides
7 the hormone ban affecting beef exports. I'm
8 wondering what other restrictions you're
9 concerned with.

10 MR. BACUS: Well, where do we start?
11 I think the biggest ones outside of hormones
12 which are used primarily at the cow-calf level in
13 which, by the way, is the technology that has
14 been approved since the 1950s and widely used in
15 our industry.

16 That aside, we also have restrictions
17 on Beta-Agonists which is something we use at the
18 feed yard level to really optimize the metabolism
19 of these animals with this technology which is
20 also approved and not only used in the United
21 States but in numerous other countries. With
22 this technology, we actually can raise these

1 animals much more efficiently with the use of
2 less ingredients. So it actually has a lower
3 environmental impact.

4 But in addition to that, as Craig,
5 mentioned, NPPC also has raised this issue as
6 NCBA of the EU's reciprocal treatment of the AMR
7 restrictions. Quite frankly, this will put in
8 place bans on technology that has gone through
9 rigorous approval process here in the United
10 States, commonly used throughout our animal
11 production system. And it would create a barrier
12 that could potentially be even greater than the
13 restrictions we currently face under hormones.

14 But we also face the same problems
15 with PRTs and other things as well. So this is
16 all the more reason why we would support a trade
17 agreement is because we need to address these
18 longstanding problems that we have in access.

19 MS. BOMER LAURITSEN: Okay, thank you.
20 You reference that EU positions taken in Codex,
21 that NCBA sees as detrimental to the Codex
22 process. I'm wondering how you would recommend

1 this challenge be addressed in the context of a
2 bilateral trade negotiation.

3 MR. BACUS: Well, I think first and
4 foremost we need to be very straightforward about
5 the fact that Codex is and supposed to be an
6 objective scientific body that looks at science,
7 looks at evidence, looks at the recommendations
8 of the scientific community, not politicians, not
9 regulators, to make these ultimate decisions.

10 And so I think that if the United
11 States and the EU are going to really have a
12 meaningful trade agreement, then we should both
13 agree from our own free will to have an agreement
14 that recognize the scientific approval process.
15 And through that, have a joint commitment to keep
16 Codex, OIE, and the other scientific bodies as
17 truly scientific but not to try to spread EU
18 protections through these international bodies.

19 MS. BOMER LAURITSEN: Thank you. We
20 understand a large proportion of the members of
21 NCBA represent small and family farmers and
22 ranchers. What, if any, new or additional

1 transparency or other mechanisms do you think
2 would help address existing or put the potential
3 EU market access and non-tariff barriers faced by
4 your smaller members?

5 MR. BACUS: I think all of our
6 members, no matter the size of their production,
7 they need predictability. They need consistency
8 in their market access. When you look at other
9 markets where we've had a lot of uncertainty, we
10 had a lot of producers who didn't focus on
11 exports. They focused on the domestic market.
12 And we still do for the most part.

13 I think if we can have rules based,
14 science based trade, that will create
15 opportunities, not only for our producers who are
16 already focused on the EU market but for a
17 broader set that will now be able to market their
18 cattle, to feed yards and to packing facilities
19 who can now market that product to the EU.

20 So I think you have to look at the
21 fact that we're just so limited right now that
22 only a handful of producers can actually put

1 their practices or their operations in place for
2 the EU market. We won't really know the
3 possibilities there until we address the systemic
4 issues with the European Union.

5 MS. BOMER LAURITSEN: You mentioned
6 the concerns about the EU's hazard based approach
7 and it's also the so called, in quotation,
8 "precautionary principle" that undermines
9 scientific bodies such as Codex for political
10 purposes. What effect do you think that this has
11 on innovation in the beef sector -- U.S. beef
12 sector?

13 MR. BACUS: I think for us we're very
14 concerned. The United States has some of the
15 highest standards in the world. These are
16 standards that are -- they go through rigorous
17 scientific review, peer review analysis, risk
18 assessments. Through this hazard based approach,
19 that threshold is lowered. And so now it becomes
20 easier to restrict different products. That
21 could be detrimental to our people because now we
22 have regulators in Brussels telling large animal

1 vets in rural Nebraska and Virginia and elsewhere
2 what they can and cannot use. And that's not
3 based on actual science.

4 At most, it's based on this assumption
5 that with the precautionary principle that if we
6 don't have all the answers, then let's go ahead
7 and restrict this product. That's not what we
8 need. What we need is we need to continue to use
9 science and technology in food production because
10 we're going to have to continue to feed more
11 people with fewer resources. We cannot do that
12 without scientific approach and without these
13 technologies.

14 MS. BOMER LAURITSEN: Okay. So for my
15 last question, I actually am going off script,
16 folks. I want to address it to the back row
17 because you all represent animal production and
18 it ties to comments that both Craig and Kent
19 made. And this goes to the Parliament's recent
20 legislation on the so called reciprocity and
21 essentially banning imported animal products
22 unless we have the same use of antibiotics as in

1 the EU.

2 We understand that it will take
3 several years for the Commission to develop
4 implementing regulations. So with that in mind,
5 what approach do you each recommend that we both
6 as industry and government should take to address
7 this legislation? Thank you.

8 MR. THORN: Well, you're right. The
9 EU still has a lot of decisions to make about how
10 to implement the legislation. And so I suppose
11 our immediate goal should be to try to affect
12 that implementation. There are a lot of
13 countries around the world that would be affected
14 by it.

15 I know the EU Commission didn't
16 include a reciprocity provision in its initial
17 legislative proposal. It was more or less
18 imposed upon them in the latter stage of the
19 legislative process. I'm sure that they're aware
20 that provision is not WTO consistent and maybe
21 they'll find some wiggle room as they're
22 developing implementing legislation so that they

1 avoid imposing the requirement.

2 It's hard to see how that will be
3 possible, though, given the plain language of the
4 legislation. I think it's up to them to tell us
5 how they're going to conform to their
6 obligations.

7 MS. MORRIS: In the context of the
8 negotiations, I'd just add that for us this is
9 exactly one of the evolving regulations that we
10 had in mind in terms of identifying the need for
11 an overarching systems based approach and
12 agreement on streamlined certification language
13 to help guard against just these type which we're
14 presuming this would likely be carried out and
15 imposed on imports through some type of
16 certification requirement, at least for our
17 products.

18 And again, without real scientific
19 basis being demonstrated to support this, trying
20 to use the negotiations in addition to the
21 approach that Craig just mentioned to preempt
22 both this and similar types of regulations in the

1 future that aren't supported by science is
2 exactly where we think the opportunity lies.

3 MR. BACUS: I think it's been
4 mentioned multiple times already. But we don't
5 view this as being compliant with the WTO
6 obligations. If you look at other countries who
7 would also be affected, this is not only the
8 United States. If you look at all the other
9 countries where the European Union has recently
10 signed trade agreements with Canada, Mexico. I
11 know they're in the process with Mercosur, Japan.
12 There are producers in those countries who would
13 also be affected.

14 So I'm sure their governments would
15 love to work with the United States and all the
16 other major exporters, Brazil, Argentina, others
17 who provide products to the European Union to
18 find a real solution here so that we're all
19 consistent with our WTO obligations.

20 MS. BOMER LAURITSEN: Thank you.

21 MS. BONNER: Mr. Gaibler, thank you so
22 much for your testimony. Given the diverse

1 membership across the U.S. Grain Council, from
2 grain to feed supply and the supply chain, what
3 sort of trade agreement provisions or obligations
4 would you advocate to facilitate the exports to
5 the EU among your council members which represent
6 small family farmers and cooperatives?

7 MR. GAIBLER: Well, our membership, it
8 does represent the value chain. So we do
9 represent from the farmer level all the way
10 through the export and all the intermediate in
11 between from shippers to tech providers,
12 pesticide companies, et cetera. And for us, we
13 look at this as how it does affect both the value
14 chains of our products but also the value added
15 products of processed products of my colleagues
16 behind me here.

17 And so for us, the biggest impediment
18 with the EU is the biotech policies that we feel
19 are -- again, these are longstanding issues that
20 we have struggled to deal with for some period of
21 time. We'd like to use this negotiating
22 agreement to try and resolve them rather than

1 have to resort to going to Geneva and trying a
2 different tact.

3 The other area of importance to us is
4 ethanol. It is a growing market for us. We
5 believe that the EU could be a substantial
6 market. But they still have this antidumping
7 duty in place as well as the existing tariffs
8 that was supposed to be hopefully have been
9 removed by last year after its five years. It's
10 still not. It's undergoing an expire review. It
11 needs to be addressed and tangentially.

12 Once you get -- I know I'm off track
13 here. But if you get to a separation of that in
14 terms of an agreement with the United Kingdom,
15 that's an outstanding issue of whether that -- if
16 that antidumping duty remains in place, would it
17 be affecting the UK market? And the UK market is
18 one part of that for ethanol that we think could
19 be, again, a growing market.

20 And then finally, again, this is not
21 an immediate threat. But if the Commission
22 continues to move forward and we see less, fewer

1 and fewer pesticides that are registered and that
2 a lot of these will have the patents expired. So
3 there'll be orphan products and companies may not
4 come up to actually seek renewal of them. And we
5 could end up losing those and having impacts in
6 terms of our exports because the maximum residue
7 levels and then consequently the import tolerance
8 levels are going to put our exports of these
9 commodities in jeopardy.

10 So those are our priority issues that
11 we need in what we view could be an important and
12 was once an important market for our growers and
13 our complete value chain.

14 MS. BONNER: Thank you.

15 CO-CHAIR GRESSER: We are almost out
16 of time. I guess as a final question, is there
17 anything that any of the panelists feel they
18 would like to raise that hasn't come up as yet or
19 anything in discussion that any of you would like
20 to respond to?

21 MR. PHILLIPS: I was just struck by
22 many of the comments. Obviously, the sugar

1 industry has no aspirations to sell sugar into
2 the EU. We would anticipate there might be some
3 opportunities from some of the processed foods
4 which will have sugar in it. And that's a
5 problem there with the biotech -- with the GMO
6 provisions.

7 But I want to point out since you were
8 asking about small businesses, the beet sugar
9 industry is entirely cooperative. All of our
10 processors are cooperatives. And for the cane,
11 there is also predominately worker owned or
12 cooperative. So these people would qualify as
13 small businesses.

14 The only thing, I don't know that this
15 was particularly mentioned. But what we
16 understand in the biotech area is that the EU
17 intends to treat this new technology of gene
18 editing the same way they treat GMOs. And we
19 think there's a distinct difference there. And
20 that could be a big problem as the technologies
21 emerge. So I'll just stop with that. Thank you.

22 CO-CHAIR GRESSER: Okay. And let me

1 thank all of our panelists for this very rich and
2 very interesting discussion. And that brings
3 that first panel to a close. So please go about
4 your day and we'll bring up the next panel.

5 (Whereupon, the above-entitled matter
6 went off the record at 10:59 a.m. and resumed at
7 11:07 a.m.)

8 CO-CHAIR GRESSER: Thank you very
9 much. Let's now begin with our second panel. As
10 with the first panel, we'd like to proceed
11 beginning from the first row to second row and
12 beginning from my right to left. So we'll begin
13 with Mr. Luis Gil Abinader from Knowledge Ecology
14 International.

15 MR. GIL ABINADER: Good morning.
16 Thank you for the opportunity to testify in this
17 hearing. My name is Luis Gil Abinader and I work
18 for Knowledge Ecology International. My
19 testimony today will be mostly about intellectual
20 property, medical technologies, and access to
21 knowledge.

22 But I want to start with a different

1 point that is that trade agreements we believe
2 should include a quality of life chapter. We
3 think that governments could set minimum
4 standards in terms of, for example, the size of
5 the seats in the planes and the amount of space
6 that you have for your legs during commercial
7 flights.

8 And the broader point that we're
9 making with this which is a serious one is that
10 trade agreements could be used to address
11 concerns that consumers actually have, right? In
12 addition to this, I have obviously all the points
13 which I'm going to highlight quickly. And with
14 regards to medical technologies, I'm going to
15 highlight five of the points that we submitted in
16 our pre-hearing statement.

17 Promote innovation including for
18 drugs, vaccines, gene and cell therapies. Create
19 more competition for medical technologies.

20 Increase the supply and overcome the undersupply
21 of medical research as a public good.

22 Progressively delink the R&D incentives from the

1 price of the products and services in the area of
2 medical technology. Increase transparency for
3 R&D investments. And increase transparency in
4 regards to prices of products and services in the
5 area of medical technologies.

6 With regards to intellectual property,
7 I'm going to highlight five of the proposals that
8 we have. Expand access to orphan copyrighted
9 works. Avoid ever-greening of patent protection
10 on medicines. And protect standards and standard
11 making organization from anti-competitive and
12 predatory licensing demands from patent holders.

13 And in the area of access to
14 knowledge, I'm going to highlight two of the
15 negotiating objectives that we propose. Enhance
16 the production, transparency, and access to
17 scientific research. And require public access
18 for government funded databases, research
19 reports, and papers.

20 We also have a list of things that we
21 would not like to see in a trade agreement. And
22 the remainder of my time, I'm going to mention

1 five of those. Do not create a trade agreement
2 norm with regards to data exclusivity in the
3 years of regulatory exclusivity. Do not create a
4 trade agreement requirement that genes and cell
5 therapies including CAR-T technology being
6 included as a product rather than as a procedure.
7 Do not create a trade agreement standard for
8 patentable subject matter.

9 Do not restrict space to eliminate
10 injunctions in certain intellectual property
11 cases. This is currently available in U.S. law.
12 And do not require aggressive provisions in terms
13 of damages for infringement in certain patent and
14 other intellectual property cases. U.S. law
15 currently has a core standard that is "damages
16 adequate to compensate for the infringement".
17 And we think that a trade agreement should not
18 include a language that is more aggressive than
19 that one.

20 Thank you again for the opportunity to
21 testify.

22 CO-CHAIR GRESSER: Thank you. I will

1 now go to Mr. Taylor from the Pharmaceutical
2 Research and Manufacturers of America.

3 MR. TAYLOR: Good morning. It's a
4 pleasure to be here on behalf of the
5 Pharmaceutical Research and Manufacturers of
6 America or PhRMA. I appreciate the opportunity
7 to testify this morning.

8 PhRMA represents the country's leading
9 innovative biopharmaceutical research companies
10 which are devoted to inventing, manufacturing,
11 and distributing valuable medicines that enable
12 patients to live longer, healthier, and more
13 productive lives.

14 A key component of America's high tech
15 economy, the research-based biopharmaceutical
16 sector supports nearly 4.7 million jobs including
17 more than 800,000 direct jobs and contributes
18 nearly \$1.3 trillion dollars in economic output
19 each year. Our sector is one of the most
20 research intensive in America and a top U.S.
21 exporter among IP intensive industries. In 2017
22 alone, we exported more than \$55 billion dollars

1 in pharmaceuticals.

2 The EU is an especially important
3 market for our industry. The U.S. and Europe are
4 home to many of the most innovative
5 biopharmaceutical companies in the world. PhRMA
6 and its members therefore strongly support the
7 negotiation of a high standard agreement with the
8 EU. Such an agreement could significantly
9 enhance the world's largest trading relationship,
10 spur further innovation to support additional
11 cures, and cement high market access,
12 intellectual property, and regulatory standards.

13 Biopharmaceutical innovators depend on
14 fair and transparent market access, robust IP
15 protection and enforcement, and strong regulatory
16 systems. The recently concluded U.S.-Mexico-
17 Canada Agreement or USMCA successfully addressed
18 many of these and therefore provides a very
19 strong base from which to negotiate a U.S.-EU
20 trade agreement.

21 From the perspective of our industry,
22 negotiations with the EU should address the

1 following. First, negotiations should build
2 common ground to ensure transparency and due
3 process in approving, pricing, and reimbursing
4 pharmaceuticals.

5 In many EU member states, governments
6 are the primary payers for medicines and in
7 effect dictate prices. This dominant position
8 often results in member states failing to
9 appropriately recognize the value of innovation
10 in their pricing and reimbursement policies and
11 instead engaging in actions that distort markets
12 and artificially depress prices.

13 With these concerns in mind, PhRMA
14 welcomes the administration's continued focus on
15 the problem of advanced economies undervaluing
16 U.S. innovative medicines. The negotiations thus
17 provide an important opportunity consistent with
18 trade promotion authority to address and
19 eliminate price controls and to ensure the
20 government regulatory reimbursement regimes are
21 transparent, nondiscriminatory, and provide
22 procedural fairness and full market access for

1 U.S. products.

2 PhRMA recommends that the
3 pharmaceutical market access commitments in the
4 existing U.S. and EU trade agreements, most
5 notably the U.S.-Korea, and EU-Korea agreements
6 form the basis for market access commitments
7 included in any EU-U.S. agreement.

8 Second, negotiations between the U.S.
9 and EU, two of the most innovative economies in
10 the world, should reinforce strong intellectual
11 property protections and effective enforcement
12 mechanisms. Both the U.S. and EU offer strong IP
13 protections within their respective systems. And
14 the parties should capitalize on these
15 negotiations to reaffirm their existing
16 commitments to IP and to secure the highest
17 international standards.

18 Consistent with U.S. law and TPA, the
19 U.S. should seek IP protections that meet the
20 highest global standards including at least 12
21 years of regulatory data protection for biologic
22 medicines. At the same time, the negotiation

1 should ensure that the EU's current patent term
2 restoration mechanism, referred to as
3 supplementary protection certificates, is not
4 amended to the detriment of IP protection.

5 A proposal currently under
6 consideration in the EU would reduce IP rights
7 and weaken existing incentives for innovation.
8 IP is the backbone of the innovative
9 pharmaceutical industry. By cementing strong IP
10 standards in a U.S.-EU agreement, the U.S. could
11 build on the successes of the USMCA, establish a
12 significant precedent for other future
13 agreements, and help pave the way for the next
14 generation of treatments and cures.

15 Third, the negotiation should increase
16 regulatory compatibility. The innovative
17 biopharmaceutical industry strongly supports
18 efforts to address incompatible or duplicative
19 regulatory requirements that can impede
20 efficiency in global drug development review and
21 evaluation. An enhanced U.S.-EU relationship
22 could be a unique opportunity to see even greater

1 compatibility and to create streamlined processes
2 and procedures.

3 For example, significant progress has
4 been made to date to mutually recognized good
5 manufacturing practices. Our industry actively
6 endorses these types of initiatives. A strong
7 regulatory framework not only ensures that
8 patients have fast access to safe, high quality,
9 and effective medicines, but also encourages
10 scientific research in innovative drug
11 development.

12 Thank you again for the opportunity to
13 testify today. We believe that with the right
14 policies and incentives in place here and abroad,
15 our member companies can continue to bring
16 valuable new medicines to patients and contribute
17 powerfully to the American economy.

18 A U.S.-EU trade agreement offers an
19 important opportunity for the United States and
20 Europe to demonstrate a steadfast commitment to
21 intellectual property and innovation to establish
22 world class minimum standards for the parties to

1 seek in future agreements and to commit to
2 cooperation abroad in a multilateral
3 organizations.

4 PhRMA's written submission goes
5 through these issues more thoroughly, but I look
6 forward to answering any questions from the
7 panel. Thank you.

8 CO-CHAIR GRESSER: Thank you very
9 much. Mr. Francer?

10 MR. FRANCER: Mr. Chairman and members
11 of the committee, thank you very much. My name
12 is Jeff Francer. I'm the senior vice president
13 and general counsel of the Association for
14 Accessible Medicines. AAM represents the
15 manufacturers of generic and biosimilar medicines
16 in the United States.

17 In the last decade, generic medicines
18 have saved U.S. patients, taxpayers, and insurers
19 \$1.67 trillion dollars compared to prices that
20 would've been paid for brand name prescription
21 drugs. In 2017 alone, generic medicines saved
22 patients and taxpayers \$265 billion dollars. And

1 the potential savings from biosimilars is
2 projected to reach nearly the same level.

3 In 2016, AAM members manufactured over
4 61 billion doses of prescription medicines here
5 in the United States at 149 facilities in 16
6 states. Our members manufacture generic and
7 biosimilar medicines for use in the United States
8 as well as for export including the EU.

9 As an initial matter, AAM strongly
10 supports the administration's blueprint for
11 lowering prescription drug prices. Generic drug
12 and biosimilar competition is a centerpiece of
13 the President's blueprint because fair
14 competition is the best way to bring down the
15 cost of prescription drugs here in our country.

16 AAM supports provisions in the U.S.
17 trade agreements that deliver on the mandate and
18 TPA to ensure that the intellectual property
19 rights provisions of our trade agreements foster
20 innovation and also promote access to medicines.
21 Any trade agreement reached with the EU must
22 maintain this careful balance which is also

1 reflected conceptually in U.S. law.

2 Absent such balance, AAM would oppose
3 the inclusion of IP provisions that extend the
4 monopoly protection for branded pharmaceuticals
5 such as longer data exclusivity periods or
6 mandates to extend the patent term based on
7 delays in granting the patent or obtaining
8 marketing approval.

9 AAM would also like to know that the
10 U.S. and EU already have strong protection of
11 pharmaceutical intellectual property and strong
12 engines for innovation under existing
13 protections. Thus it's unclear whether there
14 even needs to be a pharmaceutical-specific IP
15 chapter within a U.S.-EU free trade agreement.

16 Moreover, AAM does not believe that
17 the current USMCA agreement as currently drafted
18 establishes the appropriate balance between
19 protecting innovation and encouraging access to
20 affordable medicine. Thus it does not serve as
21 an appropriate model for the U.S.-EU trade
22 agreement.

1 One area of great concern for AAM is
2 the requirement for countries under the USMCA to
3 provide ten-year exclusivity period for brand
4 name biologics independent of patent protection.
5 President Trump's blueprint for lowering
6 prescription drug prices counts on access to
7 biosimilars, and the U.S. is far behind other
8 countries. Trade provisions that block patient
9 access to biosimilars hurt patients in the United
10 States and globally.

11 If there is an IPR chapter in the
12 U.S.-EU free trade agreement, AAM recommends that
13 it contain provisions to facilitate the timely
14 development of, and patient access to, generic
15 and biosimilar products in the U.S. and the EU.

16 These features are outlined in more
17 detail in our written submission and include a
18 clear and robust regulatory review or Bolar
19 period, an incentive for promoting generic and
20 biosimilar competition, and requirements to
21 disclose the best mode for carrying out a new
22 invention.

1 All of these requirements are
2 contained in U.S. law already. And without such
3 provisions, the required balance between
4 protecting IP and encouraging access to medicines
5 will not be met. The net effect of such an
6 agreement would be a slowdown of biosimilar and
7 generic drug access for American patients, an
8 increase in prescription drug prices borne by
9 patients, employers, and taxpayers here in the
10 United States.

11 In conclusion, the U.S.-EU trade
12 agreement presents an opportunity to improve on
13 the USMCA by including provisions that enhance
14 generic and biosimilar drug development and
15 access. This approach will benefit U.S.
16 exporters of these medicines and advance the
17 President's goal of lowering drug prices in the
18 United States.

19 Most importantly, it will ensure that
20 America's workers, taxpayers, and patients have
21 greater access to affordable medicine. Thank you
22 and I look forward to taking your questions.

1 CO-CHAIR GRESSER: Thank you very
2 much. Mr. O'Mara?

3 MR. O'MARA: Good morning, and thank
4 you for the opportunity to testify today. I am
5 Matthew O'Mara, Vice President for International
6 Affairs representing BIO's one thousand members
7 developing innovating biotech products and
8 applications spanning the agricultural,
9 environmental, health, and industrial sectors.

10 Our member companies, predominantly
11 small and medium size enterprises without
12 commercial products, proudly harness our
13 biotechnology tools to address a number of global
14 challenges identified by the UN sustainable
15 development goals, including no poverty, zero
16 hunger, good health and well-being, clean water
17 and sanitation, to name a few.

18 To successfully bring these products
19 to market, the proper policy and regulatory
20 frameworks are necessary. Strong IP, science-
21 based decision-making free from political
22 influence, timely and predictable market access

1 are all critical elements.

2 The biotechnology sector is becoming
3 increasingly global, making trade policy critical
4 to our membership, particularly the small and
5 medium sized enterprises that lack the resources
6 to navigate the global marketplace.

7 The proposed U.S.-EU agreement is a
8 substantial opportunity for our members,
9 particularly our small and medium sized companies
10 in the health sector, as the EU and U.S. are
11 likely the first two markets they will attempt to
12 enter.

13 As such, ensuring high standards for
14 IP in both markets, that IP standards remain
15 high, are strengthened and sustained, regulatory
16 relationships and cooperation are further
17 harmonized, and the value of innovation respected
18 through market access.

19 For our companies investing in
20 agricultural innovation, this agreement is of
21 critical importance to reverse the European
22 Union's departure and steady decline in the

1 science-based decision-making that affects
2 farmers around the world, and most significantly
3 in developing economies. This is why BIO
4 strongly supports a U.S.-EU agreement that
5 maintains an ambitious agenda and comprehensive
6 scope.

7 As outlined in our comments, BIO
8 believes recent trade agreements, including the
9 USMCA, KORUS FTA, and the EU-Korea FTA forms a
10 strong foundation from which to build a stronger
11 transatlantic trading relationship.

12 With respect to biopharmaceuticals,
13 BIO recommends the U.S. and EU capture provisions
14 from respective agreements with Korea to
15 establish greater transparency and accountability
16 with respect to pricing and reimbursement
17 decisions to ensure European patients can receive
18 timely access to new innovations.

19 Further, BIO feels strongly that any
20 form of price controls which distort market
21 incentives and stifle innovation are addressed.

22 With respect to harmonization and

1 biopharmaceuticals, a strong basis is already
2 established with the U.S. and EU Export Working
3 Group and recent conclusion of the U.S. MRA and
4 good manufacturing practices. We urge the two
5 economies to harness this agreement to strengthen
6 and sustain these efforts.

7 With regard to IP, both economies
8 maintain high standards, and we strongly support
9 further strengthening. Chief among these
10 objectives would be to achieve 12 years of
11 regulatory data protection for biologics, and to
12 address efforts to weaken the rights of SPC
13 holders to allow for the stockpiling and
14 manufacturing for export during the SPC period.

15 Finally, on agricultural innovation,
16 BIO remains highly concerned with the departure
17 from science-based decision-making. Various
18 agricultural biotechnologies contributed to a
19 substantial and balanced bilateral trade since
20 1999. Import authorizations for new biotech
21 products took on average seven and a half years
22 in 2017, the risk assessment alone averaging 5.5

1 years.

2 Following completion of the risk
3 assessment and EFSA's expert recommendation is
4 advanced, the member state decision-making
5 process breaks down, science is ignored and the
6 Commission is left to make the determination.
7 This cycle continues to undermine science and
8 delay the process, including additional --
9 requiring additional redundant and unnecessary
10 steps during the risk assessment process.

11 This has consequences far beyond
12 European borders, affecting U.S. farmers'
13 decisions and the ability of farmers in
14 developing countries to easily address threats to
15 their crops such as the fall armyworm in Africa.

16 Further, with respect to animal
17 health, the newly revised veterinary and
18 medicinal products legislation will impose
19 Europe's hazard-based system on trading partners,
20 threatening to stop trade in meat and animal
21 products globally.

22 This agreement is critical to address

1 existing commercial technologies, but also the
2 future of agricultural innovation. BIO seeks a
3 reset with the EU and an outcome that respects
4 science and innovation and empowers the world to
5 adopt farm practices that are more productive and
6 less environmentally intensive and promote the
7 health and well-being of plants and animals.

8 Thank you, I'm happy to answer your
9 questions.

10 CO-CHAIR GRESSER: Thank you. And our
11 final witness, Maria Fabiana Jorge, MFJ
12 International.

13 MS. FABIANA JORGE: Thank you. Good
14 morning, and thank you for the opportunity to
15 participate in this panel.

16 My name is Maria Fabiana Jorge, and I
17 have been working for over 25 years on issues
18 related to trade, intellectual property, and
19 access to drugs. MFJ International is a small
20 consulting firm with a significant focus on
21 increasing access to affordable medication
22 throughout the world.

1 This testimony is not made on behalf
2 of any government.

3 President Trump's blueprint to lower
4 drug prices has stated that one of his greatest
5 priorities is to reduce the price of prescription
6 drugs. This is something that touches every
7 single American. In his blueprint, the President
8 also addressed the need to increase competition
9 and to end the gaming of regulatory processes
10 that make these drug prices artificially inflated
11 or hinder generic branded or biosimilar
12 competition.

13 It is with this frame of reference
14 that I would like to address a need to adjust the
15 U.S. trade policy to support and meet the
16 priorities identified by the President. In order
17 to do so, intellectual property provisions
18 related to pharmaceuticals need to be adjusted to
19 meet the President's priorities and the current
20 market realities.

21 I would like to address three issues:
22 the need to adjust U.S. trade policy, the

1 importance of the European market for the generic
2 biosimilar industry, and the need to include
3 provisions to ensure the expedited launch of
4 generic and biosimilar products.

5 The generic industry represents a
6 great success story, growing from 19 percent of
7 generic utilization in 1984 to about 90 percent
8 of generic utilization today. Given that the
9 U.S. market is now at a point of saturation, the
10 only way the generic industry could continue to
11 grow is by expanding to foreign markets. As a
12 result, during the last decade, many generic
13 companies have invested heavily, thus becoming
14 global players.

