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

9:35 a.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CO-CHAIR GRESSER: Thank you, Dan. Let's now go to our witnesses. I think we should

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Market access negotiations with the EU

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

Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you very much.

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

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

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

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

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

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

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

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

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

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

Codex standards were established to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition to facing high EU tariffs,

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

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

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

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

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

CO-CHAIR GRESSER: Thank you.

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

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

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

Tariff and regulatory barriers have

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

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

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

residue standard.

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

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

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

no scientific justification for imposing additional inspection requirements.

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

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

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

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

Thank you.

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

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

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

American agriculture, including for the dairy industry.

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

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

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

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

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

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

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

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

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

Given Europe's tariff and non-tariff

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

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

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

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

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

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

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

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

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

administration moving forward.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in sugar and ethanol.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In your testimony, you cited the need

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GAIBLER: How it what?

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

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

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

MS. BOMER LAURITSEN: Okay. Thank

you. Bob?

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

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

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

how they are choosing to deal with the issue.

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

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

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

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

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

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

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

MR. SPITZER: Okay. Thank you very

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

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

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

different systems.

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

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

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

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

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

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

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

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

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

to the tariff?

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

MR. SPITZER: Okay. Thank you.

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

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

MR. THORN: No, NPPC would definitely

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

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

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

And so we see no reason for this

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

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

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

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

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

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

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

MS. BOMER LAURITSEN: Okay, thank you.

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

MS. MORRIS: Thank you. Our written

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the EU.

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

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

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

avoid imposing the requirement.

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

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

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

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

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

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

MS. BOMER LAURITSEN: Thank you.

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

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

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

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

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

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

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

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

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

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

MS. BONNER: Thank you.

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

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

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

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

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

CO-CHAIR GRESSER: Okay. And let me

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

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

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

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

But I want to start with a different

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

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

Promote innovation including for drugs, vaccines, gene and cell therapies. Create more competition for medical technologies. Increase the supply and overcome the undersupply of medical research as a public good. Progressively delink the R&D incentives from the

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

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

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

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

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

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

Thank you again for the opportunity to testify.

CO-CHAIR GRESSER: Thank you. I will

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

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

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

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

in pharmaceutics.

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

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

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

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

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

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

U.S. products.

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

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

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

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

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

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

compatibility and to create streamlined processes and procedures.

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

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

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

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

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

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

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

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

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

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

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

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

reflected conceptually in U.S. law.

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

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

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

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

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

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

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

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

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

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

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

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

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

are all critical elements.

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

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

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

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

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

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

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

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

With respect to harmonization and

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

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

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

years.

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

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

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

This agreement is critical to address

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

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

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

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

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

This testimony is not made on behalf of any government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

drugs, if any.

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

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

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

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

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

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

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

One of the points in your written

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. BOHON: Thanks.

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

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

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

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

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

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

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

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

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

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

MS. BOHON: Thank you.

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

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

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

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

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

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

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

MR. TAYLOR: In terms of that language?

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

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

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

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

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

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

MS. BOHON: Thank you.

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

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

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

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

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

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

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

harmonization.

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

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

MS. BLEIMUND: Thank you.

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

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

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

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

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

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

I think the other key point here is

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

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

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

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

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

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

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

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

But that decision was not based on

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

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

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

MS. BOHON: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

MS. BLEIMUND: Thank you.

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

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

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

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

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

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

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

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

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

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

CO-CHAIR MULLANEY: Thank you. I like

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

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

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

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

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

Council, and William Foley of Libbey Incorporated.

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

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

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

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

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

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

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

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

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

We recommend that the negotiations

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

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

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

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

Instead, the deal should create a

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

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

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

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

labor.

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

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

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

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

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

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

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

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

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

CO-CHAIR MULLANEY: Ms. Chorlins?

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

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

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

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

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

In keeping with the Chamber's mission

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

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

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

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

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

Eliminate all tariffs on nonindustrial goods as agreed at the presidential statement in July. Eliminate or significantly streamline licensing requirements for U.S. LNG exports to non-FTA partner countries such as the EU.

Resolve longstanding market access issues such as increasing U.S. imports of non-hormone treated beef from the United States. Agree to maintain existing market access levels for services and establish a framework for cooperation towards elimination of services' trade restrictions in third countries.

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

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

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

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

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

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

Establish new rules to protect trade

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

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

Create new meaningful regulatory cooperation dialogues. Formalize a joint commitment to follow good regulatory practices. Pursue new sectoral agreements that minimize duplicative testing and certification requirements.

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

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

mixed.

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

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

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

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

agreement on safeguards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2015.

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

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

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

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

CO-CHAIR GRESSER: Thank you.

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

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

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

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

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

mind elaborating on that a bit?

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

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

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

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

And if the U.S. and Europe cooperated

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

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

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

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

You also objected to negative lists or

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

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

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

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

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

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

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

And in fact, they are representative

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

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

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

us to put that in writing for you.

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

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

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

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

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

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

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

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

MS. LYNTON GROTZ: Thank you.

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

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

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

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

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

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

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

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

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

important precedent like I said.

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

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

MS. LYNTON GROTZ: Thank you.

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

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

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

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

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

MR. FOLEY: Yes, we have.

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

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

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

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

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

MS. BONNER: Okay.

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

MS. BONNER: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

as an opportunity for our customs agencies to be cooperating?

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

MR. MANOGUE: Right, yes.

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

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

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

colleague for another question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. CHORLINS: Small, but mighty.

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

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

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

much.

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

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

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

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

providers in the world.

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

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

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

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

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

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

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

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

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

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

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

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

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

any other trade negotiations.

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

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

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

MR. TOMPA: Thank you. I'm appearing on behalf of the American Numismatic Association, the Ancient Coin Collectors Guild, the Association of Deals and Collectors of Ancient and Ethnographic Art, the Committee for Culture Policy, the Global Heritage Alliance, the International Association for Professional Numismatics, and the Professional Numismatics Guild.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Two, the agreement should contain

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

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

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

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

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

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

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

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

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

facilitation.

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

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

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

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

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

costs.

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

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

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

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

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

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

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

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

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

I'd like to spend a few minutes

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

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

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

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

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

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

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

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

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

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

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

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

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

CF Industries has been down this road before making the very same request. Unfortunately, previous efforts to negotiate EU fertilizer tariff elimination have been very challenging.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Why is the SME versus large

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

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

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

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

Many times these companies are

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

annually.

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

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

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

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

simple, and transparent.

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

Number four, digital trade: Digital trade based on the free flow of data across borders is critical to chemical manufacturers. State-of-the-art provisions on promoting data privacy, enabling open cross border data flows, prohibiting data localization requirements, and strengthening cyber security while respecting intellectual property rights will be critical. The USMCA provides a starting point for strong provisions on digital trade.

Number five, trade facilitation: ACC recommends that the United States and EU pursue a WTO trade facilitation agreement plus approach to customs and trade facilitation efforts in their bilateral negotiations.

Number six, dispute settlement: We

recommend that the United States and European Union agree on binding and enforceable state to state dispute settlement.

We also urge both parties to accept investor state dispute settlement provisions for all sectors without limitations on the claims that investors can make on specific investment protections.

Number seven, duration of the agreement: The U.S. and EU trade agreement should provide maximum predictability and certainty to investors and traders. We support making improvements to the agreement as international trade evolves, but recommend avoiding the inclusion of time frames for an early termination or sunset of the agreement.

Number eight, addressing sources of marine litter: There is a global need to support infrastructure development to collect, sort, and process used plastics. Such infrastructure will create opportunities for trade and investment and help keep used plastics out of the environment,

thereby reducing marine litter. We recommend that the U.S.-EU trade agreement build on the marine litter language in the USMCA environment chapter.

I will close with one final and urgent recommendation from U.S. chemical manufacturers. We strongly encourage the U.S. and EU to work together and with other like-minded governments to address trade distorting practices by other countries.

ACC and its members stand ready to assist the administration in the creation of a coalition of allies in the WTO to protect and enforce its trading principles around the globe.

Thank you again for the opportunity to provide input on behalf of ACC members and the businesses of chemistry in the United States.

CO-CHAIR GRESSER: Thank you all very much. Let me now turn to David Weiner, Deputy Assistant USTR for Europe to begin the questioning.

MR. WEINER: Thank you, Ed, and thank

you to all of the witnesses for the testimony. It's been very helpful. I was going to -- we'll sort of move down the dais here and I'll start with a couple of questions for Mr. Mullen. I had actually initially a sort of two-part question on your comments about regulatory harmonization.

You said in your submission and your testimony just now that you recommended that it would be, that you recommended that we would seek agreement between the United States and the EU to harmonize regulations across the entire supply chain, including from product conception to delivery to the consumer, to include design manufacturing, distribution, and consumption.

That's a pretty ambitious proposal for regulatory harmonization, so I was wondering whether you could first explain perhaps whether there are priorities in that sort of list of areas across the supply chain in which I think you feel and your companies feel that we do not have sufficient harmonization, and maybe explain whether there's areas of particular, in which the

lack of harmonization or lack of sort of equivalence in our regulatory approaches is particularly burdensome?

And then also maybe explain how harmonization in those areas, some of which don't immediately seem to relate to the delivery, to the express delivery service industry itself, how that would impact the industry and the member companies in your association?

MR. MULLEN: Okay, thanks very much. That's really a good question and really what we're trying to get at there is that it's a mistake anymore to look at products that are, as being sort of built in one country and then shipped to another country.

And supply chains truly have become global and we have to look at this process from that point of view, that there are many different players involved in a product coming from, starting in one place with raw materials and ending up in someplace else where it gets sold.

And what we're really trying to get at

is the fact that two-thirds of the holds that are put on shipments coming into the United States now are placed by other government agencies, not Customs and Border Protection, which mainly is looking at security issues.

But the other government agencies, and the Food and Drug Administration is a very large one, agriculture requirements are a very large one, consumer product safety, they need to look at these products as being part of a system that starts with a set of raw materials and goes through a design process, a manufacturing process, and then the delivery part of it is really sort of the last step of it.

We think it would be enormously helpful for countries to look at it from that point of view and harmonize their regulations across the entire process so that when a medical device is coming in from the EU, the FDA is confident that it's gone through a process that is in harmony with U.S. regulations.

So we recommend the creation of a

group that would actually look at these kinds of issues and try to come up with a set of best practices that would work well for both sides, so that's what we're trying to get at with that part of it.

MR. WEINER: And is that, is it an area in which you've had dialogue with European counterparts? I would imagine that some of them may feel similarly about that or --

MR. MULLEN: I'm not sure what the question is.

MR. WEINER: Is there -- you have -- I think that there are some EU-based express delivery companies, and I wonder whether they have a similar perspective on this issue or on these set of issues, the regulatory harmonization?

MR. MULLEN: Well, even --

MR. WEINER: Or have you had engagement with them?

MR. MULLEN: Even my members, of course, have global operations and they go both

ways, and, yes, I would say it's equally a problem for U.S. made devices that are going into the EU. We think there needs to be better harmony there.

MR. WEINER: Okay, thank you. So I'm going to move down the dais here and ask some questions of you, Mr. Tompa. I'm curious. You're bringing to us a set of issues which are a little bit new.

MR. TOMPA: Unusual.

MR. WEINER: Unusual for us, at least with respect to USTR.

MR. TOMPA: Sure.

MR. WEINER: Our colleague from CBP was not able to join us at the last minute, so, but I'm curious to know whether you've -- you're asking us -- and I'm sort of summarizing a little bit, your testimony, all of which was quite interesting.

But you're asking us to sort of address in the context of a trade agreement where we take on some binding rules between ourselves

and another party or parties, issues which, you know, traditionally lie outside of sort of the trade policy area, and --

But of course our trade agreements are quite ambitious in scope in recent decades in the United States and EU, in both the United States and the EU, so we do address things that are sort of trade related.

Do you -- are you -- can you point to other agreements in recent years, other trade agreements or principally trade agreements, that address the kinds of issues that you're asking us to address here, that would --

MR. TOMPA: No, I can't, but that's because they really haven't been a serious issue until recently, so it may be one of those situations where there was not a need before, and so it was never raised before.

And actually, the most, most of the trade in our antiquities, especially -- I did this on the behalf of a number of organizations, but I'm outside counsel to the Numismatic Trade

Associations, and most of the trade is actually between the EU and the U.S., so because of that, it really just has not been an issue before.

MR. WEINER: Globally most of the trade is between those two?

MR. TOMPA: Yes, yeah.

MR. WEINER: Okay, are you -- you said in your testimony that there are, you know, you are concerned in particular about new, existing, and I guess some newly proposed EU rules --

MR. TOMPA: Yes.

MR. WEINER: -- that the European Parliament approved or has voted on?

MR. TOMPA: Yes, they actually just voted on it and I didn't get the details or a reporting of the details until, like, 10 minutes before I left, so I wasn't able to actually read them.

In our written testimony, we summarize what the rules were proposed as, and there may be some changes from them, but you have to keep in mind that they seem to be made with the idea that

we're talking about large value objects, and a lot of the objects that the people I represent deal in are quite low value, you know, like $50, etcetera.

