

# AmCham EU's response to the European Commission's Consultation on EU-US High Level Working Group on Jobs and Growth

CONSULTATION RESPONSE

American Chamber of Commerce to the European Union  
Avenue des Arts/Kunstlaan 53, 1000 Brussels, Belgium  
Telephone 32-2-513 68 92 Fax 32-2-513 79 28  
Register ID: 5265780509-97  
**Email: [info@amchameu.eu](mailto:info@amchameu.eu)**

Secretariat Point of Contact: Aylin Lusi  
Email: [aylin.lusi@amchameu.eu](mailto:aylin.lusi@amchameu.eu) Tel: +32 2289 10 33

23 April 2012

## Introduction

The American Chamber of Commerce to the European Union (AmCham EU) welcomes the opportunity to provide input to the European Commission's consultation on the EU-US High Level Working Group on Jobs and Growth.

We are at a crucial juncture in the world economy. Developed economies, which have been the engines of growth for the past century, are now grappling with substantial debt and other challenges. At the same time, emerging markets are increasing in importance, particularly as prominent investors in both our economies. The European Commission's recent report on trade and investment barriers also points to the tendency of these emerging economies towards trade-restrictive industrial policies, containing discriminatory provisions against foreign products, services and investments, impacting EU and US companies. Citizens in the EU and US feel uncertain about the future and are less optimistic about the possibilities for the next generation. Calls for a return to protectionism, isolationism and 'times of the past' are increasing.

AmCham EU believes that the EU and US need to look forward and work together in a positive, pro-active, ambitious fashion to outline a vision of the future transatlantic economy for our citizens built on the same principles that have existed for the past 60 years – common values and democratic ideals – and providing for a common path forward in an interdependent world.

### Overview

In a perfect world, AmCham EU member companies would like to see a transatlantic environment where goods, services, people, capital, data and ideas could flow freely across the Atlantic. Citizens would have confidence that products and services produced in one location would be tested and certified to the same health and safety standards they are accustomed to locally. Cross-border consumer disputes would be solved in a speedy and mutually satisfactory manner. Intellectual property rights (IPR) would be enforced globally, and research and innovation would be shared and leveraged to maximum efficiency. Long standing trade disputes would be resolved, or at least managed in a way that would allow the rest of the transatlantic relationship to prosper. Inefficiencies in the flow of trade and investment would be minimised and companies would be able to use the funds gained from efficiencies on new jobs, research, investment and growth.

The above outcomes will result in growth of the current transatlantic economy – growth in jobs from the current 15 million people employed on both sides of the Atlantic – and growth in total commercial sales, currently standing at \$5 trillion per year. These outcomes will be achieved if we introduce a higher level of

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ambition in our approach to transatlantic relations, both in achieving further integration between our economies and in dealing with third countries.

With this in mind, AmCham EU supports the EU and US' efforts to further integrate their economies via a comprehensive agreement focused on boosting the transatlantic market and encouraging the creation of jobs and growth. Creating a framework agreement that would allow the countries to move forward on specific issues that impede trade and investment would demonstrate the strong commitment to further eliminate inefficiencies in our economic relationship.

We encourage the EU and US to consider a legal instrument that would become the template for the 'next-generation' of economic or trade agreements. This new instrument, a **Transatlantic Economic Growth Agreement** (TEGA), should be as broad as possible, with a focus on those issues that provide the most potential benefit to EU and US companies both large and small, farmers, workers and consumers. The TEGA would build on the best terms currently negotiated by each party in other free trade agreements (FTAs), and would also seek to address some of the additional issues that create redundancies and inefficiencies to the detriment of our citizens' overall welfare. Despite many sensitive political issues and ongoing trade disputes, we hope that the governments would be able to design a mechanism to address and manage these issues in a way that allows broader trade liberalisation to advance.

The components of this agreement would include the following key policy areas for transatlantic cooperation:

## 1. Tariffs

**Conventional tariffs on goods:** AmCham EU believes that all tariffs on transatlantic trade should be eliminated. While applied tariffs are relatively low, research shows that when they are applied on such a large base, their elimination could raise EU and US exports by about 17%. This would improve the global competitiveness of European and US firms, especially those – like many AmCham EU members – with significant integrated operations in both the EU and US. In addition, the cash flow benefits that would be created could be used to help expand investment in each other's markets.

**Non-tariff barriers:** AmCham EU believes that the removal or reduction of non-tariff barriers is the most important aspect of a potential EU-US TEGA. Non-tariff barriers to the trade of goods, services and investment represent significant market barriers and are the area of largest potential gain for the EU and US. We would encourage governments to structure a process enabling firstly prevention, then where possible reduction and then elimination of non-tariff barriers.