15 Today, many generic biosimilar
16 companies depend significantly on the revenues
17 they obtain from foreign markets. Generic
18 utilization rates in the European Union are very
19 dissimilar. The generic market share in Germany
20 and the UK in 2016 reached 75 percent in volume,
21 but less than 30 percent in Italy, and less than
22 15 percent in Luxembourg. Hence, the European

1 Union offers an important opportunity for the
2 generic industry to grow.

3 With regards to the biosimilar market,
4 the European Union is ahead of the U.S. But
5 biosimilar penetration in the EU remains low.

6 Therefore, it is critical that the
7 agreement with the European Union not only not
8 include higher barriers to entry through the
9 adoption of higher intellectual property
10 standards, but also that it adopt provisions to
11 increase and speed up the launch of generic and
12 biosimilar drugs, allowing this industry to
13 continue to grow and generate more jobs at home.

14 It is essential that the agreement not
15 open the door to new evergreening practices, but
16 prevent the use of frivolous lawsuits to block or
17 delay competition. Furthermore, the President
18 and the FDA Commissioner have addressed the
19 importance of increasing the use of biosimilars.

20 It is therefore critical not to make
21 the mistake of the USMCA granting a very long
22 exclusivity period for biologics, thus ignoring

1 the conclusions of the Federal Trade Commission
2 that no exclusivity is necessary for these drugs,
3 given that originator companies will retain most
4 of the market share and price, even after patent
5 expiration.

6 While 15 biosimilar drugs have been
7 approved, only six have been launched, as most of
8 the rest are tied up in litigation. As
9 Commissioner Gottlieb stated, competition for
10 biosimilars is for the most part anemic, in part
11 because litigation has delayed market access for
12 biosimilar products that are or shortly will be
13 available in markets outside the U.S. several
14 years before they will be available to patients
15 here.

16 These delays compound this enormous
17 cost for patients and payers. It is too
18 premature to determine the period needed for this
19 exclusivity in this incipient market.
20 Furthermore, trade agreements should not prevent
21 Congress from determining what is the actual
22 period of exclusivity needed for these expensive

1 drugs, if any.

2 Neither the USMCA nor the U.S.-Japan
3 FTA, or the U.S.-EU FTA should lock such
4 provisions, overriding the work of democratically
5 elected members of Congress. Likewise, the
6 agreement should not include a definition of what
7 is a biologic product. This should be deferred
8 to the FDA so it can be adjusted with the
9 development of science.

10 Given the importance of the European
11 market for the generic and biosimilar industry,
12 the USTR should ensure the adoption of provisions
13 that will support the export of generic and
14 biosimilar drugs so the industry can grow,
15 continue to provide more affordable drugs in the
16 US, and generate more drugs at home.

17 In order to accomplish this, the
18 agreement should foster the launch of generic and
19 biosimilar drugs. For example, it should provide
20 incentives to challenge the validity and
21 enforceability of patents, include a broad
22 mandatory boiler provision, require the

1 disclosure of best mode, and impose similar
2 penalties to those that infringe intellectual
3 property rights, as to those that misuse them
4 simply to prevent competition.

5 These provisions are important to
6 strike a balance between innovation and access,
7 and that will also allow us to maximize exports.
8 I thank you again for the opportunity to
9 participate in this hearing.

10 CO-CHAIR MULLANEY: Well, I'd like to
11 thank very much the witnesses for your testimony
12 this morning. It's, again, extraordinarily
13 useful for us to hear from those with skin in the
14 game, what it is we should be pursuing in these
15 negotiations.

16 We'll probably from this side go to
17 questions from the panelists pretty much in the
18 order in which you originally presented. And
19 I'll start off with a few questions to the
20 representative from Knowledge Ecology
21 International, Mr. Abinader.

22 One of the points in your written

1 testimony was that you suggested enhancing
2 transparency in software algorithms, protocols
3 for software, as a way to protect against cyber
4 threats. And I was wondering if you could
5 elaborate a bit on the link between transparency
6 and protection against cyber threats.

7 MR. GIL ABINADER: Yes, so we have
8 seen a trend, and it is in the USMCA agreement, a
9 restriction that governments can require
10 companies to disclose the software for whatever
11 reasons, whether that's security reasons, whether
12 that's privacy reasons, or any other reason.

13 So there's a debate in Congress and in
14 other, you know, countries related to how to
15 regulate some of the algorithms in some of the
16 softwares.

17 And so if we are at a stage where we
18 are exploring the kind of policy that can be
19 implemented, if trade agreements include a
20 restriction to government so governments cannot
21 ask companies to disclose that software in order
22 to explore and to regulate, then trade agreements

1 would significantly limit that ability, and it
2 could be problematic.

3 CO-CHAIR MULLANEY: Okay, so it has to
4 do with requests from a government?

5 MR. GIL ABINADER: Governments, yeah,
6 so, yeah.

7 CO-CHAIR MULLANEY: You also mentioned
8 as one of your priorities the protection of
9 privacy, and I was wondering how, whether -- how
10 you envisioned that in the U.S.-EU trade
11 agreement we could be enhancing privacy
12 protections, and whether there are samples from
13 other, examples from other negotiations that you
14 think might serve as a model for preserving the
15 protections of privacy?

16 MR. GIL ABINADER: Yeah, I think it
17 would be better to follow up with specifics on
18 that regard, if there's any mechanism to follow
19 up comments.

20 CO-CHAIR MULLANEY: Okay, great, thank
21 you. Your submission also called for expanded
22 access to orphaned copyrighted works. And I was

1 wondering if you had in mind specific provisions
2 or commitments that you would recommend in
3 pursuit of that aim?

4 MR. GIL ABINADER: Right, so one
5 specific policy could be, for example, include
6 formalities in copyrighted works when the term,
7 beyond the term of the convergence, which, you
8 know, prohibits formalities.

9 So formalities can be introduced in
10 order to understand, to have for example a
11 registration in order to have an understanding of
12 where is the work, who is the title holder and
13 other information about the works. That's one
14 way of doing it.

15 CO-CHAIR MULLANEY: All right. Thank
16 you, I'll stop there and we'll see how the time
17 goes. We may come back around, go one more
18 round. Colleague from the Department of
19 Commerce.

20 MS. BOHON: Yes. Hi, Ellen Bohon,
21 Department of Commerce. Thank you for your
22 testimony. This first question is for both Mr.

1 Taylor and Mr. O'Mara. What commitments would
2 you like to see in an agreement to address your
3 concerns regarding pricing and reimbursement
4 policymaking? And would your proposals limit
5 what the U.S. Government could do to address
6 healthcare costs?

7 MR. TAYLOR: I'll take the first shot
8 at that.

9 MS. BOHON: Thanks.

10 MR. TAYLOR: Thank you for your
11 question. There's a rich history here of trade
12 agreements addressing these sorts of issues,
13 dating back in the United States to Australia and
14 Korea. And chapters that look at pricing
15 reimbursement systems and transparency measures
16 that apply to the systems, as well as the need to
17 appropriately value the innovative nature of
18 biopharmaceuticals.

19 What we're seeking in the EU-U.S. FTA
20 would be something comparable to that sort of
21 chapter. There's a history in the EU as well, in
22 its agreement with Korea. There's language in

1 that agreement that more or less mirrors the
2 U.S.-Korea FTA.

3 We believe that on the pricing
4 reimbursement side, when you're dealing with
5 markets that enforce price controls, the need for
6 transparency and the need to push for competitive
7 market-based disciplines in those systems is a
8 critical goal. And it's going to be very
9 important in the EU, where we face a number of
10 price controls as an industry.

11 So on the one hand, you have the
12 transparency piece, the deadlines, the due
13 process elements. A lot of these, my
14 understanding is in the EU track, the
15 transparency directive already exists, so it's
16 really not asking much more than is already at
17 play. But then you have this notion that these
18 systems need to appropriately value the
19 innovation in medicines.

20 Would they have an effect here in the
21 United States? I think the answer to that is no
22 for a couple reasons. It would have a beneficial

1 effect, I think, for U.S. industry and for the
2 creation of more, newer medicines and more
3 competition in the pharmaceutical market.

4 We have a competitive, market-based
5 system here. We're not actually trying to
6 address in the United States the same sorts of
7 price controls and government systems that we're
8 looking at abroad. So that's one element.

9 Second, we've already committed to
10 these obligations under several FTAs to date. So
11 it's already there in U.S. trade policy as an
12 obligation for the United States.

13 So those would be the key elements.
14 They would not have an impact on the United
15 States, but they are key to opening up market
16 access in the EU in member states, and I think
17 more broadly to other markets where the U.S. is
18 engaged in free trade agreement talks.

19 MS. BOHON: Thank you.

20 MR. O'MARA: Well, I fully support Mr.
21 Taylor's comprehensive response. Hard to add
22 much, frankly, but yes, I think to just echo the

1 fact that this would not be breaking new ground
2 with respect to a trade agreement. This has been
3 something that's been addressed in a number of
4 them.

5 And I think Mr. Taylor's point with
6 respect to the fact that there's already a
7 transparency directive in Europe with regards to
8 requirements for, you know, once a product has
9 been approved, you know, the process for actually
10 getting reimbursed. I think that's really the
11 issue here, is to make sure that there's no --
12 the lag does not go on.

13 There needs to be transparency with
14 respect to why the decision, you know, what the
15 decision was based on. And I think it's
16 important that people understand that products
17 are available, and especially ones to treat life-
18 threatening illnesses.

19 And so I think end goal here is to get
20 products to the market faster.

21 MS. BOHON: Thank you. So Mr. Taylor,
22 if the pricing and transparency language from

1 KORUS is sufficient to form the basis of
2 discussion, what other specific provisions should
3 be included?

4 MR. TAYLOR: In terms of that
5 language?

6 MS. BOHON: Yes, I'm sorry, on pricing
7 and transparency.

8 MR. TAYLOR: I think that the U.S.-
9 Korea language is a good start. And again, it
10 has its companion language in the EU-Korea text.
11 I think that the USMCA language honestly is a
12 good start as well. Talk about agreement as a
13 template for future trade agreements.

14 I would encourage us to think about
15 what additional disciplines could be set in the
16 language as we think about some of the nuances of
17 the European system.

18 But as a baseline and as a start, I
19 think that the Korea text, the timelines, as Mr.
20 O'Mara mentioned, the transparency elements.
21 These systems, when our companies are trying to
22 gain market access in a number of European and

1 other economies are more or less a black box. We
2 need due process and discipline imposed on the
3 systems.

4 And then again, this obligation that
5 these markets and systems be pushed to a place
6 where they're actually recognizing and
7 appropriately valuing the innovations inherent in
8 the medicines I think is important. So I think
9 Korea is a good start.

10 MS. BOHON: Thank you.

11 CO-CHAIR MULLANEY: Why don't we turn
12 next to a colleague from Health and Human
13 Services for Mr. Francer.

14 MS. BLEIMUND: Good morning, Emily
15 Bleimund from U.S. Health and Human Services.
16 So, Mr. Francer, have AAM members faced issues
17 regarding transparency or procedural fairness
18 with respect to drug pricing in the EU? And if
19 so, what have been the concerns and how would you
20 propose that we address them?

21 MR. FRANCER: Yeah, thank you for the
22 question. I'm not aware of problems with

1 transparency with respect to pricing in the EU.
2 I'd note that we don't have much of a quarrel
3 with some of the transparency provisions that Mr.
4 Taylor was just discussing.

5 And we think, quite frankly, that that
6 is probably the best way to ensure that there's
7 appropriate compensation for the brand-name
8 drugs, as opposed to the IP provisions which
9 create monopolies that block access to generic
10 and biosimilar medicines.

11 MS. BLEIMUND: Thank you. One more
12 question. In your submission, you discuss
13 waiving bridging studies. Can you elaborate on
14 how or if the waiving of bridging studies can be
15 done under the existing FDA and EMA requirements?

16 MR. FRANCER: Yes. In general, just
17 to make sure that everybody on the panel can
18 understand, we face, and this is the same on the
19 brand side of the ecosystem as well, different
20 requirements for approval in different countries.
21 And so both the innovative side and the generic
22 and biosimilar side generally support regulatory

1 harmonization.

2 One area of particular sensitivity,
3 especially on biosimilar medicines, which can be
4 much more expensive to produce than typical small
5 molecule generic, is if the U.S. FDA is requiring
6 the repetition of studies that have already
7 occurred elsewhere in the world. Because the
8 U.S. is so far behind in biosimilars, often these
9 studies will be done in Europe first.

10 So we believe that it's important to
11 create a type of regulatory harmonization that
12 can allow for the acceptance of those types of
13 studies under U.S. law. We believe it's
14 consistent with U.S. law. I'm happy to give you
15 more detail on that in a submission after the
16 hearing.

17 MS. BLEIMUND: Thank you.

18 CO-CHAIR MULLANEY: All right, we turn
19 back to a Commerce colleague.

20 MS. BOHON: Thank you. So this
21 question is for Mr. O'Mara, BIO. What specific
22 changes does BIO recommend that the Commission

1 and the European Food and Safety Authority make
2 to have a timely and risk-based authorization
3 process?

4 MR. O'MARA: Thank you. Well, there
5 are a number of challenges in the risk assessment
6 process for the approval of genetically
7 engineered crops. First and foremost, one of the
8 biggest challenges we face is the actual
9 legislative timelines in Europe are six months.

10 And as I mentioned earlier and it was
11 in my testimony, the average is taking seven and
12 a half years to gain approval. Sticking to that
13 timeline, sticking somewhat close to that
14 timeline would be a vast improvement.

15 I think the one problem that, one
16 reason that there's so much lag is the fact that
17 any time there's a question to an applicant, the
18 clock stops. And it's not an automatic
19 restarting of the clock once the applicant
20 actually resubmits the information. So that's
21 one of the big areas where there's lost time.

22 I think the other key point here is

1 that as there, the concerns of member states have
2 increased over the years with respect to
3 political voting matters. What that has done is
4 force the development of -- it's basically forced
5 the European Food Safety Authority to get rid of
6 scientific discretion.

7 So even if a study is not necessarily
8 based on their own scientific guidelines, they
9 have to do it. And 31 new, I think 31 new
10 guidance documents have been implemented since
11 2006, basically taking the scientific discretion
12 out of EFSA's hands.

13 The other piece here is that when you
14 talk about combination of biotech traits
15 together, what we call stacked events, what many
16 countries do around the world is they look at the
17 single approvals, and when those products are
18 combined, they look at the highest order
19 combination.

20 What Europe does, say there's three to
21 four products that have been stacked together.
22 Europe looks at every iteration, and they do it

1 only after all the singles have been approved.
2 So we add a tremendous amount of time to the
3 overall process. Thank you.

4 MS. BOHON: Thank you, one more
5 question. How would the Commission -- how should
6 the Commission address the advent of new
7 technologies such as gene editing in light of the
8 recent European Court of Justice opinion?

9 MR. O'MARA: Frankly, I think the
10 agreement is critical because Europe is in
11 desperate need of reforms in the area of
12 regulation of food and animal products. The
13 previous panel listed off a number of those.

14 One of the concerning developments has
15 to do with ag innovation, as you mentioned, gene
16 editing. The recent European Court of Justice
17 ruled that, this decision ruled that essentially
18 products that can be produced via traditional
19 methods of plant breeding are effectively the
20 same as GMOs and must be subject to the same
21 directive.

22 But that decision was not based on

1 science, it was based purely on court
2 proceedings, and there was no risk assessment
3 done. Many other countries around the world are
4 finding a different, less burdensome way of
5 addressing this issue. Which again, is simply a
6 matter of evolution in plant breeding.

7 How would I suggest it be addressed?
8 I don't know that it necessarily should be done
9 in the agreement itself, but the fact of the
10 matter is there needs to be reforms, and I think
11 this agreement needs to support reforms, and
12 there needs to be a commitment in this agreement
13 to science-based decision-making and a commitment
14 to enabling innovation in this area.

15 Specifically to this one issue also,
16 I'd just point out that Europe's own science
17 advisors have come out to say that reform is
18 needed because the GMO directive is not
19 appropriate for regulation of gene editing.

20 MS. BOHON: Thank you.

21 CO-CHAIR MULLANEY: Let's turn back to
22 the colleague from HHS.

1 MS. BLEIMUND: Thank you, this
2 question is for Ms. Jorge. You note that very
3 few biosimilars that have been launched in the
4 United States -- you note that very few
5 biosimilars have been launched in the United
6 States and their utilization rate remains low in
7 both the U.S. and the EU, even after launch.

8 Can you please describe how the
9 provisions you would like to see included in the
10 agreement to support the growth of the biosimilar
11 industry will result in improvements to the
12 status quo? Would these provisions require
13 changes to U.S. law?

14 MS. FABIANA JORGE: Thank you for the
15 question. Yes, as I say, there are 15 products
16 that have been approved by FDA and there is a
17 very conscious effort to bring the products to
18 the market. And the government is doing, the FDA
19 is doing everything they can to do that. But
20 only six products have been launched.

21 Certainly this is not because the
22 biosimilar companies don't want to launch them.

1 Something is preventing them, and like
2 Commissioner Gottlieb said, it is litigation.

3 So one of the things we need to really
4 look at, and I think we all want the protection
5 of intellectual property, but we do not want
6 misuse of it. And it has to be a balance. This
7 country has both a pharmaceutical industry,
8 originator industry, but also a generic one.

9 And the trade policy cannot reflect
10 only one side of the industry. It has to be
11 balanced, and that will only help to maximize
12 exports. So the answer to your question what
13 needs to be done, in my opinion, it has to be
14 addressing some of these obstacles that are being
15 taken to prevent or delay the entry of generic
16 companies, or biosimilar companies in this case.

17 And let me just mention, this is from
18 a case in New York from 2010 between AstraZeneca
19 and Dr. Lurie. And the judge in the ruling said
20 basically he had been telling AstraZeneca to
21 withdraw the case, it was no case. But they
22 refused to do it. So the judge in the ruling

1 said, AstraZeneca insists that its litigation
2 conduct here was appropriate because a lot of
3 money was on the line.

4 This is a ridiculous claim to make.
5 Astra was not free to throw up roadblocks or to
6 assert a claim construction in bad faith to abuse
7 the court system just because it was to its
8 economic advantage to keep a competitor out of
9 the marketplace.

10 So we think litigation is very
11 important, and if it's an infringement that is
12 wrong. But the problem is if litigation is being
13 used not just to defend what has to be fairly
14 defended, but just to prevent competition. And
15 that needs to be addressed. And the U.S.-EU FTA,
16 Free Trade Agreement, would do really well if it
17 addresses these type of issues.

18 MS. BLEIMUND: Thank you.

19 CO-CHAIR MULLANEY: Maybe, I think we
20 have a few minutes more.

21 CO-CHAIR GRESSER: About ten to
22 fifteen minutes left.

1 MR. SPITZER: I'm happy to take ten,
2 fifteen minutes. Going to circle back to
3 Knowledge Ecology International. You mentioned
4 that your number one priority in your written
5 submission was to promote innovation for medical
6 technologies, including the drug, vaccines,
7 diagnostic tests, gene therapies, things like
8 that. In an agreement, how would you see us best
9 promoting the innovation in those technologies?

10 MR. GIL ABINADER: I guess the idea is
11 that we have adopted a tool for promoting
12 innovations exclusively based on high prices and
13 monopolies, which is intellectual property.

14 And there are alternatives to
15 promoting innovations, some of them that could be
16 introduced in a trade agreement, for example,
17 agreements on minimum fundings of R&D and, you
18 know, and having safeguards in the way that the
19 result for that R&D, it's adopted. So agreements
20 on minimum fundings, agreements for R&D, right.

21 So other setting priorities of
22 research and for example, in the area of anti-

1 microbial resistance, de-linkage incentive of R&D
2 from the prices of the products and several other
3 mechanisms that, does it have to be exclusively
4 based on high prices and monopolies.

5 CO-CHAIR MULLANEY: And so, rules on
6 funding of R&D, you're talking about the
7 government funding?

8 MR. GIL ABINADER: Government funding
9 of R&D. They are including more, you know, I
10 guess specific provisions could be in terms of,
11 for example, the licensing of the research that
12 had been funded by the government. The U.S.
13 already had provisions in that regard, Section
14 209 of the Babel Act that has some provisions
15 requiring that that research has to be licensed
16 under reasonable terms.

17 And so the U.S. could try to ask other
18 countries to do the same thing, and the U.S.
19 could ask for transparency in terms of how
20 governments license government-funded research.
21 And several other specific proposals, too.

22 CO-CHAIR MULLANEY: Thank you. I like

1 to ask this question at the end of the last
2 session, which was is there anything that was
3 left unsaid after all these discussions among the
4 panelists, anything they would make, anything
5 they would like to say before you close out the
6 second panel?

7 MS. FABIANA JORGE: It is a lot, but
8 we don't have time for it.

9 CO-CHAIR GRESSER: Let me thank all of
10 our witnesses very sincerely for these
11 presentations. This has been a very interesting
12 session for us. This brings this panel to a
13 close, and we will open the next one at 12:05.

14 (Whereupon, the above-entitled matter
15 went off the record at 11:56 a.m. and resumed at
16 12:05 p.m.)

17 CO-CHAIR GRESSER: Thank you all very
18 much. Can we have the audience please be quiet?
19 Welcome to our third panel this morning. We will
20 be hearing from Celeste Drake of the AFL-CIO,
21 Marjorie Chorlins, the U.S. Chamber of Commerce,
22 Rufus Yerxa with the National Foreign Trade

1 Council, and William Foley of Libbey
2 Incorporated.

3 As in our previous panels, we'd like
4 to start from my right or your left and go in
5 that direction, and please respect the five
6 minute limit for oral testimony, and let's get
7 started.

8 MS. DRAKE: Thank you, Mr. Chairman,
9 members of the committee. Good afternoon. I
10 appreciate this opportunity to testify on a
11 possible trade deal between the United States and
12 the European Union on behalf of the AFL-CIO and
13 its 55 affiliated unions.

14 I've submitted written testimony for
15 the record and I will highlight key issues here.

16 At the outset, the AFL-CIO emphasizes
17 that one-off trade agreements are not an
18 efficient way to create good jobs, raise wages,
19 or address inequality.

20 Even generous projections for the
21 previous effort at a U.S.-EU agreement projected
22 growth after 10 years at a mere one half of one

1 percent of GDP and history has shown that these
2 projections vastly overstate benefits and
3 understate costs to working families.

4 A more effective way to grow the U.S.
5 economy and increase opportunities for hard-
6 working Americans would be a coordinated mix of
7 wage led growth policies and significant
8 infrastructure investment yielding projected
9 growth of more than nine percent after a mere
10 five years.

11 That being said, should the president
12 wish to move ahead with negotiations with the
13 European Union, we urge that he do so in a
14 cooperative, transparent, and inclusive manner.

15 Civil society, including labor unions
16 on both sides of the Atlantic, are key partners
17 with critical insight and advice. Keeping the
18 public in the dark, as happened with the TTIP
19 negotiations, is likely to backfire, creating
20 public opposition before the deal is even
21 concluded.

22 We recommend that the negotiations

1 focus on key issues such as reducing tariffs,
2 setting high bars for labor and environmental
3 protections, and creating cooperative mechanisms
4 which include unions and others members of civil
5 society to address trade irritants and alleged
6 non-tariff barriers.

7 Where tariffs are reduced, staging
8 must recognize the trade sensitivity of certain
9 products and phase out periods for those products
10 must be lengthy.

11 Unlike market fundamentalists who
12 brought us the great financial crisis, we
13 recognize the value of public interest
14 protections that keep workers safe on the job,
15 children safe at the breakfast table, and
16 families safe on their travels.

17 The approach of past U.S. trade
18 agreements based on corporate wish lists of ways
19 to limit the ways we can regulate banks, food
20 safety, brand name pharmaceuticals, and even
21 public services should be abandoned entirely.

22 Instead, the deal should create a

1 cooperative mechanism to address and resolve
2 specific trade challenges. This will better
3 protect the right of citizens on both sides of
4 the Atlantic to democratically decide the levels
5 of protection that we want.

6 Rather than responding to the demands
7 of global corporations, the primary goals of this
8 negotiation must be full employment, decent work,
9 and rising standards of living for all. Of
10 critical importance are the labor and
11 environmental rules the agreement would
12 establish.

13 The deal's labor rules must protect
14 workers' rights to organize and act collectively.
15 They must explicitly require each party to adopt
16 and maintain in law, regulation, and practice
17 fundamental labor rights with specific reference
18 to the ILO core conventions.

19 The labor provisions must apply to all
20 workers regardless of sector or citizenship and
21 include enforceable standards for acceptable
22 conditions of work and the recruitment of migrant

1 labor.

2 The labor provisions should also stand
3 up an independent secretariat to make monitoring
4 and enforcement less confrontational, and a
5 working group to oversee the impacts of the deal
6 on issues such as wages, working conditions, and
7 local communities.

8 Without such a working group, the long
9 term impacts of the deal could only be evaluated
10 by general measures such as increased trade flows
11 which don't reflect quality of life for ordinary
12 Americans.

13 The deal should also prevent U.S. and
14 EU companies from using transatlantic investment
15 as a way to avoid obligations to workers.

16 The labor enforcement provisions must
17 ensure prompt actions and trade sanctions when
18 necessary. Delayed and uncertain enforcement is
19 tantamount to no enforcement at all.

20 The United States and the EU are each
21 other's largest source of foreign direct
22 investment. In 2017, transatlantic FDI flows

1 totaled more than \$5 trillion. Thus, this deal
2 need not sacrifice our ability to screen or
3 regulate foreign investment in the name of
4 attracting it.

5 Rather, the parties should work
6 jointly and cooperatively to develop and apply
7 policies that protect our economies from the
8 threat of predatory investments by third parties.

9 We strongly oppose ISDS, which
10 provides foreign investors with a private justice
11 system. If U.S. courts are good enough for U.S.-
12 based companies and workers, they're good enough
13 for foreign companies.

14 In sum, we recommend a new style deal
15 focused on tariff reductions, sustainable
16 environmental practices, and rising standards for
17 workers. I thank the committee and would be
18 pleased to answer any questions you may have.

19 CO-CHAIR MULLANEY: Ms. Chorlins?

20 MS. CHORLINS: Thank you and good
21 afternoon, Marjorie Chorlins here on behalf of
22 the U.S. Chamber of Commerce, and I appreciate

1 the opportunity to present the following
2 testimony in response to the U.S. Trade
3 Representative's Federal Register notice.

4 The U.S. business community is
5 encouraged that the U.S. and the European Union
6 have returned to the negotiating table and are
7 committed to securing tangible improvements in
8 the transatlantic commercial relationship.

9 In recent years, the EU has negotiated
10 major new market opening agreements with a number
11 of countries. Indeed just this week, the
12 European Parliament ratified an agreement, a
13 significant agreement between the EU and Japan, a
14 deal that's expected to enter into force early
15 next year.

16 It's vital that the U.S. pursue a
17 robust and positive trade agenda and that these
18 negotiations with the EU represent an opportunity
19 to do just that. We cannot afford to fall
20 further behind in securing closer commercial ties
21 with our allies and major trading partners.

22 In keeping with the Chamber's mission

1 to advocate for free enterprise, competitive
2 markets and rules-based trade, one of the
3 Chamber's primary objectives in these
4 negotiations will be to pursue measures that
5 remove and do not increase barriers to trade.

6 To ensure this, we recommend hewing
7 closely to the negotiating objectives set forth
8 in the trade promotion authority law.

9 There are a range of near term
10 opportunities for forward momentum in the
11 transatlantic economic relationship. Taken
12 collectively, these measures would provide a
13 significant boost to the U.S. economy and
14 strengthen our partnership with Europe at a time
15 when joint leadership is essential.

16 Among the near term opportunities, the
17 two sides should strive to first remove
18 expeditiously the U.S. Section 232 tariffs on
19 steel and aluminum imports from the EU and the
20 corresponding EU retaliatory measures.

21 Avoid imposition of new Section 232
22 tariffs on imported autos or auto parts.

1 Eliminate all tariffs on nonindustrial goods as
2 agreed at the presidential statement in July.

3 Eliminate or significantly streamline licensing
4 requirements for U.S. LNG exports to non-FTA
5 partner countries such as the EU.

6 Resolve longstanding market access
7 issues such as increasing U.S. imports of non-
8 hormone treated beef from the United States.

9 Agree to maintain existing market access levels
10 for services and establish a framework for
11 cooperation towards elimination of services'
12 trade restrictions in third countries.

13 And finally, launch a dialogue on
14 standards and conformity assessment that includes
15 active stakeholder engagement.

16 Our written submission identifies
17 additional opportunities for near term advances
18 in several sectors, including automobiles,
19 energy, medical devices, chemicals,
20 pharmaceuticals, agriculture and biotechnology,
21 and services, including both financial services
22 and express delivery.

1 There are also several longstanding
2 barriers to transatlantic trade investment whose
3 elimination would significantly boost the long
4 term economic outlook on both sides of the
5 Atlantic.

6 Greater cooperation in these areas
7 would also provide a pathway for joint leadership
8 in response to shared challenges in a rapidly
9 changing global economy.

10 As a result of this U.S.-EU dialogue,
11 the two sides should cooperate to protect
12 companies and workers from non-market oriented
13 policies and practices by third countries. Work
14 together to strengthen global trade rules and
15 institutions via, among other things, the U.S.,
16 EU, Japan trilateral talks.

17 Promote binding commitments to
18 increase services market access, including for
19 new services. Address non-science-based
20 restrictions on agricultural trade in a
21 transparent and timely fashion.