So the idea that you're going to have this kind of provenance information or you're going to be able to have this document trail, etcetera, back five, 10 years for something that is, you know, worth $50 is kind of a little bit--

It's impractical and it just won't happen, and I think we outlined in our papers, you know, why traditionally there was never any requirement of provenance information, and even when previously some countries started requiring export certificates for these kinds of objects, the ones that did wouldn't even do it on an individual basis.

And the example I gave was Israel where Israel would issue export permits for 500 ancient coins, but they wouldn't actually identify them, so even if you kept the document, and most people wouldn't keep the document, once

the thing was exported, you would just get rid of it, you know, because there was no need to keep it, it wouldn't be of any use today.

So to have a requirement that you have to prove something back five, 10, 15, 20, 30 years, it's kind of just a little bit -- it's asking for the impossible, especially for low value items. We're not talking about, you know, million dollar items here, you know, so that's one of the issues that we're working with.

And it doesn't seem, from what I can tell, that the -- the trade association also engaged lobbyists in Europe and it doesn't seem like it sank into the European Parliamentarians.

I will say that their process was very, very rushed and it was very influenced by sort of very overblown conceptions of what ISIS was making based upon looting, and if you look through our paperwork and look at the documents that I cite, it goes through the bases for these claims and debunks all of them.

But basically they were started mainly

by the Syrian government and the Russian government as part of their effort to sort of paint this as, you know, their war in Syria as, you know, something that was noble as opposed to what it really was.

MR. WEINER: Just one additional question, you emphasize in your statement and your written materials that these are, of course, in large part small businesses, I guess, on both sides --

MR. TOMPA: That's correct.

MR. WEINER: -- and individuals, small firms that are doing this.

MR. TOMPA: Yeah, I could elaborate on that.

MR. WEINER: Yeah.

MR. TOMPA: Most of them are solo proprietors, and I would say in the United States, I'd say a third of them are actually part time, so they're collectors and, you know, they just do this as a part time thing because they love the object.

They love collecting it and it's just a way to sort of take that to a different level, so they have other jobs. I could see them dropping out of doing this if the regulations get too extensive.

MR. WEINER: Thank you.

MR. TOMPA: Thank you.

CO-CHAIR GRESSER: I have a question for Mr. Herman. I'm quite interested in your comments on methods of enforcing anti-counterfeiting policy against third party, busy third party marketplaces. What commitments would you like to see in a FTA or in a trade agreement to address these concerns?

MR. HERMAN: So there's been a concern, we've raised it in the USTR's notorious markets report every year, of third party marketplaces have become platforms for the sale of counterfeit products because the platforms have no regulation of the sellers on the platform, and so they can put anything on there, portray it as a legitimate product, and sell it.

And so what we would be asking as part of a trade agreement is to have the European Union regulate platforms that are based in the European Union to ensure that they, that they're checking the sellers and making sure they're legitimate, that they have rights to sell the products that they're selling, and that they're not counterfeit products, and so that's basically what we're looking for.

CO-CHAIR GRESSER: Thank you. Perhaps we could turn to our colleague from the Treasury Department.

MR. MEIER: Ms. O'Brien, thank you for your testimony. You note that CF Industries is also producing fertilizer in Canada, United States, and in Trinidad, excuse me, Canada, the United Kingdom, and Trinidad.

If duty free access were achieved, what percentage of the fertilizer exported by your company to the EU do you anticipate will be of U.S. origin?

MS. O'BRIEN: For CF Industries, the

majority of our production is U.S. based, so we have five world scale plants in the U.S. and two in Canada, but the majority of our export capability is out of our Donaldsonville, Louisiana facility where we have four docks where we can export our product.

And most of our product is going to be for U.S. farmers, as I said in our testimony, but because of the ebb and flow of demand and weather, we do have opportunities to export. When we do, we would like to send that product to Europe or other parts of the world, and Europe is a great growing market for us.

So I can't give you a particular percentage of U.S. origin, but most of it would have to be U.S. origin because of our logistics.

MR. MEIER: Okay, thank you. It's interesting that the EU cited nitrogen fertilizer as energy sensitive given that they are a net exporter. Could you explain more about why it has this designation?

MS. O'BRIEN: I'm sorry. I didn't

hear the last part of your question.

MR. MEIER: Could you explain more about why nitrogen has the energy sensitive designation given that the EU is a net exporter?

MS. O'BRIEN: I mean, in our view, that is purely a protectionist measure on their part. The commodities are completely fungible. Our products and their products are produced the same way with the same energy intensity and, you know, we just viewed it as another example of trying to find a way through the T-TIP negotiations to preclude us from exporting our products to Europe.

MR. MEIER: Thank you. You reference a forthcoming EU fertilizer regulation and the need for regulatory cooperation minimizing barriers. Can you provide an example of how the lack of EU harmonization and inconsistencies in member state implementation has adversely impacted bilateral trade?

MS. O'BRIEN: Yeah, we are watching right now a couple of situations that we're

concerned about. I mean, we've been -- as others have spoken here today about the REACH, the EU REACH program, that's extremely complex, and demanding, and continues to be a significant barrier to trade in our view.

The EU also has a series of regulations that govern the movement of fertilizer, the labeling, the nutrient content, and that can be interpreted by each member state in a unique way, so we are concerned about that.

We also know that they recently adopted some new security regulations that cover ammonium nitrate-based fertilizers and potentially UAN, and that's going to affect how these products are transferred and sold in the EU, so we are very concerned about how that is interpreted by the member states, and we're really looking here for best practices as these regulations are developed.

Finally, there's a new regulation on EU fertilizer that just covers a whole host of topics on the environmental side, including

groundwater, drinking water, and emissions ceilings, and again, we are concerned about how the different member states are going to interpret these new upcoming regulations and we just want to make sure that our government is involved so that we can see best practices implemented on those.

MR. MEIER: Thanks, just one last question for you. Thank you for raising the impact of EU fertilizer tariffs on U.S. exports and suggesting that USTR seek elimination of these tariffs. Do you anticipate any resistance from EU competitors and are potential customers in the EU pressing for greater competition among fertilizer producers?

MS. O'BRIEN: We certainly expect our counterparts in Europe to be opposed to our position on reducing these tariffs immediately to zero because their position has always been either don't eliminate the tariff or stage it.

Under T-TIP, it was they who asked for a staging of seven years, which we found totally

unacceptable since they have complete access here now at zero rates.

And what's so fascinating about the farming community is there is a demand for our products, especially the UAN product. They just don't make enough to supply European farmers, and so we have customers asking us to please supply them with this product.

So the farming community basically is asking for more U.S. products, more competition in the fertilizer space.

MR. MEIER: Thank you.

MR. O'BYRNE: This question is for Mr. Oehme. Thank you for your comments on how small and medium sized enterprises are often disproportionately affected by transatlantic barriers to trade.

Could you elaborate on the benefits a U.S.-EU trade agreement would have for SMEs and what sort of provisions or commitments in particular would help grow their market access? Thank you.

MR. OEHME: Well, many of the aspects have been mentioned today. Obviously the SMEs are taking part in producing products at a smaller scale than larger companies, so the regulatory issues apply to SMEs just as to the extent that they apply to large companies, so that would certainly help very much.

And I think it's also important that there is the awareness of SMEs and that they can also play an important role, and many of them in a certain niche have a large market share, so that when you really look at the individual companies, they may be small, but they can have a large market share.

And one aspect that came up at our last meeting in Vienna of this group that I mentioned, that is where -- and then USTR, Treasury, Commerce, and SBA are part of, is the fact that, at least from what we heard in Europe, women, if they are running SMEs or if they're starting SMEs, are disadvantaged because the banks don't give them the funding.

Some authorities may not take them seriously, and that's maybe not something that can be regulated in a free trade agreement, but it is an issue that should be brought to the attention, that there is unequal treatment of the various SMEs.

MR. O'BYRNE: Thank you.

MR. HENRY: I have a question for Mr. Brzytwa from the American Chemistry Council. You advocate for greater regulatory compatibility and cooperation in the chemical sector and point to the USMCA chemicals annex as a possible basis for that.

Given the fundamentally different regulatory approaches taken under EU's REACH framework and the U.S. Toxic Substances Control Act, in which areas do you think concrete compatibility improvements are feasible without changes to one system or another?

MR. BRZYTWA: Well, thank you for that question. I think we recognize that the two systems for chemical management respectively in

the United States and EU are, you're never going to be able to harmonize them. This is why we're promoting regulatory cooperation to create efficiencies for our chemical manufacturers.

And as I said, chemical trade is very much between related parties. So we want to identify the right set of topics where we can cooperate, where we can create those efficiencies.

If you look at the USMCA, it identifies a core set of issues for further discussion between the three USMCA parties, and number one on that list, if I'm not mistaken, is the GHS, the globally harmonized system for chemicals classification and labeling.

We think this is a prime area for additional new discussions between the regulators in the EU and U.S. regulators, the EPA. I think we can have further conversations about information sharing, safety data sheets, how we can actually make the process of regulation less costly for our businesses.

And if I may say, we've been talking about small and medium sized enterprises here. It's expensive to comply with regulation, as we know, and I think it's even disproportionately expensive for SMEs.

If we're going to have robust regulatory cooperation between the U.S. and the EU, we should really look to making sure that SMEs are going to be the beneficiaries of that, and that's particularly true in the chemicals area.

MR. HENRY: Thank you. In the document, you advocate seeking the inclusion of chemical reaction rules of origin. How do the chemical reaction rules in the USMCA and the EU and Canada FTA compare, and does the EU agreement with Canada include any new rules that the U.S. should consider?

MR. BRZYTWA: Yeah, I'll admit I have not done a deep dive on the Canada-EU agreement, and I think that's probably something that we will look at in the future.

We're engaging in discussions with the EU industry to see where we can provide some common perspectives. We did this with our counterpart associations in Mexico and in Canada when it came to the USMCA and we were able to provide some really good input to the three parties.

You know, if you look at the input we gave in that process, I think it would be, you know, broadly is reflected in the USMCA outcomes, and this is why we're recommending the USMCA as a starting point. If we're able to get on the same page as the Canadian industry, you know, I think we're confident that we can do that with the EU industry.

As a matter of fact, the United States, well, ACC and our counterpart in the EU, Cefic, did submit a joint proposal on rules of origin for T-TIP, and I think we're going to look at that to see if we want to make any changes to that based on progress we've made respectively since.

MR. HENRY: Thank you.

CO-CHAIR GRESSER: Well, we are just about out of time for this panel. This has been a very interesting set of presentations and we appreciate it very much.

Before closing, we would just like to ask is there anything that any of you would have liked to raise, but didn't have the chance to do so, or anything in the proceedings you'd like to respond to? And if not, thank you very much on behalf of the TPSC and the panel is closed.

(Whereupon, the above-entitled matter went off the record at 2:33 p.m. and resumed at 2:42 p.m.)

CO-CHAIR GRESSER: Thank you all very much. We are beginning our fifth panel of the day. This will look at the automotive sector. We are fortunate to have with us Charles Uthus from the American Automotive Policy Council, Paul Ryan of the Association of Global Automakers, Ann Wilson with the Motor Equipment Manufacturers Association, and Jennifer Thomas of the Alliance

of Automobile Manufacturers.

As in previous sessions, we will start on my right or your left and go one by one. And so I'd like to invite Mr. Uthus to kick it off.

MR. UTHUS: Thank you very much.

Good afternoon. I am Charles Uthus, Vice President Automotive Policy Council. I am also a chair of ITAC-2, which is Automotive and Capital Goods ITAC.

AAPC represents the common public policy interest of America's automakers, FCA, Ford, and General Motors. We appreciate this important opportunity to provide our views and recommendations on the proposed U.S.-EU trade agreement before the Trade Policy Staff Committee.

We understand that currently autos are not formally among the sectors that are covered in the talks but we believe that the U.S. auto industry would benefit from their inclusion. As the largest manufacturing and exporting sector in the United States, America's automotive industry

has a major stake in a potential trade agreement with the European Union.

Today the U.S. and the EU together account for 31 percent of global auto production and 37 percent of global auto sales. Moreover, U.S.-EU auto trade, including vehicles and parts, accounts for 11 percent of total trade between the U.S. and EU.

We believe a successful trade agreement with the EU would benefit the industries, workers, and consumers on both sides of the Atlantic. For American automakers, such an agreement would only expand U.S. auto exports to Europe but, through regulatory convergence, it would also boost our auto exports to third countries that have limited imports to vehicles certified to European standards, primarily from exclusions of vehicles certified to the equally robust U.S. auto safety and environmental standards.

So to put some numbers on this, last year the EU exported 1.4 million cars and light

trucks to the U.S. worth about $43 billion. Meanwhile, American vehicle exports to the EU were worth about $8.6 billion. One reason for the disparity in auto trade volume is the EU's relatively high import tariff on passenger vehicles, which is 10 percent, compared to 2.5 percent in the U.S. But another, perhaps less well-known reason for the limited U.S. exports volume to Europe is the need to modify a vehicle to comply with different auto safety standards in the European Union.

Modifying a U.S.-certified vehicle to meet European standards can cost millions of dollars per vehicle program. Not only does this make it difficult for our vehicles to be sold in Europe, but also makes it difficult for many vehicles manufactured in the United States to be sold in third country markets that exclusively accept European auto standards.