## 2. Services and Investment

**Services:** The services sector remains Europe's largest untapped source of economic growth and jobs. While services account for approximately 70% of Europe's output, they only account for 23% of Europe's trade. Fully implementing the EU Services Directive could deliver economic gains between €60-140 billion (representing 0.6 – 1.5% GDP) and generate more than 600,000 new jobs. According to Daniel Hamilton's 'Europe 2020' report, Europe's failure to capitalize on services is one of the main factors behind the existence of a gap between the US and EU on GDP and productivity growth. Services sector reform in industries like health, transport, capital markets, telecoms, ICT and social services would provide a significant boost to economic activity and increase Europe's global competitiveness.

**Investment:** As major investors in Europe, AmCham EU members believe that an open investment policy is vital to attract the capital needed to promote growth in Europe generally. Both large and small companies need access to capital to fuel European competitiveness and innovation. We welcome the reinvigoration of the EU-US Investment Dialogue.<sup>1</sup>

Maintaining a stable investment environment between the EU and US is important. What concerns us, as the largest foreign investors in Europe, is the possibility that either the EU or US will take actions that could deter investment, or that the US or EU will take action on a host of issues (e.g. taxation) that are specifically targeted at foreign investors. Such actions would make our continued investment in the EU or US more difficult in the long-run.

With such an important economic relationship, based on the \$1 trillion that our companies have invested in one another in 2010 alone, AmCham EU welcomes the recent statement on principals of investment, and calls upon the EU and the US to work together to achieve the highest standards of openness to, and protection for, Foreign Direct Investment.<sup>2</sup> Both inward and outward investment play vital roles in creating innovation, economic competitiveness, jobs and growth; at this time confidence in investing needs to be rebuilt

We support the inclusion of investment in an EU –US agreement. While the US currently has bilateral investment treaties and other investment treaties with most Member States, it would provide a single regime for the entire EU. We believe that the priority should be placed on ensuring the rights outlined in existing agreements are retained.

While the text of the EU-Canada agreement is not public, the negotiating mandate given to the European Commission for those negotiations largely contains principles which could also form a basis for work between the EU and US. We understand that there are concerns in the EU with certain US restrictions on direct investment in certain industries, such as the US law known as the Committee on Foreign Investment in the United States (CFIUS), and with restrictions at the sub-federal level. We hope that work on investment would be

<sup>1</sup> Please see Annex 1 – 14 July 2011 letter on needs from investment dialogue

<sup>2</sup> Please see Annex 2 – 11 April 2012 Press Statement on Principals of Investment

able to focus on the trillions of dollars, euros etc. worth of investments that take place between the EU and US, and ensure that the appropriate protections are in place.

**Data:** The generation, transfer and processing of data have resulted in a multitude of new services and offerings, such as cloud-based ones, which in turn fuel economic growth, job creation and enhanced services to customers in the transatlantic marketplace. Accompanied by appropriate safeguards for security and privacy protection, the free flow of data is a fundamental prerequisite for continued development of new and innovative services on a transatlantic basis.

The US and EU have engaged in constructive discussions and initiatives to facilitate the flow of data between the EU and US. As the EU embarks on enhanced harmonisation of its data protection regimes, and the US revisits its own data privacy legislative framework, EU and US authorities should expand their cooperative efforts to continue to foster the free transfer and processing of data on a transatlantic basis. Such policy discussions and solution frameworks could also serve as building blocks for more globally coherent approaches to information transfers and processing.

Furthermore, it is important to consider that growth opportunities for the EU and US in cross-border trade in ICT-enabled services are threatened by the potential for restrictions on cross-border data flows. Many countries are considering restrictions on the location of storage and processing for various types of data, however existing trade agreements do not address these issues. For example, exceptions in the World Trade Organisation General Agreement on Trade in Services (WTO GATS) gives countries the right to regulate for national security, privacy, compliance with regulations, protection of public safety, and prevention of fraudulent practices, and to ensure the integrity of the financial system, among other reasons. Any of these rights could be used as an excuse to block data flows, effectively creating barriers to services trade.