22 Establish new rules to protect trade

1 secrets, eliminate forced technology transfers,
2 and reduce barriers to foreign direct investment.

3 Ensure the highest standards of
4 intellectual property protection across all
5 industries to enhance leadership in innovative
6 sectors.

7 Create new meaningful regulatory
8 cooperation dialogues. Formalize a joint
9 commitment to follow good regulatory practices.

10 Pursue new sectoral agreements that minimize
11 duplicative testing and certification
12 requirements.

13 Promote effective regulatory
14 cooperation to jointly address emerging
15 technologies and prevent unnecessary regulatory
16 divergences, and finally, to prevent restrictions
17 on the free flow of data.

18 As we begin these new negotiations,
19 the business community has looked to recent
20 agreements, including the U.S., Mexico, Canada
21 agreement, for signals of where USTR will seek to
22 take these negotiations. Our reactions are

1 mixed.

2 On the one hand, USMCA included very
3 strong provisions in a number of rules chapters,
4 some of which surpass the quality in any earlier
5 U.S. trade agreement.

6 Among the successes are chapters on
7 digital trade, intellectual property, financial
8 services, sanitary and phytosanitary measures,
9 technical barriers to trade, competition
10 policies, state-owned enterprises, good
11 regulatory practices, telecommunications, and
12 customs and trade facilitation.

13 Unfortunately, the USMCA fell short in
14 other areas. USMCA outcomes on investment
15 protection, government procurement, de minimis
16 and Canada's cultural exemption are disappointing
17 and ought not be viewed as precedence for future
18 trade agreements, including with the European
19 Union.

20 Other USMCA elements of concern are
21 those that appear to be "managed trade" measures
22 that limit trade and may violate the WTO

1 agreement on safeguards.

2 The Chamber encourages the U.S. and
3 the European Union to negotiate in good faith to
4 expand our relationship. We are each other's
5 largest trading and investment partners and
6 approximately 15 million high paying jobs rely on
7 that trade and investment today.

8 There are multiple opportunities to
9 deepen and expand our economic ties and to
10 collaborate to address common challenges in the
11 world economy. By contrast, raising new barriers
12 between the U.S. and Europe would be
13 counterproductive and undercut growth in both
14 economies.

15 We welcome the opportunity to continue
16 to provide input and to work with you as these
17 negotiations progress. Thank you.

18 CO-CHAIR GRESSER: Thank you. Now to
19 Ambassador Yerxa.

20 MR. YERXA: Thank you very much and
21 thank you for inviting me. Of course I want to
22 begin by saying that my association, the National

1 Foreign Trade Council, which represents many of
2 our nation's largest exporters and foreign
3 investors in the manufacturing services,
4 technology, and food production sectors, has huge
5 concern with these negotiations.

6 Vital that they create a strengthening
7 of our trade ties with the EU and create a high
8 standards agreement, not simply because, as both
9 Celeste and Marjorie said, this is the largest,
10 taken as a whole, the largest both bilateral
11 trade and investment relationship in the world,
12 but also because historically, the standards that
13 the U.S. and Europe set have a huge implication
14 for the global system, for institutions like the
15 WTO and for our other agreements with other
16 countries, so it's very important to get it
17 right.

18 We submitted to you a statement which
19 has a lot of specific negotiating objectives that
20 we would consider important. I won't go through
21 those for you. I assume you've all looked at
22 them, but let me just mention a couple of things.

1 First of all, we did state sort of
2 guiding principles. They're not dissimilar to
3 some that Marjorie has stated on behalf of the
4 Chamber, that the EU-U.S. agreement must create
5 more open markets and better rules, not new
6 restrictions.

7 We think that's vitally important,
8 particularly if you look at some of the recent
9 actions taken both by the U.S. and the EU, the
10 national security restrictions that the U.S. has
11 taken on steel and aluminum and the retaliation
12 by Europe.

13 We'd say first and foremost, this
14 agreement should result in those measures being
15 removed on both sides. The 232 measures are
16 causing major harm to U.S. manufacturers,
17 exporters, agriculture, and consumers. They're
18 not justified on national security grounds.

19 They create a dangerous precedent in
20 the international system and they're totally
21 inappropriate to impose on our best allies and
22 our NATO partners, particularly if we're entering

1 into a deepened free trade relationship with each
2 other or a more open trade relationship with each
3 other. So that's the first thing - is creating
4 more open markets and better rules.

5 Secondly, the new agreement should
6 reflect the changing world economy. These are,
7 by the way, the same principles we spoke to you
8 about earlier this week with Japan, and that, of
9 course, means new rules to ensure open markets in
10 digital trade, e-commerce, other new
11 technologies.

12 This is a particular challenge in
13 negotiating with Europe, to be quite frank,
14 because very often they have a more conservative
15 approach to the development of new technologies
16 in their system, and it's important for us to use
17 these negotiations to push for agreements which
18 are going to help to expand the digital economy
19 and move both our economies in the direction we
20 need to move.

21 And, you know, I will leave the rest
22 of the specific points for our interchange, but I

1 do have a couple of observations as someone who
2 negotiated for six years as the Deputy USTR with
3 the Europeans, including a major multilateral
4 agreement, the Uruguay round, that resulted in
5 the WTO and, you know, that was very much driven
6 by a bilateral relationship between the U.S. and
7 the Europeans.

8 And I know many of you have had long
9 experience in dealing with Europe, so you'll
10 probably endorse what I'm about to say, but there
11 are a couple of takeaways I have from trying to
12 get a new agreement between the U.S. and Europe.

13 First, they are enormously committed
14 to their own regulatory principles and societal
15 values, and this has a huge impact in key areas
16 that you'll be negotiating in, agriculture
17 obviously, but also areas like health and food
18 safety.

19 You know, their - in many cases -
20 overly prescriptive use of something like the
21 precautionary principle where we would urge more
22 scientific-based and more objective standards

1 will be something you'll have to deal with in the
2 area of health, food safety, chemicals, and a
3 number of other areas, their treatment of
4 privacy, which certainly has a big impact on the
5 digital economy and where we have had a perilous
6 time in reaching understandings with each other,
7 and the importance they place on something like
8 geographical indications in the IP sector versus
9 our greater reliance on trademarks and how we
10 sort that out.

11 My main points to you, just two, that
12 we cannot simply bowl them over in negotiation
13 and force them to abdicate to us in all areas of
14 their regulatory standards. We have to find a
15 way to move their system in the right direction
16 and to find areas of consensus between us, both
17 with respect to regulatory coherence and the
18 trade agreements we reach.

19 And lastly, you know, they will not
20 move in negotiations, and you all know this, if
21 it is something that creates an unacceptable
22 division among their member states.

1 You're entering into these
2 negotiations at a time when there is a lot going
3 on there, obviously a huge challenge that creates
4 for you in negotiating and how they can
5 successfully strike a bargain with us that can be
6 supported by all 28 of their member states.

7 I'm optimistic that if the U.S. puts
8 the right set of standards out to begin with,
9 that we can achieve that. It will take a lot of
10 work and we hope you'll work with all of us in
11 the private sector in helping to define an
12 acceptable path forward.

13 CO-CHAIR GRESSER: Thank you, and now
14 let's turn to Mr. Foley.

15 MR. FOLEY: Good morning. My name is
16 William Foley and I'm the Chairman of the Board
17 and Chief Executive Officer of Libbey
18 Incorporated.

19 Libbey is a global manufacturer and
20 marketer of glass tableware products, the leading
21 manufacturer of glass tableware in the western
22 hemisphere, and among the largest in the world.

1 Libbey operates two glass
2 manufacturing facilities in the United States,
3 one in Toledo, Ohio and one in Shreveport,
4 Louisiana.

5 Libbey sells its glass tableware
6 products to customers in over 100 countries,
7 primarily in food service, retail, and business
8 to business markets. In 2017, Libbey's sales
9 were \$782 million.

10 Libbey supports the U.S. pursuing the
11 following negotiated objectives for the U.S. and
12 EU trade agreement.

13 First and foremost, regarding market
14 access, Libbey believes that the U.S. should seek
15 negotiating modalities that account for the
16 import sensitivity of low value glass tableware
17 by giving products classified under HS7013 the
18 longest tariff phase out period provided in the
19 agreement.

20 Low value glass tableware products
21 historically have been treated as import
22 sensitive, and consequently, U.S. tariffs on

1 these products have generally been higher than
2 average U.S. tariffs.

3 In prior trade agreements, low value
4 glass tableware products have been accorded
5 extended periods for tariff reduction or
6 elimination.

7 Most recently, in the TPP agreement,
8 low value glass tableware products reported a 10-
9 year tariff elimination and the U.S. negotiating
10 objectives for the TTIP recognize that there
11 should be transition periods, extensive
12 transition periods for sensitive products.

13 Over the past 20 years, increased
14 imports of glassware products have gained more
15 than 50 percent of the U.S. market despite
16 declining U.S. consumption, and there has been a
17 persistent trade deficit in glassware.

18 The EU is a major source of glassware
19 imports even though subject to U.S. most favored
20 nation duty rates. Over the same period, the
21 domestic industry has experienced a corresponding
22 loss in employment.

1 It is critical to domestic industry's
2 ability to continue to invest in plant,
3 technology, and training that treatment of
4 glassware as import sensitivity be maintained.
5 Immediate or too rapid tariff elimination would
6 hamstring the domestic industry's ability to
7 adapt to new competitive conditions.

8 I'll briefly mention several other
9 negotiating objectives that Libbey supports.
10 Regarding rules of origin, Libbey urges the U.S.
11 to seek rules that limit eligibility for
12 preferential tariff treatment for glass tableware
13 products under HS7013 to products that are form
14 finished and packaged in the U.S. or EU.

15 The same rule should apply to certain
16 other glass products, namely stoppers, lids,
17 closures, candle holders, globes, and chimneys.

18 Regarding trade remedies, the U.S.
19 should seek to maintain its rights and ability to
20 use antidumping duty, countervailing duty, and
21 safeguard laws. This is a U.S. negotiating
22 objective expressly stated in the TPA bill of

1 2015.

2 Regarding services, Libbey supports
3 improved liberalization in the following sectors,
4 restaurant and food service, hotels, tourism,
5 distribution, franchising, transportation,
6 express delivery, and telecommunications. The
7 U.S. should also seek agreement regarding privacy
8 and digital trade.

9 Regarding transparency, the U.S.
10 should seek provisions that guarantee greater
11 transparency in regulatory practices. This too
12 is a U.S. negotiating objective expressly stated
13 in the TPA bill of 2015.

14 Regarding regulatory compatibility,
15 the U.S. should seek mutual recognition of U.S.
16 and EU standards, but not pursue harmonization of
17 regulatory standards.

18 Finally, with regard to de minimis
19 thresholds for low value imports, the U.S. should
20 seek to raise the EU threshold. Thank you very
21 much for your time and attention this morning.

22 CO-CHAIR GRESSER: Thank you.

1 CO-CHAIR MULLANEY: Great, well,
2 thanks very much to the panel for providing such
3 important and useful insights.

4 As I mentioned earlier, this is a key
5 time in this negotiation where we don't talk to
6 the Commission. We're not expounding on our
7 objectives. We're hearing from stakeholders to
8 what our objectives should be, so I very much
9 appreciate the input.

10 I think we will go with questioning
11 and probably go in the same order in which you
12 did your presentations, and probably switch off
13 among the different U.S. government colleagues on
14 this side of the table.

15 And so I'm going to turn the mic over
16 to our colleague from the Department of Labor,
17 but I wanted to ask one initial question if I
18 might, Celeste, because I hadn't focused on it in
19 the written submission.

20 You said something in your oral
21 statement this morning about predatory investment
22 by third countries and I wondered if you wouldn't

1 mind elaborating on that a bit?

2 MS. DRAKE: Sure, so the AFL-CIO has
3 had a longstanding support for reforms to the
4 CFIUS process and to make sure that our trade
5 agreements don't interfere with our ability to do
6 that.

7 And so historically, for instance, in
8 the USMCA or NAFTA renegotiations, we had said
9 there should be a specific exemption so that the
10 U.S. could beef up CFIUS without coming into
11 violation of that agreement.

12 And we look for examples, for
13 instance, to what Canada has and to what
14 Australia has, where they can actually screen for
15 economic impacts, and it's not just national
16 security, but economic security.

17 And we think that there are examples
18 of threats there specifically with some past
19 investments and attempted investments by state-
20 owned enterprises from China that really could
21 have used a more rigorous screening.

22 And if the U.S. and Europe cooperated

1 to say, "We're going to work together to make
2 sure that we don't have state-owned enterprises
3 from third parties investing in a predatory
4 manner" --

5 So for instance, to obtain
6 intellectual property, to take that intellectual
7 property back to the home country and do
8 production there, creating, you know, jobs and
9 economic growth at home and, you know, depriving
10 the United States or Europe from that, we think
11 that would be a good point of cooperation between
12 the countries.

13 CO-CHAIR MULLANEY: Yeah, thank you.
14 Thank you for that. I'll turn to my Department
15 of Labor colleague, Emma.

16 MS. LAURY: Thank you for your
17 testimony today, Celeste. In your submission,
18 you indicated that the U.S. FTA should contain no
19 rules regarding technical barriers to trade,
20 regulatory practices, sanitary and phytosanitary
21 standards or the like.

22 You also objected to negative lists or

1 ratchet mechanisms to ISDS and limitations on
2 antitrust law or financial services regulations.

3 You stated that the AFL-CIO would
4 object to restrictions on the ability to adopt
5 policies to constrain growth in the price of
6 medicines and to limitations or restrictions on
7 public services of any kind.

8 Given this position, for what reason
9 do you attach the importance of including labor
10 rules in the agreement when the EU's labor laws
11 and practices are typically not thought to be a
12 source of real concern?

13 MS. DRAKE: I appreciate that
14 question, and we actually are in alliance with
15 the European Trade Union Confederation on this
16 because we have all seen, quite frankly, the use
17 of outsourcing by companies to, you know, a third
18 country as a way to decrease costs, including not
19 just by lower wages, but by the ability to abuse
20 and exploit workers and violate their fundamental
21 labor rights, often to abuse and exploit the
22 environment, and to seek to pressure those

1 political entities to lowering their taxes and
2 providing tax holidays, and that has actually
3 been used by European companies in some cases in
4 their investments in the United States.

5 So whereas they may operate in Europe
6 with very high standards, respecting freedom of
7 association, respecting the right to collective
8 bargaining, and so on and so on, they come to the
9 United States and they seek to invest in one of
10 the 50 states that has the lowest ability to
11 organize, lowest wages, lowest environmental
12 protections, and thereby are treating U.S.
13 workers quite differently than they treat
14 European workers.

15 And while some may say, "Oh, well,
16 that might create some jobs in the United States.
17 Don't you appreciate those jobs?" we think that
18 more jobs and better jobs can be created by
19 lifting both parties up to the highest standards,
20 and similarly with the environment, so that's why
21 we say do include those things.

22 And in fact, they are representative

1 of fundamental human rights as recognized by the
2 International Labor Organization and the United
3 Nations Declaration of Human Rights, which just
4 had its anniversary, and that's a quite different
5 decision than, "Well, what's the appropriate
6 level of this toxin in this drinking water?"
7 which is, you know, something that we should
8 decide democratically and not by rules cemented
9 in a trade agreement.

10 CO-CHAIR MULLANEY: So moving down the
11 road, we may come around for another round time
12 permitting. Marjorie, you mentioned the concern
13 with respect to trade secrets theft and I'd be
14 interested in your elaboration on what you might
15 like to see in terms of commitments on the trade
16 secrets theft to address the concern.

17 MS. CHORLINS: Dan, with your
18 indulgence, what I'd like to do is come back to
19 you in writing with a bit more in-depth
20 explanation on that and a couple of other
21 technical issues. I didn't want to delve too
22 deeply today and I think it's actually better for

1 us to put that in writing for you.

2 CO-CHAIR MULLANEY: Okay, okay, fair
3 enough. We look forward to that. If I might,
4 I'll turn the mic over to my Treasury colleague
5 for a question or two.

6 MS. LYNTON GROTZ: Thank you.
7 Marjorie, I'd like to ask you two questions,
8 please. The first is in your written comments,
9 you state that the currency language in a U.S.-EU
10 agreement should not infringe on the ability of
11 the Federal Reserve to steer U.S. monetary
12 policy. Can you elaborate on how a U.S.
13 agreement could best address the issue of
14 currency?

15 MS. CHORLINS: Thank you for the
16 question. I think that, candidly speaking, this
17 is an issue that need not be addressed in an
18 agreement between the U.S. and the European
19 Union. I'm not really sure I need to say more
20 than that.

21 MS. LYNTON GROTZ: No, that's pretty
22 clear. And then on a different note, your

1 submission also discusses the cross border supply
2 of financial services, and I was curious if there
3 were specific areas of cross border supply that
4 you would be interested in broadening?

5 MS. CHORLINS: Here again what I would
6 like to do -- I mean, obviously we look at the
7 dialogue between the U.S. and EU, the U.S.-EU
8 financial regulatory dialogue, as an important
9 platform.

10 We'd obviously like to see some
11 improvements there, and I think there is an
12 opportunity here again for us to come back to you
13 with a bit more detail.

14 The main point I think I would stress
15 here though is the importance of making sure that
16 that existing regulatory dialogue be
17 strengthened, be made more transparent, allow for
18 more robust input from industry and other
19 stakeholders ahead of the meetings of the
20 regulators, and that the results of those
21 meetings actually be made public so that it's
22 more of an engaged dialogue.

1 MS. LYNTON GROTZ: Thank you.

2 CO-CHAIR MULLANEY: Maybe we can turn
3 to questions for Ambassador Yerxa and continue
4 with my Treasury colleague.

5 MS. LYNTON GROTZ: Sure, Ambassador,
6 your testimony recommends building upon various
7 provisions in the EU trade agreements, for
8 example, with Japan, Canada, and others. Could
9 you give us a little more detail as to which
10 provisions from those provisions should be
11 emulated?

12 MR. YERXA: Yes, certainly. Well, you
13 know, obviously we think there are a lot of
14 improvements certainly in the USMCA, whether you
15 look at the customs chapter.

16 We think the digital economy and e-
17 commerce chapter are very important and there's,
18 I think, particularly in that area one thing I'd
19 like to stress.

20 I didn't get a chance in my direct
21 statement, but we have major concerns about
22 potential discriminatory treatment to digital

1 services and services providers in the EU, in
2 particular ideas related to, for example, a
3 digital services tax.

4 Those proposals which are based on the
5 concept of digital presence are troubling. If
6 implemented, they could potentially serve as very
7 significant digital trade barriers.

8 So they could undermine the long held
9 principle of permanent establishment that
10 underlines worldwide taxation and we're concerned
11 that those proposals, if implemented, could
12 disproportionately affect U.S. companies because
13 on a de facto basis, they seem to be designed in
14 a way which would impose much higher burdens on
15 U.S. parent companies to our detriment, and we
16 think that raises questions of their obligations
17 under the GATT and EU commitments under bilateral
18 tax agreements. That's one example.

19 I think there are other areas.
20 Obviously we think strong improvements in USMCA
21 on the provisions related to state-owned
22 enterprises, for example. We think that's a very

1 important precedent like I said.

2 This needs to be a high standards
3 agreement that other major economies in the world
4 will have to give weight to in how they develop
5 their systems. I don't think I need to say more
6 than that about it.

7 And, you know, the same goes for a lot
8 of the proposals that we think are useful in, for
9 example, the customs and trade facilitation area,
10 which we think should be directly relevant to a
11 U.S.-EU agreement.

12 MS. LYNTON GROTZ: Thank you.

13 CO-CHAIR MULLANEY: Maybe I can turn
14 to our SBA colleague for a question to Mr. Foley.

15 MS. BONNER: Yes, thank you, Mr.
16 Foley, for your testimony. Can you share if
17 Libbey believes glassware is being dumped in the
18 United States?

19 MR. FOLEY: We see a number of
20 indications of significantly lower prices in the
21 United States coming from around the world.
22 There are a number of countries that sponsor and

1 support subsidization of the businesses, and as a
2 result, those businesses that are typically very
3 troubled tend to dump large quantities of
4 inventory in the U.S. market at very depressed
5 prices, and we see that happening today. It's
6 been going on, but really more aggressively in
7 the last several years.

8 MS. BONNER: Okay, do you see any
9 increase of transshipment of this good via the
10 EU? Have you seen any of those indications?

11 MR. FOLEY: Yes, we have.

12 MS. BONNER: Thank you. When you
13 specified or proposed a phase in, did you have
14 any specific time period recommendation?

15 MR. FOLEY: Well, no, like any
16 manufacturer, we prefer the longest time period
17 possible. You know, NAFTA approved 10 years.
18 There has been some consideration of 15. We'd be
19 in favor of the longest time frame possible.

20 MS. BONNER: Okay, and I believe you
21 may have answered this, but it might be helpful
22 to do in a written submission or now. When you

1 referred to certain products in the rules of
2 origin section of your written comments, can you
3 expand on what those certain products you were
4 referring to?

5 MR. FOLEY: Yeah, it's really
6 everything listed in HF7013.

7 MS. BONNER: Okay.

8 MR. FOLEY: It's a very broad
9 category. We can provide more information for
10 that if you'd like to have it and we'd be happy
11 to do that.

12 MS. BONNER: Thank you.

13 MR. SPITZER: Well, let's take
14 advantage of the time we have. We'll circle back
15 again to Ms. Drake, and I'm going to turn it back
16 over to our Department of Labor colleague.

17 MS. LAURY: Do you think the USMCA
18 labor chapter including its dispute provisions is
19 a suitable model for the U.S.-EU trade agreement?

20 MS. DRAKE: Thank you for the
21 question. Before I answer, I just want to say
22 the AFL-CIO supports the general thesis of

1 Libbey's testimony, and in fact, glass was
2 identified by our affiliate, the United Steel
3 Workers, as one of those especially sensitive
4 products, and they have recommended a phase out
5 period as long as 20 to 30 years, so I'll just
6 get that on record.

7 In terms of the renegotiated NAFTA or
8 the USMCA and its enforcement provisions, we have
9 a number of concerns, primary is the ability of
10 one of the three parties to block the formation
11 of a dispute settlement panel by blocking a
12 meeting of the Free Trade Commission.

13 And in fact, unfortunately, the United
14 States itself has a history in the original NAFTA
15 of using this exact method to avoid a meeting of
16 the Free Trade Commission to avoid getting to
17 dispute settlement.

18 And while we do understand that each
19 of the three parties is going to have its own
20 national interests that it wants to protect and
21 therefore would have an incentive to block a
22 panel formation, our experience with labor

1 provisions proves that they really need to be
2 treated differently in order to have the same
3 impact, and I'll explain.

4 In 25 years of labor provisions being
5 associated with trade agreements, including in
6 the side agreements with the first NAFTA, only
7 one case out of more than 50 filed under NAFTA,
8 CAFTA, Columbia, Peru, etcetera, ever got to
9 dispute settlement, and didn't actually come
10 close to winning.

11 And when we ask about why there are
12 cases that are sitting in consultations for five
13 years, six years, seven years in the cases
14 against Bahrain, for example, and the Dominican
15 Republic, you know, often what we're told is that
16 there are other considerations.

17 And again, understandable that there
18 are other considerations, defense, national
19 security, etcetera, but because vulnerable
20 foreign workers don't have high paid lobbyists to
21 get into the offices to explain why their rights
22 and defense of their rights should rise to the

1 top, we've recommended that not only you take out
2 this ability to block dispute settlement, but you
3 add additional tools, additional carrots and
4 sticks to try and make sure that that monitoring
5 and enforcement does happen.

6 So for instance, one example might be
7 the ability to make sure that if there have been
8 legitimate questions that have been raised about
9 particular worksites and places that are
10 producing goods for export or services for
11 export, that the U.S., for example, or the EU, or
12 whoever is the appropriate party can say, "We'd
13 like to do a joint inspection of this workplace
14 and find out what's really going on," and really
15 putting pressure on those employers to say,
16 "These are real rules and we're going to do
17 things that to some extent are going to inflict
18 some potential pain so that you are encouraged to
19 actually do the right thing."

20 And we have had a whole host of ideas
21 and what we're put into our recommendations
22 include this independent secretariat which takes

1 off some of that political pressure, a wages and
2 standards board to make sure that living wages
3 are being paid, a whole host of things, including
4 where citizens can say, "Wait a minute. A case
5 has been delayed for far too long." We want to
6 make sure that discretion not to enforce isn't
7 being abused.

8 So the USMCA doesn't quite get there.
9 It's certainly an improvement in terms of the
10 obligations over what we've seen in the past, but
11 the singular ability to block a panel formation
12 is actually a step back, for instance, from what
13 we were criticizing in the TPP.

14 CO-CHAIR MULLANEY: Maybe I can turn
15 to my State Department colleague for another
16 question for Ms. Drake.

17 MR. MANOGUE: Okay, thank you very
18 much. I just have a quick question for Ms. Drake
19 again. Do you believe the EU is prepared to
20 agree to a prohibition on the importation of
21 goods made in whole or in part by forced labor,
22 including forced child labor, and do you see this

1 as an opportunity for our customs agencies to be
2 cooperating?

3 MS. DRAKE: I'm -- it's -- the
4 acoustics are bad. I just want to make sure I
5 understand your question. Do I believe the EU
6 would agree to such a prohibition?

7 MR. MANOGUE: Right, yes.

8 MS. DRAKE: Certainly we don't see any
9 reason why they would not. The EU has many
10 similar provisions in trade laws around their GSP
11 system that we have to try and address goods made
12 with forced labor and other violations of labor
13 rights, and certainly the European Trade Union
14 Confederation supports working cooperatively to
15 address goods made with forced labor.

16 So we see no reason why the EU could
17 not agree, and as you said, develop cooperative
18 mechanisms through customs to really enforce
19 that, and that would make a significant
20 difference around the world.

21 CO-CHAIR MULLANEY: Great, so maybe
22 before Ms. Chorlins, we'll turn back to the SPA

1 colleague for another question.

2 MS. BONNER: Hi, Ms. Chorlins, thank
3 you for your testimony. Would you be able to
4 identify any specific challenges or restrictions
5 that disproportionately burden your smaller
6 members in achieving EU market access?

7 MS. CHORLINS: Thank you for the
8 question. I think it's fair to say that
9 measures, well, both border measures and behind
10 the border measures invariably have a
11 disproportionate impact on small and medium-sized
12 companies because in many instances, they don't
13 have the resources available at their disposal to
14 continue to trade even with those barriers in
15 place.

16 I would be hard-pressed to tell you
17 specifically what measures in EU law have a
18 disproportionate impact, but I think it's fair to
19 say, generally speaking -- and this is one of the
20 reasons why I think the fact that the TTIP
21 negotiations had a dedicated chapter, if you
22 will, for the small and medium-sized enterprises,

1 while we thought it wasn't absolutely necessary
2 to have, was nonetheless a good platform to allow
3 for some attention to be paid to the unique
4 barriers, or the disproportionate burden, I would
5 say, of barriers on small and medium-sized
6 enterprises, including access to the relevant
7 information they need in order to do business
8 with Europe. I'm happy to elaborate on that in
9 writing.

10 CO-CHAIR MULLANEY: Great, thank you,
11 and moving down the line, Ambassador Yerxa, and I
12 might actually address this to you, but Ms.
13 Chorlins also made a comment in this direction,
14 the discussion of EU regulations, EU standards,
15 and barriers that might arise in that context.

16 I think you mentioned we had to, if I
17 noted correctly, recognize that there's
18 significant investment in those rules and that we
19 needed to find a way to move us closer together,
20 and I think Ms. Chorlins also mentioned the
21 notion that one of your objectives was we should
22 have a discussion or a dialogue on the standards.

1 And I was wondering whether either of
2 you would care to elaborate on that, on what is
3 it, how we should be approaching that issue of,
4 you know, regulatory barriers and specifically in
5 the area of standards and conformity assessments?

6 MR. YERXA: Well, you know, I know
7 you've had a lot of experience in dealing with
8 the Europeans on some of these things and, you
9 know, it is very difficult to address these in a
10 comprehensive way with the Europeans because
11 obviously you're not only dealing with an
12 evolving set of fairly expansive regulations at
13 the European level, but then you're dealing of
14 course with 28 member states and regulatory
15 bodies in all of those member states, maybe 27 by
16 the time you get this done. We'll have to see.

17 But certainly one of the challenges is
18 always the extent to which you can use the
19 negotiating framework to actually get regulators
20 to deal with each other in a way that creates
21 better opportunities for, if not convergence or
22 harmonization, at least, you know, at least

1 something that reduces the impediments and leads
2 to more regulatory consistency that is less of an
3 impediment on those who are doing both across
4 board investment and trade.

5 Certainly that's big now in the area
6 of the digital economy and e-commerce. You know,
7 you're dealing with, for example, privacy
8 regulators in the member states. You're dealing
9 with tax regulators in the member states. So we
10 think that this whole area of how to expand the
11 digital economy --

12 By the way, going back to a question
13 asked by SBA and Marjorie, I think Marjorie
14 commented on, this is extremely important to
15 small business because the platform for expanding
16 trade among small businesses is critically the e-
17 commerce and digital platform and that is
18 bringing new players into the trading system in a
19 way that almost no other precedent in previous
20 technologies, so it's extremely important that we
21 try to move in the direction of getting some
22 better regulatory coherence.

