



## Position Paper



### EUROCHAMBRES' views and priorities for the negotiations with the United States for a Transatlantic Trade and Investment Partnership (TTIP)

#### Executive Summary:

*EUROCHAMBRES pleads for a deep and comprehensive Trade and Investment Partnership (TTIP) with the United States. The agreement should have its clear aim to strengthen the multilateral trade rules.*

*As SME's are the backbone of the Transatlantic Economy, the **TTIP should set the world-wide standard in terms of a 21st century SME-friendly trade agreement.** Therefore streamlining and reducing the administrative burdens associated with customs procedures; harmonizing standards; arranging mutual recognition of certification, taking steps to ease the movement of people and offering tailored support for SME's in achieving regulatory compliance is to be made an overall priority in the agreement.*

*In line with the above, the TTIP should go well beyond a traditional Free Trade Agreement. In particular it should achieve the following:*

- *A **zero tariff agreement** in all sectors upon entry into force of the agreement, with limited transitional periods for sensitive products in line with those in CETA.*
- ***Rules of origin that are truly SME friendly;** simple to use, easily understandable, containing low thresholds for sourcing from third parties and coherent with existing RoO's in other EU FTA's.*
- ***Ambitious service liberalisation,** in the form of GATS + commitments, based on a negative list approach (except for Mode IV), and be mutually supportive with negotiations on goods and customs/trade facilitation so as to boost efficiencies in global value chains.*
- ***Facilitate the movement of people** by expanding or creating new Visa categories, particularly for the temporary posting of workers, such as for instance sending technicians for installation works/setting up machineries, or for general training purposes of personnel.*
- ***Foresee a "controlled" facilitation of data flows** on the condition that adequate legal protection and effective enforcement means are available. Wide ranging data flow liberalisation should be negotiated only once the appropriate EU data protection mechanisms are in place and through a separate negotiation track.*
- ***Ensure wide ranging access for the establishment of EU investments** on a non-discriminatory basis in the US, using a negative list approach.*

- **Ensure appropriate protection of EU investors** commensurate with best practice in Member State's BIT's, including effective Investor-to State-Dispute Settlement (ISDS) that is accessible to companies of all sizes, containing build in time limits for the total length of proceedings
- **Ensure access to the US public procurement market** at all levels of government, expand the coverage of commitments, remove localization policies, increase transparency, and facilitate EU business participation in US procurement procedures.
- **Make horizontal regulatory cooperation a priority**, by encompassing wide-ranging set of entities/regulators, by foreseeing ex-ante and ex post assessments for legislation having a significant impact on transatlantic trade, by duly taking into account the specific impact on SME's, and by ensuring effective stakeholder participation.
- In this context, the top ten most burdensome regulations for SME's in the transatlantic market should be identified and monitored on a yearly basis, once TTIP is concluded.
- Existing transatlantic structures should continue to play a vital role, in particular the **Transatlantic Economic Council (TEC)**. It should have a prime oversight function regarding the chapter specific committees/bodies established by the TTIP and should also be vetted with sufficient powers to work with regulators and stakeholders in effectively fulfilling the institutional role in overseeing horizontal regulatory cooperation.
- **Achieve ambitious TBT + and SPS+ commitments**, by recognizing as mutually compatible regulatory processes where those can be regarded as essentially equivalent on both sides. Quality standards and special labelling requirements imposed on imported EU products into the US should be a priority.
- **Achieve meaningful results in facilitating customs procedures** through simplification, centralization and streamlining, strengthening the benefit of trusted traders, and achieve a harmonization of non-preferential rules of origin
- **Create an SME chapter**, equipped with online tools to inform SME's comprehensively about the US regulatory environment, such as through a broadened Market Access Database, and offer personalized and tailored help to SME's in attaining regulatory compliance.
- **Table 21st century rules regarding State owned enterprises (SOE's), and Energy**. In particular the latter should receive a special focus in the negotiations, not only by protecting the free transportation/transit of energy, but also by solidifying efforts to facilitate exports of liquefied natural gas (LNG) to the entirety of the European Union and creating a platform for further cooperation in the field of energy policy.
- **Ensure compatibility in area of Intellectual Property**, particularly in relation to patents, trademarks and design rights; protect European Geographical Indications (GI's) and ensure closer cooperation in international bodies, regarding cyber theft, misappropriation of trade secrets and counterfeiting.

For the entire agreement, EUROCHAMBRES cannot overstate the need and the importance of having transparent, easily understandable and clear rules and obligation for EU businesses. Moreover, enhanced transparency standards during the negotiations on both sides of the Atlantic should be upheld to reduce suspiciousness, build confidence and increase acceptance, all of which are preconditions for concluding and implementing successfully the TTIP.