Until recently, the different U.S. and EU auto standards did not pose a significant barrier to automotive trade to third markets,

since these markets typically accepted both U.S. and EU certified vehicles. However, for more than a decade, the EU has been successful in persuading other countries to accept vehicles certified exclusively to European standards. When this happens, more often than not, third countries move to solely accept those just European standards at the exclusion of shutting American cars and trucks out of critically and rapidly growing markets around the world.

With regard to auto standards and regulations, we believe two goals should be pursued by the negotiators. First, any U.S.-EU agreement must clearly articulate a process that at the earliest stage possible directs coordination and cooperation between U.S. and EU regulators and harmonization on all new vehicle standards and regulations deployed. Second is the creation of a comprehensive approach that will pave the way for each party to mutually recognize and accept vehicles built to the other party's existing auto standards and regulations.

Developing a framework for regulatory convergence and mutual recognition is vital to the continued success of American auto exports. If, however, no action is taken the U.S. will continue to experience a steady erosion of the ability to cost-effectively export its vehicles to Europe and beyond. Inaction would also open the door for the creation of other sets of standards, which could further supplant the acceptance of U.S.-certified vehicles in other markets.

With regard to tariffs, we recommend that, in close consultation with industry stakeholders, the U.S. secure appropriate phase-downs of the auto tariffs that U.S. exports face in the European Union. However, we believe that any potential trade agreement must be viewed in its entirety, which requires that only -- that the U.S. only agree to tariff phase-outs that are commensurate with the level of the overall improved access American automakers would gain.

And finally, whether through the U.S.-

EU trade negotiations or through separate channels, we urge the administration to avoid imposing any new tariffs on imported vehicles or parts, particularly tariffs that would be imposed as part of the ongoing 232 auto investigation. The 232 auto tariffs would almost certainly end the U.S.-EU trade talks and lead to retaliation that would also hurt America's automakers and consumers.

In conclusion, American automakers believe the trade agreement negotiations with the EU are a critical opportunity and represent a win-win-win scenario for our sector. If successful, it will allow our automakers to gain improved access to the EU auto market, gain improved access to markets that currently only accept European standards, and will help America maintain its leadership in global auto standards development.

Thank you again for the opportunity to share our views and recommendations.

CO-CHAIR GRESSER: Thank you very

much.

Let's now move to Mr. Ryan.

MR. RYAN: Thank you very much, Mr. Chairman.

Members of the Trade Policy Staff Committee, good afternoon. My name is Paul Ryan and I am the Vice President of Trade and Competitiveness for the Association of Global Automakers. Global Automakers represents the U.S. subsidiaries of 12 international automobile manufacturers, as well as suppliers and a handful of automotive trade-related associations.

I am also here today on behalf of Here for America, which represents all international automakers operating in the United States, as well as several suppliers.

International automakers have invested $82 billion in the United States and become a part of the American manufacturing landscape. In fact, 14 companies now produce cars and trucks in the United States and a 15th is scheduled to begin production in 2021. Ten of these 14

companies originated outside the United States and most have been building vehicles here for decades, including three of the four current U.S. producers that originated in Europe.

International auto companies are deeply enmeshed in the U.S. communities in which they operate. Combined, these companies employ 133,000 Americans at nearly 500 facilities and they create jobs for some 1.3 million Americans. Importantly, international automakers produced nearly half of all the cars, SUVs, vans, and light trucks made in America last year and accounted for nearly half of all U.S. vehicle exports.

For their part, European-based automakers have invested more than $30 billion in manufacturing, R&D, design, and other facilities here in the United States, accounting for over 200,000 direct, indirect, and induced American jobs. These companies collectively produced over 800,000 cars in 2017. One of these producers has located its largest worldwide manufacturing

facility here in the United States and all actively promote the dissemination of workforce skills necessary to their advanced production operations.

Significantly, many of these producers export as much as 60 percent of all of the vehicles they build in America each year to customers around the world.

Mr. Chair, a trade agreement with the European Union can promote, in our view, economic growth, increased jobs, can benefit consumers, and enhance the global competitiveness of U.S. producers. We also believe that these measures that I intend to outline will help advance these complementary objectives but there are, however, trade actions currently in place that we believe complicate the negotiating process and which we also believe should be resolved prior to negotiations with the EU.

First, the 232 tariffs on steel and aluminum are damaging the U.S. automobile industry and they are contrary to the spirit of

proposed negotiations with the EU. We believe they should be removed immediately.

A second issue involves the threat of additional tariffs on autos and auto parts under the current Commerce Department's Section 232 investigation. In our view, there is no credible justification for the idea that automotive imports threaten our national security. In fact, the growth of international automobile manufacturers in the United States during the past quarter century proves otherwise.

Mr. Chair, there are five key issues that I would like to urge the administration to consider as it begins the negotiation of a trade agreement with the EU. First, we believe that such an agreement should include the auto sector and that it should also embrace global harmonization for future automotive standards and regulations. We also recommend that the United States and the EU should work through global bodies like the U.N.'s Working Party 29 to the greatest extent possible.

Both the U.S. and the EU have strong regulatory regimes that provide a solid foundation for mutual recognition, which we believe will not compromise vehicle safety or environmental performance but which will promote trade and economic growth. In fact, the Peterson Institute for International Economics has estimated that the removal of regulatory differences in autos could increase trade by 20 percent.

Second, we believe that all vehicle tariffs should be eliminated at the earliest possible opportunity. While our member companies have U.S.-produced products that compete in the U.S. market, immediate duty-free treatment of autos and auto parts would benefit all U.S. automotive producers, their workers, and ultimately their consumers in the United States and in the European Union.

We recognize that, as with other trade agreements, there may be an interest in including an automotive rule of origin as part of any

tariff concessions that are included in this agreement. Should negotiators pursue such a rule, we believe it should be a balanced, flexible, rule and one that is consistent with the tariff benefits that are obtained.

Third, in today's world, a constant stream of data flows seamlessly across our national borders. It is, therefore, essential to have clear consistent rules in place that allow for the unimpeded flow of data and we, therefore, encourage the inclusion of provisions that prohibit the imposition of localization requirements, as well as language to promote e-commerce.

Fourth, we believe that a U.S.-EU trade agreement should include customs and facilitation provisions that mirror those in recent free trade agreements with Mexico, Canada, and South Korea.

And finally, we believe that currency is an international economic issue more properly addressed in a multilateral context, such as the

G7 or the G20, rather than in a bilateral or regional trade agreement. If currency provisions are, however, included in a U.S.-EU agreement, those disciplines, in our view, should not restrict U.S. policy options or preempt multilateral treatment of the issue.

Mr. Chair and members of the TPSC, I appreciate the opportunity to bring these views to your attention and I am happy to answer any questions that you may have.

CO-CHAIR GRESSER: Thank you.

Ms. Wilson.

MS. WILSON: Thank you.

Good afternoon. My name is Ann Wilson and I am the Senior Vice President of Government Affairs for the Motor and Equipment Manufacturers Association. MEMA is a trade association representing more than 1,000 suppliers that manufacturer new original equipment and aftermarket components and systems for use in passenger cars and commercial vehicles. Vehicle suppliers are the largest employer of

manufacturing jobs in the United States, directly employing over 871,000 Americans in all 50 states. Supplier manufacturing jobs have increased over 19 percent since 2012, in large part because of the investment in new innovative technologies that are dependent on a global supply chain.

I am pleased to be here today to address our priorities for a free trade agreement with the European Union. The EU is a critical trading partner for the U.S. vehicle parts manufacturers. MEMA supports this opportunity for the U.S. to strengthen our trading relationship with the EU and we urge both parties to arrive at a trade agenda that is mutually acceptable. If the U.S. and the EU decide to include vehicles and vehicle parts within that discussion, MEMA urges the parties to address the following issues: agree to terms that exempt the EU from Section 232 tariffs on steel and aluminum imports, as well as from any potential tariffs resulting from a Section 232 investigation on

automobile and automotive parts without any caps or quotas; allow for regulatory convergence and mutual recognition of existing standards, removing technical barriers to trade without further modification, testing, or certification, provided that safety levels and environmental protection are not lowered; and finally, address non-tariff barriers to trade.

MEMA has consistently opposed the imposition of Section 232 tariffs and believes that the United States and the EU must agree to terms related to the current Section 232 tariffs on steel and aluminum and any potential Section 232 tariffs on automobiles and their parts.

Moreover, MEMA would urge the parties to agree to a full exemption without any caps or quotas. Addressing these exemptions would signify the importance of our trading relationships and provide the ongoing stability that suppliers need to thrive in the United States. If these matters are not addressed, U.S. suppliers and OEMs will be less competitive and

less profitable.

This afternoon, I wanted to spend the larger share of my time discussing an issue of specific importance between the U.S. and the EU, regulatory convergence and mutual recognition.

The U.S. vehicle industry is undergoing one of the most significant technological transformations to the future of our mobility. These advances are improving vehicle safety and efficiency in unprecedented ways, yet minor regulatory differences between the U.S. and the EU are costly for the industry and the end consumer.

Therefore, MEMA urges USTR to revisit regulatory convergence, since this has the potential to breakdown unnecessary technical barriers while maintaining the fundamental structure of each regulatory system. This can be done utilizing resources of effectively and respecting sovereignty without sacrificing vehicle safety or environmental performance. This is of particular importance for new forward-

looking standards on advanced technologies.

At the same time, MEMA believes that aligning or mutually recognizing each other's regulatory schemes would open opportunities for U.S. vehicle suppliers to access the European marketplace. MEMA urges the parties to establish a pathway for mutual recognition of existing standards without further modification, testing, or certification, again, providing that levels of safety and environmental protection are not lowered. This will not only tackle non-tariff barriers by allowing U.S. FMVSS-certified vehicles and parts into the EU but will also cultivate opportunities to align in the development of new future standards for new technologies.

Our industry is committed to work with the USTR and the Departments of Commerce and Transportation to develop these practical approaches to these challenges. MEMA stands ready to fully participate in the negotiations.

I would like to thank you for your

time this afternoon and would be happy to answer your questions.

CO-CHAIR GRESSER: Thank you very much.

Now, Ms. Thomas.

MS. THOMAS: Thank you.

Good afternoon. I am Jennifer Thomas. I am the Vice President of Federal Government Affairs at the Alliance of Automobile Manufacturers. The Alliance is a trade association representing 12 automakers, both domestic and international nameplates. Together, Alliance members represent approximately 70 percent of new car sales in the U.S.

Thank you for the opportunity to be here and express our views on the negotiating objectives for a potential U.S.-EU free trade agreement. Bear with me because you are going to hear a lot of the same themes that you have already heard from my fellow panelists but I think that underscores the importance of these issues.

Automakers are encouraged by the work conducted thus far by the U.S.-EU Executive Working Group launched in July. While autos were not included in this initial effort, we remain hopeful that autos will be part of the formal U.S.-EU bilateral negotiations.

The case for a strong automotive chapter within a U.S.-EU agreement is clear. The U.S. and EU are the second and third largest passenger vehicle producers and vehicle markets in the world. Automotive is the largest exporting sector in both the U.S. and the EU, equaling ten percent of transatlantic trade. An increase in bilateral auto trade would account for more than one-third of all gains in total bilateral trade flows, more than any other sector.

Formalizing our strong transatlantic relationship in the form of a free trade agreement would strengthen the U.S. and EU roles as global auto standard setters, preventing the emergence of a third set of potentially

conflicting or inconsistent regulations. A U.S.-EU free trade agreement represents a unique opportunity to break down regulatory barriers in the auto sector, while maintaining high-level safety and environmental performance. Greater regulatory convergence will lower cost, create jobs, enhance the competitiveness of the transatlantic auto industry, and promote good regulatory practices in the global marketplace.

We strongly recommend that the two partners prioritize efforts related to regulatory convergence of existing automotive safety standards and the harmonization of future automotive standards. Much work was conducted in this area as part of the Transatlantic Trade and Investment Partnership negotiations under the previous administration and it would be a missed opportunity to not continue building on the progress made during these discussions. In fact, the Peterson Institute concluded in a 2015 analysis that as much as $20 billion could be gained annually as a result of U.S.-EU auto

regulatory convergence.

We encourage both partners to again prioritize three pillars as part of the upcoming negotiations:

1) Equivalence of existing automotive safety standards and harmonization of future regulations;

2) Improve and strengthen the U.N. WP.29 Global Technical Regulation process; and

3) Coordination of research and regulatory development for future regulations.

While the Alliance certainly commends the administration for initiating bilateral negotiations with the EU, I'd be remiss if I failed to stress that any potential benefits derived from a U.S.-EU free trade agreement could be completely eliminated, should the administration impose steep tariffs on imported autos and auto parts as a result of the ongoing Department of Commerce Section 232 auto investigation.

If implemented, increased auto tariffs

would pose a material threat to the economy and may result in the loss of as many as 700,000 jobs across the U.S. With this forthcoming U.S.-EU trade agreement, we strongly encourage the administration to lift the threat of increased auto tariffs by dropping this investigation.

Similarly, the Alliance urges the administration to eliminate these Section 232 tariffs on imported steel and aluminum. The success of our nation's auto sector continues to be undermined by these tariffs. Over the past year, automakers have witnessed a more than 30 percent increase in domestic steel prices. These steep and unexpected increases in the price of key manufacturing inputs are driving up production costs for all U.S. automakers. Removing the Section 232 steel and aluminum tariffs and the threat of Section 232 auto tariffs would provide both the industry much-needed certainty and strengthen the U.S.-based auto industries standing in the global market.

