

TACD

TRANS ATLANTIC
CONSUMER DIALOGUE

DIALOGUE TRANSATLANTIQUE
DES CONSOMMATEURS

Ambassador Ron Kirk
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Office of the United States Trade Representative
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Commissioner Karel De Gucht
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EU and US consumer groups' initial reaction to the announcement of a Transatlantic Trade and Investment Partnership

Dear Ambassador Kirk and Commissioner De Gucht,

The Transatlantic Consumer Dialogue (TACD) is a long-established forum of consumer organisations which develops joint consumer policy recommendations to the United States government and the European Union (EU), in order to promote the consumer interest in their policy making. We are supportive of close EU-US economic and regulatory cooperation as a means to address common challenges and to deliver a fairer, safer and more vibrant marketplace for consumers.

The United States and the European Union have recently announced plans to begin negotiations of a trade and investment agreement. In their announcements both parties noted that trade tariffs in the United States and European Union are already low, and that the proposed Transatlantic Trade and Investment Partnership (TTIP) will focus in particular on "*regulatory issues and non-tariff trade barriers*".

We believe that advancement of consumer well-being must be the primary measurement of whether such a trade pact should be adopted or not. We are very sceptical that a trade partnership built around regulatory convergence will serve consumer interests, and we will vigorously oppose a deal that dismantles existing EU and US consumer protection.

As a general principle, we believe that an agreement aiming for regulatory convergence will only be acceptable if it requires high 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.

Given the breadth of consumer interests and the potential scope of the proposed trade agreement, we cannot analyse 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, and should include 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: The agreement may establish minimal standards for financial institution safety, soundness and consumer protection, but must ensure the freedom of the trading partners to establish more robust regulations. 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.

We would like to conclude with recommendations for the **negotiating process**.

In recent years, TACD has sought to engage in the preparation of agendas for the Transatlantic Economic Council meetings and participate in stakeholder meetings surrounding the High Level Regulatory Cooperation Forum. These efforts have largely failed to be meaningful, because of a lack of mutual engagement by governmental parties, in notable contrast to their engagement with business organisations.

With talks now slated for a fully-fledged Transatlantic trade agreement, 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.

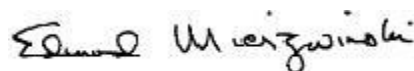
Nothing is more important to an open process than **publication of negotiating texts** as they are developed. Publication should be supplemented with structured and regular opportunity for **public comment**. We also urge the EU and the US to create a formal TTIP **consumer advisory committee** that is briefed on a regular basis and provided an opportunity to offer input on the negotiations.

Below to this letter, please find our most recent policy paper on EU-US trade, *Consumers at the Heart of International Trade*. We look forward to working with you as negotiations proceed.

Yours sincerely,



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Consumers at the heart of International Trade

TACD statement on the future of EU-US trade and economic relations

Who is TACD?

TACD is a forum of US and EU consumer organisations which develops and agrees on joint consumer policy recommendations to the US government and the European Union to promote the consumer interest in EU and US policy making. We are supportive of close EU US economic and regulatory cooperation as a means to address common challenges and to deliver a fairer, safer and more vibrant marketplace for consumers.

Consumers at the heart of international trade

It is key for decision makers in the transatlantic context to grant due consideration to the promotion of the consumer interest when designing trade relationships. Consumers play a major role in the functioning of competitive markets and recent experience has shown, in different sectors that lack of consumer trust can lead to market collapses. It is therefore crucial that trade relationships that are oriented towards removal of barriers to trade are based on a high level of respect for the consumer interest. It is a priority to define consumer protection policy not as a burden to trade, but rather as an asset to develop healthy, and above all, stable trade relationships across the Atlantic.

In this context, special attention has to be granted to the need for a balanced weighing of different stakeholders' interests. The promotion of the consumer interest must be put high on the agenda of the negotiators. Every initiative that is envisaged should be analysed for its potential impact, not only on industry and commerce, but also in terms of consumer welfare, which is a broader concept than just enhanced competition that also refers to health, safety, privacy and the protection of other legal and economic interests.