It is in the interest of both the EU and US to modernise their approaches to services trade agreements to address these cross-border data issues. These issues should be incorporated in all future services trade negotiations, whether at the bilateral, pluri-lateral or multi-lateral level. Given their strengths as exporters of ICT-enabled services, the EU and US should cooperate to establish a new agreement that can set the standard and serve as a model for the rest of the world. This initiative could build on work completed in 2011 on the EU-US Trade Principles for ICT Services, the Organisation for Economic Co-operation and Development Internet Policy Principles and on the two parties' ongoing work on e-commerce and services trade in their respective bilateral and regional free trade agreements. This issue is especially timely following the European Commission's recently released revision of the EU Data Protection Regulation, which may have a significant impact on transatlantic data flows and the businesses that rely on them, such as cloud computing, business services, financial services, and the entertainment industry. The EU and US are well positioned to lead the world in the development of a 21<sup>st</sup> century services and cross-border data transfer agreement.



### 3.Regulatory issues affecting trade in goods

AmCham EU has been a long-standing supporter of the EU and US' work on regulatory cooperation, both in the broader context and in sector-specific areas. The EU and US share common goals of ensuring citizens' health and safety, even though they often take different approaches to achieve these objectives.

We recognise that these differences are very difficult to harmonise, as they often reflect fundamentally different cultural and legal approaches to public policy. Transatlantic mutual recognition of regulations and standards is the path we should explore further and the work of the High Level Working Group on Jobs and Growth is a unique opportunity towards that end. The agreement at the last EU-US summit to apply mutual recognition to the sensitive area of security is encouraging.

Improving regulatory cooperation makes economic sense. At a time when national budgets are being cut, finding ways to achieve more with fewer resources is critical. One way would be to explore whether there is more that can be done to share data between regulators, so that scarce resources can be used more efficiently.

We believe that Presidential-level support for enhanced technical regulatory dialogue is needed, and that inclusion of this in a possible agreement should be explored. Enhanced technical regulatory dialogues should seek holistic solutions to suit the needs of all parties and not cause any unfair competitive disadvantages. While the expectations and commitment to meet them should be firm, we urge that the process remains flexible and able to evolve over time depending on changing circumstances. The process should also include regular participation of EU and US stakeholders, including industry, given the enormous importance of transatlantic economic relations to both economies.

**Standards:** There is great interest in pursuing work on standards. The EU and US should agree on concrete processes to reinforce cooperation between standards setting organizations (SSOs). Before they agree on a standard, SSOs should at a minimum study the impact of the future norm on the transatlantic market. Systematic bilateral cooperation before approving a standard is key and the 'Bridges Principles' agreed upon at the last transatlantic summit<sup>3</sup> should be made mandatory.

Procedures aimed at promoting the compatibility of future regulations and standards should be made mandatory. An example to that point is European Commissioner De Gucht's recent idea of systematic 'external competitiveness proofing' whereby the legislator would take into consideration the transatlantic impact of the future legislation at impact assessment stage.<sup>4</sup> While there is no identical point in the US legislative process to include a similar review, the US Office of Management and Budget (OMB) could review rules for compatibility

<sup>3</sup> [http://trade.ec.europa.eu/doclib/docs/2011/december/tradoc\\_148393.pdf](http://trade.ec.europa.eu/doclib/docs/2011/december/tradoc_148393.pdf)

<sup>4</sup> The related European Commission Press Release can be found here:  
<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/21&format=HTML&aged=0&language>

and include concerns in the Statement of Administrative Procedures, or the OMB could include such a review in the impact assessment that the regulatory agencies must conduct in their rule making process. While neither of these is directly comparable to the US system, they could result in similar outcomes.

Outside of these examples, we know that regulatory cooperation is being looked at in some of the current EU free trade agreements. While those texts are not public, they may include some provisions that could also be used in an EU-US TEGA.

Within governments, we see several different kinds of potential regulatory cooperation: general cooperation on the process of developing, drafting, approving and implementing regulations; cooperation on specific bilateral regulations; cooperation on international and third country issues; and new and emerging work on standards.

***Cooperation on Regulatory Process and Procedures:*** We are long-standing supporters of general cooperation on the regulatory process. We need to reinforce the good work that has taken place, most notably on issues such as assessing risk. For most industries, commitment to fully implement the 2002 Guidelines on Regulatory Cooperation and Transparency would be a key first step in promoting more open, efficient regulatory environments. With the regulatory reform processes on both sides of the Atlantic, full and detailed implementation of the guidelines – including interactive consultation of affected industry in the early stages of the regulations development process - would be invaluable to removing unnecessary barriers and inefficiencies.