We will applaud the administration for

its efforts to pursue a U.S.-EU bilateral trade agreement and strongly encourage the transatlantic partners to again prioritize the convergence of existing automotive safety standards and the harmonization of future standards. Resolving these non-tariff barriers will help facilitate the flow of free trade across the Atlantic and cement the partners' standing as leaders in establishing global regulatory standards. After all, pursuing market access opportunities and lowering, not erecting, barriers to free trade is the most effective way to achieve our shared goal of growing U.S. manufacturing and jobs.

Thank you again for the opportunity to be here today.

CO-CHAIR GRESSER: Thank you all very much.

David, would you like to start questioning?

MR. WEINER: Sure, thank you.

Thank you, everyone, for the witness

statements. It is striking how much agreement there is across the panel. Well maybe not totally surprising but it's striking anyway.

MR. UTHUS: And we did not compare notes.

MR. WEINER: I'm sure. That would have been a process value. Of course you didn't do that.

I have questions for you, Mr. Uthus, first. You talk a little bit about -- you talk quite a lot about, and all the other panelists have as well, about the importance of an ambitious mutual recognition or regulatory equivalence outcome, if we were to address these issues in a trade agreement.

Can you talk a little bit about what U.S. manufacturer models that are not currently exported to Europe or not exported in great volumes might benefit from that kind of harmonization?

The question is prompted, of course, by our understanding that U.S. manufacturers or

U.S.-based or U.S.-owned manufacturing companies are focused on light trucks and SUVs a little bit more in recent years. And we're wondering whether you could address the question that is sometimes raised about the receptivity of European consumers and the ability of those kinds of vehicles to sort of sell well in the European market.

MR. UTHUS: Well I guess really I would focus on the fact that there is a threshold -- and thank you for the question, by the way -- is a threshold by which companies would have to cross before they even consider selling a vehicle in their marketplace. So oftentimes, it's unknown what would be the consumer take an interest in particular types of vehicles in different markets around the world because of the cost threshold that has to be taken into account. And the cost associated with having to meet the European standards is a very high one. And it's quite significant, as I noted in my testimony, millions of dollars per vehicle program.

So as such, you have to take into account whether that you think there is going to be the volume necessary on the other end. And oftentimes the threshold really never gets crossed so that you can't even test the receptivity of those types of vehicles.

So that said, I think that there is definitely, in conversations with my member companies, there are definitely models that are currently only certified to U.S. safety standards if they feel like there would be an interest in Europe. And that they would want to, if the threshold was lowered in terms of cost, be interested in introducing it to the European market.

MS. WILSON: If I might, from a parts perspective, it's also a question of the parts that either accompany that vehicle or in the aftermarket parts, what we have seen is -- and we are stronger supporters of the program within WP.29 to harmonize regulations -- we have seen more economies around the world accepting

European standards, so European-standard products. It makes it much more difficult for our manufacturers to export from the United States for some of those. Sometimes it's a market requirement, certification requirement, things like that.

So the ability to harmonize that will not only help between the United States and EU but I think, as one of the other panelists mentioned, it also helps in the ability overall of global trade.

MR. WEINER: Thank you. I appreciate both responses.

On tariffs, you recommended that EU passenger vehicle tariffs be reduced on a faster time line than U.S. tariffs and I think you also recommended that we tie these tariff reductions to increased market access in the EU.

So I was curious to know if you could maybe elaborate a little bit on how we might give suggestions, or how we might evaluate that increased market access, and how we might

evaluate and measure it. And then also whether you've thought a little bit about what kinds of provisions, what kinds of actual provisions you would propose we would include in our trade agreements to sort of implement this recommendation, linking tariff reductions and market access.

MR. UTHUS: Right. This is for me?

MR. WEINER: Yes, sorry.

MR. UTHUS: Yes, it's okay.

So overall, we're seeking a balanced automotive package. And while it's difficult to assess at this stage what that would look like, we assume that tariff reductions would certainly be part of a comprehensive deal.

So given the fact that the EU passenger car tariff is four times that of the U.S. tariff, 10 percent compared to 2.5 percent, we would recommend, at a minimum, that the tariffs on passenger vehicles in Europe be lowered to, at a minimum, to the U.S. level as just a starting point.

But again, I think overall we'd have to sort of take a look, take a step back and take a look at where we were in the negotiations and look at the package in its entirety.

MR. WEINER: Thank you. Did you want to address that?

MR. RYAN: Yes, on your first point, I think it's a great question and I think a hard one to answer, based upon what the current sort of production profile of the different companies might be.

But on the passenger car side, certainly, that's a much more global product, as opposed to say trucks which are fairly uniquely demanded here in North America and the United States in particular. So those vehicles are made much more broadly throughout the world.

And to the extent that there is greater sort of harmony between U.S. standards and vehicles that are made in the United States, it's conceivable at some point, as companies decide how to fill different market demands, that

that would tilt in favor of the United States.

MR. UTHUS: And to add to that point, you know I think it's important to note that while the U.S. is definitely moving toward more of a SUV/pickup truck/minivan-centric marketplace, the rest of the world is moving in that direction. I mean they are not anywhere near as far along as we are but they are also moving in that direction. So I think that goes to Paul's point that there's a growing opportunity for more exports of those products around the world.

MR. WEINER: Thanks. I'm good.

CO-CHAIR GRESSER: So we now have questions for Mr. Ryan.

MR. MEIER: I'll ask the first question. Thank you for your testimony, Mr. Ryan.

With regard to your comments on currency, you know that currency is an international issue more properly addressed in multilateral agreements, given that the TPA sets

out an objective related to currency for our bilateral agreements, in your view, how can the administration best these requirements, while addressing the concerns raised in your comments?

MR. RYAN: It's a good question and we recognize that it is identified as a key negotiating objective in the TPA. I think our point is simply that any effort by the administration to address that and fulfill that objective probably should be approached very cautiously and carefully, you know recognizing that currency values are influenced by a number of different factors, not just those within the control of maybe the countries that are parties to an agreement but beyond that to ensure that U.S. policy options are not constrained as a result of any agreement in the currency space.

MR. MEIER: Thank you.

MR. KENNEDY: So I have a second question for Mr. Ryan.

So in your testimony, you speak about the importance of investments in the United

States by European auto companies, their impacts on U.S. jobs and competitiveness. Are there any specific provisions that you would like to see in the U.S.-EU trade agreement that could further promote these types of investments?

MR. RYAN: I think that -- beyond those that we've all mentioned and identified?

MR. KENNEDY: Or if there is any of those that you've talked about that you think would particularly drive investment.

MR. RYAN: Well I think certainly the regulatory side of things, the reduction of tariffs to a level that would at least be equal to what we have in this country but tariffs can be a powerful motivator to help companies sort of break into markets and they are constraint on trade and so the reduction of those. And that's why we would call for really a much more immediate and rapid reduction in those tariffs.

MR. KENNEDY: Thank you.

MS. THOMAS: Could I just add one point?

You know we certainly commend the administration for their efforts in areas of tax reform and regulatory reform that certainly provided a climate that helps attract more investment here in the U.S. but I would, again, stress that this looming threat of increased auto tariffs under the Section 232 auto investigation and the existing steel and aluminum tariffs is causing tremendous uncertainty for this industry in an already fragile time in our cycle.

We have just experienced seven years of growth and we are very much a cyclical industry. So we are very much in a time where we're -- my companies are witnessing either flat or decreased sales. So this ongoing threat of auto tariffs via Section 232 is just injecting more uncertainty in a very fragile environment.

MR. RYAN: I would associate myself with Jennifer's remarks. I think the biggest single thing that could be done, at least right now, is to remove the threat of tariffs or the actual reality of the steel and aluminum tariffs

to enable the companies to compete more effectively.

MR. UTHUS: If I might add a point to that, I mean I think we, certainly our organization, applauds the USMCA and the result of that negotiation. We are going to be definitely very supportive of that negotiation and its results and the agreement that came of it.

But I think our deep concern is that the steel and aluminum tariffs could seriously erode the benefits that that agreement could achieve. So at a minimum, we would want to see steel and aluminum tariffs as soon as possible eliminated with regards to Canada and Mexico.

MS. WILSON: And just since you've heard the same thing from all four of us, I will say it one more time but let me give you an idea of a story that I heard recently from one of our Board members in Detroit.

So we represent suppliers. Many of them are Tier 2, Tier 3 suppliers. We have you

know our members are witnessing 50 percent increase in their steel prices. And if you are small, the two biggest inputs you have or the cost inputs are the cost of the raw materials and your people.

We have a member who has lost a contract to supply someplace in the EU, I don't know where, but it was because the cost of the steel inputs have gone so high. And they purchase their steel domestically but, overall, the cost of steel has gone that high.

So unless we address that, there is no way that we're going to get the benefits that we would want to get from a free trade agreement.

MR. RYAN: I think it is important, as Ann just mentioned, to note the unanimity within the industry here on these issues. This is not an industry that, over the past 25 or 30 years, has been known as one that sort of finds consensus on trade issues.

The fact that we do feel so strongly and so uniformly about this I think suggests that

something is happening. And one of the things that is happening is the industry itself has become really a global industry and our competitiveness is really dependent on our ability to pull together inputs from a variety of places.

MR. KENNEDY: Thank you. I did have two questions for MEMA, although I feel one of them you may have already addressed and so that's fine if that's the answer.

MS. WILSON: I can always expand.

MR. KENNEDY: You can always expand it.

A similar question to what we asked before. So just noting the global nature of the supply network that all the auto manufacturers uses, are there particular, from your perspective, rules or provisions that would encourage either location or relocation of auto parts supply chain into the United States?

MS. WILSON: I don't think I can emphasize enough the importance of regulatory

convergence and harmonization.

I would say prior to this year and the trade challenges faced by our members over the last 15 years when we would survey members, they would always identify the ability to harmonize regulations as their number one priority. It allows them to manufacture something, to ship it either to Europe or to ship it abroad so it increases our exports. It decreases the cost so that if they do, indeed, end up manufacturing somewhere else and providing it to an OEM someplace else, it decreases the cost for both R and D. And as we look into the future, we look at automated technology, lightweight technology, things like that, it's also really important to think about the fact that many of these technologies are not going to be able to be developed overall.

We have a very good system in this country. We have a lot of testing going on. We have a lot of IP protection, something that we all embrace. Actually as an industry, we are all

trying to work together on those issues, too.

It's a real opportunity for this country to lead the world but, at the same time, what our engineers tell me is that we can't do this multiple times. We can't have an AV systems of regulation in the United States, one in North America, one in Europe, and one in Asia. It's just too costly. You end up with problems with not only IP protection but also privacy protections, cybersecurity protections.

So if we're going to end up with only one system of regulation, then we have to be part of that and the United States will benefit from being part of that. Otherwise, the rest of the countries in the rest of the world will go without us and those technologies will be developed elsewhere and that is not something that we want to do.

MR. KENNEDY: I did have a follow-up on that line before we move on to the next set of questions.

So has MEMA done any analysis or

looked at if we had successful convergence or mutual recognition, what that might do to trade flows or the current trade imbalance? I know there have been some studies that looked at that but I don't know if you have any.

MS. WILSON: I'm not aware of any but I will definitely take a look for some and see what we can do and try to provide them to you.

MR. KENNEDY: Okay, thank you.

MR. HENRY: I have a question for Ms. Thomas from the Alliance of Automobile Manufacturers. It's related to regulatory convergence and auto safety standards and how that would be accomplished within the U.S. legal framework.

Given that the National Traffic and Motor Vehicle Safety Act requires all vehicles sold in the United States to comply with the Federal Motor Vehicle Safety Standards, do you believe there would be public safety concerns associated with such convergence or recognition? And would there be congressional support for such

regulatory convergence?

MS. THOMAS: That's a great question. Thank you.

I think it's safe to say that when you get into a car in Europe, you feel just as safe as you do when you get into a car here in the U.S. and that's because both the U.S. and the EU have very long-standing high levels of automotive safety.

That said, they've taken two different approaches to how to go about regulating auto safety. And that is why we are here as a united industry urging the administration to include regulatory convergence as part of this effort, because there are tremendous savings that could be involved, should we reach agreement with the EU in this effort.

And as I noted in my statement, there was tremendous progress made several years ago and cooperation between the two partners certainly improved in that exercise. So I do not think that safety will be compromised.

Are there challenges involved just by the sole nature of the two different approaches? Sure. This is not a simple easy exercise but it is still worthy of trying and we do believe that if we can establish a precedent for mutual recognition, it would increase bilateral trade flow for the U.S.-based auto sector and it would also help in expanding free trade with other markets that only accept UNECE standards.

So the benefits are tremendous and it's not just a cost savings. It's also for consumers and jobs as well.

MR. HENRY: I have another question for you related to rules or origin.

Should rules of origin be structured in a U.S.-EU agreement so that trade is facilitated but also that more equivalent and input is localized within the U.S. or within the free trade area?

MS. THOMAS: I'm sorry. I had trouble hearing you. Could you repeat that?