Defining consumer welfare beyond enhanced choice and lower prices to the benefit of the whole economy

Increased international trade is often described as conveying consumer welfare by offering them choice between more products and services, and therefore, due to competitive structure, bringing down retail prices. However, it is key to understand that for this potential to materialize for consumers many other conditions need to be met on retail markets: sufficient competition, consumer mobility, sufficient information, etc.

These potential benefits could also be neutralized by additional threats that consumers will have to face if the trade agreements lead to the removal or amendment of regulations that are genuinely protecting consumer health and safety (anti microbial treatment, non-therapeutic use of antibiotics, etc) or other legitimate economic and legal interests such as balanced copyright enforcement or open standards for example. Beyond these, neutralisation of benefits can also take place when regulations currently in place, implemented on the basis of consumer preference, for example the use of GMO's or cloned animals in food which European consumers object to, would have to be abandoned for the sake of transatlantic business.

Fundamentally, where removal of barriers would lead to a reduction of consumer protection in one or several sectors, this could lead to a major crisis of consumer confidence, as has been observed in previous years, be it in the food or in the financial sector. Yet consumer confidence is key for flourishing markets. Therefore TACD calls upon EU and US policy makers, to take as a basis, in their discussions related to removal of barriers to trade, an ambitious level of protection of consumers in their different rights to safety, health, legal and economic protection.

Do transatlantic policy makers engage with consumers and their representatives?

In order to define an ambitious level of consumer protection, policy makers on both sides of the Atlantic need to be properly informed about consumer needs and expectations and also about the implications of policy decisions on consumer welfare. Therefore, TACD strongly recommends **informing and including consumer representatives** in the preparatory discussions for them to properly inform the debates on the relevant consumer needs and expectations. It is key that consumer representatives be given the recognition of stakeholder, formally and informally, that is equivalent to the one granted to business representatives from different sectors.

Several fora, such as TEC, HLRCF, have been set up that provide for stakeholder dialogue in the context of transatlantic relationships. TACD is pleased that work in these fora have led to greater cooperation and communication on issues of toy safety, and safety of imports from third countries.

Nevertheless, in spite of recent efforts to have more engagement with TACD in the preparation of agendas of TEC meetings and participation in some of the stakeholder meetings surrounding the High Level Regulatory Cooperation Forum (HLRCF), TACD representatives have never been able to significantly contribute to the work because of late notification and lack of access to preparatory work. A blunt analysis of the results of our efforts to contribute to the work of TEC/HLRCF is a total lack of substantive outcomes for consumer representatives, combined with a strong feeling of having been involved only cosmetically in the TEC/HLRCF.

A major concern: consumer welfare under the yoke of boosting trade relationships

While TACD believes in consumers benefiting from global and open markets and favours, in principle, the removal of unnecessary barriers to trade, it is strongly concerned by the significance that the key policy makers in the transatlantic negotiations attribute to trade relationships over the values of their societies, such as consumer health and safety. The values that prevail in the EU or in the US and that lead to different assessments of priorities, of opportunities and of risks, should not be endangered by a purely industry led push towards removal of trade barriers to boost their growth. Not only would such an approach lead to a growth bubble that questions the sustainability of our growth model hence our current economic crisis, it also neglects the potential of a more sustainable growth model, where innovation led by a multi-stakeholder approach, engaging more with civil society, would boost competitiveness and long-term sustainability of business.

Urgent need for an analysis beyond business interests

From the consumer perspective it is crucial that whatever priority sector is identified by various business sectors, a **holistic analysis** is undertaken by policy makers that takes proper account of implications, positive or negative, on consumer interests. Any free trade agreement, whatever the priority sectors covered, should properly reflect consumer concerns from both sides of the Atlantic and should not lead to dismantling, in total or in part, of consumer protection regulations.