***Sector-Specific Cooperation:*** Regulatory cooperation is ongoing, and we believe that the work of Transatlantic Economic Council (TEC) has made positive contributions in some specific areas. Next, the TEC should look to apply lessons learned in those areas to new issues, especially in the area of key emerging technologies that are not yet regulated. The TEC works particularly well when addressing new issues and preventing a problem or dispute from occurring, such as the work on developing a common plug for e-vehicles. As we have seen, the TEC is not a forum to resolve trade disputes. We therefore would continue to encourage the governments to use the TEC to seek out and work on new or emerging regulatory and standards related issues, and to give a needed boost or profile to those issues to ensure they are resolved in a timely fashion.

**Financial Services:** In the financial services area, AmCham EU has been a long-standing supporter of the Financial Markets Regulatory Dialogue (FMRD), where the EU and US regulators meet and discuss issues of mutual interest. AmCham EU believes that cooperation between the EU and US remains critical to ensure that markets are safe, sound and well-regulated, while supporting and encouraging economic growth and the creation of jobs. The work of the G20 and other international bodies (Basel, IAIS, IOSCO) to encourage and establish global standards and frameworks for international cooperation remains vital, and AmCham EU believes that such work will be impactful if the EU and US have similar views and approaches.

AmCham EU believes that a level playing field for the global financial services industry is essential. We believe that the best way to achieve this is to ensure that standards agreed on at an international level are fully and consistently implemented on a local level, to maximize global convergence and eliminate systemic risk. Differences between regulatory regimes may occur, and it may play out differently for different parts of the financial sector (i.e. insurance), as a result of variations in local market conditions, legal systems and stages of regulatory development. Common EU and US regulatory objectives can be reached in more than one way, but can be objectively recognised and confirmed through an agreed outcomes-based analysis. We attach as an annex our recent paper on EU and US regulatory convergence in financial services, where we discuss these issues in more detail.<sup>5</sup>

**Chemicals:** While levels of protection of the chemicals management systems in the EU and US are comparable, the regulatory systems differ fundamentally. Past efforts to improve convergence of regulations have not been very successful. As a first step, EU and US regulatory agencies should assess the regulatory application dossiers and identify key data sets and definitions. A harmonized approach to data assessment would simplify the registration process, improve transparency and be more efficient for companies to develop their application dossiers in both economies.

**Trade Disputes:** With regard to existing trade disputes, we encourage the EU and US governments to think about how best to address and resolve long-standing trade disputes, particularly with regard to regulatory and standards related issues. The WTO Dispute Settlement Body is a powerful enforcer of trade rules, but as we know some disputes between the EU and US have ultimately been resolved using other means, and some continue to remain unresolved despite WTO rulings. Trade agreements and trade rules have limits, and the EU and US should consider how best to address those issues that impact on trade and investment, which ultimately may not be able to be resolved via the existing trade rules. A possible side agreement, or other potential forum, could be considered as a means to look further at some of the long-standing issues which will be politically important to address alongside any EU-US agreement.

#### **4. Government procurement and intellectual property rights**

**Public Procurement:** AmCham EU would welcome further work between the EU and US on opening public procurement markets. If properly drafted and implemented, an agreement between the EU and US could deepen competitiveness, provide access to each other's markets and eventually enhance procurement markets globally. Work in this area should not side-step the WTO Government Procurement Agreement (GPA), but instead reinforce and support expanding the application of the GPA to more countries. The objective should be to ensure that the EU and US have access to public procurement contracts in other countries, and lead to an overall improvement of procurement markets globally and to help prevent the isolation of EU or US domestic markets.

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<sup>5</sup> Please see Annex 3.



Although we see the merits of equipping the EU with a new instrument to promote free trade and open public markets, AmCham EU is very concerned by some aspects of the European Commission's proposal for a European public procurement instrument.<sup>6</sup> The automatic exclusion of US bidders in sectors where the EU has taken reservations in international agreement is particularly worrying. According to this proposal, US companies would be a priori excluded from some public EU tenders in strategic sectors like water, airports, urban transport etc., and this exclusion would be decided automatically, without a verification of the existence of a lack of reciprocity (while in cases where countries which have not negotiated an agreement with the EU are at stake, a full enquiry would be conducted). This process would amount to a clear discrimination against countries like the US which have negotiated public procurement agreements with the EU.

At a time when the EU and US should be cooperating to resolve such issues, we believe that this measure would signify a step backwards; and would hope that any EU-US agreement reached addresses and resolves such issues. AmCham EU will soon circulate a new paper on the recent EU proposal.