MR. HENRY: Oh, sure. Should rules of

origin be structured in a U.S.-EU agreement so that trade is facilitated and that more equipment and input is localized within the U.S. or within the free trade area?

MS. THOMAS: So as the Alliance, we have not established a position yet on how the rules of origin should be handled within the context of U.S.-EU bilateral.

But that said, we understand it's a natural part of the discussion and are happy to follow-up with you with additional information and our views on that issue but, ultimately, it does need to strike the right balance to ensure that investment continues while, at the same time, you reward continued investment by enabling duty-free access if you meet that standard.

So it's about striking the right balance, similar to the exercise we just went through in USMCA but happy to follow-up with you to discuss that in more detail.

MR. HENRY: Thank you.

CO-CHAIR GRESSER: Well we are about

out of time but before closing the panel, I would just like to ask all four of you is there anything that you would have liked to raise and did not have the opportunity to do so or is there anything in the discussion you'd like to respond to?

MS. THOMAS: If I could just make the point, which I think was made -- Ann, I think you made it -- just this transformation of mobility that the industry is currently going through and the opportunity here to partner with the EU in setting global standards for these future technologies is critical for maintaining U.S. leadership.

If we don't -- you know the U.S. and the EU are no longer the largest markets but if we partner together, we would be. And if we cooperate on a regulatory basis in setting these future standards, then I think we have an opportunity to remain leaders in establishing high-level safety standards, high-level environment standards and, if we don't, then I

think there runs the risk of other emerging markets filling that void and then we would be set back because there would again be a diverging or inconsistent standard out there that we would have to meet, too.

MR. RYAN: To build on that point just a little bit, it's easier to develop harmonized standards at the beginning of the whole process, rather than in the middle or later. So the technologies that Jennifer was talking about, automated, connected vehicle technologies are now emerging. And how we're going to sort of regulate that is a hugely critical question.

And I agree to the extent that we can harmonize that now through a WP.29 process or something else that allows us to play a leadership role perhaps with the Europeans in making those standards, we will have more success in creating uniformity as well as enhancing the ability of the industry to move in that direction than the alternative.

MR. UTHUS: And so I might add to that

particular point.

You know I've been to the WP.29 meetings in Geneva and the primary interlocutor there is the Department of Transportation or the EPA, which is appropriate. It makes perfect sense.

But you know increasingly, as we've talked about here, automotive standards and regulations on a global basis or the lack of global regulations plays a more important role in terms of the competitiveness of the North American auto industry.

So you know as TPSC, I think that the role that you -- you need to start playing a stronger role and a greater role in the whole process that is going on in the global regulatory harmonization because it has important economic trade and competitiveness implications. And I would urge you to become more engaged or involved in that. Thank you.

CO-CHAIR GRESSER: Thank you. That point is well taken. Thank you all.

And this bring the panel to a close.

We will start again in about ten minutes with the sixth and final panel today.

(Whereupon, the above-entitled matter went off the record at 3:28 p.m. and resumed at 3:37 p.m.)

CO-CHAIR GRESSER: Thank you all very much. Thanks to all our witnesses for coming in today and for your patience as we prepare for this final panel today.

Just two things before we start. We will proceed, as in previous panels, beginning in my first row, from my right or your left down in that direction. And we would ask the witnesses please to respect the five-minute limit on oral testimony because we very much want to hear all of your insights and views and save time for our government panelists to explore them in more detail.

With that, let's begin and we can start with Brian Scarpelli from ACT | The App Association.

MR. SCARPELLI: Thank you for this opportunity for The App Association to share views on proposed negotiating objectives for a future U.S.-EU trade agreement.

My name is Brian Scarpelli. I'm Senior Global Policy Counsel with ACT and The App Association.

The App Association represents thousands of small business software application development companies and tech firms that create the software used on mobile devices and in enterprise systems increasingly around the globe. Today, the ecosystem that the app economy represents, which we call the app economy, we value at approximately $950 billion annual and it is also responsible for 4.7 million American jobs.

Alongside the world's rapid embrace of mobile technology, including many technologies impacted by this future FTA, our members have been creating innovative solutions that power the internet of things across modalities and segments

of the economy. And the USTR's approach in this FTA directly affects all of our members. So, we're happy to be here.

While the global digital economy holds great promise for our members, they also face a diverse array of challenges when entering new markets, taking the form of laws, regulations, policies, and practices that protect domestic goods and services from foreign competition, artificially-stimulated exports of particular domestic goods or services, or fail to provide adequate and effective protection of intellectual property rights. These barriers take many forms but have the same net effect, impeding U.S. exports, and investment, and job growth.

Generally, we advocate for bilateral and multilateral agreements to address, through digital trade and other chapters, barriers to U.S. exports of goods and services in intellectual property rights. We are committed to working with the U.S. Government and other governments to reduce or eliminate trade barriers

that will inhibit the growth of the app economy.

With respect to digital trade, our members prioritize a number of issues and I will describe a few of them, in no order of importance, now.

First, enabling cross-border data flows. The seamless flow of data between economies and across borders is essential to the functioning of the global digital economy and our members need to take advantage of the internet's global nature to reach new customers who live outside of the U.S. The tolling of data across borders for the purpose of collecting custom duties directly contributes to the balkanization of the internet, and jeopardizes the efficiency of the internet, and effectively blocks innovative products and services from market entry.

2) Data localization policies. Data localization requirements seriously hinder imports and exports and reduce an economy's international competitiveness. Our members

simply do not have the resources to build or maintain unique infrastructure in every country in which they do business and data localization requirements can effectively exclude them from commerce there.

3) Ensuring market entry isn't contingent on source code transfer. Some governments have proposed policies that require companies to transfer or provide access to proprietary source code as a requirement for legal market entry which, again, is a nonstarter for our member companies.

4) Preserving the ability to utilize technical protection mechanisms to ensure end user security and privacy and trust. Global digital trade depends on the use of technical protection mechanisms, such as encryption, to gain and maintain the trust of end users. So that's also essential to our members; and

5) Securing intellectual property protections. IP protections can lead to customer data loss, interruption of service, revenue loss,

reputational damage. Each one of those can potentially represent by itself an end of life occurrence for a small app development company. So strong protection of IP for copyrights, patents, trademarks, and trade secrets is very important to us.

While The App Association supports the EU's Digital Single Market Strategy goals of opening digital economy opportunities for businesses in Europe and enhancing Europe's position in the digital economy, today there are a variety of policies, consultations, and proposals that raise significant concerns for us, some of which have already been recognized by USTR as approaches that would seriously undermine transatlantic trade and investment, stifle innovation, and undermine the EU-wide digital economy.

Our concerns lie across a number of EU policies addressing, among other areas, data flows, privacy, and taxation and we provide much further detail on these in our written

submission.

I would also specifically like to mention our ongoing concern with a proposed platform-to-business regulation intended to address allegedly unfair contractual clauses and trading practices in relationships between platforms and business, such as app developers.

As proposed, we believe the P2B regulation, as it's called, would undermine the relationship developers have with platforms and the benefit they offer to our members.

Further, we always want to make sure to mention that the U.S.-Mexico-Canada Agreement contains numerous provisions that will enable the app economy to expand and create jobs across North America and these provisions are aligned with a number of the priorities I just covered, including in the areas of data flows, avoiding data localization, preserving the ability to use encryption and IP protection. So to the extent possible, the future U.S.-EU trade agreement will ideally leverage such provisions in order to

advance harmonized policies across U.S. trading partners, which will enable the U.S. app economy to grow and create more jobs.

Finally, there is also a broader impact that we always like to note. In some other key markets, there are policies being proposed and put into place, finalized, that would create significant barriers through the flow of data through applying physical good custom-style approaches to the digital economy.

Indonesia, for example, has even put tariff codes into place for digital goods today. So for us, it is more important than ever that the U.S. build on the success of the USMCA with regard to digital trade and provide a model for future bilateral and multilateral FTAs with other important trading partners like the EU. We believe doing so will advance the ability of American small business innovators to grow in the new markets and, again, create new jobs.

We appreciate the opportunity provide our views here today on a future U.S.-EU trade

agreement and I look forward to your questions.

Thank you.

CO-CHAIR GRESSER: Thank you very much.

We will now go to Mr. Whitlock from BSA.

MR. WHITLOCK: Thank you very much for the opportunity to testify at today's hearing. I will discuss the importance of including strong digital trade rules as part of a U.S.-EU trade agreement, building on the strong rules and outcomes in the United States-Mexico-Canada Agreement.

BSA is the leading advocate for the software industry in the United States and around the world and our members are the forefront of artificial intelligence, machine learning, cloud-based analytics and internet of things, powering U.S. innovation and economic growth. In 2016, the U.S. software contributed over $1.14 trillion of U.S. value-added GDP and over 10 million jobs, driving growth across all 50 states.

The United States and the European Union share an impressive $1 trillion trading relationship and make up nearly half of global GDP. In 2016 alone, the United States had a $55 billion services trade surplus with the EU, driven by U.S. and EU investment and investment across the data economy and robust bilateral trade.

This negotiation presents an enormous opportunity for the United States and the European Union to solidify a strong transatlantic partnership and more closely align their economies in relation to digital trade. Robust, binding bilateral digital trade outcomes will not only benefit both countries' innovation economies but prove crucial in addressing current challenges U.S. providers and exporters face across the EU.

The United States and the European Union share common economic interests. Both enjoy a competitive advantage in the emerging technology space and interest in combating

digital protectionist policies abroad and a desire to continue leading and benefiting from the digital economy.

The European Union itself has included a number of digital trade provisions in prior free trade agreements that correspond to the digital trade provisions found in U.S. FTAs. These provisions, which would provide common ground, for U.S.-EU digital trade negotiation address the protection of source code from mandatory disclosure requirements, the use of electronic signatures in commercial transactions, the prohibition of preferential treatment for state-owned enterprises, the prohibition on customs duties on electronic transmissions, as my colleague referred in respect to what Indonesia does now, and consumer choice of digital services and applications.

We also urge USTR to negotiate provisions that enhance legal certainty for U.S. businesses in the European Union and address trade and market access challenges reflected in

our 2018 NTE submission. These issues include the current push in the EU to include data flow language in EU FTAs that contain very broad exceptions. USTR should work to proactively address these challenges by working with the EU to include strong digital trade disciplines that obligate the parties to permit the cross-border transfer of data, while protecting personal information, prohibit data localization requirements, promote the use of innovative technology in the public sector, support encryption in commercial products, support intellectual property while including appropriate exceptions and safeguards, and promote interoperability to adherence to internationally-recognized standards relating to digital technologies.

We thank the TPSC for the opportunity to testify and the U.S. Government for its leadership in digital trade and for considering inclusion of a robust digital trade outcome as a part of the U.S.-EU trade negotiations.

Thank you and I look forward to your questions.

CO-CHAIR GRESSER: Thank you very much.

Mr. Schonander.

MR. SCHONANDER: Thank you to the Trade Policy Steering Committee for this opportunity to testify. So my name is Carl Schonander. I am the Senior Director for International Public Policy for the Software and Information Industry Association.

SIIA is the principle trade association for the software and digital information industries. The more than 800 software companies' data and analytics firms' information services companies and digital publishers that make up our membership serve nearly every segment of society, including business, education, government, healthcare, and consumers.

So on December 10th, we reiterated support for a U.S.-EU trade agreement and we said

a trade agreement between the United States and the European Union would expand what is already the world's largest and investment relationship. Such an agreement would also have an important positive precedential value for trade around the world, especially in the areas of cross-border data flows and digital trade. This is why SIIA supports a U.S.-EU trade agreement and has submitted recommendations for the kinds of provisions that such an agreement should include.

And just for the record, we also signed on, together with many other trade associations, on November 6th -- 29 other trade associations -- we sent a letter to Ambassador Lighthizer, urging the administration to make digital trade a priority in its negotiations with the European Union, also Japan and the United Kingdom and we reiterate that request.

In our view, it's crucial to ensure the nondiscriminatory treatment of digital products, including new and innovative products, and to promote global digital trade by both the

United States and the EU, reiterating support for the World Trade Organization customs duty moratorium on electronic transmissions. And although forced technology transfer is not a problem in the U.S.-EU trade and investment context, it would have a helpful precedential value to include a provision in a U.S.-EU trade agreement banning forced technology transfer.

The U.S. and the EU could also lead by committing to promote paperless trading, including the use of customs forms in electronic formats. And in this context, SIIA endorses again the digital and intellectual property rights objectives in the 2015 Trade Promotion Act. We also endorse the digital trade and intellectual property rights chapters in the U.S.-Mexico-Canada Agreement, USMCA, and the financial services chapter. And we think that USTR and the U.S. Government can draw from those provisions in their negotiations with the European Union.

So to summarize, there are four or

five different broadly very, very important things. One is to obtain an affirmative data flow obligation. And here, teeing off what my colleague from BSA said, it's going to be very important to negotiate with the European Union something that is less than what the European Union has advocated for in other agreements, which is this blanket exception for privacy.

I'll read what the proposed language from the EU says. Nothing in this agreement shall affect the protection of personal data and privacy afforded by the parties' respective safeguards. End quote.

So in our view, it is essential for the U.S. Government to find a way to limit this principle so that enforcement of legitimate privacy rules cannot be used to distort trade or discriminate against foreign competitors.