1 I mean, you know, a lot of work
2 obviously was done, as you know, on the privacy
3 issue, and there is an arrangement in place.
4 It's still exceedingly burdensome on small
5 business. We hope that we can use these
6 discussions to create better opportunities for
7 small business.

8 The other area that I think that I
9 cite that is really important to our people is in
10 the whole area of financial services and
11 financial regulations.

12 We're concerned about what's going to
13 happen in the wake of a Brexit and how that might
14 change or adjust the environment in Europe for
15 cross border financial services. We can
16 elaborate more on that in writing.

17 MS. CHORLINS: It's always hard to
18 follow Rufus because he's covered the ground
19 pretty well.

20 I think it's fair to say that, look,
21 this whole issue of regulatory cooperation and
22 standards and conformity assessment was so

1 integral to the TTIP negotiations and we
2 recognize that for quite some time, the
3 impression was the negotiations were talking
4 past, regulators, I guess I would say, were
5 talking past one another. It seems to me that
6 that's the downside.

7 The upside is that having begun those
8 conversations already several years ago, we have
9 the opportunity to build on them now and to
10 identify ways where, even as Rufus says, if we
11 cannot bridge gaps on existing regulations, that
12 as we look ahead to potential regulation of new
13 products, that we start from a point of actually
14 talking with one another, having regulators talk
15 with one another to see if they can actually
16 begin at a common point rather than going off
17 immediately on divergent paths.

18 So the opportunity from our
19 perspective, while we believe and our member
20 companies believe that there are sector specific
21 opportunities to improve cooperation on existing
22 regulations, the rule opportunity, an equally

1 significant opportunity, I guess I would say,
2 rests in the regulations that we haven't even
3 thought of yet.

4 CO-CHAIR MULLANEY: Great, well, thank
5 you all very much. This has been our smallest
6 panel so far, but --

7 MS. CHORLINS: Small, but mighty.

8 CO-CHAIR MULLANEY: -- it's very,
9 extremely rich if I might say, if I might say so,
10 very, very, very useful, a very detailed
11 conversation, so thank you. Thank you very much.

12 CO-CHAIR GRESSER: This is a final
13 question or suggestion. Is there anything that
14 any of you would have liked to raise that you
15 weren't able to do or anything that has come up
16 in the discussion that anybody would like to
17 respond to?

18 In that case, we thank you very much
19 for your testimony. We're very grateful to you
20 and this concludes the panel. We will be now
21 taking about a half-hour break for lunch and
22 we'll reconvene at 1:30. Thank you all very

1 much.

2 (Whereupon, the above-entitled matter
3 went off the record at 12:55 p.m. and resumed at
4 1:35 p.m.)

5 CO-CHAIR GRESSER: Thank you all very
6 much. We're now commencing our fourth panel.
7 Just as a reminder to our witnesses, we have a
8 limit of five minutes for each oral testimony.
9 Please respect that as we want to make sure that
10 everyone has a chance to offer their views and
11 insights, and that our government panelists have
12 a chance to explore issues in more depth.

13 So as in previous panels, we'll start
14 on my right or your left and go through the first
15 row and the same for the second row, and let's
16 begin with Mr. Mullen from the Express
17 Association of America.

18 MR. MULLEN: Thanks very much for the
19 opportunity to talk with you today. I'm
20 testifying on behalf of the Express Association
21 of America which represents DHL, FedEx, and UPS,
22 the three largest express delivery service

1 providers in the world.

2 EAA member companies serve over 200
3 countries, have estimated annual revenues in
4 excess of \$200 billion, employ more than 1.1
5 million people, and deliver more than 30 million
6 packages each day.

7 EAA strongly supports the concept of
8 negotiating a trade agreement with a significant
9 U.S. trading partner provided that the European
10 Union agrees to a high standard comprehensive
11 agreement.

12 The U.S.-European trade agreement
13 presents an excellent opportunity to speed the
14 flow of trade by improving and harmonizing
15 regulations, and the EAA believes regulatory
16 harmonization should be the major focus of this
17 negotiation.

18 Regulations should be harmonized in
19 three areas, first, customs and trade
20 facilitation measures which are complementary to
21 the process of maximizing the benefits of tariff
22 reductions.

1 Specific opportunities with regard to
2 the EU in this area include separating the
3 physical release of goods from the duty and tax
4 collection process, providing for the immediate
5 release of express shipments upon arrival,
6 creating common data elements for import and
7 export to simplify the clearance process, and
8 reduce programming costs for both government and
9 industry, creating a single window to allow the
10 trade community to provide the information to
11 satisfy all government agency requirements with a
12 single data transmission, harmonizing the
13 informal entry level between the U.S. and the EU
14 to provide a simplified clearance process for
15 lower value goods that still require an entry,
16 enhancing the mutual recognition of our
17 respective trusted trader programs by providing a
18 common application process and a broader set of
19 common benefits for program membership, raising
20 the EU's current de minimis limit for duties of
21 150 euros, about \$170 U.S. dollars, to a more
22 commercially meaningful level.

1 The EU has announced its intention to
2 eliminate its current de minimis level for taxes
3 of 22 euros, about U.S. \$25, over the next two
4 years and replace it with a simplified system
5 that moves collection of taxes off the border.

6 The U.S. should encourage the EU to
7 ensure the new approach includes a simplified
8 process for collecting the taxes and a periodic
9 schedule for paying the taxes such as monthly or
10 twice yearly rather than the current transaction
11 by transaction basis.

12 Unfortunately, the plans the EU has
13 announced do not include a simple registration
14 system for foreign sellers and still rely heavily
15 on burdensome border controls.

16 Second, services trade, for
17 harmonizing regulations on services trade, the
18 U.S.-EU trade agreement should include binding
19 market access and national treatment commitments
20 in transportation and logistics services, a
21 delivery services annex where the parties commit
22 to nondiscriminatory treatment of non-postal

1 providers, a commitment to continually expand
2 aviation freedoms between the two parties to
3 create more efficient aviation services. Third,
4 air cargo regulatory harmonization.

5 Further harmonization of air cargo
6 regulations would create a more seamless process
7 and would enhance our mutual ability to avoid
8 incidents that would disrupt supply chains.

9 Such harmonization could include
10 common definitions of high risk cargo and related
11 protocols, common standards for screening
12 equipment, common training requirements, improved
13 intelligence sharing, including with the private
14 sector, and a common approach to providing
15 advanced air cargo supply chain information for
16 risk assessment which would avoid the need to
17 program systems to meet requirements of several
18 divergent regimes.

19 Finally, I spoke on Monday about the
20 need to ensure that under no circumstances would
21 the United States suggest it would lower its de
22 minimis level as negotiating leverage in these or

1 any other trade negotiations.

2 Such a step would retard the ability
3 of U.S. small and medium businesses to engage in
4 the ongoing growth of e-commerce and would
5 represent a burdensome new tax on U.S. consumers.

6 Thank you again for the opportunity to
7 testify and I look forward to your questions.

8 CO-CHAIR GRESSER: Thank you. Now
9 we'll go to Mr. Peter Tompa representing seven
10 associations of collectors of coins and cultural
11 items.

12 MR. TOMPA: Thank you. I'm appearing
13 on behalf of the American Numismatic Association,
14 the Ancient Coin Collectors Guild, the
15 Association of Dealers and Collectors of Ancient
16 and Ethnographic Art, the Committee for Culture
17 Policy, the Global Heritage Alliance, the
18 International Association for Professional
19 Numismatics, and the Professional Numismatics
20 Guild.

21 Collectors, the small businesses of
22 the art, antiquities and numismatic trade and

1 museums face product specific import and export
2 barriers justified as a means to combat looting
3 in unstable and war-torn countries, particularly
4 in the Middle East, but which make little sense
5 when applied to trade between the U.S. and EU.

6 The cultural goods they collect and
7 trade in fall under HTS USA 9705, collections and
8 collectors pieces, and HTS USA 9706, which is
9 antiques. We believe that U.S. negotiators
10 should work to streamline trade in these goods
11 between the U.S. and EU.

12 As set forth in our written comments,
13 the major justification given for trade
14 restrictions, ISIS looting of archeological sites
15 for profit in the Middle East, is greatly
16 overblown, and in any case, should have no impact
17 whatsoever on trade specifically between the U.S.
18 and EU.

19 As to exports between the U.S. and EU,
20 we suggest that U.S. negotiators work to allow
21 U.S. dealers and collectors to self-certify the
22 goods they seek to export to the EU were lawfully

1 on the market in the U.S. and were not believed
2 to be the direct products of illicit digs outside
3 or within the United States in order to gain
4 reentry into the EU without the need to secure a
5 formal EU import license.

6 We make this request in the wake of
7 rules that are no longer just proposed, but we
8 understand have been passed on December 11 by the
9 European Parliament relating to the import of
10 cultural goods into the EU, which based upon
11 reports we have received, may very well be
12 unworkable in practice.

13 U.S. trade negotiators should also
14 work with U.S. Customs and Border Protection and
15 EU officials to allow for the legal exports of
16 historical artifacts from the EU to the U.S.
17 under EU regulations adopted after the Convention
18 on Cultural Property Implementation Act became
19 law.

20 CPI import restrictions only apply to
21 cultural goods subject to export control of a
22 particular country. However, CBP has failed to

1 acknowledge the EU members are part of a common
2 market that allows for the export of
3 archaeological and ethnological objects with or
4 without a license according to the local law of
5 the exporting EU member.

6 Allowing entry of these objects
7 legally exported from the EU that are found on
8 designated lists for EU member countries like
9 Bulgaria, Cyprus, Greece, and Italy for which CPI
10 import certificates have been granted would
11 greatly facilitate the lawful trade in a
12 situation that could be specifically have been
13 contemplated by the CPIA which predates the EU's
14 export controls.

15 Thank you in advance for your efforts
16 to facilitate trade in cultural goods between the
17 U.S. and EU on behalf of collectors, the small
18 businesses of the art, antiques and numismatic
19 trade, and museums.

20 CO-CHAIR GRESSER: Thank you. Now to
21 Mr. Herman from the American Apparel and Footwear
22 Association.

1 MR. HERMAN: Thank you. My name is
2 Nate Herman. I'm the senior vice president for
3 supply chain at the American Apparel and Footwear
4 Association, the national association of the
5 apparel and footwear industry.

6 Through the power of global value
7 chains, our members directly employ millions of
8 Americans in such diverse areas as design,
9 manufacturing, compliance, logistics, and retail.

10 Our products are designed, made, and
11 sold in nearly every country around the world,
12 including the United States and European Union.

13 International trade has been good for
14 industry, but the persistence of high trade
15 barriers, be they in the form of tariffs, onerous
16 customs requirements, or burdensome regulations,
17 continues to inject unnecessary costs into our
18 supply chains.

19 Trade agreements are opportunities to
20 reduce these costs and expand the U.S. jobs our
21 global value chains support. It is through this
22 lens that we view the U.S.-EU trade agreement.

1 The goal of the negotiations should be
2 to craft an agreement that expands trade between
3 the United States and the EU while reducing
4 regulatory and market access costs currently
5 associated with those trade links.

6 The bottom line is that creating more
7 opportunities through trade agreements will
8 support far more U.S. jobs and growth than
9 restrictive rules.

10 I have six recommendations to achieve
11 this goal. We support the immediate elimination,
12 immediate and reciprocal elimination of the high
13 duties that both countries maintain on textiles,
14 travel goods, footwear, and apparel.

15 We also support the immediate
16 elimination of any retaliatory duties imposed by
17 the EU, as well as any retaliatory duties imposed
18 by the U.S. that led to the EU retaliation. The
19 duties imposed costs and activities, including
20 manufacturing activities in the U.S., and
21 undermine markets for U.S. exporters in Europe.

22 Two, the agreement should contain

1 flexible rules of origin for our products. The
2 bottom line is that yarn forward doesn't work.
3 When you require everything to be made in a trade
4 agreement region, you get 100 percent of nothing.
5 The numbers bear this out.

6 Today, free trade agreements account
7 for only 18.9 percent of total U.S. apparel
8 imports. That number has dropped dramatically
9 from 2003 where it represented 26.6 percent of
10 total U.S. imports even though over those last 15
11 years, the United States has entered into a
12 significant number of new free trade agreements.

13 The more flexible the rules are in an
14 agreement, the more everyone benefits. Fifty
15 percent of a large pie is much better than 100
16 percent of a small slice.

17 We need to incorporate sufficient
18 flexibilities into the rules of origin so that
19 different supply chains and the U.S. jobs they
20 support can take advantage of the agreement.

21 Even the recently concluded U.S.
22 Mexico Canada Agreement or the USMCA uses tariff

1 preference levels or TPLs to promote the export
2 of U.S. made apparel to Canada. These TPLs
3 recognize that apparel manufacturing jobs
4 sometimes need access to foreign textiles to be
5 competitive.

6 Similarly, we should explore
7 accumulation provisions with joint FTA partners
8 like Mexico. Currently, many U.S. yarn and
9 fabric exports are sent to Mexico where they are
10 knit and sewn into garments and imported back
11 into the United States.

12 How much more powerful would that
13 supply chain be if the apparel made in Mexico
14 using U.S. yarn and fabric would also have duty
15 free access to the European Union? The EU
16 already has similar provisions in many of its
17 trade agreements.

18 Three, we can promote usage of the
19 agreement by including facilitative customs
20 procedures such as those that were included in
21 the general customs chapter of the USMCA. We
22 believe the USMCA is the gold standard for trade

1 facilitation.

2 The agreement should also include,
3 among other things, proper enforcement that
4 treats trusted traders as partners and focuses
5 enforcement activities on traders who are more
6 likely to present risks.

7 We further urge that customs
8 provisions apply to the whole agreement and not
9 single out any one industry.

10 Finally, we support using these trade
11 agreement negotiations to increase the threshold
12 that the EU applies to its de minimis shipments.

13 Four, promote regulatory
14 harmonization. The EU and the United States both
15 maintain an extensive array of product safety,
16 chemical management, and labeling requirements
17 regarding apparel, footwear, textiles, and travel
18 goods.

19 In many cases, these are intended to
20 achieve the same goal, yet they often contain
21 different requirements such as testing
22 recertification that greatly add compliance

1 costs.

2 For example, although the U.S. and the
3 EU both regulate phthalates in child care
4 products, only the U.S. applies this rule to
5 children's pajamas, we think incorrectly. We
6 believe the U.S.-EU trade agreement presents and
7 important opportunity to achieve harmonization
8 and alignment for these regulations.

9 Five, any trade agreement should
10 reflect the U.S. and EU's shared commitment to
11 the protection of intellectual property rights.
12 This is not just about protecting American
13 businesses from damage to their reputation and
14 American jobs from being hurt by lost sales.

15 This is about child safety and knowing
16 that the pajamas a consumer bought for a newborn
17 will not result in a rash. This is about worker
18 safety, knowing that the shoes a consumer bought
19 were assembled in ethical factories.

20 This is about the environment and
21 knowing that the water used to dye the jeans a
22 consumer is wearing was properly treated.

1 And finally, number six, any U.S.-EU
2 agreement should protect the Berry Amendment
3 which requires all clothing, textiles, and
4 footwear purchased by the Defense Department be
5 made in the United States to maintain a warm
6 industrial base for national security.

7 Thank you again for providing us this
8 opportunity to testify. I would be happy to take
9 any questions.

10 CO-CHAIR GRESSER: Thank you. Ms.
11 O'Brien, please proceed.

12 MS. O'BRIEN: Thank you. Good
13 afternoon. My name is Rosemary O'Brien. I am
14 vice president of public affairs for CF
15 Industries, one of the leading manufacturers and
16 distributors of nitrogen products.

17 CF appreciates the opportunity to
18 appear before you today to address negotiating
19 priorities for the proposed U.S.-European Union
20 free trade agreement, and we have provided
21 detailed written comments to USTR.

22 I'd like to spend a few minutes

1 telling you about our company, its production
2 economics, and the importance of eliminating the
3 EU's 6.5 percent tariff on fertilizer imports as
4 part of the U.S.-EU trade agreement negotiations.

5 CF is a global leader in manufacturing
6 and distribution of nitrogen products, serving
7 both agricultural and industrial customers.

8 We operate world-class nitrogen
9 manufacturing facilities in the U.S. and we
10 distribute plant nutrients throughout a system of
11 terminals, warehouses, and associated
12 transportation equipment located primarily in the
13 Midwestern U.S.

14 The company employs about 2,000 people
15 in the United States and we also produce nitrogen
16 fertilizers in Canada, the United Kingdom, and
17 Trinidad as part of a joint venture.

18 We are the largest producer of a
19 product called UAN solutions globally, and we are
20 the largest producer of other nitrogen products,
21 including ammonia, urea, and ammonium nitrate in
22 the U.S.

1 Our products are produced from natural
2 gas feed stock. In other words, natural gas is
3 our raw material used to produce our products.
4 In 2017, natural gas accounted for about 47
5 percent of our total production costs, so the
6 cost of natural gas in relation to product prices
7 is a key driver of the economics of the nitrogen
8 fertilizer business.

9 In the past, U.S. natural gas prices
10 were very high and very volatile and less
11 favorable than natural gas prices in many other
12 producing countries making the export of our
13 domestically produced nitrogen products
14 uncompetitive.

15 Today, U.S. produced nitrogen
16 fertilizer exports are considerably more
17 competitive. The modernization of U.S. gas
18 prices to shale gas production along with
19 relatively strong nitrogen prices have
20 dramatically changed U.S. nitrogen producer
21 economics over the past few years. This prompted
22 CF Industries to invest \$5.2 billion to add new

1 nitrogen capacity in Louisiana and Iowa, all of
2 which came on stream in 2016.

3 While much of this capacity does serve
4 American farmers, CF does export UAN and urea to
5 its customers in the EU, and we would like to do
6 so on the same basis as EU producers exporting to
7 the U.S.

8 With respect to the EU, CF is
9 exporting UAN to address increasing demand for
10 this product due to a growing shortfall in supply
11 by local producers. Given our advantageous
12 production economics, CF's products will be
13 competitive in the EU if they are permitted to
14 compete on a level playing field.

15 The European Union continues to
16 maintain prohibitively high bound tariff rates at
17 6.5 percent on imports of most major fertilizers,
18 including urea and UAN. In contrast, imports of
19 these and other fertilizers from the EU enter the
20 U.S. duty free and have for almost a century
21 since 1922, even in periods of soaring U.S. gas
22 prices.

1 U.S. producers have directed a
2 substantial volume of their fertilizer exports to
3 the U.S., but this trade tends to flow one way.
4 For example, in 2017, U.S. imports of urea from
5 the EU totaled over 225,000 metric tons and were
6 valued at \$40 million while U.S. exports of urea
7 to the EU totaled less than 11,000 metric tons.

8 CF Industries has been down this road
9 before making the very same request.

10 Unfortunately, previous efforts to negotiate EU
11 fertilizer tariff elimination have been very
12 challenging.

13 In the T-TIP negotiations, the EU
14 would not agree to immediate tariff elimination
15 for fertilizers, placing them in a special energy
16 sensitive category even though the EU already
17 provides duty free treatment to fertilizer
18 imports from some major producing countries under
19 other trade agreements.

20 CF Industries respectfully requests
21 that the United States remain steadfast in
22 insisting on full elimination of EU fertilizer

1 tariffs immediately upon ratification of any
2 final U.S.-EU trade agreement.

3 CF Industries also requests that the
4 United States ensure that regulatory cooperation
5 with the EU is ongoing to minimize inconsistency
6 and member state implementation of rules
7 governing the use and handling of fertilizers.

8 While CF Industries does not seek
9 bilateral regulatory harmonization, we recommend
10 that USTR maintain an ongoing dialogue with the
11 EU to reduce or eliminate regulatory barriers
12 that may impede bilateral trade in fertilizers.

13 Finally, CF urges the United States to
14 obtain assurances from the EU that it will
15 actively solicit and consider the interests of
16 U.S. stakeholders when engaging in rulemaking
17 that impacts bilateral trade.

18 Thank you very much and I'm happy to
19 answer any questions you may have.

20 CO-CHAIR GRESSER: Thank you. Mr.
21 Sven Oehme from the European-American Business
22 Organization?

1 MR. OEHME: Yeah, good afternoon, Mr.
2 Chairman, and thank you for the opportunity to be
3 here and to testify today, and I also appreciate
4 the colleagues that are here sitting on your side
5 of the room and look forward to any questions
6 they might have.

7 The European-American Business
8 Organization is a consulting firm specializing in
9 transatlantic business development. It is a one-
10 stop shop and it helps companies that are looking
11 at expanding abroad. The customer base of our
12 company is mostly made up of SMEs.

13 The relevance of SMEs in today's
14 economy, in Europe, the category of small and
15 medium-sized businesses is made up of businesses
16 which employ fewer than 250 persons and have an
17 annual turnover not exceeding 50 million euros
18 and/or an annual balance sheet total not
19 exceeding 45 million euros.

20 In the U.S., the SBA sets small
21 business criteria based on industry, ownership
22 structure, revenue, and number of employees,

1 which in most circumstances may be as high as
2 1,500, but the cap typically is at 500 people,
3 employees.

4 In 2015, in the EU, businesses
5 employing fewer than 250 persons represented 99
6 percent of all enterprises in the EU. They
7 account for about two-thirds of total employment
8 in Europe. Enterprises with fewer than 250
9 persons employed contribute about 56 percent of
10 the total turnover in the EU.

11 The total number of SMEs in Europe is
12 estimated at about 23 million. In the U.S.,
13 there are about close to 28 million SMEs. Firms
14 with fewer than 500 workers account for 99.7
15 percent of those businesses. American SMEs
16 generate about 50 percent of U.S. GDP.

17 Important is a look at employment.
18 Small businesses created 1.9 million net jobs in
19 2015 and firms employing fewer than 20 employees
20 experienced the largest gains adding 1.1 million
21 net jobs.

22 Why is the SME versus large

1 enterprises discussion relevant? The discussion
2 about free trade was dominated for many years by
3 large multinational corporations. Research
4 showed however that SMEs play an important and
5 increasing role in today's trade environment.

6 The gross generating potential of SMEs
7 has been the subject of many academic studies.
8 Some recent studies suggest that large
9 enterprises are more procyclical, which means
10 that they are more affected by international
11 business cycles than SMEs are.

12 The role of SMEs is now being
13 recognized in trade agreements. The new United
14 States-Mexico-Canada agreement includes a chapter
15 on SMEs.

16 As SMEs are entities that don't have
17 the resources at their disposal that a large
18 multinational firm has, they are disadvantaged.
19 In many cases, the founder, owner, CEO is the
20 decision maker and has to take all of the aspects
21 necessary into account.

22 Many times these companies are

1 exporters and thus are confronted with all of the
2 challenges that all exporters are facing such as
3 barriers at the border, barriers behind the
4 border, financing of exports, etcetera. These
5 are all issues that make it much tougher for an
6 SME to send its products across national borders.

7 There's a lot of paperwork involved in
8 the process. While much is digital today, it
9 still means that forms need to be filled in,
10 signed, and presented.

11 There are requirements in Europe
12 presenting challenges to U.S. SMEs like the CE
13 Mark, REACH, the REACH legislation, regulation,
14 and also, which we frequently see, understanding
15 value added tax.

16 A new free trade agreement between the
17 U.S. and Europe may not resolve all of the issues
18 from the very beginning, but it can certainly
19 start a process that leads to freer and fairer
20 trade. Such an agreement can aim at cooperation
21 of the partner countries to increase the trade
22 and investment opportunities for SMEs.

1 Unfortunately, the process seems to be a bit slow
2 in Europe.

3 The U.S., Mexico, Canada agreement
4 mentions in one of its articles a committee on
5 SME issues and I just want to mention that a
6 predecessor to such a committee already exists
7 for about nine years.

8 It is the EU, U.S. Small and Medium
9 Enterprise SME Best Practices Workshop in the
10 framework of the Transatlantic Economic Council,
11 and we had the last meeting just a month ago in
12 Vienna.

13 One thing that I also want to mention
14 as the last time, SMEs are not just run and owned
15 by males or men. They are also -- and that was
16 an aspect that came up in Vienna. There are also
17 women, and women apparently have a much tougher
18 time in running SMEs, and getting financing,
19 etcetera. So I just wanted to mention that. In
20 the U.S., I guess, we would also look at minority
21 owned businesses, which is not an issue in Europe
22 apparently.

1 I thank you for the chance to speak
2 here and I look forward to any questions.

3 CO-CHAIR GRESSER: Thank you, and our
4 final witness on this panel, Mr. Brzytwa from the
5 American Chemistry Council.

6 MR. BRZYTWA: Thank you very much,
7 Chairman Gresser, and to the interagency panel.
8 The American Chemistry Council appreciates the
9 opportunity to testify today on the U.S. chemical
10 industries' priorities for a potential trade
11 agreement between the United States and the
12 European Union.

13 Trade in chemicals is already a strong
14 feature of the U.S.-EU trading relationship. In
15 2017, the U.S. exported more than \$20 billion in
16 chemicals to the EU. We imported more than \$25
17 billion.

18 A significant portion of the U.S.-EU
19 chemicals trade is between related parties.
20 Fifty eight percent of chemical exports and 80
21 percent of chemical imports are between related
22 parties.

1 The significant volume of trade
2 between related parties is due to the highly
3 integrated and efficient nature of the U.S. and
4 EU chemical manufacturing supply chains.

5 Removing both tariff and non-tariff
6 barriers to the free flow of chemicals between
7 the U.S. and EU would yield significant cost
8 savings for ACC members and our downstream
9 customers.

10 To that end, ACC is pleased to share
11 with you today an overview of our recommendations
12 and objectives for a successful trade agreement
13 with the European Union.

14 Number one, tariff elimination and
15 market access: The average tariff rate on
16 chemicals traded between the U.S. and EU is three
17 percent.

18 Immediately eliminating U.S. tariffs
19 on chemical imports could save U.S. chemical
20 manufacturers \$758 million annually. Immediately
21 eliminating EU tariffs on chemical imports would
22 reduce tariffs paid in the EU by \$614 million

1 annually.

2 We also urge the U.S. to eliminate its
3 Section 232 tariffs on steel and aluminum imports
4 from the EU and to avoid the imposition of any
5 quotas of any kind on imports of EU steel and
6 aluminum.

7 Number two, regulatory cooperation:
8 The EU and the U.S. made significant progress on
9 regulatory cooperation for the chemicals sector
10 during the T-TIP negotiations. The United States
11 has since made further progress in the sectoral
12 annex for chemical substances in the U.S.,
13 Mexico, Canada agreement, USMCA.

14 Based on this progress, we recommend
15 that the new U.S.-EU negotiations create a
16 distinct track for regulatory cooperation for the
17 chemicals sector and build on the outcomes of the
18 USMCA.

19 Number three, rules of origin for
20 chemical substances: Chemical manufacturers will
21 benefit from duty free trade only if the rules of
22 origin for chemical substances are flexible,

1 simple, and transparent.

2 We recommend that the United States
3 build on the rules of origin outcomes of the
4 USMCA, including creating a menu-based approach
5 that has the fewest number of exceptions as
6 possible.

7 Number four, digital trade: Digital
8 trade based on the free flow of data across
9 borders is critical to chemical manufacturers.
10 State-of-the-art provisions on promoting data
11 privacy, enabling open cross border data flows,
12 prohibiting data localization requirements, and
13 strengthening cyber security while respecting
14 intellectual property rights will be critical.
15 The USMCA provides a starting point for strong
16 provisions on digital trade.

17 Number five, trade facilitation: ACC
18 recommends that the United States and EU pursue a
19 WTO trade facilitation agreement plus approach to
20 customs and trade facilitation efforts in their
21 bilateral negotiations.

22 Number six, dispute settlement: We

1 recommend that the United States and European
2 Union agree on binding and enforceable state to
3 state dispute settlement.

4 We also urge both parties to accept
5 investor state dispute settlement provisions for
6 all sectors without limitations on the claims
7 that investors can make on specific investment
8 protections.

9 Number seven, duration of the
10 agreement: The U.S. and EU trade agreement should
11 provide maximum predictability and certainty to
12 investors and traders. We support making
13 improvements to the agreement as international
14 trade evolves, but recommend avoiding the
15 inclusion of time frames for an early termination
16 or sunset of the agreement.

17 Number eight, addressing sources of
18 marine litter: There is a global need to support
19 infrastructure development to collect, sort, and
20 process used plastics. Such infrastructure will
21 create opportunities for trade and investment and
22 help keep used plastics out of the environment,

1 thereby reducing marine litter. We recommend
2 that the U.S.-EU trade agreement build on the
3 marine litter language in the USMCA environment
4 chapter.

5 I will close with one final and urgent
6 recommendation from U.S. chemical manufacturers.
7 We strongly encourage the U.S. and EU to work
8 together and with other like-minded governments
9 to address trade distorting practices by other
10 countries.

11 ACC and its members stand ready to
12 assist the administration in the creation of a
13 coalition of allies in the WTO to protect and
14 enforce its trading principles around the globe.

15 Thank you again for the opportunity to
16 provide input on behalf of ACC members and the
17 businesses of chemistry in the United States.

18 CO-CHAIR GRESSER: Thank you all very
19 much. Let me now turn to David Weiner, Deputy
20 Assistant USTR for Europe to begin the
21 questioning.

22 MR. WEINER: Thank you, Ed, and thank

1 you to all of the witnesses for the testimony.
2 It's been very helpful. I was going to -- we'll
3 sort of move down the dais here and I'll start
4 with a couple of questions for Mr. Mullen. I had
5 actually initially a sort of two-part question on
6 your comments about regulatory harmonization.