Below, one will find a list of sectors where these aspects are particularly highlighted. In general, in the sectors concerned, TACD also calls for **enhanced cooperation between surveillance authorities**, as a globalised economy needs coordinated enforcement:

- The **digitalisation and globalisation** of world economies has led to frontiers and national/supranational regulation becoming less relevant. It is therefore essential that a global regulatory framework is set up that addresses the challenges in terms of consumer protection linked to digital products and services within our **information society**: data and privacy protection, internet of things, cloud computing, e-health, distance selling contracts, intellectual property rights, digital content products and services contracts, etc.
- The focus on innovation as a key tool for sustainable growth leads to encouraging **emerging technologies**, such as nano-and biotechnologies, other medical technologies, e-payments and mobile payments, but also smart grids and energy saving technologies. While these technologies can provide potential benefits to consumers, they also bear risks not only for consumers but also for the environment. It is key that proper risk assessment and management methods are designed and made applicable. While these measures may be perceived as “barriers” in the short term, in the long term these measures create markets that are protected from volatility and unanticipated costs, as might happen if a poorly assessed consumer products were found to be causing illness and death, and had to be withdrawn, at great expense to retailers. Therefore, the decisions as to the roll out innovative technologies onto the markets should not only be based on their benefits in terms of economic growth and competitiveness, but also on a proper risk assessment and risk management from the consumer and environmental perspective.
- The economic crisis that EU and US is currently facing has provided more than needed evidence that world markets need a sound **financial system** and that the sustainability of this system not only relies on prudential elements, but also on conduct of business.

Too many scandals have hit the headlines over the last years that have shown that the lack of consumer protection in retail financial services has contributed to the current crisis. This crisis also highlighted the shortcomings of a regulatory system that lacks proper enforcement and that is characterised by regulatory capture; the supervisory authorities in the financial sector were either not properly resourced to independently monitor the banking sector. Another lesson learned concerns the global interconnectedness of our financial systems, which calls for an enhanced regulatory and enforcement cooperation between the EU and the US.

- **Food safety** is a recurrent concern in transatlantic relationships where consumer health and safety needs are often questioned in order to enable transatlantic trade. This is the case with differing approaches to food hygiene practices (chemical washes of meat for example), novel foods, and especially cloned animals and their offspring, as well as transgenic animals, anti-microbial resistance, GMOs, etc. In no case should negotiations between the EU and US result in reduced protections, either of safety, or of information and disclosure, for consumers. In parallel, enhanced cooperation is particularly crucial in this sector to develop common strategies for handling emergency food safety issues such as findings of dangerous pathogens in sprouts. There is also potential for cooperative efforts to address obesity, through product labelling and other tools, which is a common problem for both the US and EU.
- Those concerns are also applicable in the area of **product safety**, where exchange of best practices has led to mutual reinforcement of product safety laws. Here also, enhanced cooperation between surveillance authorities, also in the context of relationships with China, are key to effectively protect consumers' safety.
- Furthermore, TACD's work on **sustainability and climate change** aims to ensure that the consumer dimension is sufficiently addressed in EU and US policy. In particular, the upcoming negotiations constitute a unique opportunity to create the necessary framework to facilitate the transition to more sustainable consumption patterns, in order to transfer a liveable planet to future generations. It is crucial to adopt a mind-set, both at policy making and at industry level, to substitute short term profitability, competitiveness and growth, with long-term sustainability of our economic model. This change of approach is too often considered as a hurdle to overcome the current economic crisis. In reality, it is an opportunity to match innovation and long-term survival.

Removing regulatory barriers should not dismantle consumer protection

In general, TACD supports the removal of unnecessary administrative burdens to trade. However, while we appreciate that harmonization of standards can be a valuable tool for increasing market outcomes for businesses, this harmonisation should always take place at an ambitious level of consumer protection, and consumer protection and safety should never be subordinated to trade promotion interests. Existing protections should never be reduced as a result of harmonization. Therefore, the concept of "regulatory barriers" is not sufficiently defined and could lead to confusion as to the scope of trade negotiations. It is crucial to guarantee to consumers that those regulatory measures that are linked to their protection should not be watered down in the context of international trade. Consumers are entitled to the same level of protection whatever the country of origin of the product/service they are being offered on the market.

Priority actions to consider in the consumer interest

Animal Identification

The U.S. and EU should seek agreement on animal identification systems for tracing food to its origin. Traceability of food animals is an essential component of early and effective control of health risks from communicable or zoonotic diseases. The EU currently requires all animals to be tagged or otherwise identified while the U.S. has failed to implement an effective animal traceability system. Although EU traceability does not impose a legal requirement on U.S. exporters, they nonetheless face contractual barriers as their EU customers demand equivalent or better traceability.