We also have views on interoperability and including financial data in the agreement.

With respect to proprietary software, encryption keys and data, there are very many

different business models in the digital trade space. For example, software code development through open source or through copyright patent protection are equally legitimate from an SIIA perspective. The parties should not establish requirements that force suppliers to share source code, encryption keys, and/or proprietary algorithms. Businesses should be free to choose the business model that works for them.

That goes as well for companies that invest in curating data, including scientific data. Such companies have an interest in protecting proprietary data and should be able to do so. And this should be clarified also with respect to access to government data.

For instance, the agreement should clarify that policies relating to government data or publicly funded research should neither diminish protections for proprietary data or content nor the incentive to engage in private sector publishing reporting on that research. Recent open access proposals planned by several

EU member states could risk undermining those incentives.

So once again, thank you for the opportunity to comment and I look forward to your questions.

CO-CHAIR GRESSER: Thank you very much.

Ms. Stelly, please begin.

MS. STELLY: Hi, good afternoon. My name is Rachael Stelly and I am policy counsel at the Computer and Communications Industry Association. CCIA is a trade association of internet and technology firms, many of whom export goods and services to the European Union and throughout the world. Thank you for this opportunity to convey our views regarding negotiating objectives for a U.S.-EU trade agreement.

The U.S. approach to transatlantic trade should reflect the increasing importance of internet-enabled trade to the global market. To do so, USTR should build off the success of the

recently signed U.S.-Mexico-Canada Agreement and pursue a holistic agreement with the EU with strong digital trade and IP chapters.

Digital trade is a significant component of the transatlantic relationships, with the U.S. relying on EU markets to deliver digital and internet services. To illustrate, the U.S. has exported $185 billion in digitally-enabled services to the EU in 2016 alone. This relationship is threatened by the rising trade barriers in the EU. As part of the Digital Single Market Initiative, the EU is currently negotiating a vast number of regulatory proposals that seek to undermine the digital trade, including a digital service tax directly aimed at U.S. companies and a copyright directive that will affect U.S. industry.

USTR should use this opportunity of a trade agreement to reduce the burden caused by these regulations and discourage further action that disproportionately closes the market for U.S. internet exporters. CCIA's written comments

go into further detail but my remarks will focus on four main priorities CCIA encourages USTR to include in its negotiating objectives.

First, an agreement should include strong protections for internet services and users in its copyright provisions. The IP chapter should uphold long-standing copyright frameworks that provide protections for online intermediaries for user-uploaded content. Intermediary liability protections for ISPs, such as the copyright safe harbors found in Section 512 of the DMCA have been critical to growing the U.S. digital economy by providing business certainty to U.S. investors and innovators. They also have been a feature of U.S. trade agreements.

The IP chapter should also protect copyright limitations and exceptions necessary for Next Generation technologies. A flexible copyright regime is necessary for the continued growth of the digital economy. Principles such as fair use have been a cornerstone of U.S.

copyright law from the beginning and industries that rely on this right are a significant contributor to the U.S. economy and exports. Fair use industries account for 16 percent of the U.S. economy and generate $5.6 trillion in annual revenue. Fair use is also critical to activities central to new areas of innovation in cutting technology, such as artificial intelligence and machine learning.

The promotion of a balanced copyright regime in a trade agreement is especially critical as EU is poised to change its copyright regime in a way that will significantly disrupt U.S. service exporters' ability to conduct business in the EU with a proposed copyright directive. The directive threatens to introduce obligations on intermediaries and disrupts the copyright balance with the introduction of a link tax. As the directive goes through the trial-like process, the proposal threatens a worst-case scenario, modeled on the Parliament's proposal.

The U.S. should insist that the EU

reaffirm its Berne and TRIPS commitment, as the EU looks to finalize this proposal and includes these commitments in a U.S.-EU trade agreement.

Second, an agreement should encourage investment by providing regulatory certainty to online intermediaries for third party content. Conflicting liability regimes undermine this certainty and represent a considerable barrier to internet commerce. Guaranteeing minimum standards for the protection of internet services from liability for third-party content is critical to promoting U.S. digital trade exports and the U.S. and the EU should work to reduce uncertainty and achieve consistency in liability rules among the parties.

At a time when the EU is actually seeking to undermine the ability for the U.S. services to operate in the European market, it is critical that the U.S. continues to negotiate for consistent clear liability frameworks for U.S. services. To do so, the U.S. should ensure that trade agreements going forward include strong

protections on any reliability like those found in the USMCA and that are consistent with U.S. statute.

Third, an agreement should enable cross-border data flows and discourage data localization mandates. Cross-border data flows are critical to digital trade and forced data localization mandates make it difficult for U.S. exporters to expand it to new markets. The U.S. should work to remove barriers to cross-border data flows and discourage localization mandates in a trade agreement with the EU, building off the strong commitments in the digital trade chapter of the USMCA. And we would also echo the concerns of many on the panel with the concerns with respect to the EU's proposed tax on data flows in trade agreements.

Finally, an agreement should encourage measures to secure digital trade and promote strong cybersecurity. The products and services that facilitate digital trade must be technologically secured. The U.S. and the EU

should continue efforts to promote regulatory cooperation and international standards for securing parts and services. A trade agreement should also follow the USMCA in calling for risk-based cybersecurity measures as the more effective approach than prescriptive regulation.

A U.S.-EU trade agreement should also contain commitments to strongly promote encrypted devices and connections.

In conclusion, the transatlantic trade relationship is critical to U.S. economic security and digital trade is an essential component of that relationship. A free trade agreement that can safeguard this relationship from political risk should be a high priority.

With the rising number of non-tariff and market access barriers in the EU directed at U.S. firms, it is critical that any U.S.-EU trade agreement include strong digital trade protections.

Thank you and I look forward to your questions.

CO-CHAIR GRESSER: Thank you. And we'll turn now to Ms. Swanson.

MS. SWANSON: On behalf of the Telecom Industry Association, thank you for the opportunity to comment. TIA is the leading trade association for the information and communications technology industry. We represent suppliers of equipment and services that power global communications networks. We are also an ANSI-accredited standards development organization.

In considering negotiating objectives for the proposed trade agreement, we believe it will be beneficial to draw upon a number of constructive provisions in the recently negotiated U.S.-Mexico-Canada agreement. In our view, the USMCA represents a major advance in trade rules, institutionalizing new norms that will facilitate expanded U.S. trade. We hope the administration will leverage key provisions in forthcoming negotiations with the EU.

We understand from the joint U.S.-EU

statement issued back in July, the two sides have agreed to work together to zero non-tariff barriers and many of the concepts we've endorsed in our comments would further that goal, especially in the digital trade and TBT sections.

Since the two parties plan a close dialogue on standards, we've also made reference to the importance of U.S.-EU alignment on standard-setting policies.

In addition, I wanted to note that a number of new provisions in the USMCA are relevant to another goal set forth in the joint statement, which is protecting American and European companies from unfair global trade practices. I want to just briefly mention four types of provisions we think are especially relevant to combating that kind of -- those sorts of market-distorting trade practices.

And the first bucket in the digital trade category is banning data localization and source code disclosure and promoting risk-based cybersecurity practices. The second, IPR

provisions that would impose criminal penalties for the theft of trade secrets. Third, there are a number of very helpful TBT provisions prohibiting mandatory in-country testing and ensuring governments don't show a preference for discriminatory standards that disadvantage foreign participants. And fourth, just a stipulation that states you shouldn't undermine the normal functioning of the market through excessive subsidies to SOEs.

Given time constraints, I will just briefly summarize a couple of selected excerpts from TIA's written testimony.

The digital trade and data flows, we've discussed further -- we've discussed in our written comments the value of promoting cross-border data flow so I won't elaborate here. But I did, on the data flows issue, want to highlight a recommendation that the two parties consider making permanent a ban on the imposition of tariffs, duties, or taxes on cross-border data flows and digital products.

The promotion of risk-based cybersecurity approaches -- the USMCA set out an expectation that both partner countries and firms within their borders should use risk-based approaches based on consensus-based standards to deal with global cyber threats. The new language represents a helpful step, we think, in forging new cyber norms.

On technical barriers to trade, the TBT chapter of the USMCA is both robust and very comprehensive. It introduces a number of noteworthy precedents that we would urge USTR to carry forward into future trade agreements, including the previously mentioned ban on requirements for mandatory in-country testing, also better disclosures on protection of IP in conformity assessments by government bodies. And the chapter also has important language on non-discriminatory standard-setting and the use of international standards.

And finally, I wanted to mention for our industry a requirement to allow -- labeling

is very important -- the provision in the USMCA that requires parties to allow regulatory information to be displayed electronically, rather than by affixing physical labels to devices. This represents a considerable savings of both money and time for ICT companies. As the EU has been very slow to embrace e-labeling, we would strongly encourage U.S. negotiators to press for such commitments.

So to summarize, newly negotiated provisions in the USMCA set important and really commercially-significant precedents that will help make U.S. telecom equipment suppliers more globally competitive. We hope the administration will leverage these advances in its upcoming negotiations with the EU.

Thank you.

CO-CHAIR GRESSER: Thank you very much.

Mr. Geiger.

MR. GEIGER: Hello and thank you very much for having me here today. I'm Harley Geiger

and I'm Director of Public Policy at Rapid7. Rapid7 is a cybersecurity and data analytics company. We are based in Boston, Massachusetts and have offices around the world. We have a headcount of about 1200 people. I'm also a member of ITAC-8.

We recommend that USTR seek the following seven commitments and these are largely focused on cybersecurity. Most of the recommendations that I will make are rooted in the USMCA. The remainder, the last two, nonetheless reflect industry and administration priorities and do not impose any affirmative regulatory obligation. I say this because we took care to make our recommendations actionable, not burdensome, and nonetheless effective for cybersecurity at large and for the cybersecurity industry.

And our first recommendation is quite basic. It is just that we urge USTR to include cybersecurity in a digital trade chapter just as a reflection of the importance of cybersecurity

to the economies of the U.S. and the EU. Many business sectors in the U.S. and EU, around the world, such as manufacturing, agriculture, healthcare, all depend on secure computing for daily operations, as well as international trade.

The USMCA includes a specific article for the first time on cybersecurity, Article 19.15 and it explicitly recognizes that cybersecurity threats undermine confidence in digital trade. So we hope to see that principle reflected throughout a U.S.-EU agreement as well.

The second is to encourage interoperable cybersecurity risk management frameworks. This is a commitment that would require the parties to develop and promote the implementation of interoperable cybersecurity risk management approaches, usually expressed through a framework that upholds certain principles.

Very similar language to this is in USMCA Article 19.15 but here the added emphasis is on interoperability. And the goal there is

that the parties' cybersecurity risk management frameworks are generally comparable across jurisdictions.

Third, we recommend that USTR look to build capabilities on national cybersecurity entities. This would be a commitment requiring the parties to build the capabilities of their national entities responsible for cybersecurity incident response, as well as national entities responsible for coordinated vulnerability disclosure. USMCA Article 19.15 includes language on building national capabilities of entities responsible for cybersecurity incident response. Here, the recommended addition is on building national capabilities -- or sorry -- capabilities for national entities responsible for coordinated vulnerability disclosure.

Coordinated vulnerability disclosure, or CVD is increasingly recognized by both the public and private sectors as a core cybersecurity practice. In our opinion, this should include national entities that facilitate

CVD between private sector organizations as well as national entities that facilitate CVD, the coordinated disclosure of previously unknown vulnerabilities from government to the private sector.

Fourth, we urge USTR to strengthen existing cybersecurity collaboration mechanisms for sharing cybersecurity threat information. This language appears in USMCA Article 19.15. We don't have an addition to that language; just the language in USMCA is very good.

Fifth, we urge USTR to seek a commitment to identify regulatory restrictions to defensive cybersecurity activity. This would be a commitment that the parties endeavor to review and identify regulations and policies that inappropriately restrict legitimate defensive cybersecurity activity. Examples of the type of regulations that might be under review include privacy restrictions and export controls, such as the Bossier arrangement and the eprivacy Regulation. This commitment need not require the

parties to revise regulations, but instead, just focus on a regulatory review to identify potential areas of improvement.

Sixth, we urge USTR to seek a commitment to encourage transparency on consumer IoT security. This would be a commitment that the parties facilitate voluntary processes that enhance the transparency of critical security features for consumer IoT devices.

The goal of this process should be to enable consumers to make informed purchasing decisions regarding data protection features in IoT security so that if you are sitting in a supermarket looking at two IoT devices, you can compare them based on their security features.

Currently, a framework like that does not exist. However, in both the U.S. and EU there is a great deal of momentum behind that concept. In the United States, the Departments of Commerce and Homeland Security released their Botnet roadmap, which includes several work streams based around this very concept with the

goal of creating a robust market for trustworthy IoT. In the EU, my understanding is that the Cybersecurity Act, which is awaiting final approval in the EU now, includes certifications that are also aimed at this for consumer IoT, critical infrastructure, and others that will essentially signal to the buyer what the level of cybersecurity in those devices are for just this purpose.

Seventh and last, we urge USTR to seek requirements to prohibit -- sorry -- to prohibit requirements to weaken encryption. This is a commitment, of course, that the parties will not require as a condition of market access that manufacturers or suppliers of encrypted products weaken cryptography in any way. This is in USMC Article 12; however, we do suggest that USTR attempt, if possible, to narrow some of the broad exceptions that are in that article.