7 You said in your submission and your
8 testimony just now that you recommended that it
9 would be, that you recommended that we would seek
10 agreement between the United States and the EU to
11 harmonize regulations across the entire supply
12 chain, including from product conception to
13 delivery to the consumer, to include design
14 manufacturing, distribution, and consumption.

15 That's a pretty ambitious proposal for
16 regulatory harmonization, so I was wondering
17 whether you could first explain perhaps whether
18 there are priorities in that sort of list of
19 areas across the supply chain in which I think
20 you feel and your companies feel that we do not
21 have sufficient harmonization, and maybe explain
22 whether there's areas of particular, in which the

1 lack of harmonization or lack of sort of
2 equivalence in our regulatory approaches is
3 particularly burdensome?

4 And then also maybe explain how
5 harmonization in those areas, some of which don't
6 immediately seem to relate to the delivery, to
7 the express delivery service industry itself, how
8 that would impact the industry and the member
9 companies in your association?

10 MR. MULLEN: Okay, thanks very much.
11 That's really a good question and really what
12 we're trying to get at there is that it's a
13 mistake anymore to look at products that are, as
14 being sort of built in one country and then
15 shipped to another country.

16 And supply chains truly have become
17 global and we have to look at this process from
18 that point of view, that there are many different
19 players involved in a product coming from,
20 starting in one place with raw materials and
21 ending up in someplace else where it gets sold.

22 And what we're really trying to get at

1 is the fact that two-thirds of the holds that are
2 put on shipments coming into the United States
3 now are placed by other government agencies, not
4 Customs and Border Protection, which mainly is
5 looking at security issues.

6 But the other government agencies, and
7 the Food and Drug Administration is a very large
8 one, agriculture requirements are a very large
9 one, consumer product safety, they need to look
10 at these products as being part of a system that
11 starts with a set of raw materials and goes
12 through a design process, a manufacturing
13 process, and then the delivery part of it is
14 really sort of the last step of it.

15 We think it would be enormously
16 helpful for countries to look at it from that
17 point of view and harmonize their regulations
18 across the entire process so that when a medical
19 device is coming in from the EU, the FDA is
20 confident that it's gone through a process that
21 is in harmony with U.S. regulations.

22 So we recommend the creation of a

1 group that would actually look at these kinds of
2 issues and try to come up with a set of best
3 practices that would work well for both sides, so
4 that's what we're trying to get at with that part
5 of it.

6 MR. WEINER: And is that, is it an
7 area in which you've had dialogue with European
8 counterparts? I would imagine that some of them
9 may feel similarly about that or --

10 MR. MULLEN: I'm not sure what the
11 question is.

12 MR. WEINER: Is there -- you have --
13 I think that there are some EU-based express
14 delivery companies, and I wonder whether they
15 have a similar perspective on this issue or on
16 these set of issues, the regulatory
17 harmonization?

18 MR. MULLEN: Well, even --

19 MR. WEINER: Or have you had
20 engagement with them?

21 MR. MULLEN: Even my members, of
22 course, have global operations and they go both

1 ways, and, yes, I would say it's equally a
2 problem for U.S. made devices that are going into
3 the EU. We think there needs to be better
4 harmony there.

5 MR. WEINER: Okay, thank you. So I'm
6 going to move down the dais here and ask some
7 questions of you, Mr. Tompa. I'm curious.
8 You're bringing to us a set of issues which are a
9 little bit new.

10 MR. TOMPA: Unusual.

11 MR. WEINER: Unusual for us, at least
12 with respect to USTR.

13 MR. TOMPA: Sure.

14 MR. WEINER: Our colleague from CBP
15 was not able to join us at the last minute, so,
16 but I'm curious to know whether you've -- you're
17 asking us -- and I'm sort of summarizing a little
18 bit, your testimony, all of which was quite
19 interesting.

20 But you're asking us to sort of
21 address in the context of a trade agreement where
22 we take on some binding rules between ourselves

1 and another party or parties, issues which, you
2 know, traditionally lie outside of sort of the
3 trade policy area, and --

4 But of course our trade agreements are
5 quite ambitious in scope in recent decades in the
6 United States and EU, in both the United States
7 and the EU, so we do address things that are sort
8 of trade related.

9 Do you -- are you -- can you point to
10 other agreements in recent years, other trade
11 agreements or principally trade agreements, that
12 address the kinds of issues that you're asking us
13 to address here, that would --

14 MR. TOMPA: No, I can't, but that's
15 because they really haven't been a serious issue
16 until recently, so it may be one of those
17 situations where there was not a need before, and
18 so it was never raised before.

19 And actually, the most, most of the
20 trade in our antiquities, especially -- I did
21 this on the behalf of a number of organizations,
22 but I'm outside counsel to the Numismatic Trade

1 Associations, and most of the trade is actually
2 between the EU and the U.S., so because of that,
3 it really just has not been an issue before.

4 MR. WEINER: Globally most of the
5 trade is between those two?

6 MR. TOMPA: Yes, yeah.

7 MR. WEINER: Okay, are you -- you said
8 in your testimony that there are, you know, you
9 are concerned in particular about new, existing,
10 and I guess some newly proposed EU rules --

11 MR. TOMPA: Yes.

12 MR. WEINER: -- that the European
13 Parliament approved or has voted on?

14 MR. TOMPA: Yes, they actually just
15 voted on it and I didn't get the details or a
16 reporting of the details until, like, 10 minutes
17 before I left, so I wasn't able to actually read
18 them.

19 In our written testimony, we summarize
20 what the rules were proposed as, and there may be
21 some changes from them, but you have to keep in
22 mind that they seem to be made with the idea that

1 we're talking about large value objects, and a
2 lot of the objects that the people I represent
3 deal in are quite low value, you know, like \$50,
4 etcetera.

5 So the idea that you're going to have
6 this kind of provenance information or you're
7 going to be able to have this document trail,
8 etcetera, back five, 10 years for something that
9 is, you know, worth \$50 is kind of a little bit--

10 It's impractical and it just won't
11 happen, and I think we outlined in our papers,
12 you know, why traditionally there was never any
13 requirement of provenance information, and even
14 when previously some countries started requiring
15 export certificates for these kinds of objects,
16 the ones that did wouldn't even do it on an
17 individual basis.

18 And the example I gave was Israel
19 where Israel would issue export permits for 500
20 ancient coins, but they wouldn't actually
21 identify them, so even if you kept the document,
22 and most people wouldn't keep the document, once

1 the thing was exported, you would just get rid of
2 it, you know, because there was no need to keep
3 it, it wouldn't be of any use today.

4 So to have a requirement that you have
5 to prove something back five, 10, 15, 20, 30
6 years, it's kind of just a little bit -- it's
7 asking for the impossible, especially for low
8 value items. We're not talking about, you know,
9 million dollar items here, you know, so that's
10 one of the issues that we're working with.

11 And it doesn't seem, from what I can
12 tell, that the -- the trade association also
13 engaged lobbyists in Europe and it doesn't seem
14 like it sank into the European Parliamentarians.

15 I will say that their process was
16 very, very rushed and it was very influenced by
17 sort of very overblown conceptions of what ISIS
18 was making based upon looting, and if you look
19 through our paperwork and look at the documents
20 that I cite, it goes through the bases for these
21 claims and debunks all of them.

22 But basically they were started mainly

1 by the Syrian government and the Russian
2 government as part of their effort to sort of
3 paint this as, you know, their war in Syria as,
4 you know, something that was noble as opposed to
5 what it really was.

6 MR. WEINER: Just one additional
7 question, you emphasize in your statement and
8 your written materials that these are, of course,
9 in large part small businesses, I guess, on both
10 sides --

11 MR. TOMPA: That's correct.

12 MR. WEINER: -- and individuals, small
13 firms that are doing this.

14 MR. TOMPA: Yeah, I could elaborate on
15 that.

16 MR. WEINER: Yeah.

17 MR. TOMPA: Most of them are solo
18 proprietors, and I would say in the United
19 States, I'd say a third of them are actually part
20 time, so they're collectors and, you know, they
21 just do this as a part time thing because they
22 love the object.

1 They love collecting it and it's just
2 a way to sort of take that to a different level,
3 so they have other jobs. I could see them
4 dropping out of doing this if the regulations get
5 too extensive.

6 MR. WEINER: Thank you.

7 MR. TOMPA: Thank you.

8 CO-CHAIR GRESSER: I have a question
9 for Mr. Herman. I'm quite interested in your
10 comments on methods of enforcing anti-
11 counterfeiting policy against third party, busy
12 third party marketplaces. What commitments would
13 you like to see in a FTA or in a trade agreement
14 to address these concerns?

15 MR. HERMAN: So there's been a
16 concern, we've raised it in the USTR's notorious
17 markets report every year, of third party
18 marketplaces have become platforms for the sale
19 of counterfeit products because the platforms
20 have no regulation of the sellers on the
21 platform, and so they can put anything on there,
22 portray it as a legitimate product, and sell it.

1 And so what we would be asking as part
2 of a trade agreement is to have the European
3 Union regulate platforms that are based in the
4 European Union to ensure that they, that they're
5 checking the sellers and making sure they're
6 legitimate, that they have rights to sell the
7 products that they're selling, and that they're
8 not counterfeit products, and so that's basically
9 what we're looking for.

10 CO-CHAIR GRESSER: Thank you. Perhaps
11 we could turn to our colleague from the Treasury
12 Department.

13 MR. MEIER: Ms. O'Brien, thank you for
14 your testimony. You note that CF Industries is
15 also producing fertilizer in Canada, United
16 States, and in Trinidad, excuse me, Canada, the
17 United Kingdom, and Trinidad.

18 If duty free access were achieved,
19 what percentage of the fertilizer exported by
20 your company to the EU do you anticipate will be
21 of U.S. origin?

22 MS. O'BRIEN: For CF Industries, the

1 majority of our production is U.S. based, so we
2 have five world scale plants in the U.S. and two
3 in Canada, but the majority of our export
4 capability is out of our Donaldsonville,
5 Louisiana facility where we have four docks where
6 we can export our product.

7 And most of our product is going to be
8 for U.S. farmers, as I said in our testimony, but
9 because of the ebb and flow of demand and
10 weather, we do have opportunities to export.
11 When we do, we would like to send that product to
12 Europe or other parts of the world, and Europe is
13 a great growing market for us.

14 So I can't give you a particular
15 percentage of U.S. origin, but most of it would
16 have to be U.S. origin because of our logistics.

17 MR. MEIER: Okay, thank you. It's
18 interesting that the EU cited nitrogen fertilizer
19 as energy sensitive given that they are a net
20 exporter. Could you explain more about why it
21 has this designation?

22 MS. O'BRIEN: I'm sorry. I didn't

1 hear the last part of your question.

2 MR. MEIER: Could you explain more
3 about why nitrogen has the energy sensitive
4 designation given that the EU is a net exporter?

5 MS. O'BRIEN: I mean, in our view,
6 that is purely a protectionist measure on their
7 part. The commodities are completely fungible.
8 Our products and their products are produced the
9 same way with the same energy intensity and, you
10 know, we just viewed it as another example of
11 trying to find a way through the T-TIP
12 negotiations to preclude us from exporting our
13 products to Europe.

14 MR. MEIER: Thank you. You reference
15 a forthcoming EU fertilizer regulation and the
16 need for regulatory cooperation minimizing
17 barriers. Can you provide an example of how the
18 lack of EU harmonization and inconsistencies in
19 member state implementation has adversely
20 impacted bilateral trade?

21 MS. O'BRIEN: Yeah, we are watching
22 right now a couple of situations that we're

1 concerned about. I mean, we've been -- as others
2 have spoken here today about the REACH, the EU
3 REACH program, that's extremely complex, and
4 demanding, and continues to be a significant
5 barrier to trade in our view.

6 The EU also has a series of
7 regulations that govern the movement of
8 fertilizer, the labeling, the nutrient content,
9 and that can be interpreted by each member state
10 in a unique way, so we are concerned about that.

11 We also know that they recently
12 adopted some new security regulations that cover
13 ammonium nitrate-based fertilizers and
14 potentially UAN, and that's going to affect how
15 these products are transferred and sold in the
16 EU, so we are very concerned about how that is
17 interpreted by the member states, and we're
18 really looking here for best practices as these
19 regulations are developed.

20 Finally, there's a new regulation on
21 EU fertilizer that just covers a whole host of
22 topics on the environmental side, including

1 groundwater, drinking water, and emissions
2 ceilings, and again, we are concerned about how
3 the different member states are going to
4 interpret these new upcoming regulations and we
5 just want to make sure that our government is
6 involved so that we can see best practices
7 implemented on those.

8 MR. MEIER: Thanks, just one last
9 question for you. Thank you for raising the
10 impact of EU fertilizer tariffs on U.S. exports
11 and suggesting that USTR seek elimination of
12 these tariffs. Do you anticipate any resistance
13 from EU competitors and are potential customers
14 in the EU pressing for greater competition among
15 fertilizer producers?

16 MS. O'BRIEN: We certainly expect our
17 counterparts in Europe to be opposed to our
18 position on reducing these tariffs immediately to
19 zero because their position has always been
20 either don't eliminate the tariff or stage it.

21 Under T-TIP, it was they who asked for
22 a staging of seven years, which we found totally

1 unacceptable since they have complete access here
2 now at zero rates.

3 And what's so fascinating about the
4 farming community is there is a demand for our
5 products, especially the UAN product. They just
6 don't make enough to supply European farmers, and
7 so we have customers asking us to please supply
8 them with this product.

9 So the farming community basically is
10 asking for more U.S. products, more competition
11 in the fertilizer space.

12 MR. MEIER: Thank you.

13 MR. O'BYRNE: This question is for Mr.
14 Oehme. Thank you for your comments on how small
15 and medium sized enterprises are often
16 disproportionately affected by transatlantic
17 barriers to trade.

18 Could you elaborate on the benefits a
19 U.S.-EU trade agreement would have for SMEs and
20 what sort of provisions or commitments in
21 particular would help grow their market access?
22 Thank you.

1 MR. OEHME: Well, many of the aspects
2 have been mentioned today. Obviously the SMEs
3 are taking part in producing products at a
4 smaller scale than larger companies, so the
5 regulatory issues apply to SMEs just as to the
6 extent that they apply to large companies, so
7 that would certainly help very much.

8 And I think it's also important that
9 there is the awareness of SMEs and that they can
10 also play an important role, and many of them in
11 a certain niche have a large market share, so
12 that when you really look at the individual
13 companies, they may be small, but they can have a
14 large market share.

15 And one aspect that came up at our
16 last meeting in Vienna of this group that I
17 mentioned, that is where -- and then USTR,
18 Treasury, Commerce, and SBA are part of, is the
19 fact that, at least from what we heard in Europe,
20 women, if they are running SMEs or if they're
21 starting SMEs, are disadvantaged because the
22 banks don't give them the funding.

1 Some authorities may not take them
2 seriously, and that's maybe not something that
3 can be regulated in a free trade agreement, but
4 it is an issue that should be brought to the
5 attention, that there is unequal treatment of the
6 various SMEs.

7 MR. O'BYRNE: Thank you.

8 MR. HENRY: I have a question for Mr.
9 Brzytwa from the American Chemistry Council. You
10 advocate for greater regulatory compatibility and
11 cooperation in the chemical sector and point to
12 the USMCA chemicals annex as a possible basis for
13 that.

14 Given the fundamentally different
15 regulatory approaches taken under EU's REACH
16 framework and the U.S. Toxic Substances Control
17 Act, in which areas do you think concrete
18 compatibility improvements are feasible without
19 changes to one system or another?

20 MR. BRZYTWA: Well, thank you for that
21 question. I think we recognize that the two
22 systems for chemical management respectively in

1 the United States and EU are, you're never going
2 to be able to harmonize them. This is why we're
3 promoting regulatory cooperation to create
4 efficiencies for our chemical manufacturers.

5 And as I said, chemical trade is very
6 much between related parties. So we want to
7 identify the right set of topics where we can
8 cooperate, where we can create those
9 efficiencies.

10 If you look at the USMCA, it
11 identifies a core set of issues for further
12 discussion between the three USMCA parties, and
13 number one on that list, if I'm not mistaken, is
14 the GHS, the globally harmonized system for
15 chemicals classification and labeling.

16 We think this is a prime area for
17 additional new discussions between the regulators
18 in the EU and U.S. regulators, the EPA. I think
19 we can have further conversations about
20 information sharing, safety data sheets, how we
21 can actually make the process of regulation less
22 costly for our businesses.

1 And if I may say, we've been talking
2 about small and medium sized enterprises here.
3 It's expensive to comply with regulation, as we
4 know, and I think it's even disproportionately
5 expensive for SMEs.

6 If we're going to have robust
7 regulatory cooperation between the U.S. and the
8 EU, we should really look to making sure that
9 SMEs are going to be the beneficiaries of that,
10 and that's particularly true in the chemicals
11 area.

12 MR. HENRY: Thank you. In the
13 document, you advocate seeking the inclusion of
14 chemical reaction rules of origin. How do the
15 chemical reaction rules in the USMCA and the EU
16 and Canada FTA compare, and does the EU agreement
17 with Canada include any new rules that the U.S.
18 should consider?

19 MR. BRZYTWA: Yeah, I'll admit I have
20 not done a deep dive on the Canada-EU agreement,
21 and I think that's probably something that we
22 will look at in the future.

1 We're engaging in discussions with the
2 EU industry to see where we can provide some
3 common perspectives. We did this with our
4 counterpart associations in Mexico and in Canada
5 when it came to the USMCA and we were able to
6 provide some really good input to the three
7 parties.

8 You know, if you look at the input we
9 gave in that process, I think it would be, you
10 know, broadly is reflected in the USMCA outcomes,
11 and this is why we're recommending the USMCA as a
12 starting point. If we're able to get on the same
13 page as the Canadian industry, you know, I think
14 we're confident that we can do that with the EU
15 industry.

16 As a matter of fact, the United
17 States, well, ACC and our counterpart in the EU,
18 Cefic, did submit a joint proposal on rules of
19 origin for T-TIP, and I think we're going to look
20 at that to see if we want to make any changes to
21 that based on progress we've made respectively
22 since.

1 MR. HENRY: Thank you.

2 CO-CHAIR GRESSER: Well, we are just
3 about out of time for this panel. This has been
4 a very interesting set of presentations and we
5 appreciate it very much.

6 Before closing, we would just like to
7 ask is there anything that any of you would have
8 liked to raise, but didn't have the chance to do
9 so, or anything in the proceedings you'd like to
10 respond to? And if not, thank you very much on
11 behalf of the TPSC and the panel is closed.

12 (Whereupon, the above-entitled matter
13 went off the record at 2:33 p.m. and resumed at
14 2:42 p.m.)

15 CO-CHAIR GRESSER: Thank you all very
16 much. We are beginning our fifth panel of the
17 day. This will look at the automotive sector.
18 We are fortunate to have with us Charles Uthus
19 from the American Automotive Policy Council, Paul
20 Ryan of the Association of Global Automakers, Ann
21 Wilson with the Motor Equipment Manufacturers
22 Association, and Jennifer Thomas of the Alliance

1 of Automobile Manufacturers.

2 As in previous sessions, we will start
3 on my right or your left and go one by one. And
4 so I'd like to invite Mr. Uthus to kick it off.

5 MR. UTHUS: Thank you very much.

6 Good afternoon. I am Charles Uthus,
7 Vice President Automotive Policy Council. I am
8 also a chair of ITAC-2, which is Automotive and
9 Capital Goods ITAC.

10 AAPC represents the common public
11 policy interest of America's automakers, FCA,
12 Ford, and General Motors. We appreciate this
13 important opportunity to provide our views and
14 recommendations on the proposed U.S.-EU trade
15 agreement before the Trade Policy Staff
16 Committee.

17 We understand that currently autos are
18 not formally among the sectors that are covered
19 in the talks but we believe that the U.S. auto
20 industry would benefit from their inclusion. As
21 the largest manufacturing and exporting sector in
22 the United States, America's automotive industry

1 has a major stake in a potential trade agreement
2 with the European Union.

3 Today the U.S. and the EU together
4 account for 31 percent of global auto production
5 and 37 percent of global auto sales. Moreover,
6 U.S.-EU auto trade, including vehicles and parts,
7 accounts for 11 percent of total trade between
8 the U.S. and EU.

9 We believe a successful trade
10 agreement with the EU would benefit the
11 industries, workers, and consumers on both sides
12 of the Atlantic. For American automakers, such
13 an agreement would only expand U.S. auto exports
14 to Europe but, through regulatory convergence, it
15 would also boost our auto exports to third
16 countries that have limited imports to vehicles
17 certified to European standards, primarily from
18 exclusions of vehicles certified to the equally
19 robust U.S. auto safety and environmental
20 standards.

21 So to put some numbers on this, last
22 year the EU exported 1.4 million cars and light

1 trucks to the U.S. worth about \$43 billion.
2 Meanwhile, American vehicle exports to the EU
3 were worth about \$8.6 billion. One reason for
4 the disparity in auto trade volume is the EU's
5 relatively high import tariff on passenger
6 vehicles, which is 10 percent, compared to 2.5
7 percent in the U.S. But another, perhaps less
8 well-known reason for the limited U.S. exports
9 volume to Europe is the need to modify a vehicle
10 to comply with different auto safety standards in
11 the European Union.

12 Modifying a U.S.-certified vehicle to
13 meet European standards can cost millions of
14 dollars per vehicle program. Not only does this
15 make it difficult for our vehicles to be sold in
16 Europe, but also makes it difficult for many
17 vehicles manufactured in the United States to be
18 sold in third country markets that exclusively
19 accept European auto standards.

20 Until recently, the different U.S. and
21 EU auto standards did not pose a significant
22 barrier to automotive trade to third markets,

1 since these markets typically accepted both U.S.
2 and EU certified vehicles. However, for more
3 than a decade, the EU has been successful in
4 persuading other countries to accept vehicles
5 certified exclusively to European standards.
6 When this happens, more often than not, third
7 countries move to solely accept those just
8 European standards at the exclusion of shutting
9 American cars and trucks out of critically and
10 rapidly growing markets around the world.

11 With regard to auto standards and
12 regulations, we believe two goals should be
13 pursued by the negotiators. First, any U.S.-EU
14 agreement must clearly articulate a process that
15 at the earliest stage possible directs
16 coordination and cooperation between U.S. and EU
17 regulators and harmonization on all new vehicle
18 standards and regulations deployed. Second is
19 the creation of a comprehensive approach that
20 will pave the way for each party to mutually
21 recognize and accept vehicles built to the other
22 party's existing auto standards and regulations.

1 Developing a framework for regulatory
2 convergence and mutual recognition is vital to
3 the continued success of American auto exports.
4 If, however, no action is taken the U.S. will
5 continue to experience a steady erosion of the
6 ability to cost-effectively export its vehicles
7 to Europe and beyond. Inaction would also open
8 the door for the creation of other sets of
9 standards, which could further supplant the
10 acceptance of U.S.-certified vehicles in other
11 markets.

12 With regard to tariffs, we recommend
13 that, in close consultation with industry
14 stakeholders, the U.S. secure appropriate phase-
15 downs of the auto tariffs that U.S. exports face
16 in the European Union. However, we believe that
17 any potential trade agreement must be viewed in
18 its entirety, which requires that only -- that
19 the U.S. only agree to tariff phase-outs that are
20 commensurate with the level of the overall
21 improved access American automakers would gain.

22 And finally, whether through the U.S.-

1 EU trade negotiations or through separate
2 channels, we urge the administration to avoid
3 imposing any new tariffs on imported vehicles or
4 parts, particularly tariffs that would be imposed
5 as part of the ongoing 232 auto investigation.
6 The 232 auto tariffs would almost certainly end
7 the U.S.-EU trade talks and lead to retaliation
8 that would also hurt America's automakers and
9 consumers.

10 In conclusion, American automakers
11 believe the trade agreement negotiations with the
12 EU are a critical opportunity and represent a
13 win-win-win scenario for our sector. If
14 successful, it will allow our automakers to gain
15 improved access to the EU auto market, gain
16 improved access to markets that currently only
17 accept European standards, and will help America
18 maintain its leadership in global auto standards
19 development.

20 Thank you again for the opportunity to
21 share our views and recommendations.

22 CO-CHAIR GRESSER: Thank you very

1 much.

2 Let's now move to Mr. Ryan.

3 MR. RYAN: Thank you very much, Mr.
4 Chairman.

5 Members of the Trade Policy Staff
6 Committee, good afternoon. My name is Paul Ryan
7 and I am the Vice President of Trade and
8 Competitiveness for the Association of Global
9 Automakers. Global Automakers represents the
10 U.S. subsidiaries of 12 international automobile
11 manufacturers, as well as suppliers and a handful
12 of automotive trade-related associations.

13 I am also here today on behalf of Here
14 for America, which represents all international
15 automakers operating in the United States, as
16 well as several suppliers.

17 International automakers have invested
18 \$82 billion in the United States and become a
19 part of the American manufacturing landscape. In
20 fact, 14 companies now produce cars and trucks in
21 the United States and a 15th is scheduled to
22 begin production in 2021. Ten of these 14

1 companies originated outside the United States
2 and most have been building vehicles here for
3 decades, including three of the four current U.S.
4 producers that originated in Europe.

5 International auto companies are
6 deeply enmeshed in the U.S. communities in which
7 they operate. Combined, these companies employ
8 133,000 Americans at nearly 500 facilities and
9 they create jobs for some 1.3 million Americans.
10 Importantly, international automakers produced
11 nearly half of all the cars, SUVs, vans, and
12 light trucks made in America last year and
13 accounted for nearly half of all U.S. vehicle
14 exports.

15 For their part, European-based
16 automakers have invested more than \$30 billion in
17 manufacturing, R&D, design, and other facilities
18 here in the United States, accounting for over
19 200,000 direct, indirect, and induced American
20 jobs. These companies collectively produced over
21 800,000 cars in 2017. One of these producers has
22 located its largest worldwide manufacturing

1 facility here in the United States and all
2 actively promote the dissemination of workforce
3 skills necessary to their advanced production
4 operations.

5 significantly, many of these producers
6 export as much as 60 percent of all of the
7 vehicles they build in America each year to
8 customers around the world.

9 Mr. Chair, a trade agreement with the
10 European Union can promote, in our view, economic
11 growth, increased jobs, can benefit consumers,
12 and enhance the global competitiveness of U.S.
13 producers. We also believe that these measures
14 that I intend to outline will help advance these
15 complementary objectives but there are, however,
16 trade actions currently in place that we believe
17 complicate the negotiating process and which we
18 also believe should be resolved prior to
19 negotiations with the EU.

20 First, the 232 tariffs on steel and
21 aluminum are damaging the U.S. automobile
22 industry and they are contrary to the spirit of

1 proposed negotiations with the EU. We believe
2 they should be removed immediately.

3 A second issue involves the threat of
4 additional tariffs on autos and auto parts under
5 the current Commerce Department's Section 232
6 investigation. In our view, there is no credible
7 justification for the idea that automotive
8 imports threaten our national security. In fact,
9 the growth of international automobile
10 manufacturers in the United States during the
11 past quarter century proves otherwise.

12 Mr. Chair, there are five key issues
13 that I would like to urge the administration to
14 consider as it begins the negotiation of a trade
15 agreement with the EU. First, we believe that
16 such an agreement should include the auto sector
17 and that it should also embrace global
18 harmonization for future automotive standards and
19 regulations. We also recommend that the United
20 States and the EU should work through global
21 bodies like the U.N.'s Working Party 29 to the
22 greatest extent possible.

1 Both the U.S. and the EU have strong
2 regulatory regimes that provide a solid
3 foundation for mutual recognition, which we
4 believe will not compromise vehicle safety or
5 environmental performance but which will promote
6 trade and economic growth. In fact, the Peterson
7 Institute for International Economics has
8 estimated that the removal of regulatory
9 differences in autos could increase trade by 20
10 percent.

11 Second, we believe that all vehicle
12 tariffs should be eliminated at the earliest
13 possible opportunity. While our member companies
14 have U.S.-produced products that compete in the
15 U.S. market, immediate duty-free treatment of
16 autos and auto parts would benefit all U.S.
17 automotive producers, their workers, and
18 ultimately their consumers in the United States
19 and in the European Union.

20 We recognize that, as with other trade
21 agreements, there may be an interest in including
22 an automotive rule of origin as part of any

1 tariff concessions that are included in this
2 agreement. Should negotiators pursue such a
3 rule, we believe it should be a balanced,
4 flexible, rule and one that is consistent with
5 the tariff benefits that are obtained.

6 Third, in today's world, a constant
7 stream of data flows seamlessly across our
8 national borders. It is, therefore, essential to
9 have clear consistent rules in place that allow
10 for the unimpeded flow of data and we, therefore,
11 encourage the inclusion of provisions that
12 prohibit the imposition of localization
13 requirements, as well as language to promote e-
14 commerce.

15 Fourth, we believe that a U.S.-EU
16 trade agreement should include customs and
17 facilitation provisions that mirror those in
18 recent free trade agreements with Mexico, Canada,
19 and South Korea.

20 And finally, we believe that currency
21 is an international economic issue more properly
22 addressed in a multilateral context, such as the

1 G7 or the G20, rather than in a bilateral or
2 regional trade agreement. If currency provisions
3 are, however, included in a U.S.-EU agreement,
4 those disciplines, in our view, should not
5 restrict U.S. policy options or preempt
6 multilateral treatment of the issue.