Antibiotic Resistance

Antibiotic resistant bacteria are becoming an increasing threat to human health, and as a result national efforts to address overuse of antibiotics in animal husbandry may affect trade. The European Food Safety Authority identifies misuse and overuse of antibiotics in food animals as a link in the emergence and spread of antibiotic resistant bacteria. This led to legislation banning the use of antibiotics for growth promotion in the EU in 2006 and this reference in the EU Action Plan Against the Rising Threats from Antimicrobial Resistance: Increasing global trade and travel favours the spread of anti microbial resistance between countries and continents. Therefore, anti microbial resistance is a global public health concern.

The outlines of an agreement would have the countries agree to phase out the use of antibiotics for growth promotion and non-therapeutic purposes, i.e. disease prevention. This would reduce the pressure for the EU to introduce barriers as part of its effort to control the emerging problem of antibiotic resistant bacteria in the food supply.

Rapid alert notification systems

Foodborne illness contributes to morbidity and mortality burdens worldwide. The growth of international trade, migration, and travel has led to the increased spread of pathogens and contaminated food. To control disease and protect public health, a strong system to quickly and efficiently alert authorities and consumers nationally and internationally must be put in place and supported through transatlantic coordination and communication

TACD calls for the introduction of cross Atlantic Food Safety Rapid Alert Notification Systems as to facilitate the exchange of emergency food safety information between regions, states, and countries. An effective and collaborative rapid alert system that disseminates information about serious risks detected in the food supply AND effectively communicates those risks to the public will provide the greatest public health protection.

We believe that having such systems in place does not only protect consumers, but will also lead to reductions in costs for withdrawing harmful products by food business operators.

Need for stronger cooperation between authorities

From the consumer perspective, the major concern linked to border enforcement is the lack of resources that customs authorities have to supervise entry into the EU and US territory of products that do not comply with EU and US rules, be they related to safety or counterfeiting. The EU and US would benefit from increased cooperation to address and insure safety of imports, and to prevent “port shopping” where products rejected in one market might seek entry into another.

A balanced intellectual property right system for a vibrant and innovative economy

The economy needs a balanced IP system in which the needs and rights of consumers are given equal consideration to those of rights holders. TACD promotes an IP system that effectively promotes innovation while maintaining access for users. The recent failure of ACTA shows that this approach is shared by society and constitutes a wake up call that indicated very clearly to policy makers that society is in need of a more proportionate IP framework.

Transatlantic discussions to date are focused in an imbalanced manner on right holders’ protection and fail to provide a sustainable framework that would create the conditions for a vibrant and innovative economy.

TACD strongly believes that negotiations concerning common rules for the enforcement of intellectual property rights should be transparent and based on objective evidence and should not undermine essential human rights. IPR enforcement policies should also distinguish between the intentional or unintentional character of acts, and between the commercial or non-commercial nature of infringement. The priority issues in this area are: compliance with competition law in creative and digital technology markets, promotion of open standards, balanced and flexible copyright exceptions, balanced and proportionate IPR enforcement procedures, multi-territorial licensing, orphan works, access to innovation and medical technologies.

Preventing the climate bubble from bursting

Citizens in the US and the EU are among the planet's biggest energy consumers. They are also increasingly concerned about **climate change** and keen to adopt 'greener' consumption behaviours. However, government policies aimed at consumers have been mostly of the 'softer' kind, focusing on information and awareness raising; these have not been very effective in changing consumption behaviour patterns. EU and US initiatives in different areas, such as energy efficiency are welcome steps. However, much more remains to be done to enable collective action and make 'green' and socially responsible choices the easy and default options. It is essential that regulatory measures taken to enhance sustainable consumption and production on either side of the Atlantic are not watered down in a move to remove barriers to trade. Rather, the negotiations should take as a base an ambitious plan to tackle proactively the sustainability and climate change challenges in order to transfer a liveable planet to the future generations.