Thank you very much and I look forward to your questions.

CO-CHAIR GRESSER: Thank you.

And our final witness on this panel, Ms. Keller, from the Semiconductor Industry Association.

MS. BENGFORT KELLER: On behalf of the SIA, thank you for the opportunity to testify here today.

SIA is the voice of the U.S. semiconductor industry. We represent semiconductor researchers, designers, and manufacturers. Semiconductors are the nation's fourth largest export. We form the bedrock of the modern American economy, powering virtually everything digital from cars and cell phones, to super computers and military systems.

International trade is very important to our industry and, thus, we welcome the administration's decision to enter into negotiations for a U.S.-EU agreement. We strongly encourage the U.S. Government to continue to lay the rules of the road for international trade, to counter rising global trade barriers and digital nationalism in third

countries.

We are prioritizing five objectives, all of which are included in the USMCA. We think that these objectives are very important for strengthening digital trade in the digital economy.

The first is ensuring access to global markets for innovative encryption products. SIA is concerned about encryption-related practices and regulations in some regions that act as non-tariff barriers, such as regulations that directly or indirectly favor specific technologies, required disclosure of IP, like source code, or require specific standards.

We recommend that the U.S.-EU trade agreement prioritize disciplines such as those included in the USMCA that prevent discriminatory restrictions on the importation of commercial products containing encryption and restrict requirements to transfer or provide access to proprietary information, or to partner, or to integrate a particular cryptographic algorithm or

cipher.

Second, our second priority is ensuring that state-owned enterprises compete fairly and transparently based on market considerations and without undue government advantage. The USMCA includes some very strong SOE disciplines that are in line with what has been discussed within the World Semiconductor Council is also in line with U.S., Japan, and EU trilateral work on strengthening subsidy disciplines.

So again, this is another top priority, not with issues in Europe, per se, but to tackle global issues and in third party countries.

The third priority is to strengthen trade secret protections. We're very pleased with the strong trade secret protections in USMCA and call on the administration to maintain a strong focus on this by including similar disciplines in a U.S.-EU agreement.

Since trade secrets are a very

valuable IP asset, that they remain extremely vulnerable today.

Fourth, the fourth priority is preventing forced localization of digital infrastructure and technology transfer. We see governments around the world using forced localization tactics to advantage domestic companies or force foreign investors to use domestic technology, transfer their own technology, or localize data storage and processing. These rules raise cost; they distort markets, reduce global interoperability, and increase risk of unauthorized disclosure or IP theft.

SIA applauds strong digital trade outcomes on forced localization and digital infrastructure in the USMCA and recommend that these be prioritized in the U.S.-EU agreement.

Last, as highlighted by one of my other colleagues, we also recommend that a U.S.-EU agreement permanently eliminate duties for electronic transmission of data, data flows, or

digital downloads. Some governments are challenging the WTO e-commerce moratorium banning customs duties on electronic transmissions. So nothing this and the effort to let this moratorium to expire, we encourage the U.S. and EU Governments to establish a clear unified position supporting duty-free treatment for digital goods.

So those are the top five. We have more details in our written comments. Thank you again for the opportunity and I'm happy to answer questions.

CO-CHAIR GRESSER: Thank you all very much. Let's now go to questions.

MR. WEINER: I also thank you all for the testimony. It was very interesting and I was struck by the fact that I think almost all of you talked about things that you like in the USMCA outcome, which I was aware of coming in but it's pretty impressive how consistently you all feel about that.

But I have a question to start with

for Mr. Scarpelli, which perhaps others at this time might want to address. And I'm wondering whether you've looked at -- in looking at the USMCA and thinking about the particular challenges posed by privacy and other policies in the EU, are there things that you would recommend we seek to do in an agreement with the EU that go beyond or that vary from what we've done in the USMCA agreement.

MR. SCARPELLI: Thank you for that question.

I think that the answer that I would give for The App Association is that generally we are realistic about the outcome of the USMCA across the different digital economy issues that it addresses. And so generally, I would not -- we don't have any pain points to point out saying that it should go much further. We are largely accepting -- you know we're accepting the reality of the USMCA and I don't mean that in a negative way at all. I'm supportive of the USMCA.

So the priority for us, really is, as

I mentioned in the opening statement, attaining as much harmonization across agreements. And that's why I mentioned using the USMCA as a baseline.

We do support voluntary frameworks based on international standards, like many other associations here, and to all ways practicable that we can generally reduce burdens in complying with new sweeping regimes such as the General Data Protection Regulation. That's something that we would support.

MR. WEINER: Thanks. Yes, I think your response made me realize we should probably flip the question around because I think we all -- I think all of us recognized, based on our interaction with the EU in business but also as trade negotiators, that what we've achieved with Mexico and Canada in the USMCA in the digital trade-related provisions and perhaps even in some areas within IPR may be difficult to achieve with the EU because of their current recent practices and recent trends in policymaking and privacy in

particular.

So if the USMCA outcome is not -- so, flipping it around, if the USMCA outcome is not achievable in terms of the data flow obligations, for example, localization obligations, what's -- and this is sort of a little bit of an open blue sky kind of question but what would be a decent outcome? What should we be seeking to do in the EU? In particular, are there specific things in relation to privacy that we're going to have to -- that you think at a minimum we need to address or seek to try to address?

MR. SCARPELLI: Thank you for the question.

I think part of my answer probably does need to include a mention that our association, as a top priority here domestically in the U.S., is to attain passage of comprehensive privacy legislation. And so I just think at the highest level that -- well, I would put it this way: the reach of the GDPR is something that our members continue to struggle

with. It's a reality that they've got to deal with and basically where we are right now as an association is trying to educate them as much as possible so they know whether it applies to them or not and what they need to do.

And so if the agreement can facilitate a -- I'm failing to find the word but a relationship between the two privacy regimes that respects one another's regime, that that's probably the ultimate want. I know a lot of the details will inevitably be hammered out in the negotiations and so we're committed to helping in any way we can as conversations go forward between negotiating parties, if that helps.

MR. WEINER: Mutual recognition kind of.

MR. SCARPELLI: Yes, that's the word.

MR. WEINER: Just a quick question before I move to Joe. Is your member companies, what's the sort -- is there sort of an average employee size?

MR. SCARPELLI: Oh, yes. Yes, the

average employee size is usually -- well, it's like high single digits.

MR. WEINER: Single digits?

MR. SCARPELLI: Yes, so under ten. A typical member I think it's seven to nine members -- seven to nine employees.

MR. WEINER: Thank you.

CO-CHAIR GRESSER: I think they're signaling interest in also answering your question.

MR. WEINER: Okay, thank you.

MR. SCHONANDER: Just the opportunity to follow-up on your question to Brian, since you said there might be such an opportunity.

You know from our point of view, we are not seeking substantive equivalence between the U.S. and EU privacy systems. That's -- I just want to set that out there.

What we are seeking is something that assures continued cross-border data flows between the European Union and the United States. And you know for the record, we have that. We have,

say, the Privacy Shield. We have you know the possibility of binding corporate rules, standard contractual clauses, et cetera, et cetera.

The reason several of us have focused so much on the exceptions language that the European Union has put out is because of the precedential value it could have in third markets. That's the issue.

We're not suggesting that there is a lack, for now, of cross-border data flow access between the United States and the European Union. It's how do we deal with China, with Vietnam, other jurisdictions if we don't deal with this in a satisfactory way.

MR. WEINER: Sure.

MR. SCHONANDER: Thanks.

MR. WEINER: Please.

MR. WHITLOCK: Thank you. I just would like to associate myself with both sets of comments on this issue, which I think is a core issue. The U.S. and the EU have many shared interests in the space of digital trade. On the

issue of cross-border data flows and a clear obligation to permit cross-border data flows, we do, as SIIA has mentioned, have an existing framework that many of our companies are able to use.

And so it is against that background that many of us are concerned by the data flows proposal that the EU has publicly released with respect to Indonesia.

The EU itself and many of its exporters stand to lose from cross-border data restrictions in India, in China, and in other countries. And I think European officials are well-aware of that.

I do think there is a good opportunity here to arrive at a common set of rules. And the USMCA provides an excellent model. If that model is not the exact language that works with the EU, I am sure there is other language that can be achieved but it needs to be a clear, strong obligation to permit cross-border data flows. And with respect to any exceptions to that

obligation, the exceptions need to be duly disciplined.

MR. WEINER: Mr. Geiger.

MR. GEIGER: So your question was whether or not if privacy -- the difference in the privacy regime in the United States versus the EU made it such that it was difficult to achieve the same level of -- the same strength of language in the USMCA on cross-border data flows with the EU, whether or not there was something else that we would like to see.

And to that, I would identify an issue that I had raised earlier and that is with relation to a cybersecurity threat in intelligence information. And so processing personal information would qualify as just personal information for cybersecurity is a pretty common occurrence. So for example, if we are trying to warn our clients of a phishing attack that is currently ongoing, that typically will involve information that qualifies as personal information. We need to talk about the

email address of the suspected phisher, the IP address that is associated with it, and so forth. And often in the United States, that information will get shared to others so that they are warned of the same attack.

And GDPR includes recitals that accommodate this very practice by saying that it is considered a legitimate use if you are sharing information for cybersecurity or fraud prevention purposes. But that is not incorporated into all regulations from the start, and the eprivacy Regulation is one area that we are concerned about. That concern has been expressed to the EU but we -- last we have seen, to the best of our knowledge, it has not been clearly addressed. BSA actually has a great paper about this very issue.

So to the extent that you are still able to preserve the data flows for cybersecurity information, that is already something that has been recognized in the context of GDPR. It's recognized in the United States. But because it

is not universal, we still think it would be helpful to have that in the trade agreement.

And we tried to incorporate that basic suggestion in the regulatory review recommendation that it will take other forms. That's the basic suggestion.

MR. WEINER: Thank you.

MR. MEIER: Okay, I've got a few questions for Mr. Whitlock and BSA. BSA's submission indicates that the agreement should require governments to adopt civil and criminal cause of action and penalties for theft of trade secrets. In the view of BSA, do the current laws of the European Union address this matter sufficiently and are there particular concerns about EU member states?

MR. WHITLOCK: We will provide a supplemental response in writing to that question.

MR. MEIER: Thank you.

In addition, now please describe which EU practices or restrictions your member

companies have encountered that restrict their ability to move data round the world and, specifically, across borders.

MR. WHITLOCK: So I think in the existing GDPR framework, Article 46 provides a number of transfer mechanisms that permit cross-border data transfer and my colleague referenced a number of them. They include standard contractual clauses, Privacy Shield, binding corporate rules, and so forth.

One of the challenges that I think many of the companies represented by the associations in this room have faced relate to the certainty provided under these rules, which have been subjected to court challenges in the EU. But I think over time many of the member companies, at least for BSA, have found a path forward to complying with these data transfer mechanisms under GDPR and so there is, including Privacy Shield, there is an existing framework that does work at this time. Predictability and certainty for the future is very important and

that's one thing that we think a trade agreement could enhance.

MR. MEIER: In your testimony, you list a number of digital trade provisions that the EU has included in previous FTAs, which you say provide a foundation for U.S.-EU digital trade negotiations. Can you explain in greater detail why these provisions are important to include in U.S.-EU trade agreements?

MR. WHITLOCK: Yes. So the provisions that are found in the EU-Mexico FTA and the EU-Japan FTA include provisions relating to source code, protection of source code from mandatory disclosure requirements, use of electronic signatures in commercial transactions, prohibition of preferential treatment for SOEs, prohibition on customs duties in electronic transmissions, and consumer choice of digital services.

So briefly to touch on a few of those, on the very first issue, as others in this testimony have mentioned, there are source code

disclosure requirements in other regions around the world, which represent a key threat in terms of forced technology transfer.

The USMCA goes beyond the language found in the EU FTAs in that it also highlights that source code, as well as algorithms contained within source code, should be protected from mandatory disclosure requirements. And we believe that would be a useful enhancement and would be hopeful that European negotiators would be amendable to making that change.

But this is a core issue. We see in many Asian economies or a number of Asian economies where source code is required to be disclosed and then presents a significant risk of leakage with competitive enterprises.

Use of -- I'll highlight a few of these. Prohibition on customs duties in electronic transmissions is a core issue, a burning issue at this particular point in time. There have been questions raised in the World Trade Organization as to whether or not the 20-

year moratorium on customs duties on electronic transmissions should be maintained. Removal of that moratorium would be a significant landscape shift, and it's very important that in U.S. FTAs and in the EU FTAs, there has been a recognition and an agreement to prohibit such customs duties on electronic transmissions and on digital products. So that would be an important -- solidifying that understanding with the EU and continuing to negotiate that understanding around the world is an important achievement.

Just one other issue. One of my colleagues has already discussed preferential treatment for SOEs. But electronic signatures in the commercial transactions, recognizing or not prohibiting the use of electronic signatures or autonomously executed contracts as valid for legally-effective contracts is a key element of 21st century commerce. It's great that the EU and the U.S. both have that as part of their legal regime. It's something we should reflect together and something we should both

respectively continue to negotiate in FTAs with other countries.