7 Mr. Chair and members of the TPSC, I
8 appreciate the opportunity to bring these views
9 to your attention and I am happy to answer any
10 questions that you may have.

11 CO-CHAIR GRESSER: Thank you.

12 Ms. Wilson.

13 MS. WILSON: Thank you.

14 Good afternoon. My name is Ann Wilson
15 and I am the Senior Vice President of Government
16 Affairs for the Motor and Equipment Manufacturers
17 Association. MEMA is a trade association
18 representing more than 1,000 suppliers that
19 manufacturer new original equipment and
20 aftermarket components and systems for use in
21 passenger cars and commercial vehicles. Vehicle
22 suppliers are the largest employer of

1 manufacturing jobs in the United States, directly
2 employing over 871,000 Americans in all 50
3 states. Supplier manufacturing jobs have
4 increased over 19 percent since 2012, in large
5 part because of the investment in new innovative
6 technologies that are dependent on a global
7 supply chain.

8 I am pleased to be here today to
9 address our priorities for a free trade agreement
10 with the European Union. The EU is a critical
11 trading partner for the U.S. vehicle parts
12 manufacturers. MEMA supports this opportunity
13 for the U.S. to strengthen our trading
14 relationship with the EU and we urge both parties
15 to arrive at a trade agenda that is mutually
16 acceptable. If the U.S. and the EU decide to
17 include vehicles and vehicle parts within that
18 discussion, MEMA urges the parties to address the
19 following issues: agree to terms that exempt the
20 EU from Section 232 tariffs on steel and aluminum
21 imports, as well as from any potential tariffs
22 resulting from a Section 232 investigation on

1 automobile and automotive parts without any caps
2 or quotas; allow for regulatory convergence and
3 mutual recognition of existing standards,
4 removing technical barriers to trade without
5 further modification, testing, or certification,
6 provided that safety levels and environmental
7 protection are not lowered; and finally, address
8 non-tariff barriers to trade.

9 MEMA has consistently opposed the
10 imposition of Section 232 tariffs and believes
11 that the United States and the EU must agree to
12 terms related to the current Section 232 tariffs
13 on steel and aluminum and any potential Section
14 232 tariffs on automobiles and their parts.

15 Moreover, MEMA would urge the parties
16 to agree to a full exemption without any caps or
17 quotas. Addressing these exemptions would
18 signify the importance of our trading
19 relationships and provide the ongoing stability
20 that suppliers need to thrive in the United
21 States. If these matters are not addressed, U.S.
22 suppliers and OEMs will be less competitive and

1 less profitable.

2 This afternoon, I wanted to spend the
3 larger share of my time discussing an issue of
4 specific importance between the U.S. and the EU,
5 regulatory convergence and mutual recognition.

6 The U.S. vehicle industry is
7 undergoing one of the most significant
8 technological transformations to the future of
9 our mobility. These advances are improving
10 vehicle safety and efficiency in unprecedented
11 ways, yet minor regulatory differences between
12 the U.S. and the EU are costly for the industry
13 and the end consumer.

14 Therefore, MEMA urges USTR to revisit
15 regulatory convergence, since this has the
16 potential to breakdown unnecessary technical
17 barriers while maintaining the fundamental
18 structure of each regulatory system. This can be
19 done utilizing resources of effectively and
20 respecting sovereignty without sacrificing
21 vehicle safety or environmental performance.
22 This is of particular importance for new forward-

1 looking standards on advanced technologies.

2 At the same time, MEMA believes that
3 aligning or mutually recognizing each other's
4 regulatory schemes would open opportunities for
5 U.S. vehicle suppliers to access the European
6 marketplace. MEMA urges the parties to establish
7 a pathway for mutual recognition of existing
8 standards without further modification, testing,
9 or certification, again, providing that levels of
10 safety and environmental protection are not
11 lowered. This will not only tackle non-tariff
12 barriers by allowing U.S. FMVSS-certified
13 vehicles and parts into the EU but will also
14 cultivate opportunities to align in the
15 development of new future standards for new
16 technologies.

17 Our industry is committed to work with
18 the USTR and the Departments of Commerce and
19 Transportation to develop these practical
20 approaches to these challenges. MEMA stands
21 ready to fully participate in the negotiations.

22 I would like to thank you for your

1 time this afternoon and would be happy to answer
2 your questions.

3 CO-CHAIR GRESSER: Thank you very
4 much.

5 Now, Ms. Thomas.

6 MS. THOMAS: Thank you.

7 Good afternoon. I am Jennifer Thomas.
8 I am the Vice President of Federal Government
9 Affairs at the Alliance of Automobile
10 Manufacturers. The Alliance is a trade
11 association representing 12 automakers, both
12 domestic and international nameplates. Together,
13 Alliance members represent approximately 70
14 percent of new car sales in the U.S.

15 Thank you for the opportunity to be
16 here and express our views on the negotiating
17 objectives for a potential U.S.-EU free trade
18 agreement. Bear with me because you are going to
19 hear a lot of the same themes that you have
20 already heard from my fellow panelists but I
21 think that underscores the importance of these
22 issues.

1 Automakers are encouraged by the work
2 conducted thus far by the U.S.-EU Executive
3 Working Group launched in July. While autos were
4 not included in this initial effort, we remain
5 hopeful that autos will be part of the formal
6 U.S.-EU bilateral negotiations.

7 The case for a strong automotive
8 chapter within a U.S.-EU agreement is clear. The
9 U.S. and EU are the second and third largest
10 passenger vehicle producers and vehicle markets
11 in the world. Automotive is the largest
12 exporting sector in both the U.S. and the EU,
13 equaling ten percent of transatlantic trade. An
14 increase in bilateral auto trade would account
15 for more than one-third of all gains in total
16 bilateral trade flows, more than any other
17 sector.

18 Formalizing our strong transatlantic
19 relationship in the form of a free trade
20 agreement would strengthen the U.S. and EU roles
21 as global auto standard setters, preventing the
22 emergence of a third set of potentially

1 conflicting or inconsistent regulations. A U.S.-
2 EU free trade agreement represents a unique
3 opportunity to break down regulatory barriers in
4 the auto sector, while maintaining high-level
5 safety and environmental performance. Greater
6 regulatory convergence will lower cost, create
7 jobs, enhance the competitiveness of the
8 transatlantic auto industry, and promote good
9 regulatory practices in the global marketplace.

10 We strongly recommend that the two
11 partners prioritize efforts related to regulatory
12 convergence of existing automotive safety
13 standards and the harmonization of future
14 automotive standards. Much work was conducted in
15 this area as part of the Transatlantic Trade and
16 Investment Partnership negotiations under the
17 previous administration and it would be a missed
18 opportunity to not continue building on the
19 progress made during these discussions. In fact,
20 the Peterson Institute concluded in a 2015
21 analysis that as much as \$20 billion could be
22 gained annually as a result of U.S.-EU auto

1 regulatory convergence.

2 We encourage both partners to again
3 prioritize three pillars as part of the upcoming
4 negotiations:

5 1) Equivalence of existing automotive
6 safety standards and harmonization of future
7 regulations;

8 2) Improve and strengthen the U.N.
9 WP.29 Global Technical Regulation process; and

10 3) Coordination of research and
11 regulatory development for future regulations.

12 While the Alliance certainly commends
13 the administration for initiating bilateral
14 negotiations with the EU, I'd be remiss if I
15 failed to stress that any potential benefits
16 derived from a U.S.-EU free trade agreement could
17 be completely eliminated, should the
18 administration impose steep tariffs on imported
19 autos and auto parts as a result of the ongoing
20 Department of Commerce Section 232 auto
21 investigation.

22 If implemented, increased auto tariffs

1 would pose a material threat to the economy and
2 may result in the loss of as many as 700,000 jobs
3 across the U.S. With this forthcoming U.S.-EU
4 trade agreement, we strongly encourage the
5 administration to lift the threat of increased
6 auto tariffs by dropping this investigation.

7 Similarly, the Alliance urges the
8 administration to eliminate these Section 232
9 tariffs on imported steel and aluminum. The
10 success of our nation's auto sector continues to
11 be undermined by these tariffs. Over the past
12 year, automakers have witnessed a more than 30
13 percent increase in domestic steel prices. These
14 steep and unexpected increases in the price of
15 key manufacturing inputs are driving up
16 production costs for all U.S. automakers.
17 Removing the Section 232 steel and aluminum
18 tariffs and the threat of Section 232 auto
19 tariffs would provide both the industry much-
20 needed certainty and strengthen the U.S.-based
21 auto industries standing in the global market.

22 We will applaud the administration for

1 its efforts to pursue a U.S.-EU bilateral trade
2 agreement and strongly encourage the
3 transatlantic partners to again prioritize the
4 convergence of existing automotive safety
5 standards and the harmonization of future
6 standards. Resolving these non-tariff barriers
7 will help facilitate the flow of free trade
8 across the Atlantic and cement the partners'
9 standing as leaders in establishing global
10 regulatory standards. After all, pursuing market
11 access opportunities and lowering, not erecting,
12 barriers to free trade is the most effective way
13 to achieve our shared goal of growing U.S.
14 manufacturing and jobs.

15 Thank you again for the opportunity to
16 be here today.

17 CO-CHAIR GRESSER: Thank you all very
18 much.

19 David, would you like to start
20 questioning?

21 MR. WEINER: Sure, thank you.

22 Thank you, everyone, for the witness

1 statements. It is striking how much agreement
2 there is across the panel. Well maybe not
3 totally surprising but it's striking anyway.

4 MR. UTHUS: And we did not compare
5 notes.

6 MR. WEINER: I'm sure. That would
7 have been a process value. Of course you didn't
8 do that.

9 I have questions for you, Mr. Uthus,
10 first. You talk a little bit about -- you talk
11 quite a lot about, and all the other panelists
12 have as well, about the importance of an
13 ambitious mutual recognition or regulatory
14 equivalence outcome, if we were to address these
15 issues in a trade agreement.

16 Can you talk a little bit about what
17 U.S. manufacturer models that are not currently
18 exported to Europe or not exported in great
19 volumes might benefit from that kind of
20 harmonization?

21 The question is prompted, of course,
22 by our understanding that U.S. manufacturers or

1 U.S.-based or U.S.-owned manufacturing companies
2 are focused on light trucks and SUVs a little bit
3 more in recent years. And we're wondering
4 whether you could address the question that is
5 sometimes raised about the receptivity of
6 European consumers and the ability of those kinds
7 of vehicles to sort of sell well in the European
8 market.

9 MR. UTHUS: Well I guess really I
10 would focus on the fact that there is a threshold
11 -- and thank you for the question, by the way --
12 is a threshold by which companies would have to
13 cross before they even consider selling a vehicle
14 in their marketplace. So oftentimes, it's
15 unknown what would be the consumer take an
16 interest in particular types of vehicles in
17 different markets around the world because of the
18 cost threshold that has to be taken into account.
19 And the cost associated with having to meet the
20 European standards is a very high one. And it's
21 quite significant, as I noted in my testimony,
22 millions of dollars per vehicle program.

1 So as such, you have to take into
2 account whether that you think there is going to
3 be the volume necessary on the other end. And
4 oftentimes the threshold really never gets
5 crossed so that you can't even test the
6 receptivity of those types of vehicles.

7 So that said, I think that there is
8 definitely, in conversations with my member
9 companies, there are definitely models that are
10 currently only certified to U.S. safety standards
11 if they feel like there would be an interest in
12 Europe. And that they would want to, if the
13 threshold was lowered in terms of cost, be
14 interested in introducing it to the European
15 market.

16 MS. WILSON: If I might, from a parts
17 perspective, it's also a question of the parts
18 that either accompany that vehicle or in the
19 aftermarket parts, what we have seen is -- and we
20 are stronger supporters of the program within
21 WP.29 to harmonize regulations -- we have seen
22 more economies around the world accepting

1 European standards, so European-standard
2 products. It makes it much more difficult for
3 our manufacturers to export from the United
4 States for some of those. Sometimes it's a
5 market requirement, certification requirement,
6 things like that.

7 So the ability to harmonize that will
8 not only help between the United States and EU
9 but I think, as one of the other panelists
10 mentioned, it also helps in the ability overall
11 of global trade.

12 MR. WEINER: Thank you. I appreciate
13 both responses.

14 On tariffs, you recommended that EU
15 passenger vehicle tariffs be reduced on a faster
16 time line than U.S. tariffs and I think you also
17 recommended that we tie these tariff reductions
18 to increased market access in the EU.

19 So I was curious to know if you could
20 maybe elaborate a little bit on how we might give
21 suggestions, or how we might evaluate that
22 increased market access, and how we might

1 evaluate and measure it. And then also whether
2 you've thought a little bit about what kinds of
3 provisions, what kinds of actual provisions you
4 would propose we would include in our trade
5 agreements to sort of implement this
6 recommendation, linking tariff reductions and
7 market access.

8 MR. UTHUS: Right. This is for me?

9 MR. WEINER: Yes, sorry.

10 MR. UTHUS: Yes, it's okay.

11 So overall, we're seeking a balanced
12 automotive package. And while it's difficult to
13 assess at this stage what that would look like,
14 we assume that tariff reductions would certainly
15 be part of a comprehensive deal.

16 So given the fact that the EU
17 passenger car tariff is four times that of the
18 U.S. tariff, 10 percent compared to 2.5 percent,
19 we would recommend, at a minimum, that the
20 tariffs on passenger vehicles in Europe be
21 lowered to, at a minimum, to the U.S. level as
22 just a starting point.

1 But again, I think overall we'd have
2 to sort of take a look, take a step back and take
3 a look at where we were in the negotiations and
4 look at the package in its entirety.

5 MR. WEINER: Thank you. Did you want
6 to address that?

7 MR. RYAN: Yes, on your first point,
8 I think it's a great question and I think a hard
9 one to answer, based upon what the current sort
10 of production profile of the different companies
11 might be.

12 But on the passenger car side,
13 certainly, that's a much more global product, as
14 opposed to say trucks which are fairly uniquely
15 demanded here in North America and the United
16 States in particular. So those vehicles are made
17 much more broadly throughout the world.

18 And to the extent that there is
19 greater sort of harmony between U.S. standards
20 and vehicles that are made in the United States,
21 it's conceivable at some point, as companies
22 decide how to fill different market demands, that

1 that would tilt in favor of the United States.

2 MR. UTHUS: And to add to that point,
3 you know I think it's important to note that
4 while the U.S. is definitely moving toward more
5 of a SUV/pickup truck/minivan-centric
6 marketplace, the rest of the world is moving in
7 that direction. I mean they are not anywhere
8 near as far along as we are but they are also
9 moving in that direction. So I think that goes
10 to Paul's point that there's a growing
11 opportunity for more exports of those products
12 around the world.

13 MR. WEINER: Thanks. I'm good.

14 CO-CHAIR GRESSER: So we now have
15 questions for Mr. Ryan.

16 MR. MEIER: I'll ask the first
17 question. Thank you for your testimony, Mr.
18 Ryan.

19 With regard to your comments on
20 currency, you know that currency is an
21 international issue more properly addressed in
22 multilateral agreements, given that the TPA sets

1 out an objective related to currency for our
2 bilateral agreements, in your view, how can the
3 administration best these requirements, while
4 addressing the concerns raised in your comments?

5 MR. RYAN: It's a good question and we
6 recognize that it is identified as a key
7 negotiating objective in the TPA. I think our
8 point is simply that any effort by the
9 administration to address that and fulfill that
10 objective probably should be approached very
11 cautiously and carefully, you know recognizing
12 that currency values are influenced by a number
13 of different factors, not just those within the
14 control of maybe the countries that are parties
15 to an agreement but beyond that to ensure that
16 U.S. policy options are not constrained as a
17 result of any agreement in the currency space.

18 MR. MEIER: Thank you.

19 MR. KENNEDY: So I have a second
20 question for Mr. Ryan.

21 So in your testimony, you speak about
22 the importance of investments in the United

1 States by European auto companies, their impacts
2 on U.S. jobs and competitiveness. Are there any
3 specific provisions that you would like to see in
4 the U.S.-EU trade agreement that could further
5 promote these types of investments?

6 MR. RYAN: I think that -- beyond
7 those that we've all mentioned and identified?

8 MR. KENNEDY: Or if there is any of
9 those that you've talked about that you think
10 would particularly drive investment.

11 MR. RYAN: Well I think certainly the
12 regulatory side of things, the reduction of
13 tariffs to a level that would at least be equal
14 to what we have in this country but tariffs can
15 be a powerful motivator to help companies sort of
16 break into markets and they are constraint on
17 trade and so the reduction of those. And that's
18 why we would call for really a much more
19 immediate and rapid reduction in those tariffs.

20 MR. KENNEDY: Thank you.

21 MS. THOMAS: Could I just add one
22 point?

1 You know we certainly commend the
2 administration for their efforts in areas of tax
3 reform and regulatory reform that certainly
4 provided a climate that helps attract more
5 investment here in the U.S. but I would, again,
6 stress that this looming threat of increased auto
7 tariffs under the Section 232 auto investigation
8 and the existing steel and aluminum tariffs is
9 causing tremendous uncertainty for this industry
10 in an already fragile time in our cycle.

11 We have just experienced seven years
12 of growth and we are very much a cyclical
13 industry. So we are very much in a time where
14 we're -- my companies are witnessing either flat
15 or decreased sales. So this ongoing threat of
16 auto tariffs via Section 232 is just injecting
17 more uncertainty in a very fragile environment.

18 MR. RYAN: I would associate myself
19 with Jennifer's remarks. I think the biggest
20 single thing that could be done, at least right
21 now, is to remove the threat of tariffs or the
22 actual reality of the steel and aluminum tariffs

1 to enable the companies to compete more
2 effectively.

3 MR. UTHUS: If I might add a point to
4 that, I mean I think we, certainly our
5 organization, applauds the USMCA and the result
6 of that negotiation. We are going to be
7 definitely very supportive of that negotiation
8 and its results and the agreement that came of
9 it.

10 But I think our deep concern is that
11 the steel and aluminum tariffs could seriously
12 erode the benefits that that agreement could
13 achieve. So at a minimum, we would want to see
14 steel and aluminum tariffs as soon as possible
15 eliminated with regards to Canada and Mexico.

16 MS. WILSON: And just since you've
17 heard the same thing from all four of us, I will
18 say it one more time but let me give you an idea
19 of a story that I heard recently from one of our
20 Board members in Detroit.

21 So we represent suppliers. Many of
22 them are Tier 2, Tier 3 suppliers. We have you

1 know our members are witnessing 50 percent
2 increase in their steel prices. And if you are
3 small, the two biggest inputs you have or the
4 cost inputs are the cost of the raw materials and
5 your people.

6 We have a member who has lost a
7 contract to supply someplace in the EU, I don't
8 know where, but it was because the cost of the
9 steel inputs have gone so high. And they
10 purchase their steel domestically but, overall,
11 the cost of steel has gone that high.

12 So unless we address that, there is no
13 way that we're going to get the benefits that we
14 would want to get from a free trade agreement.

15 MR. RYAN: I think it is important, as
16 Ann just mentioned, to note the unanimity within
17 the industry here on these issues. This is not
18 an industry that, over the past 25 or 30 years,
19 has been known as one that sort of finds
20 consensus on trade issues.

21 The fact that we do feel so strongly
22 and so uniformly about this I think suggests that

1 something is happening. And one of the things
2 that is happening is the industry itself has
3 become really a global industry and our
4 competitiveness is really dependent on our
5 ability to pull together inputs from a variety of
6 places.

7 MR. KENNEDY: Thank you. I did have
8 two questions for MEMA, although I feel one of
9 them you may have already addressed and so that's
10 fine if that's the answer.

11 MS. WILSON: I can always expand.

12 MR. KENNEDY: You can always expand
13 it.

14 A similar question to what we asked
15 before. So just noting the global nature of the
16 supply network that all the auto manufacturers
17 uses, are there particular, from your
18 perspective, rules or provisions that would
19 encourage either location or relocation of auto
20 parts supply chain into the United States?

21 MS. WILSON: I don't think I can
22 emphasize enough the importance of regulatory

1 convergence and harmonization.

2 I would say prior to this year and the
3 trade challenges faced by our members over the
4 last 15 years when we would survey members, they
5 would always identify the ability to harmonize
6 regulations as their number one priority. It
7 allows them to manufacture something, to ship it
8 either to Europe or to ship it abroad so it
9 increases our exports. It decreases the cost so
10 that if they do, indeed, end up manufacturing
11 somewhere else and providing it to an OEM
12 someplace else, it decreases the cost for both R
13 and D. And as we look into the future, we look
14 at automated technology, lightweight technology,
15 things like that, it's also really important to
16 think about the fact that many of these
17 technologies are not going to be able to be
18 developed overall.

19 We have a very good system in this
20 country. We have a lot of testing going on. We
21 have a lot of IP protection, something that we
22 all embrace. Actually as an industry, we are all

1 trying to work together on those issues, too.

2 It's a real opportunity for this
3 country to lead the world but, at the same time,
4 what our engineers tell me is that we can't do
5 this multiple times. We can't have an AV systems
6 of regulation in the United States, one in North
7 America, one in Europe, and one in Asia. It's
8 just too costly. You end up with problems with
9 not only IP protection but also privacy
10 protections, cybersecurity protections.

11 So if we're going to end up with only
12 one system of regulation, then we have to be part
13 of that and the United States will benefit from
14 being part of that. Otherwise, the rest of the
15 countries in the rest of the world will go
16 without us and those technologies will be
17 developed elsewhere and that is not something
18 that we want to do.

19 MR. KENNEDY: I did have a follow-up
20 on that line before we move on to the next set of
21 questions.

22 So has MEMA done any analysis or

1 looked at if we had successful convergence or
2 mutual recognition, what that might do to trade
3 flows or the current trade imbalance? I know
4 there have been some studies that looked at that
5 but I don't know if you have any.

6 MS. WILSON: I'm not aware of any but
7 I will definitely take a look for some and see
8 what we can do and try to provide them to you.

9 MR. KENNEDY: Okay, thank you.

10 MR. HENRY: I have a question for Ms.
11 Thomas from the Alliance of Automobile
12 Manufacturers. It's related to regulatory
13 convergence and auto safety standards and how
14 that would be accomplished within the U.S. legal
15 framework.

16 Given that the National Traffic and
17 Motor Vehicle Safety Act requires all vehicles
18 sold in the United States to comply with the
19 Federal Motor Vehicle Safety Standards, do you
20 believe there would be public safety concerns
21 associated with such convergence or recognition?
22 And would there be congressional support for such

1 regulatory convergence?

2 MS. THOMAS: That's a great question.

3 Thank you.

4 I think it's safe to say that when you
5 get into a car in Europe, you feel just as safe
6 as you do when you get into a car here in the
7 U.S. and that's because both the U.S. and the EU
8 have very long-standing high levels of automotive
9 safety.

10 That said, they've taken two different
11 approaches to how to go about regulating auto
12 safety. And that is why we are here as a united
13 industry urging the administration to include
14 regulatory convergence as part of this effort,
15 because there are tremendous savings that could
16 be involved, should we reach agreement with the
17 EU in this effort.

18 And as I noted in my statement, there
19 was tremendous progress made several years ago
20 and cooperation between the two partners
21 certainly improved in that exercise. So I do not
22 think that safety will be compromised.

1 Are there challenges involved just by
2 the sole nature of the two different approaches?
3 Sure. This is not a simple easy exercise but it
4 is still worthy of trying and we do believe that
5 if we can establish a precedent for mutual
6 recognition, it would increase bilateral trade
7 flow for the U.S.-based auto sector and it would
8 also help in expanding free trade with other
9 markets that only accept UNECE standards.

10 So the benefits are tremendous and
11 it's not just a cost savings. It's also for
12 consumers and jobs as well.

13 MR. HENRY: I have another question
14 for you related to rules or origin.

15 Should rules of origin be structured
16 in a U.S.-EU agreement so that trade is
17 facilitated but also that more equivalent and
18 input is localized within the U.S. or within the
19 free trade area?

20 MS. THOMAS: I'm sorry. I had trouble
21 hearing you. Could you repeat that?

22 MR. HENRY: Oh, sure. Should rules of

1 origin be structured in a U.S.-EU agreement so
2 that trade is facilitated and that more equipment
3 and input is localized within the U.S. or within
4 the free trade area?

5 MS. THOMAS: So as the Alliance, we
6 have not established a position yet on how the
7 rules of origin should be handled within the
8 context of U.S.-EU bilateral.

9 But that said, we understand it's a
10 natural part of the discussion and are happy to
11 follow-up with you with additional information
12 and our views on that issue but, ultimately, it
13 does need to strike the right balance to ensure
14 that investment continues while, at the same
15 time, you reward continued investment by enabling
16 duty-free access if you meet that standard.

17 So it's about striking the right
18 balance, similar to the exercise we just went
19 through in USMCA but happy to follow-up with you
20 to discuss that in more detail.

21 MR. HENRY: Thank you.

22 CO-CHAIR GRESSER: Well we are about

1 out of time but before closing the panel, I would
2 just like to ask all four of you is there
3 anything that you would have liked to raise and
4 did not have the opportunity to do so or is there
5 anything in the discussion you'd like to respond
6 to?

7 MS. THOMAS: If I could just make the
8 point, which I think was made -- Ann, I think you
9 made it -- just this transformation of mobility
10 that the industry is currently going through and
11 the opportunity here to partner with the EU in
12 setting global standards for these future
13 technologies is critical for maintaining U.S.
14 leadership.

15 If we don't -- you know the U.S. and
16 the EU are no longer the largest markets but if
17 we partner together, we would be. And if we
18 cooperate on a regulatory basis in setting these
19 future standards, then I think we have an
20 opportunity to remain leaders in establishing
21 high-level safety standards, high-level
22 environment standards and, if we don't, then I

1 think there runs the risk of other emerging
2 markets filling that void and then we would be
3 set back because there would again be a diverging
4 or inconsistent standard out there that we would
5 have to meet, too.

6 MR. RYAN: To build on that point just
7 a little bit, it's easier to develop harmonized
8 standards at the beginning of the whole process,
9 rather than in the middle or later. So the
10 technologies that Jennifer was talking about,
11 automated, connected vehicle technologies are now
12 emerging. And how we're going to sort of
13 regulate that is a hugely critical question.

14 And I agree to the extent that we can
15 harmonize that now through a WP.29 process or
16 something else that allows us to play a
17 leadership role perhaps with the Europeans in
18 making those standards, we will have more success
19 in creating uniformity as well as enhancing the
20 ability of the industry to move in that direction
21 than the alternative.

22 MR. UTHUS: And so I might add to that

1 particular point.

2 You know I've been to the WP.29
3 meetings in Geneva and the primary interlocutor
4 there is the Department of Transportation or the
5 EPA, which is appropriate. It makes perfect
6 sense.

7 But you know increasingly, as we've
8 talked about here, automotive standards and
9 regulations on a global basis or the lack of
10 global regulations plays a more important role in
11 terms of the competitiveness of the North
12 American auto industry.

13 So you know as TPSC, I think that the
14 role that you -- you need to start playing a
15 stronger role and a greater role in the whole
16 process that is going on in the global regulatory
17 harmonization because it has important economic
18 trade and competitiveness implications. And I
19 would urge you to become more engaged or involved
20 in that. Thank you.

21 CO-CHAIR GRESSER: Thank you. That
22 point is well taken. Thank you all.

1 And this bring the panel to a close.

2 We will start again in about ten
3 minutes with the sixth and final panel today.

4 (Whereupon, the above-entitled matter
5 went off the record at 3:28 p.m. and resumed at
6 3:37 p.m.)

7 CO-CHAIR GRESSER: Thank you all very
8 much. Thanks to all our witnesses for coming in
9 today and for your patience as we prepare for
10 this final panel today.

11 Just two things before we start. We
12 will proceed, as in previous panels, beginning in
13 my first row, from my right or your left down in
14 that direction. And we would ask the witnesses
15 please to respect the five-minute limit on oral
16 testimony because we very much want to hear all
17 of your insights and views and save time for our
18 government panelists to explore them in more
19 detail.

20 With that, let's begin and we can
21 start with Brian Scarpelli from ACT | The App
22 Association.

1 MR. SCARPELLI: Thank you for this
2 opportunity for The App Association to share
3 views on proposed negotiating objectives for a
4 future U.S.-EU trade agreement.

5 My name is Brian Scarpelli. I'm
6 Senior Global Policy Counsel with ACT and The App
7 Association.

8 The App Association represents
9 thousands of small business software application
10 development companies and tech firms that create
11 the software used on mobile devices and in
12 enterprise systems increasingly around the globe.
13 Today, the ecosystem that the app economy
14 represents, which we call the app economy, we
15 value at approximately \$950 billion annual and it
16 is also responsible for 4.7 million American
17 jobs.

18 Alongside the world's rapid embrace of
19 mobile technology, including many technologies
20 impacted by this future FTA, our members have
21 been creating innovative solutions that power the
22 internet of things across modalities and segments

1 of the economy. And the USTR's approach in this
2 FTA directly affects all of our members. So,
3 we're happy to be here.

4 While the global digital economy holds
5 great promise for our members, they also face a
6 diverse array of challenges when entering new
7 markets, taking the form of laws, regulations,
8 policies, and practices that protect domestic
9 goods and services from foreign competition,
10 artificially-stimulated exports of particular
11 domestic goods or services, or fail to provide
12 adequate and effective protection of intellectual
13 property rights. These barriers take many forms
14 but have the same net effect, impeding U.S.
15 exports, and investment, and job growth.

