



Comments of the Transatlantic Consumer Dialogue Concerning Proposed Transatlantic Trade and Investment Partnership

Docket Number USTR-2013-0019

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The Transatlantic Consumer Dialogue (TACD) is pleased to have the opportunity to respond officially to the USTR request for comments on the proposed free trade agreement between the US and the EU. TACD is a forum of consumer organisations established in 1998 with the goal of promoting the consumer interest in the US and EU policy making.

We are therefore naturally supportive of close EU-US economic and regulatory cooperation, providing such cooperation addresses the challenges common to our democratic societies, including in times of economic down-turn, and aims to deliver a fairer, safer and more vibrant marketplace for consumers.

We note that in recent announcements, both the US and the EU signalled their intention to focus the proposed Transatlantic Trade and Investment Partnership (TTIP) on "*regulatory issues and non-tariff trade barriers*". In our view, such a focus is tantamount to putting the cart before the horse ; we strongly believe that advancement of consumer well-being must be the goal and primary measurement of the value of proceeding with such a trade pact.

As a fundamental principle, we believe that an agreement aiming for regulatory convergence will only be acceptable if it requires the highest standards of consumer and other protections and related compliance, while affording both trading partners the autonomy to adopt stronger facially non-discriminatory protections. This means that a free trade deal must not limit the US and the EU and its member countries from maintaining or adopting and enforcing standards that provide higher levels of consumer protection than those required by the agreement, including in the face of scientific uncertainty; and such protections must not be subject to challenge under the terms of the agreement. The US and the EU should exclude from the pact any sector or regulatory area where they cannot agree on this framework; and clearly, some areas should be excluded at the outset.

A second fundamental principle is one of transparency : this negotiation must be conducted in an open manner, with negotiating texts made public at key points. In addition, and not as a substitute to public disclosure, we urge establishment of a Consumer Advisory Committee to insure that not just business, but consumer views are considered as negotiation proceeds.

Given the breadth of consumer interests, the potential scope of the proposed trade agreement, and the fact that very little has been publicly disclosed about issues to be negotiated, we cannot analyse at this stage all areas of potential concern. But we want to highlight a number of topics:

Safe Food: Food safety and inspection standards must be established at the highest level to ensure consumer protection. The agreement could help improve food safety by addressing animal identification systems for tracing food to its origin, plans to phase out use

of antibiotics for non-therapeutic use in animals, and a Transatlantic rapid alert notification system. Trading partners must be free to establish non-discriminatory food safety, nutrition and labelling standards that are stronger than the harmonized norm and that meet the objective of consumer protection and environmental and ethical considerations.

Emerging Technologies: Trading partners must be afforded discretion to regulate products of emerging technologies, such as nano- and biotechnologies. Non-discriminatory regulations that meet the objectives of consumer protection and environmental or ethical protections, including those addressing consumer labelling, should not be subject to challenge under a Transatlantic agreement.

Financial Protections: We are concerned about proposals to address market access in the TTIP. It is essential that consumer protection measures, many of which are still under development in response to the collapse and rescue of major portions of the banking system, should not be preempted by this agreement. The US and EU must be free without exception to establish limits on financial institutions size; insist on separation of banking, investment banking, insurance and commercial functions; ban or restrict the offering of risky financial services or products; establish fees and taxes for financial institutions and financial transactions; adopt reserve requirements above international standards; impose performance standards and investment obligations; and cap fees and interest rates.

Intellectual Property Rights: Provisions on intellectual property (IP) rights should ensure governments may enact robust limitations and exceptions to rights, and limitations on remedies. IP enforcement should be proportionate and respect the right to a judicial remedy. In some areas, mandatory minimum exceptions should be addressed, such as robust cross-border exceptions for disabilities or distance education. Access to medical technologies and knowledge should not be undermined.

Privacy Rights: Measures related to personal information and privacy should ensure the highest level of data protection for both EU and US consumers, and permit nations to establish more robust privacy-enhancing measures, that include new and evolving digital technologies. Comprehensive legislative data protection reforms are ongoing in the EU, and more privacy-friendly mechanisms are being developed in the US, therefore data flows and data protection must not be included in free trade negotiations.

Drugs and Medical Devices: Trading partners must be free to establish high safety and efficacy standards that drugs and devices must meet before being afforded market approval or market access. The US and the EU must be free to institute the testing regimes they deem appropriate.

Energy and Climate Change: The agreement must facilitate a transition to more sustainable consumption and production patterns, and not water down or impose barriers to measures for promoting them. To advance sustainability and avert catastrophic climate change, the agreement must ensure that trading partners can adopt tax policies, mandatory performance standards, carbon and pollution regulations, schemes for self-generation or "feed-in" electricity tariffs and renewable energy standards without being subject to challenge under the agreement.

Investor-State Dispute Resolution: The agreement should not include investor-state dispute resolution. Investors should not be empowered to sue governments to enforce the agreement in secretive private tribunals, and to skirt the well-functioning domestic court systems and robust property rights protections in the United States and European Union. Experience elsewhere shows how powerful interests from tobacco companies to corporate polluters have used investor-state dispute resolution provisions to challenge and undermine consumer and environmental protections. Investors must not be empowered to sue

governments directly for compensation before foreign investor tribunals over regulatory policy (including “indirect” expropriation), contract disputes, nor guarantee a Minimum Standard of Treatment for foreign investors.

Competition Policy: The agreement should in no way restrict the ability of the EU and the US to apply robust competition policy without being challenged. This includes establishing their own standards of anti-competitive impacts; proactively addressing anticompetitive merger trends ; limiting the size of businesses for reasons of their own; mandating licensing of intellectual property; and responding to new anti-competitive challenges certain to arise as technology evolves.

In conclusion we would like to re-iterate our recommendations for the **negotiating process**. It is vital that governmental negotiators reform their engagement with consumer organisations and civil society. We must have a fully **open process**. Citizens in Europe and the United States will not accept a closed, secret process, with the results revealed only when negotiations are concluded for an up or down vote.

Nothing is more important to an open process than **publication of negotiating texts** as they are developed. The US Trade Representative shares negotiating texts on a classified basis with more than 20 committees designed to obtain the input of various business sectors. However these texts are not shared with consumer groups, other directly concerned civil society groups, or the general public. There are many models and precedents for disclosing negotiating texts in international contexts¹.

Publication of negotiating texts should be supplemented with structured and regular opportunity for **public comment**. We also urge the EU and the US to create a formal TTIP Consumer Advisory Committee that is briefed on a regular basis and provided an opportunity to offer input on the negotiations. We cannot participate in a meaningful, substantive manner without knowing what topics are being negotiated and what the positions are on them.

Our comments above are brief, designed to stake our sine-qua-non principles at the start of this important process. Further and more in-depth reflections on the future of EU-US trade and economic relations can be found on our website, at <http://bit.ly/10excEK>

We look forward to working with USTR and other stakeholders as the negotiations proceed, including by providing further in-depth analysis from a consumer perspective sector by sector.

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¹ Examples of negotiations where texts are or were made public include: the current Doha Round negotiations at the World Trade Organisation <http://bit.ly/jmUSL>; the Free Trade Area of the Americas <http://bit.ly/S3c63N>; the Multilateral Agreement on Investment (later texts) <http://bit.ly/10ewMyb> ; further examples include resolutions or treaties at the World Health Organisation; various treaties at the World Intellectual Property Organisation; and standards under development at the Codex Alimentarius Commission.

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