MR. O'BYRNE: And Mr. Whitlock, from a small business perspective, does your organization have recommendations or ideas on digital trade commitments or mechanisms that might increase access for U.S. small businesses in your industry?

CO-CHAIR GRESSER: I suspect this is a sort of general question, if others have ideas or views on this.

MR. WHITLOCK: Yes, I would love to answer. Give me a few minutes to collect my thoughts and perhaps others.

MS. SWANSON: I have a comment in response to your question.

MR. O'BYRNE: Yes.

MS. SWANSON: Earlier on I want to make it clear that I worked for the American Chamber of Commerce in China. We do an annual business climate survey. Many of our clients at that time or members were small companies in

China and consistently the annual business climate survey found that regulatory uncertainty, just a lack of clarity in regulations, was one of the top concerns for our member companies at that time.

So I guess I would refer to the TBT chapter of USMCA, which had a number of provisions on transparency, providing lengthy periods for comments. As I recall, it even has a provision in which governments can be called on to explain why they couldn't accept comments.

There are a lot of very detailed and kind of thoughtful provisions, disciplines there that could be used to offer more transparency to smaller companies that I think would be broadly helpful in a number of regions.

MR. SCARPELLI: Thank you. Yes, I could contribute.

Again, this is much like what was just raised. This kind of an overall theme but you know I think that something that would particularly benefit smaller businesses that just

simply don't have infinity legal funds to pay outside counsel, et cetera, is furthering the idea that regulations put into place are based on data-demonstrated needs.

There's a few different developments taking place, that have taken place or that are taking place in the EU, which we talk about in more detail in our written filing, where the public record and the research, even that of the European Commission, does not demonstrate an actual harm, yet they are still pursuing a regulation to address a hypothetical harm.

And you know I can think a couple of examples. There was a consultation initiated by the European Commission, which was basically based on a presumption that accessing a good or service via a mobile app was inherently less safe than in any other -- through some other modality without really providing any basis for that.

Another would be -- another example that rises to the top, pretty troubling for us, is the platform-to-business regulation I

mentioned earlier, which just simply is not based -- that we don't believe is based on inadequate evidence basically to even pursue the means -- the measures that they're trying to take, which would effectively allow for regulators to intervene in dictating -- in changing contract terms that our members would negotiate with platforms that they partner with in order to build once and sell everywhere.

MR. SCHONANDER: Thanks. Well, a couple of different things. Probably higher de minimis requirements would be useful for SMEs -- not probably -- they would.

Getting back to sort of the strictly digital data flow area, while it is not -- while we do not recommend and it is not really appropriate for trade negotiators to get into the substance of what each country's or each jurisdiction's privacy regime should look like, there are in general data protection regulations, some rules which make exceptions for what SMEs have to do.

So I think generally encouraging an SME sort of friendly application of privacy and other rules can be pretty helpful. For example, in GDPR in Article 30, you have to be a certain size in order to produce something that they call a record of processing. And there are other rules like that as well.

I would also urge the U.S. Government to continue the really great work on the EU-U.S. Privacy Shield. We're not suggesting that that's a model that should be replicated around the world. We're, as you know, big fans of the APEC Cross-Border Privacy Rules System.

But the truth of the matter is that the Privacy Shield now has 4,000 participating members. The vast majority of those members are SMEs, at least a plurality for sure. One of the reasons is it's a self-sort of regulating mechanism. It's administered and enforced in the United States. It's also relatively inexpensive to join.

So those are a few suggestions.

Thanks.

MR. GEIGER: So I want to identify three recommendations that we've made that are potentially helpful for small businesses.

The first on encouraging interoperable cyber risk management frameworks. So small businesses are seeking out cybersecurity products both to secure themselves, for its own sake, but also to meet their security compliance obligations. They're trying to figure out how to get to reasonable administrative, physical, and technical safeguards to protect personal information and the risk management framework can help them do that.

In the United States, we've created the NIST Cybersecurity Framework and it is intended to be helpful for organizations to try to achieve that level of security based on their -- the particular data they hold, the particular systems that they run, and so forth. And so having a counterpart to that, that is interoperable in the EU will make it easier for

small businesses to be able to look for products that can fulfill the functions within such a framework, as well as for vendors to be able to talk with those customers with a common lexicon and, ideally, helps get them to a place where they are more secure.

And it's not an easy document to read but it is helpful as a compliance and security program resource.

Second, I had mentioned the recommendation on transparency for security for IoT. Small businesses are consumers of IoT devices of many sorts, not just like wearables that consumers have but also office IoT devices. And currently, because a small business does not have the same sort of resources that a very large business might have, it is more difficult for them to evaluate those devices based on security. They don't have the resources to look into it as deeply as a company that has a large amount of financial resources and technical expertise may be able to.

Having a simplified labeling and transparency scheme for IoT, which again is there is support for in both the U.S. and the EU Governments, would help enable them to make those purchasing decisions more quickly and to hold their service providers to account.

Lastly, the recommendation that several of us have made on prohibiting requirements to weaken encryption, if there is a requirement to weaken encryption for extraordinary access, government access, that burden will fall most heavily on small businesses because the entry point into the encryption, the point at which encryption is weak, suddenly becomes a magnet for attackers. That is, that is the target that the small business must defend against. And the attackers will come not just in the form of people who know our attackers but also requests from government agencies that may or may not exist. They can be very, very clever.

And it will be small businesses that will have the greatest trouble with the

technology necessary to prevent exploitation of weakened encryption, as well as to vet incoming requests from government agencies for access to data that is then made available as a result of weakened encryption.

There are other ways around -- there are other ways to get access to data that helps law enforcement. We think weakening encryption is not the right approach.

Thanks.

MR. WHITLOCK: Thanks very much.

So I'd like to tie a few of the points in our written submission to small business interests. And the themes I would like to touch upon are services, market access, cross-border data flows, interoperable standards, IP protection, and exceptions, and SOEs.

First off on the question of services market access, it is important to ensure broad services market access, including with respect to value-added telecom services, particularly those that can be provided on a cross-border basis

through Mode 1 commitments.

Small and medium-sized enterprises can invest in software development where barriers to entry are lower and can access infrastructure without making a full investment in infrastructure through cloud-based services. Infrastructure is a service, software is a service, and platform is a service. All of those services provide the ability for smaller scale enterprises to participate in the marketplace but the ability of those smaller enterprises to participate globally in the marketplace does depend upon services commitments being undertaken on a cross-border basis in the relevant sectors. So that's the first theme to strike.

The second theme relates to commitments on cross-border access and data localization. Again, obviously in echoing the comments of others who have testified, the ability to transfer data across borders without -- and provisions built into a trade agreement that provide a presumption favoring the ability

to transfer data are very important for smaller and medium-sized enterprises that do not necessarily have a local presence and a team of local attorneys in the foreign market to comply with.

So then the third point that I would strike is interoperability of technical regulations. And again, you know we see trends in other regions, mandatory national standards that discriminate in favor of local champions and it's very difficult for any U.S. enterprise, let alone a small or medium-sized business to comply with mandatory national standards that are unique to a foreign market.

The fourth theme I would like to strike relates to intellectual property rules and exceptions. Trade secrets, for example, are often a crown jewel of a small or medium-sized enterprise. And if those trade secrets are forced to be disclosed to a government or are not subject to adequate protections and are lost, it can be debilitating for such an enterprise.

At the same time, appropriate exceptions are necessary to permit the types of activities in the digital environment that are necessary to develop new innovations, including with respect to artificial intelligence and machine learning.

And the last theme to strike relates to standard enterprises. Again, ensuring that the playing field is leveled and does not favor large incumbent standard enterprises is an important feature of U.S. FTAs. That's important for all enterprises, including small and medium-sized enterprises.

MR. SCHONANDER: Thanks. I just wanted to add one point to my colleague from Rapid7's very interesting testimony on cybersecurity, which is this. On his first point on interoperability, I'd like to echo that and maybe it would be good to find some language in there sort of acknowledge in whatever is ultimately agreed upon between the United States and the European Union acknowledging that there

is no relationship between where the data is located and cybersecurity. This is a point that we encounter in many jurisdictions around the world, Vietnam, China, Indonesia, I think two other places.

So something promoting interoperable cybersecurity frameworks and acknowledging that in order to achieve that cybersecurity that the data does not have to be located in a particular geographical location would be helpful, again, from a precedential standpoint. Thank you.

MS. STELLY: I would echo many of my colleagues' concerns with SME's compliance with data localization mandates. However, I wanted to briefly touch upon a couple of items on the burden on SMEs and complying with takedowns and the importance of intermediary liability protections in both the context of IP and in their content.

Many of the proposals that are floating around in the EU, including the Copyright Directive, there is also a directive

that is being considered on the operation of terrorist content online. Both proposals do not currently have permit exceptions for SMEs. And while many of our larger companies spend extensive resources on products such as content ID that work very closely with the most recent technology that is out there to swiftly remove illegal content online, this doesn't -- many of the proposals out there don't limit it just to compliance with the larger companies that many U.S. internet services are forced to comply with -- could be forced to comply with one-hour takedowns for content that our larger companies are still struggling to deal with.

So respective the burdens on SMEs on that.

CO-CHAIR GRESSER: I guess we've heard everyone on this topic but Ms. Keller. Anything to add?

MS. BENGFORT KELLER: Nothing really to add. You know I will just reiterate what my colleagues have said. You know we've highlighted

the importance of IP. I think that's a very important one, especially when we -- especially of concern regarding state actors supporting or contributing through industrial policy, that's a particular concern as well.

So the trade secrets reiterate and the SOE disciplines are very important.

So I just wanted to highlight those two.

CO-CHAIR GRESSER: Okay. This discussion of the SME aspect is very -- it's been very interesting to me individually but I think to the government generally we have something like 285,000 goods exporters and about 280,000 of them are SMEs. We do not know how many SME services exporters there are but I would imagine there's quite a lot.

So if anyone has additional thoughts they would like to submit in writing, we would welcome that. Feel free to do so.

We probably have time for one or two more questions.

MR. HENRY: I have a question for Ms. Stelly from the Computer and Communication Industry Association.

How should we address in the U.S.-EU negotiations issues concerning interconnection, transit, and peering arrangements among network providers that participate in the global internet?

MS. STELLY: I'm sorry, could you repeat the question again?

MR. HENRY: Yes, how should we address issues concerning interconnection, transit, and peering arrangements among network providers that participate in the global internet?

MS. STELLY: Thank you for that question. I'm happy to provide further comments in a supplemental response.

MR. HENRY: Thank you.

I have another question. This is for Ms. Swanson.

TIA submission notes that the USMCA represent a major advance in trade rules for the

ICT industry in several areas, including digital trade and technical barriers to trade. Can TIA identify particular challenges that member companies face in the European market and give some examples that illustrate how those particular barriers would be addressed through USMCA provisions?

MS. SWANSON: I think the best one is e-labeling really because I think most regions around the world, including for that matter, China had adopted e-labeling in some way. And Europe, for reasons that are a bit unclear, has remained a little bit of an outlier.

So for our industry, many of the companies we represent make physical devices and as those devices get smaller and smaller and they are sold into more and more countries around the world, many of whom have their own requirements for labels of some kind, it gets hard to physically fit them onto the device.

So you can see how I think e-labeling is not controversial in any policy sense. We've

just found it hard to get -- so far the EU has not sort of shown a lot of political will in moving forward on this. So that would be a very concrete example of an issue where we could see progress would be helpful through U.S. ICT companies.

I mean there are a number of other precedents in the USMCA that we think would be really helpful to carry forward like the TBT language on no mandatory required in-country testing and the provisions on the confidentiality of business information, preserving that, or allowing for more disclosure of that in relation to government-related testing. But those are less specific to certainly the problems in Europe and more about just raising the bar broadly.

MR. HENRY: Thank you.

CO-CHAIR GRESSER: I guess one last question for Ms. Keller.

What commitments would you like to see in an FTA to address your concerns regarding semiconductor counterfeiting and enforcement

measures, aimed at the combating the trafficking of counterfeit semiconductors?

MS. BENGFORT KELLER: I do not know of specific measures with the EU. I know that in the USMCA we were pleased about the ex-officio authority for Canadian authorities to seize counterfeits. You know previously, they did not have that or it wasn't explicitly laid out and so were not seizing suspected counterfeits.

I don't believe we have the same issue with the EU but I think it's more of working closely with the EU to seize and destroy counterfeit chips, which cause severe risks to health and safety because of the types of products that they go into.

So other than that, I have no specific -- more specific recommendations than continuing to prioritize that as an issue.

CO-CHAIR GRESSER: Okay, we are very close to out of time but let me raise one final thing for any witness.

Is there anything in this discussion

that you would have wanted to raise but didn't have time to do so, or opportunity to do so? Or anything that you would like to respond to that came up?

In that case, on behalf of the U.S. Trade Policy Committee, let me thank you all for your very important contributions as we think through the negotiating objectives for the U.S.-EU trade agreement.

David, any final comment?

MR. WEINER: Thank you. Thank you very much.

CO-CHAIR GRESSER: In that case, thank you all, and this hearing is now adjourned.

(Whereupon, the above-entitled matter went off the record at 4:53 p.m.)

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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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Neal R Gross

Court Reporter