16 Generally, we advocate for bilateral
17 and multilateral agreements to address, through
18 digital trade and other chapters, barriers to
19 U.S. exports of goods and services in
20 intellectual property rights. We are committed
21 to working with the U.S. Government and other
22 governments to reduce or eliminate trade barriers

1 that will inhibit the growth of the app economy.

2 With respect to digital trade, our
3 members prioritize a number of issues and I will
4 describe a few of them, in no order of
5 importance, now.

6 First, enabling cross-border data
7 flows. The seamless flow of data between
8 economies and across borders is essential to the
9 functioning of the global digital economy and our
10 members need to take advantage of the internet's
11 global nature to reach new customers who live
12 outside of the U.S. The tolling of data across
13 borders for the purpose of collecting custom
14 duties directly contributes to the balkanization
15 of the internet, and jeopardizes the efficiency
16 of the internet, and effectively blocks
17 innovative products and services from market
18 entry.

19 2) Data localization policies. Data
20 localization requirements seriously hinder
21 imports and exports and reduce an economy's
22 international competitiveness. Our members

1 simply do not have the resources to build or
2 maintain unique infrastructure in every country
3 in which they do business and data localization
4 requirements can effectively exclude them from
5 commerce there.

6 3) Ensuring market entry isn't
7 contingent on source code transfer. Some
8 governments have proposed policies that require
9 companies to transfer or provide access to
10 proprietary source code as a requirement for
11 legal market entry which, again, is a nonstarter
12 for our member companies.

13 4) Preserving the ability to utilize
14 technical protection mechanisms to ensure end
15 user security and privacy and trust. Global
16 digital trade depends on the use of technical
17 protection mechanisms, such as encryption, to
18 gain and maintain the trust of end users. So
19 that's also essential to our members; and

20 5) Securing intellectual property
21 protections. IP protections can lead to customer
22 data loss, interruption of service, revenue loss,

1 reputational damage. Each one of those can
2 potentially represent by itself an end of life
3 occurrence for a small app development company.
4 So strong protection of IP for copyrights,
5 patents, trademarks, and trade secrets is very
6 important to us.

7 While The App Association supports the
8 EU's Digital Single Market Strategy goals of
9 opening digital economy opportunities for
10 businesses in Europe and enhancing Europe's
11 position in the digital economy, today there are
12 a variety of policies, consultations, and
13 proposals that raise significant concerns for us,
14 some of which have already been recognized by
15 USTR as approaches that would seriously undermine
16 transatlantic trade and investment, stifle
17 innovation, and undermine the EU-wide digital
18 economy.

19 Our concerns lie across a number of EU
20 policies addressing, among other areas, data
21 flows, privacy, and taxation and we provide much
22 further detail on these in our written

1 submission.

2 I would also specifically like to
3 mention our ongoing concern with a proposed
4 platform-to-business regulation intended to
5 address allegedly unfair contractual clauses and
6 trading practices in relationships between
7 platforms and business, such as app developers.

8 As proposed, we believe the P2B
9 regulation, as it's called, would undermine the
10 relationship developers have with platforms and
11 the benefit they offer to our members.

12 Further, we always want to make sure
13 to mention that the U.S.-Mexico-Canada Agreement
14 contains numerous provisions that will enable the
15 app economy to expand and create jobs across
16 North America and these provisions are aligned
17 with a number of the priorities I just covered,
18 including in the areas of data flows, avoiding
19 data localization, preserving the ability to use
20 encryption and IP protection. So to the extent
21 possible, the future U.S.-EU trade agreement will
22 ideally leverage such provisions in order to

1 advance harmonized policies across U.S. trading
2 partners, which will enable the U.S. app economy
3 to grow and create more jobs.

4 Finally, there is also a broader
5 impact that we always like to note. In some
6 other key markets, there are policies being
7 proposed and put into place, finalized, that
8 would create significant barriers through the
9 flow of data through applying physical good
10 custom-style approaches to the digital economy.

11 Indonesia, for example, has even put
12 tariff codes into place for digital goods today.
13 So for us, it is more important than ever that
14 the U.S. build on the success of the USMCA with
15 regard to digital trade and provide a model for
16 future bilateral and multilateral FTAs with other
17 important trading partners like the EU. We
18 believe doing so will advance the ability of
19 American small business innovators to grow in the
20 new markets and, again, create new jobs.

21 We appreciate the opportunity provide
22 our views here today on a future U.S.-EU trade

1 agreement and I look forward to your questions.

2 Thank you.

3 CO-CHAIR GRESSER: Thank you very
4 much.

5 We will now go to Mr. Whitlock from
6 BSA.

7 MR. WHITLOCK: Thank you very much for
8 the opportunity to testify at today's hearing. I
9 will discuss the importance of including strong
10 digital trade rules as part of a U.S.-EU trade
11 agreement, building on the strong rules and
12 outcomes in the United States-Mexico-Canada
13 Agreement.

14 BSA is the leading advocate for the
15 software industry in the United States and around
16 the world and our members are the forefront of
17 artificial intelligence, machine learning, cloud-
18 based analytics and internet of things, powering
19 U.S. innovation and economic growth. In 2016,
20 the U.S. software contributed over \$1.14 trillion
21 of U.S. value-added GDP and over 10 million jobs,
22 driving growth across all 50 states.

1 The United States and the European
2 Union share an impressive \$1 trillion trading
3 relationship and make up nearly half of global
4 GDP. In 2016 alone, the United States had a \$55
5 billion services trade surplus with the EU,
6 driven by U.S. and EU investment and investment
7 across the data economy and robust bilateral
8 trade.

9 This negotiation presents an enormous
10 opportunity for the United States and the
11 European Union to solidify a strong transatlantic
12 partnership and more closely align their
13 economies in relation to digital trade. Robust,
14 binding bilateral digital trade outcomes will not
15 only benefit both countries' innovation economies
16 but prove crucial in addressing current
17 challenges U.S. providers and exporters face
18 across the EU.

19 The United States and the European
20 Union share common economic interests. Both
21 enjoy a competitive advantage in the emerging
22 technology space and interest in combating

1 digital protectionist policies abroad and a
2 desire to continue leading and benefiting from
3 the digital economy.

4 The European Union itself has included
5 a number of digital trade provisions in prior
6 free trade agreements that correspond to the
7 digital trade provisions found in U.S. FTAs.
8 These provisions, which would provide common
9 ground, for U.S.-EU digital trade negotiation
10 address the protection of source code from
11 mandatory disclosure requirements, the use of
12 electronic signatures in commercial transactions,
13 the prohibition of preferential treatment for
14 state-owned enterprises, the prohibition on
15 customs duties on electronic transmissions, as my
16 colleague referred in respect to what Indonesia
17 does now, and consumer choice of digital services
18 and applications.

19 We also urge USTR to negotiate
20 provisions that enhance legal certainty for U.S.
21 businesses in the European Union and address
22 trade and market access challenges reflected in

1 our 2018 NTE submission. These issues include
2 the current push in the EU to include data flow
3 language in EU FTAs that contain very broad
4 exceptions. USTR should work to proactively
5 address these challenges by working with the EU
6 to include strong digital trade disciplines that
7 obligate the parties to permit the cross-border
8 transfer of data, while protecting personal
9 information, prohibit data localization
10 requirements, promote the use of innovative
11 technology in the public sector, support
12 encryption in commercial products, support
13 intellectual property while including appropriate
14 exceptions and safeguards, and promote
15 interoperability to adherence to internationally-
16 recognized standards relating to digital
17 technologies.

18 We thank the TPSC for the opportunity
19 to testify and the U.S. Government for its
20 leadership in digital trade and for considering
21 inclusion of a robust digital trade outcome as a
22 part of the U.S.-EU trade negotiations.

1 Thank you and I look forward to your
2 questions.

3 CO-CHAIR GRESSER: Thank you very
4 much.

5 Mr. Schonander.

6 MR. SCHONANDER: Thank you to the
7 Trade Policy Steering Committee for this
8 opportunity to testify. So my name is Carl
9 Schonander. I am the Senior Director for
10 International Public Policy for the Software and
11 Information Industry Association.

12 SIIA is the principle trade
13 association for the software and digital
14 information industries. The more than 800
15 software companies' data and analytics firms'
16 information services companies and digital
17 publishers that make up our membership serve
18 nearly every segment of society, including
19 business, education, government, healthcare, and
20 consumers.

21 So on December 10th, we reiterated
22 support for a U.S.-EU trade agreement and we said

1 a trade agreement between the United States and
2 the European Union would expand what is already
3 the world's largest and investment relationship.
4 Such an agreement would also have an important
5 positive precedential value for trade around the
6 world, especially in the areas of cross-border
7 data flows and digital trade. This is why SIIA
8 supports a U.S.-EU trade agreement and has
9 submitted recommendations for the kinds of
10 provisions that such an agreement should include.

11 And just for the record, we also
12 signed on, together with many other trade
13 associations, on November 6th -- 29 other trade
14 associations -- we sent a letter to Ambassador
15 Lighthizer, urging the administration to make
16 digital trade a priority in its negotiations with
17 the European Union, also Japan and the United
18 Kingdom and we reiterate that request.

19 In our view, it's crucial to ensure
20 the nondiscriminatory treatment of digital
21 products, including new and innovative products,
22 and to promote global digital trade by both the

1 United States and the EU, reiterating support for
2 the World Trade Organization customs duty
3 moratorium on electronic transmissions. And
4 although forced technology transfer is not a
5 problem in the U.S.-EU trade and investment
6 context, it would have a helpful precedential
7 value to include a provision in a U.S.-EU trade
8 agreement banning forced technology transfer.

9 The U.S. and the EU could also lead by
10 committing to promote paperless trading,
11 including the use of customs forms in electronic
12 formats. And in this context, SIIA endorses
13 again the digital and intellectual property
14 rights objectives in the 2015 Trade Promotion
15 Act. We also endorse the digital trade and
16 intellectual property rights chapters in the
17 U.S.-Mexico-Canada Agreement, USMCA, and the
18 financial services chapter. And we think that
19 USTR and the U.S. Government can draw from those
20 provisions in their negotiations with the
21 European Union.

22 So to summarize, there are four or

1 five different broadly very, very important
2 things. One is to obtain an affirmative data
3 flow obligation. And here, teeing off what my
4 colleague from BSA said, it's going to be very
5 important to negotiate with the European Union
6 something that is less than what the European
7 Union has advocated for in other agreements,
8 which is this blanket exception for privacy.

9 I'll read what the proposed language
10 from the EU says. Nothing in this agreement
11 shall affect the protection of personal data and
12 privacy afforded by the parties' respective
13 safeguards. End quote.

14 So in our view, it is essential for
15 the U.S. Government to find a way to limit this
16 principle so that enforcement of legitimate
17 privacy rules cannot be used to distort trade or
18 discriminate against foreign competitors.

19 We also have views on interoperability
20 and including financial data in the agreement.

21 With respect to proprietary software,
22 encryption keys and data, there are very many

1 different business models in the digital trade
2 space. For example, software code development
3 through open source or through copyright patent
4 protection are equally legitimate from an SIIA
5 perspective. The parties should not establish
6 requirements that force suppliers to share source
7 code, encryption keys, and/or proprietary
8 algorithms. Businesses should be free to choose
9 the business model that works for them.

10 That goes as well for companies that
11 invest in curating data, including scientific
12 data. Such companies have an interest in
13 protecting proprietary data and should be able to
14 do so. And this should be clarified also with
15 respect to access to government data.

16 For instance, the agreement should
17 clarify that policies relating to government data
18 or publicly funded research should neither
19 diminish protections for proprietary data or
20 content nor the incentive to engage in private
21 sector publishing reporting on that research.
22 Recent open access proposals planned by several

1 EU member states could risk undermining those
2 incentives.

3 So once again, thank you for the
4 opportunity to comment and I look forward to your
5 questions.

6 CO-CHAIR GRESSER: Thank you very
7 much.

8 Ms. Stelly, please begin.

9 MS. STELLY: Hi, good afternoon. My
10 name is Rachael Stelly and I am policy counsel at
11 the Computer and Communications Industry
12 Association. CCIA is a trade association of
13 internet and technology firms, many of whom
14 export goods and services to the European Union
15 and throughout the world. Thank you for this
16 opportunity to convey our views regarding
17 negotiating objectives for a U.S.-EU trade
18 agreement.

19 The U.S. approach to transatlantic
20 trade should reflect the increasing importance of
21 internet-enabled trade to the global market. To
22 do so, USTR should build off the success of the

1 recently signed U.S.-Mexico-Canada Agreement and
2 pursue a holistic agreement with the EU with
3 strong digital trade and IP chapters.

4 Digital trade is a significant
5 component of the transatlantic relationships,
6 with the U.S. relying on EU markets to deliver
7 digital and internet services. To illustrate,
8 the U.S. has exported \$185 billion in digitally-
9 enabled services to the EU in 2016 alone. This
10 relationship is threatened by the rising trade
11 barriers in the EU. As part of the Digital
12 Single Market Initiative, the EU is currently
13 negotiating a vast number of regulatory proposals
14 that seek to undermine the digital trade,
15 including a digital service tax directly aimed at
16 U.S. companies and a copyright directive that
17 will affect U.S. industry.

18 USTR should use this opportunity of a
19 trade agreement to reduce the burden caused by
20 these regulations and discourage further action
21 that disproportionately closes the market for
22 U.S. internet exporters. CCIA's written comments

1 go into further detail but my remarks will focus
2 on four main priorities CCIA encourages USTR to
3 include in its negotiating objectives.

4 First, an agreement should include
5 strong protections for internet services and
6 users in its copyright provisions. The IP
7 chapter should uphold long-standing copyright
8 frameworks that provide protections for online
9 intermediaries for user-uploaded content.
10 Intermediary liability protections for ISPs, such
11 as the copyright safe harbors found in Section
12 512 of the DMCA have been critical to growing the
13 U.S. digital economy by providing business
14 certainty to U.S. investors and innovators. They
15 also have been a feature of U.S. trade
16 agreements.

17 The IP chapter should also protect
18 copyright limitations and exceptions necessary
19 for Next Generation technologies. A flexible
20 copyright regime is necessary for the continued
21 growth of the digital economy. Principles such
22 as fair use have been a cornerstone of U.S.

1 copyright law from the beginning and industries
2 that rely on this right are a significant
3 contributor to the U.S. economy and exports.
4 Fair use industries account for 16 percent of the
5 U.S. economy and generate \$5.6 trillion in annual
6 revenue. Fair use is also critical to activities
7 central to new areas of innovation in cutting
8 technology, such as artificial intelligence and
9 machine learning.

10 The promotion of a balanced copyright
11 regime in a trade agreement is especially
12 critical as EU is poised to change its copyright
13 regime in a way that will significantly disrupt
14 U.S. service exporters' ability to conduct
15 business in the EU with a proposed copyright
16 directive. The directive threatens to introduce
17 obligations on intermediaries and disrupts the
18 copyright balance with the introduction of a link
19 tax. As the directive goes through the trial-
20 like process, the proposal threatens a worst-case
21 scenario, modeled on the Parliament's proposal.

22 The U.S. should insist that the EU

1 reaffirm its Berne and TRIPS commitment, as the
2 EU looks to finalize this proposal and includes
3 these commitments in a U.S.-EU trade agreement.

4 Second, an agreement should encourage
5 investment by providing regulatory certainty to
6 online intermediaries for third party content.
7 Conflicting liability regimes undermine this
8 certainty and represent a considerable barrier to
9 internet commerce. Guaranteeing minimum
10 standards for the protection of internet services
11 from liability for third-party content is
12 critical to promoting U.S. digital trade exports
13 and the U.S. and the EU should work to reduce
14 uncertainty and achieve consistency in liability
15 rules among the parties.

16 At a time when the EU is actually
17 seeking to undermine the ability for the U.S.
18 services to operate in the European market, it is
19 critical that the U.S. continues to negotiate for
20 consistent clear liability frameworks for U.S.
21 services. To do so, the U.S. should ensure that
22 trade agreements going forward include strong

1 protections on any reliability like those found
2 in the USMCA and that are consistent with U.S.
3 statute.

4 Third, an agreement should enable
5 cross-border data flows and discourage data
6 localization mandates. Cross-border data flows
7 are critical to digital trade and forced data
8 localization mandates make it difficult for U.S.
9 exporters to expand it to new markets. The U.S.
10 should work to remove barriers to cross-border
11 data flows and discourage localization mandates
12 in a trade agreement with the EU, building off
13 the strong commitments in the digital trade
14 chapter of the USMCA. And we would also echo the
15 concerns of many on the panel with the concerns
16 with respect to the EU's proposed tax on data
17 flows in trade agreements.

18 Finally, an agreement should encourage
19 measures to secure digital trade and promote
20 strong cybersecurity. The products and services
21 that facilitate digital trade must be
22 technologically secured. The U.S. and the EU

1 should continue efforts to promote regulatory
2 cooperation and international standards for
3 securing parts and services. A trade agreement
4 should also follow the USMCA in calling for risk-
5 based cybersecurity measures as the more
6 effective approach than prescriptive regulation.

7 A U.S.-EU trade agreement should also
8 contain commitments to strongly promote encrypted
9 devices and connections.

10 In conclusion, the transatlantic trade
11 relationship is critical to U.S. economic
12 security and digital trade is an essential
13 component of that relationship. A free trade
14 agreement that can safeguard this relationship
15 from political risk should be a high priority.

16 With the rising number of non-tariff
17 and market access barriers in the EU directed at
18 U.S. firms, it is critical that any U.S.-EU trade
19 agreement include strong digital trade
20 protections.

21 Thank you and I look forward to your
22 questions.

1 CO-CHAIR GRESSER: Thank you. And
2 we'll turn now to Ms. Swanson.

3 MS. SWANSON: On behalf of the Telecom
4 Industry Association, thank you for the
5 opportunity to comment. TIA is the leading trade
6 association for the information and
7 communications technology industry. We represent
8 suppliers of equipment and services that power
9 global communications networks. We are also an
10 ANSI-accredited standards development
11 organization.

12 In considering negotiating objectives
13 for the proposed trade agreement, we believe it
14 will be beneficial to draw upon a number of
15 constructive provisions in the recently
16 negotiated U.S.-Mexico-Canada agreement. In our
17 view, the USMCA represents a major advance in
18 trade rules, institutionalizing new norms that
19 will facilitate expanded U.S. trade. We hope the
20 administration will leverage key provisions in
21 forthcoming negotiations with the EU.

22 We understand from the joint U.S.-EU

1 statement issued back in July, the two sides have
2 agreed to work together to zero non-tariff
3 barriers and many of the concepts we've endorsed
4 in our comments would further that goal,
5 especially in the digital trade and TBT sections.

6 Since the two parties plan a close
7 dialogue on standards, we've also made reference
8 to the importance of U.S.-EU alignment on
9 standard-setting policies.

10 In addition, I wanted to note that a
11 number of new provisions in the USMCA are
12 relevant to another goal set forth in the joint
13 statement, which is protecting American and
14 European companies from unfair global trade
15 practices. I want to just briefly mention four
16 types of provisions we think are especially
17 relevant to combating that kind of -- those sorts
18 of market-distorting trade practices.

19 And the first bucket in the digital
20 trade category is banning data localization and
21 source code disclosure and promoting risk-based
22 cybersecurity practices. The second, IPR

1 provisions that would impose criminal penalties
2 for the theft of trade secrets. Third, there are
3 a number of very helpful TBT provisions
4 prohibiting mandatory in-country testing and
5 ensuring governments don't show a preference for
6 discriminatory standards that disadvantage
7 foreign participants. And fourth, just a
8 stipulation that states you shouldn't undermine
9 the normal functioning of the market through
10 excessive subsidies to SOEs.

11 Given time constraints, I will just
12 briefly summarize a couple of selected excerpts
13 from TIA's written testimony.

14 The digital trade and data flows,
15 we've discussed further -- we've discussed in our
16 written comments the value of promoting cross-
17 border data flow so I won't elaborate here. But
18 I did, on the data flows issue, want to highlight
19 a recommendation that the two parties consider
20 making permanent a ban on the imposition of
21 tariffs, duties, or taxes on cross-border data
22 flows and digital products.

1 The promotion of risk-based
2 cybersecurity approaches -- the USMCA set out an
3 expectation that both partner countries and firms
4 within their borders should use risk-based
5 approaches based on consensus-based standards to
6 deal with global cyber threats. The new language
7 represents a helpful step, we think, in forging
8 new cyber norms.

9 On technical barriers to trade, the
10 TBT chapter of the USMCA is both robust and very
11 comprehensive. It introduces a number of
12 noteworthy precedents that we would urge USTR to
13 carry forward into future trade agreements,
14 including the previously mentioned ban on
15 requirements for mandatory in-country testing,
16 also better disclosures on protection of IP in
17 conformity assessments by government bodies. And
18 the chapter also has important language on non-
19 discriminatory standard-setting and the use of
20 international standards.

21 And finally, I wanted to mention for
22 our industry a requirement to allow -- labeling

1 is very important -- the provision in the USMCA
2 that requires parties to allow regulatory
3 information to be displayed electronically,
4 rather than by affixing physical labels to
5 devices. This represents a considerable savings
6 of both money and time for ICT companies. As the
7 EU has been very slow to embrace e-labeling, we
8 would strongly encourage U.S. negotiators to
9 press for such commitments.

10 So to summarize, newly negotiated
11 provisions in the USMCA set important and really
12 commercially-significant precedents that will
13 help make U.S. telecom equipment suppliers more
14 globally competitive. We hope the administration
15 will leverage these advances in its upcoming
16 negotiations with the EU.

17 Thank you.

18 CO-CHAIR GRESSER: Thank you very
19 much.

20 Mr. Geiger.

21 MR. GEIGER: Hello and thank you very
22 much for having me here today. I'm Harley Geiger

1 and I'm Director of Public Policy at Rapid7.
2 Rapid7 is a cybersecurity and data analytics
3 company. We are based in Boston, Massachusetts
4 and have offices around the world. We have a
5 headcount of about 1200 people. I'm also a
6 member of ITAC-8.

7 We recommend that USTR seek the
8 following seven commitments and these are largely
9 focused on cybersecurity. Most of the
10 recommendations that I will make are rooted in
11 the USMCA. The remainder, the last two,
12 nonetheless reflect industry and administration
13 priorities and do not impose any affirmative
14 regulatory obligation. I say this because we
15 took care to make our recommendations actionable,
16 not burdensome, and nonetheless effective for
17 cybersecurity at large and for the cybersecurity
18 industry.

19 And our first recommendation is quite
20 basic. It is just that we urge USTR to include
21 cybersecurity in a digital trade chapter just as
22 a reflection of the importance of cybersecurity

1 to the economies of the U.S. and the EU. Many
2 business sectors in the U.S. and EU, around the
3 world, such as manufacturing, agriculture,
4 healthcare, all depend on secure computing for
5 daily operations, as well as international trade.

6 The USMCA includes a specific article
7 for the first time on cybersecurity, Article
8 19.15 and it explicitly recognizes that
9 cybersecurity threats undermine confidence in
10 digital trade. So we hope to see that principle
11 reflected throughout a U.S.-EU agreement as well.

12 The second is to encourage
13 interoperable cybersecurity risk management
14 frameworks. This is a commitment that would
15 require the parties to develop and promote the
16 implementation of interoperable cybersecurity
17 risk management approaches, usually expressed
18 through a framework that upholds certain
19 principles.

20 Very similar language to this is in
21 USMCA Article 19.15 but here the added emphasis
22 is on interoperability. And the goal there is

1 that the parties' cybersecurity risk management
2 frameworks are generally comparable across
3 jurisdictions.

4 Third, we recommend that USTR look to
5 build capabilities on national cybersecurity
6 entities. This would be a commitment requiring
7 the parties to build the capabilities of their
8 national entities responsible for cybersecurity
9 incident response, as well as national entities
10 responsible for coordinated vulnerability
11 disclosure. USMCA Article 19.15 includes
12 language on building national capabilities of
13 entities responsible for cybersecurity incident
14 response. Here, the recommended addition is on
15 building national capabilities -- or sorry --
16 capabilities for national entities responsible
17 for coordinated vulnerability disclosure.

18 Coordinated vulnerability disclosure,
19 or CVD is increasingly recognized by both the
20 public and private sectors as a core
21 cybersecurity practice. In our opinion, this
22 should include national entities that facilitate

1 CVD between private sector organizations as well
2 as national entities that facilitate CVD, the
3 coordinated disclosure of previously unknown
4 vulnerabilities from government to the private
5 sector.

6 Fourth, we urge USTR to strengthen
7 existing cybersecurity collaboration mechanisms
8 for sharing cybersecurity threat information.
9 This language appears in USMCA Article 19.15. We
10 don't have an addition to that language; just the
11 language in USMCA is very good.

12 Fifth, we urge USTR to seek a
13 commitment to identify regulatory restrictions to
14 defensive cybersecurity activity. This would be
15 a commitment that the parties endeavor to review
16 and identify regulations and policies that
17 inappropriately restrict legitimate defensive
18 cybersecurity activity. Examples of the type of
19 regulations that might be under review include
20 privacy restrictions and export controls, such as
21 the Bossier arrangement and the eprivacy
22 Regulation. This commitment need not require the

1 parties to revise regulations, but instead, just
2 focus on a regulatory review to identify
3 potential areas of improvement.

4 Sixth, we urge USTR to seek a
5 commitment to encourage transparency on consumer
6 IoT security. This would be a commitment that
7 the parties facilitate voluntary processes that
8 enhance the transparency of critical security
9 features for consumer IoT devices.

10 The goal of this process should be to
11 enable consumers to make informed purchasing
12 decisions regarding data protection features in
13 IoT security so that if you are sitting in a
14 supermarket looking at two IoT devices, you can
15 compare them based on their security features.

16 Currently, a framework like that does
17 not exist. However, in both the U.S. and EU
18 there is a great deal of momentum behind that
19 concept. In the United States, the Departments
20 of Commerce and Homeland Security released their
21 Botnet roadmap, which includes several work
22 streams based around this very concept with the

1 goal of creating a robust market for trustworthy
2 IoT. In the EU, my understanding is that the
3 Cybersecurity Act, which is awaiting final
4 approval in the EU now, includes certifications
5 that are also aimed at this for consumer IoT,
6 critical infrastructure, and others that will
7 essentially signal to the buyer what the level of
8 cybersecurity in those devices are for just this
9 purpose.

10 Seventh and last, we urge USTR to seek
11 requirements to prohibit -- sorry -- to prohibit
12 requirements to weaken encryption. This is a
13 commitment, of course, that the parties will not
14 require as a condition of market access that
15 manufacturers or suppliers of encrypted products
16 weaken cryptography in any way. This is in USMC
17 Article 12; however, we do suggest that USTR
18 attempt, if possible, to narrow some of the broad
19 exceptions that are in that article.

20 Thank you very much and I look forward
21 to your questions.

22 CO-CHAIR GRESSER: Thank you.

1 And our final witness on this panel,
2 Ms. Keller, from the Semiconductor Industry
3 Association.

4 MS. BENGFORT KELLER: On behalf of the
5 SIA, thank you for the opportunity to testify
6 here today.

7 SIA is the voice of the U.S.
8 semiconductor industry. We represent
9 semiconductor researchers, designers, and
10 manufacturers. Semiconductors are the nation's
11 fourth largest export. We form the bedrock of
12 the modern American economy, powering virtually
13 everything digital from cars and cell phones, to
14 super computers and military systems.

15 International trade is very important
16 to our industry and, thus, we welcome the
17 administration's decision to enter into
18 negotiations for a U.S.-EU agreement. We
19 strongly encourage the U.S. Government to
20 continue to lay the rules of the road for
21 international trade, to counter rising global
22 trade barriers and digital nationalism in third

1 countries.

2 We are prioritizing five objectives,
3 all of which are included in the USMCA. We think
4 that these objectives are very important for
5 strengthening digital trade in the digital
6 economy.

7 The first is ensuring access to global
8 markets for innovative encryption products. SIA
9 is concerned about encryption-related practices
10 and regulations in some regions that act as non-
11 tariff barriers, such as regulations that
12 directly or indirectly favor specific
13 technologies, required disclosure of IP, like
14 source code, or require specific standards.

15 We recommend that the U.S.-EU trade
16 agreement prioritize disciplines such as those
17 included in the USMCA that prevent discriminatory
18 restrictions on the importation of commercial
19 products containing encryption and restrict
20 requirements to transfer or provide access to
21 proprietary information, or to partner, or to
22 integrate a particular cryptographic algorithm or

1 cipher.

2 Second, our second priority is
3 ensuring that state-owned enterprises compete
4 fairly and transparently based on market
5 considerations and without undue government
6 advantage. The USMCA includes some very strong
7 SOE disciplines that are in line with what has
8 been discussed within the World Semiconductor
9 Council is also in line with U.S., Japan, and EU
10 trilateral work on strengthening subsidy
11 disciplines.

12 So again, this is another top
13 priority, not with issues in Europe, per se, but
14 to tackle global issues and in third party
15 countries.

16 The third priority is to strengthen
17 trade secret protections. We're very pleased
18 with the strong trade secret protections in USMCA
19 and call on the administration to maintain a
20 strong focus on this by including similar
21 disciplines in a U.S.-EU agreement.