***Intellectual Property Rights (IPR):*** AmCham EU is committed to enhancing EU-US engagement, cooperation and coordination on IP matters principally bilaterally, but also vis-à-vis China, other countries and in multilateral forums. We support increased EU customs harmonisation which will facilitate greater EU-US enforcement cooperation.

EU and US companies are confronting the twin challenges of:

1. Combating trade in counterfeit and pirated goods: especially online, but also in other areas like agricultural chemicals and medicines. Illegal online activities are harming consumers, legitimate content providers and good manufacturers, and are also undermining trust in e-commerce, one of the key contributors to economic growth. Increased cooperation between the EU and US in collaboration with all actors in the internet ecosystem is therefore necessary. Such efforts should be aligned with the online freedom of expression principles shared on both sides of the Atlantic.
2. Preventing attempts by third countries to weaken IP protection in their own respective countries and in multilateral forums: without a shared strategy that is based on enhanced cooperation and coordination, a number of major emerging economies will continue to erode EU and US competitiveness by both failing to enforce IP rights in their countries, or in some cases, not doing so in order to build national champions and advance an IP theft-based industrial policy.

EU-US coordination is furthered through the development of enhanced coordination on IP issues at the EU Ministerial and Parliamentary levels. For example, this coordination would be enhanced through the emergence of an EU counterpart to the US Intellectual Property Enforcement Coordinator. Such a

<sup>6</sup> Please see Annex 4.

structural change at the Commission should be complemented in the Parliament through the creation of an IP caucus that could engage its longstanding counterpart in the US Congress.

Finally, EU-US enforcement cooperation is enhanced by greater customs harmonisation, such as through the creation of an integrated EU customs rapid alert and information exchange system that will further transatlantic sharing of intelligence and the development of risk analysis.

## 5. Rules

**Trade Facilitation:** AmCham EU would welcome further work between the EU and the US to improve trade facilitation that would significantly reduce the transaction costs for transatlantic and international trade and minimise bureaucracy. Together, they should promote and support initiatives, such as the 'national single window initiative' - that help to effectively ensure that all ports of entry within a country treat imports the same way, from classification definitions and tariff allotment, to registration requirements, as opposed to the current practice which can result in variable assessments of the same product.

The EU and US should cooperate to strive towards implementing a uniform international system of standardised customs processes, efficient customs clearance and mutual recognition of customs and security related standards. The recent TEC announcement on progress on the mutual recognition of EU and US customs security schemes (namely the EU Authorised Economic Operator [AEO] and the US Customs-Trade Partnership against Terrorism [C-TPAT]) is a good example (and should be implemented as soon as possible) of mutual recognition which needs further review in order to generate tangible benefits for AEO and CTPAT licensed operators.

**Rules of Origin:** AmCham EU encourages the EU and US to work on harmonising rules of origin regionally and globally, and implement them bilaterally and globally via the World Customs Organisation and World Trade Organisation.

**Third countries:** AmCham EU is interested in seeing the EU and US cooperate in encouraging application and enforcement of WTO principles globally. While the Doha Development Round (DDA) may not be progressing at the moment, we continue to strongly support the WTO and believe the multilateral approach remains the best means to achieve gains for jobs and growth, within the EU and US, and more globally. In addition, there are some elements of the DDA that can be picked up and progressed through bilateral and pluri-lateral agreements etc., and we would encourage the EU and US to look at such issues more closely.

For example, EU and US negotiators should take the lead on freeing trade for clean technology. US-EU tariffs on clean technologies should be eliminated; EU-US standards and norms governing this sector should be recognised as equivalent, and public procurement should be more open to these technologies on both sides of the Atlantic.

Similarly, we are also supportive of recent discussions on a pluri-lateral agreement in services. Services trade is an area of enormous potential within the transatlantic space, but also in many other markets. Similarly we are supportive of the conclusion of the WTO agreement on trade facilitation and recent efforts for a pluri-lateral agreement on services.

## Conclusion

AmCham EU understands the difficulties surrounding this ambitious task. We need a higher level of ambition in our approach to transatlantic relations, both in achieving further integration between our economies, and in dealing with third countries. Clearly this requires the right process to be in place, and we welcome EU and US efforts to construct such a framework. AmCham EU is actively engaged in the issue of transatlantic trade and investment and actively contributes to the various stakeholder initiatives that feed into the process. We hope that these contributions will be useful, and that our leaders provide the necessary leadership to inspire confidence for our businesses to invest in both economies to promote the jobs and growth that are so urgently needed.

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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totaled \$2.2 trillion in 2010 and directly supports more than 4.2 million jobs in Europe.*

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