22 Since trade secrets are a very

1 valuable IP asset, that they remain extremely
2 vulnerable today.

3 Fourth, the fourth priority is
4 preventing forced localization of digital
5 infrastructure and technology transfer. We see
6 governments around the world using forced
7 localization tactics to advantage domestic
8 companies or force foreign investors to use
9 domestic technology, transfer their own
10 technology, or localize data storage and
11 processing. These rules raise cost; they distort
12 markets, reduce global interoperability, and
13 increase risk of unauthorized disclosure or IP
14 theft.

15 SIA applauds strong digital trade
16 outcomes on forced localization and digital
17 infrastructure in the USMCA and recommend that
18 these be prioritized in the U.S.-EU agreement.

19 Last, as highlighted by one of my
20 other colleagues, we also recommend that a U.S.-
21 EU agreement permanently eliminate duties for
22 electronic transmission of data, data flows, or

1 digital downloads. Some governments are
2 challenging the WTO e-commerce moratorium banning
3 customs duties on electronic transmissions. So
4 nothing this and the effort to let this
5 moratorium to expire, we encourage the U.S. and
6 EU Governments to establish a clear unified
7 position supporting duty-free treatment for
8 digital goods.

9 So those are the top five. We have
10 more details in our written comments. Thank you
11 again for the opportunity and I'm happy to answer
12 questions.

13 CO-CHAIR GRESSER: Thank you all very
14 much. Let's now go to questions.

15 MR. WEINER: I also thank you all for
16 the testimony. It was very interesting and I was
17 struck by the fact that I think almost all of you
18 talked about things that you like in the USMCA
19 outcome, which I was aware of coming in but it's
20 pretty impressive how consistently you all feel
21 about that.

22 But I have a question to start with

1 for Mr. Scarpelli, which perhaps others at this
2 time might want to address. And I'm wondering
3 whether you've looked at -- in looking at the
4 USMCA and thinking about the particular
5 challenges posed by privacy and other policies in
6 the EU, are there things that you would recommend
7 we seek to do in an agreement with the EU that go
8 beyond or that vary from what we've done in the
9 USMCA agreement.

10 MR. SCARPELLI: Thank you for that
11 question.

12 I think that the answer that I would
13 give for The App Association is that generally we
14 are realistic about the outcome of the USMCA
15 across the different digital economy issues that
16 it addresses. And so generally, I would not --
17 we don't have any pain points to point out saying
18 that it should go much further. We are largely
19 accepting -- you know we're accepting the reality
20 of the USMCA and I don't mean that in a negative
21 way at all. I'm supportive of the USMCA.

22 So the priority for us, really is, as

1 I mentioned in the opening statement, attaining
2 as much harmonization across agreements. And
3 that's why I mentioned using the USMCA as a
4 baseline.

5 We do support voluntary frameworks
6 based on international standards, like many other
7 associations here, and to all ways practicable
8 that we can generally reduce burdens in complying
9 with new sweeping regimes such as the General
10 Data Protection Regulation. That's something
11 that we would support.

12 MR. WEINER: Thanks. Yes, I think
13 your response made me realize we should probably
14 flip the question around because I think we all -
15 - I think all of us recognized, based on our
16 interaction with the EU in business but also as
17 trade negotiators, that what we've achieved with
18 Mexico and Canada in the USMCA in the digital
19 trade-related provisions and perhaps even in some
20 areas within IPR may be difficult to achieve with
21 the EU because of their current recent practices
22 and recent trends in policymaking and privacy in

1 particular.

2 So if the USMCA outcome is not -- so,
3 flipping it around, if the USMCA outcome is not
4 achievable in terms of the data flow obligations,
5 for example, localization obligations, what's --
6 and this is sort of a little bit of an open blue
7 sky kind of question but what would be a decent
8 outcome? What should we be seeking to do in the
9 EU? In particular, are there specific things in
10 relation to privacy that we're going to have to -
11 - that you think at a minimum we need to address
12 or seek to try to address?

13 MR. SCARPELLI: Thank you for the
14 question.

15 I think part of my answer probably
16 does need to include a mention that our
17 association, as a top priority here domestically
18 in the U.S., is to attain passage of
19 comprehensive privacy legislation. And so I just
20 think at the highest level that -- well, I would
21 put it this way: the reach of the GDPR is
22 something that our members continue to struggle

1 with. It's a reality that they've got to deal
2 with and basically where we are right now as an
3 association is trying to educate them as much as
4 possible so they know whether it applies to them
5 or not and what they need to do.

6 And so if the agreement can facilitate
7 a -- I'm failing to find the word but a
8 relationship between the two privacy regimes that
9 respects one another's regime, that that's
10 probably the ultimate want. I know a lot of the
11 details will inevitably be hammered out in the
12 negotiations and so we're committed to helping in
13 any way we can as conversations go forward
14 between negotiating parties, if that helps.

15 MR. WEINER: Mutual recognition kind
16 of.

17 MR. SCARPELLI: Yes, that's the word.

18 MR. WEINER: Just a quick question
19 before I move to Joe. Is your member companies,
20 what's the sort -- is there sort of an average
21 employee size?

22 MR. SCARPELLI: Oh, yes. Yes, the

1 average employee size is usually -- well, it's
2 like high single digits.

3 MR. WEINER: Single digits?

4 MR. SCARPELLI: Yes, so under ten. A
5 typical member I think it's seven to nine members
6 -- seven to nine employees.

7 MR. WEINER: Thank you.

8 CO-CHAIR GRESSER: I think they're
9 signaling interest in also answering your
10 question.

11 MR. WEINER: Okay, thank you.

12 MR. SCHONANDER: Just the opportunity
13 to follow-up on your question to Brian, since you
14 said there might be such an opportunity.

15 You know from our point of view, we
16 are not seeking substantive equivalence between
17 the U.S. and EU privacy systems. That's -- I
18 just want to set that out there.

19 What we are seeking is something that
20 assures continued cross-border data flows between
21 the European Union and the United States. And
22 you know for the record, we have that. We have,

1 say, the Privacy Shield. We have you know the
2 possibility of binding corporate rules, standard
3 contractual clauses, et cetera, et cetera.

4 The reason several of us have focused
5 so much on the exceptions language that the
6 European Union has put out is because of the
7 precedential value it could have in third
8 markets. That's the issue.

9 We're not suggesting that there is a
10 lack, for now, of cross-border data flow access
11 between the United States and the European Union.
12 It's how do we deal with China, with Vietnam,
13 other jurisdictions if we don't deal with this in
14 a satisfactory way.

15 MR. WEINER: Sure.

16 MR. SCHONANDER: Thanks.

17 MR. WEINER: Please.

18 MR. WHITLOCK: Thank you. I just
19 would like to associate myself with both sets of
20 comments on this issue, which I think is a core
21 issue. The U.S. and the EU have many shared
22 interests in the space of digital trade. On the

1 issue of cross-border data flows and a clear
2 obligation to permit cross-border data flows, we
3 do, as SIIA has mentioned, have an existing
4 framework that many of our companies are able to
5 use.

6 And so it is against that background
7 that many of us are concerned by the data flows
8 proposal that the EU has publicly released with
9 respect to Indonesia.

10 The EU itself and many of its
11 exporters stand to lose from cross-border data
12 restrictions in India, in China, and in other
13 countries. And I think European officials are
14 well-aware of that.

15 I do think there is a good opportunity
16 here to arrive at a common set of rules. And the
17 USMCA provides an excellent model. If that model
18 is not the exact language that works with the EU,
19 I am sure there is other language that can be
20 achieved but it needs to be a clear, strong
21 obligation to permit cross-border data flows.
22 And with respect to any exceptions to that

1 obligation, the exceptions need to be duly
2 disciplined.

3 MR. WEINER: Mr. Geiger.

4 MR. GEIGER: So your question was
5 whether or not if privacy -- the difference in
6 the privacy regime in the United States versus
7 the EU made it such that it was difficult to
8 achieve the same level of -- the same strength of
9 language in the USMCA on cross-border data flows
10 with the EU, whether or not there was something
11 else that we would like to see.

12 And to that, I would identify an issue
13 that I had raised earlier and that is with
14 relation to a cybersecurity threat in
15 intelligence information. And so processing
16 personal information would qualify as just
17 personal information for cybersecurity is a
18 pretty common occurrence. So for example, if we
19 are trying to warn our clients of a phishing
20 attack that is currently ongoing, that typically
21 will involve information that qualifies as
22 personal information. We need to talk about the

1 email address of the suspected phisher, the IP
2 address that is associated with it, and so forth.
3 And often in the United States, that information
4 will get shared to others so that they are warned
5 of the same attack.

6 And GDPR includes recitals that
7 accommodate this very practice by saying that it
8 is considered a legitimate use if you are sharing
9 information for cybersecurity or fraud prevention
10 purposes. But that is not incorporated into all
11 regulations from the start, and the eprivacy
12 Regulation is one area that we are concerned
13 about. That concern has been expressed to the EU
14 but we -- last we have seen, to the best of our
15 knowledge, it has not been clearly addressed.
16 BSA actually has a great paper about this very
17 issue.

18 So to the extent that you are still
19 able to preserve the data flows for cybersecurity
20 information, that is already something that has
21 been recognized in the context of GDPR. It's
22 recognized in the United States. But because it

1 is not universal, we still think it would be
2 helpful to have that in the trade agreement.

3 And we tried to incorporate that basic
4 suggestion in the regulatory review
5 recommendation that it will take other forms.
6 That's the basic suggestion.

7 MR. WEINER: Thank you.

8 MR. MEIER: Okay, I've got a few
9 questions for Mr. Whitlock and BSA. BSA's
10 submission indicates that the agreement should
11 require governments to adopt civil and criminal
12 cause of action and penalties for theft of trade
13 secrets. In the view of BSA, do the current laws
14 of the European Union address this matter
15 sufficiently and are there particular concerns
16 about EU member states?

17 MR. WHITLOCK: We will provide a
18 supplemental response in writing to that
19 question.

20 MR. MEIER: Thank you.

21 In addition, now please describe which
22 EU practices or restrictions your member

1 companies have encountered that restrict their
2 ability to move data round the world and,
3 specifically, across borders.

4 MR. WHITLOCK: So I think in the
5 existing GDPR framework, Article 46 provides a
6 number of transfer mechanisms that permit cross-
7 border data transfer and my colleague referenced
8 a number of them. They include standard
9 contractual clauses, Privacy Shield, binding
10 corporate rules, and so forth.

11 One of the challenges that I think
12 many of the companies represented by the
13 associations in this room have faced relate to
14 the certainty provided under these rules, which
15 have been subjected to court challenges in the
16 EU. But I think over time many of the member
17 companies, at least for BSA, have found a path
18 forward to complying with these data transfer
19 mechanisms under GDPR and so there is, including
20 Privacy Shield, there is an existing framework
21 that does work at this time. Predictability and
22 certainty for the future is very important and

1 that's one thing that we think a trade agreement
2 could enhance.

3 MR. MEIER: In your testimony, you
4 list a number of digital trade provisions that
5 the EU has included in previous FTAs, which you
6 say provide a foundation for U.S.-EU digital
7 trade negotiations. Can you explain in greater
8 detail why these provisions are important to
9 include in U.S.-EU trade agreements?

10 MR. WHITLOCK: Yes. So the provisions
11 that are found in the EU-Mexico FTA and the EU-
12 Japan FTA include provisions relating to source
13 code, protection of source code from mandatory
14 disclosure requirements, use of electronic
15 signatures in commercial transactions,
16 prohibition of preferential treatment for SOEs,
17 prohibition on customs duties in electronic
18 transmissions, and consumer choice of digital
19 services.

20 So briefly to touch on a few of those,
21 on the very first issue, as others in this
22 testimony have mentioned, there are source code

1 disclosure requirements in other regions around
2 the world, which represent a key threat in terms
3 of forced technology transfer.

4 The USMCA goes beyond the language
5 found in the EU FTAs in that it also highlights
6 that source code, as well as algorithms contained
7 within source code, should be protected from
8 mandatory disclosure requirements. And we
9 believe that would be a useful enhancement and
10 would be hopeful that European negotiators would
11 be amenable to making that change.

12 But this is a core issue. We see in
13 many Asian economies or a number of Asian
14 economies where source code is required to be
15 disclosed and then presents a significant risk of
16 leakage with competitive enterprises.

17 Use of -- I'll highlight a few of
18 these. Prohibition on customs duties in
19 electronic transmissions is a core issue, a
20 burning issue at this particular point in time.
21 There have been questions raised in the World
22 Trade Organization as to whether or not the 20-

1 year moratorium on customs duties on electronic
2 transmissions should be maintained. Removal of
3 that moratorium would be a significant landscape
4 shift, and it's very important that in U.S. FTAs
5 and in the EU FTAs, there has been a recognition
6 and an agreement to prohibit such customs duties
7 on electronic transmissions and on digital
8 products. So that would be an important --
9 solidifying that understanding with the EU and
10 continuing to negotiate that understanding around
11 the world is an important achievement.

12 Just one other issue. One of my
13 colleagues has already discussed preferential
14 treatment for SOEs. But electronic signatures in
15 the commercial transactions, recognizing or not
16 prohibiting the use of electronic signatures or
17 autonomously executed contracts as valid for
18 legally-effective contracts is a key element of
19 21st century commerce. It's great that the EU
20 and the U.S. both have that as part of their
21 legal regime. It's something we should reflect
22 together and something we should both

1 respectively continue to negotiate in FTAs with
2 other countries.

3 MR. O'BYRNE: And Mr. Whitlock, from
4 a small business perspective, does your
5 organization have recommendations or ideas on
6 digital trade commitments or mechanisms that
7 might increase access for U.S. small businesses
8 in your industry?

9 CO-CHAIR GRESSER: I suspect this is
10 a sort of general question, if others have ideas
11 or views on this.

12 MR. WHITLOCK: Yes, I would love to
13 answer. Give me a few minutes to collect my
14 thoughts and perhaps others.

15 MS. SWANSON: I have a comment in
16 response to your question.

17 MR. O'BYRNE: Yes.

18 MS. SWANSON: Earlier on I want to
19 make it clear that I worked for the American
20 Chamber of Commerce in China. We do an annual
21 business climate survey. Many of our clients at
22 that time or members were small companies in

1 China and consistently the annual business
2 climate survey found that regulatory uncertainty,
3 just a lack of clarity in regulations, was one of
4 the top concerns for our member companies at that
5 time.

6 So I guess I would refer to the TBT
7 chapter of USMCA, which had a number of
8 provisions on transparency, providing lengthy
9 periods for comments. As I recall, it even has a
10 provision in which governments can be called on
11 to explain why they couldn't accept comments.

12 There are a lot of very detailed and
13 kind of thoughtful provisions, disciplines there
14 that could be used to offer more transparency to
15 smaller companies that I think would be broadly
16 helpful in a number of regions.

17 MR. SCARPELLI: Thank you. Yes, I
18 could contribute.

19 Again, this is much like what was just
20 raised. This kind of an overall theme but you
21 know I think that something that would
22 particularly benefit smaller businesses that just

1 simply don't have infinity legal funds to pay
2 outside counsel, et cetera, is furthering the
3 idea that regulations put into place are based on
4 data-demonstrated needs.

5 There's a few different developments
6 taking place, that have taken place or that are
7 taking place in the EU, which we talk about in
8 more detail in our written filing, where the
9 public record and the research, even that of the
10 European Commission, does not demonstrate an
11 actual harm, yet they are still pursuing a
12 regulation to address a hypothetical harm.

13 And you know I can think a couple of
14 examples. There was a consultation initiated by
15 the European Commission, which was basically
16 based on a presumption that accessing a good or
17 service via a mobile app was inherently less safe
18 than in any other -- through some other modality
19 without really providing any basis for that.

20 Another would be -- another example
21 that rises to the top, pretty troubling for us,
22 is the platform-to-business regulation I

1 mentioned earlier, which just simply is not based
2 -- that we don't believe is based on inadequate
3 evidence basically to even pursue the means --
4 the measures that they're trying to take, which
5 would effectively allow for regulators to
6 intervene in dictating -- in changing contract
7 terms that our members would negotiate with
8 platforms that they partner with in order to
9 build once and sell everywhere.

10 MR. SCHONANDER: Thanks. Well, a
11 couple of different things. Probably higher de
12 minimis requirements would be useful for SMEs --
13 not probably -- they would.

14 Getting back to sort of the strictly
15 digital data flow area, while it is not -- while
16 we do not recommend and it is not really
17 appropriate for trade negotiators to get into the
18 substance of what each country's or each
19 jurisdiction's privacy regime should look like,
20 there are in general data protection regulations,
21 some rules which make exceptions for what SMEs
22 have to do.

1 So I think generally encouraging an
2 SME sort of friendly application of privacy and
3 other rules can be pretty helpful. For example,
4 in GDPR in Article 30, you have to be a certain
5 size in order to produce something that they call
6 a record of processing. And there are other
7 rules like that as well.

8 I would also urge the U.S. Government
9 to continue the really great work on the EU-U.S.
10 Privacy Shield. We're not suggesting that that's
11 a model that should be replicated around the
12 world. We're, as you know, big fans of the APEC
13 Cross-Border Privacy Rules System.

14 But the truth of the matter is that
15 the Privacy Shield now has 4,000 participating
16 members. The vast majority of those members are
17 SMEs, at least a plurality for sure. One of the
18 reasons is it's a self-sort of regulating
19 mechanism. It's administered and enforced in the
20 United States. It's also relatively inexpensive
21 to join.

22 So those are a few suggestions.

1 Thanks.

2 MR. GEIGER: So I want to identify
3 three recommendations that we've made that are
4 potentially helpful for small businesses.

5 The first on encouraging interoperable
6 cyber risk management frameworks. So small
7 businesses are seeking out cybersecurity products
8 both to secure themselves, for its own sake, but
9 also to meet their security compliance
10 obligations. They're trying to figure out how to
11 get to reasonable administrative, physical, and
12 technical safeguards to protect personal
13 information and the risk management framework can
14 help them do that.

15 In the United States, we've created
16 the NIST Cybersecurity Framework and it is
17 intended to be helpful for organizations to try
18 to achieve that level of security based on their
19 -- the particular data they hold, the particular
20 systems that they run, and so forth. And so
21 having a counterpart to that, that is
22 interoperable in the EU will make it easier for

1 small businesses to be able to look for products
2 that can fulfill the functions within such a
3 framework, as well as for vendors to be able to
4 talk with those customers with a common lexicon
5 and, ideally, helps get them to a place where
6 they are more secure.

7 And it's not an easy document to read
8 but it is helpful as a compliance and security
9 program resource.

10 Second, I had mentioned the
11 recommendation on transparency for security for
12 IoT. Small businesses are consumers of IoT
13 devices of many sorts, not just like wearables
14 that consumers have but also office IoT devices.
15 And currently, because a small business does not
16 have the same sort of resources that a very large
17 business might have, it is more difficult for
18 them to evaluate those devices based on security.
19 They don't have the resources to look into it as
20 deeply as a company that has a large amount of
21 financial resources and technical expertise may
22 be able to.

1 Having a simplified labeling and
2 transparency scheme for IoT, which again is there
3 is support for in both the U.S. and the EU
4 Governments, would help enable them to make those
5 purchasing decisions more quickly and to hold
6 their service providers to account.

7 Lastly, the recommendation that
8 several of us have made on prohibiting
9 requirements to weaken encryption, if there is a
10 requirement to weaken encryption for
11 extraordinary access, government access, that
12 burden will fall most heavily on small businesses
13 because the entry point into the encryption, the
14 point at which encryption is weak, suddenly
15 becomes a magnet for attackers. That is, that is
16 the target that the small business must defend
17 against. And the attackers will come not just in
18 the form of people who know our attackers but
19 also requests from government agencies that may
20 or may not exist. They can be very, very clever.

21 And it will be small businesses that
22 will have the greatest trouble with the

1 technology necessary to prevent exploitation of
2 weakened encryption, as well as to vet incoming
3 requests from government agencies for access to
4 data that is then made available as a result of
5 weakened encryption.

6 There are other ways around -- there
7 are other ways to get access to data that helps
8 law enforcement. We think weakening encryption
9 is not the right approach.

10 Thanks.

11 MR. WHITLOCK: Thanks very much.

12 So I'd like to tie a few of the points
13 in our written submission to small business
14 interests. And the themes I would like to touch
15 upon are services, market access, cross-border
16 data flows, interoperable standards, IP
17 protection, and exceptions, and SOEs.

18 First off on the question of services
19 market access, it is important to ensure broad
20 services market access, including with respect to
21 value-added telecom services, particularly those
22 that can be provided on a cross-border basis

1 through Mode 1 commitments.

2 Small and medium-sized enterprises can
3 invest in software development where barriers to
4 entry are lower and can access infrastructure
5 without making a full investment in
6 infrastructure through cloud-based services.

7 Infrastructure is a service, software is a
8 service, and platform is a service. All of those
9 services provide the ability for smaller scale
10 enterprises to participate in the marketplace but
11 the ability of those smaller enterprises to
12 participate globally in the marketplace does
13 depend upon services commitments being undertaken
14 on a cross-border basis in the relevant sectors.
15 So that's the first theme to strike.

16 The second theme relates to
17 commitments on cross-border access and data
18 localization. Again, obviously in echoing the
19 comments of others who have testified, the
20 ability to transfer data across borders without -
21 - and provisions built into a trade agreement
22 that provide a presumption favoring the ability

1 to transfer data are very important for smaller
2 and medium-sized enterprises that do not
3 necessarily have a local presence and a team of
4 local attorneys in the foreign market to comply
5 with.

6 So then the third point that I would
7 strike is interoperability of technical
8 regulations. And again, you know we see trends
9 in other regions, mandatory national standards
10 that discriminate in favor of local champions and
11 it's very difficult for any U.S. enterprise, let
12 alone a small or medium-sized business to comply
13 with mandatory national standards that are unique
14 to a foreign market.

15 The fourth theme I would like to
16 strike relates to intellectual property rules and
17 exceptions. Trade secrets, for example, are
18 often a crown jewel of a small or medium-sized
19 enterprise. And if those trade secrets are
20 forced to be disclosed to a government or are not
21 subject to adequate protections and are lost, it
22 can be debilitating for such an enterprise.

1 At the same time, appropriate
2 exceptions are necessary to permit the types of
3 activities in the digital environment that are
4 necessary to develop new innovations, including
5 with respect to artificial intelligence and
6 machine learning.

7 And the last theme to strike relates
8 to standard enterprises. Again, ensuring that
9 the playing field is leveled and does not favor
10 large incumbent standard enterprises is an
11 important feature of U.S. FTAs. That's important
12 for all enterprises, including small and medium-
13 sized enterprises.

14 MR. SCHONANDER: Thanks. I just
15 wanted to add one point to my colleague from
16 Rapid7's very interesting testimony on
17 cybersecurity, which is this. On his first point
18 on interoperability, I'd like to echo that and
19 maybe it would be good to find some language in
20 there sort of acknowledge in whatever is
21 ultimately agreed upon between the United States
22 and the European Union acknowledging that there

1 is no relationship between where the data is
2 located and cybersecurity. This is a point that
3 we encounter in many jurisdictions around the
4 world, Vietnam, China, Indonesia, I think two
5 other places.

6 So something promoting interoperable
7 cybersecurity frameworks and acknowledging that
8 in order to achieve that cybersecurity that the
9 data does not have to be located in a particular
10 geographical location would be helpful, again,
11 from a precedential standpoint. Thank you.

12 MS. STELLY: I would echo many of my
13 colleagues' concerns with SME's compliance with
14 data localization mandates. However, I wanted to
15 briefly touch upon a couple of items on the
16 burden on SMEs and complying with takedowns and
17 the importance of intermediary liability
18 protections in both the context of IP and in
19 their content.

20 Many of the proposals that are
21 floating around in the EU, including the
22 Copyright Directive, there is also a directive

1 that is being considered on the operation of
2 terrorist content online. Both proposals do not
3 currently have permit exceptions for SMEs. And
4 while many of our larger companies spend
5 extensive resources on products such as content
6 ID that work very closely with the most recent
7 technology that is out there to swiftly remove
8 illegal content online, this doesn't -- many of
9 the proposals out there don't limit it just to
10 compliance with the larger companies that many
11 U.S. internet services are forced to comply with
12 -- could be forced to comply with one-hour
13 takedowns for content that our larger companies
14 are still struggling to deal with.

15 So respective the burdens on SMEs on
16 that.

17 CO-CHAIR GRESSER: I guess we've heard
18 everyone on this topic but Ms. Keller. Anything
19 to add?

20 MS. BENGFORT KELLER: Nothing really
21 to add. You know I will just reiterate what my
22 colleagues have said. You know we've highlighted

1 the importance of IP. I think that's a very
2 important one, especially when we -- especially
3 of concern regarding state actors supporting or
4 contributing through industrial policy, that's a
5 particular concern as well.

6 So the trade secrets reiterate and the
7 SOE disciplines are very important.

8 So I just wanted to highlight those
9 two.

10 CO-CHAIR GRESSER: Okay. This
11 discussion of the SME aspect is very -- it's been
12 very interesting to me individually but I think
13 to the government generally we have something
14 like 285,000 goods exporters and about 280,000 of
15 them are SMEs. We do not know how many SME
16 services exporters there are but I would imagine
17 there's quite a lot.

18 So if anyone has additional thoughts
19 they would like to submit in writing, we would
20 welcome that. Feel free to do so.

21 We probably have time for one or two
22 more questions.

1 MR. HENRY: I have a question for Ms.
2 Stelly from the Computer and Communication
3 Industry Association.

4 How should we address in the U.S.-EU
5 negotiations issues concerning interconnection,
6 transit, and peering arrangements among network
7 providers that participate in the global
8 internet?

9 MS. STELLY: I'm sorry, could you
10 repeat the question again?

11 MR. HENRY: Yes, how should we address
12 issues concerning interconnection, transit, and
13 peering arrangements among network providers that
14 participate in the global internet?

15 MS. STELLY: Thank you for that
16 question. I'm happy to provide further comments
17 in a supplemental response.

18 MR. HENRY: Thank you.

19 I have another question. This is for
20 Ms. Swanson.

21 TIA submission notes that the USMCA
22 represent a major advance in trade rules for the

1 ICT industry in several areas, including digital
2 trade and technical barriers to trade. Can TIA
3 identify particular challenges that member
4 companies face in the European market and give
5 some examples that illustrate how those
6 particular barriers would be addressed through
7 USMCA provisions?

8 MS. SWANSON: I think the best one is
9 e-labeling really because I think most regions
10 around the world, including for that matter,
11 China had adopted e-labeling in some way. And
12 Europe, for reasons that are a bit unclear, has
13 remained a little bit of an outlier.

14 So for our industry, many of the
15 companies we represent make physical devices and
16 as those devices get smaller and smaller and they
17 are sold into more and more countries around the
18 world, many of whom have their own requirements
19 for labels of some kind, it gets hard to
20 physically fit them onto the device.

21 So you can see how I think e-labeling
22 is not controversial in any policy sense. We've

1 just found it hard to get -- so far the EU has
2 not sort of shown a lot of political will in
3 moving forward on this. So that would be a very
4 concrete example of an issue where we could see
5 progress would be helpful through U.S. ICT
6 companies.

7 I mean there are a number of other
8 precedents in the USMCA that we think would be
9 really helpful to carry forward like the TBT
10 language on no mandatory required in-country
11 testing and the provisions on the confidentiality
12 of business information, preserving that, or
13 allowing for more disclosure of that in relation
14 to government-related testing. But those are
15 less specific to certainly the problems in Europe
16 and more about just raising the bar broadly.

17 MR. HENRY: Thank you.

18 CO-CHAIR GRESSER: I guess one last
19 question for Ms. Keller.

20 What commitments would you like to see
21 in an FTA to address your concerns regarding
22 semiconductor counterfeiting and enforcement

1 measures, aimed at the combating the trafficking
2 of counterfeit semiconductors?

3 MS. BENGFORT KELLER: I do not know of
4 specific measures with the EU. I know that in
5 the USMCA we were pleased about the ex-officio
6 authority for Canadian authorities to seize
7 counterfeits. You know previously, they did not
8 have that or it wasn't explicitly laid out and so
9 were not seizing suspected counterfeits.

10 I don't believe we have the same issue
11 with the EU but I think it's more of working
12 closely with the EU to seize and destroy
13 counterfeit chips, which cause severe risks to
14 health and safety because of the types of
15 products that they go into.

16 So other than that, I have no specific
17 -- more specific recommendations than continuing
18 to prioritize that as an issue.

19 CO-CHAIR GRESSER: Okay, we are very
20 close to out of time but let me raise one final
21 thing for any witness.

22 Is there anything in this discussion

1 that you would have wanted to raise but didn't
2 have time to do so, or opportunity to do so? Or
3 anything that you would like to respond to that
4 came up?

5 In that case, on behalf of the U.S.
6 Trade Policy Committee, let me thank you all for
7 your very important contributions as we think
8 through the negotiating objectives for the U.S.-
9 EU trade agreement.

10 David, any final comment?

11 MR. WEINER: Thank you. Thank you
12 very much.

13 CO-CHAIR GRESSER: In that case, thank
14 you all, and this hearing is now adjourned.

15 (Whereupon, the above-entitled matter
16 went off the record at 4:53 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: US-EU Trade Agreement Hearing

Before: USTR

Date: 12-14-18

Place: Washington, DC

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Court Reporter

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