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*Lastly, negotiators should duly consider the impact of the TTIP on existing agreements entered into by the EU and the US, particularly in relation to NAFTA and the EU's Customs Union with Turkey.*

## **Background:**

With the current impasse of the Doha negotiations, EUROCHAMBRES is increasingly supporting to seek for alternative ways to improve market access for European firms, as well as working for a constant improvement of trade rules

Therefore without losing sight of, nor withdrawing support for the initiatives pursued in the WTO, it is only natural to look towards our continents biggest trading partner - the United States - to reinvigorate together the transatlantic economic relationship, thereby hopefully leading the way, towards an enhanced future global framework of multilateral trade rules that reflects the reality in which business operates today.

In terms of trade flows, there is no bigger trading block in the world than the one between the EU and the US. Investments on both sides of the Atlantic and the resulting economic benefits there from are unmatched. Thus, according figures from the European Commission, the elimination of tariffs between the EU and the US alone could boost the EU economy by 107 billion, while an elimination of non-tariff barriers such as regulatory differences and trade restrictions could increase the EU's GDP annually by as much as 122 billion by 2018. In addition an ambitious and comprehensive agreement will further strengthen the already strong investment relationship and serve as a multiplier for Foreign Direct Investment (FDI) into Europe in times where this is critically needed.

Contrariwise, failing to conclude an agreement could hamper prospects of economic growth and challenge our ability to produce innovative models to pursue trade and investment liberalisation in the 21st century

- The topics covered in the present Paper, follow the structure of the agreement as outlined by the final report of the HLWG and are intended to feed into the ongoing negotiation process.

## **(A) Market Access**

### **(I) Tariffs:**

As a typical relationship among highly developed countries, the EU-US relationship is characterized by a low average tariff level with some tariffs peaks in sensitive sectors such as agriculture or textiles. The overall volume of bilateral trade in goods is more than significant, totalling half a trillion euros in 2012, taking place largely on an intra-industry scale<sup>1</sup>. Thus eliminating tariffs on such a large base would boost U.S. and EU exports as well as enabling companies on both sides to improve their global competitiveness, as well as expand investments in the face of immediate cash-flow benefits.

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<sup>1</sup> Study by Deutsche Bank: "Atlantic unity in global competition", August , 2013.

Into the US		Into the EU	
<b>Agricultural Products (average)</b>	7,9%	<b>Agricultural Products (average)</b>	4,9%
Alcoholic beverages, tobacco products	82,2%	Alcoholic beverages, tobacco products	13,8
Milk products	10,9 %	Milk products	6,4%
Sugar	5,7%	Sugar	8,0%
Other wheat's	5,4%	Other wheat's	2,6%
Vegetable, Fruits, Nuts	5,1%	Vegetable, Fruits, Nuts	6,4%
<b>Industrial Products</b>	3,5%	<b>Industrial Products</b>	3,5%
Clothing/Apparel	10,8%	Clothing/Apparel	10,8%
Textiles	8,1%	Textiles	6,9%
Leather products	7,1%	Leather products	6,3%
Automotive & Automotive parts	3,9%	Automotive & Automotive parts	6,5%

Thus, in the field of tariffs, EUROCHAMBRES pleads for the following:

- A zero tariff agreement in all sectors upon entry into force of the agreement. If necessary foresee limited carve outs and/or transitional periods.
- Concerning rules of origin, the agreement should keep the additional bureaucratic burden for companies as low as possible and ensure the compatibility with relevant provisions in other existing EU FTA's. Given the considerable amount of EU FTA's negotiated so far and those which are still being negotiated or envisioned, the issue of cumulation is of increasing importance for European businesses. In this sense products or materials originating in third countries with which both the EU and the US have negotiated an FTA should be allowed to be processed or added for the production of the final product in both regions, without that jeopardizing the preferential origin. Furthermore cumulation for other countries should be considered in line with the global value chains of EU and US firms.
- Moreover, given the political agreement on the trade deal between the EU and Canada, CETA, and in view of the high level of integration of the U.S. and the Canadian economy, it should be possible to agree on similar certification and notification systems for the EU-U.S. and the EU-Canadian trade flows

## II. Services:

Services are of crucial significance to both the EU and the US, making up around 70% of their respective GDP's. EU exports of services to the US totaled 156 billion in 2012<sup>3</sup>. Yet trade openness in goods does not match the trade openness in services. Therefore trade liberalization in this area could create significant economic gains for both parties. Taking

<sup>2</sup> Source: Ifo Institute (2013)

<sup>3</sup> Figures from the European Commission

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into account the increasing value added brought about by services to production processes, negotiations on services, goods and customs/trade facilitation should be mutually supportive, aiming for a reduction in costs and improving logistics along the production chain, thus increasing overall efficiencies in the global value chain.

**EUROCHAMBRES** thus pleads for the following:

- Aim for substantial “GATS + commitments” through an “negative list” approach using the GATS framework as a basis for negotiations.. New services emerging in the fast changing globalised world would thus automatically be covered by liberalization efforts in the TTIP.
- Strive for convergence with relevant obligations under CETA and the relevant disciplines in a future plurilateral agreement for services at the WTO.

#### Movement of people (Mode IV):

In a world economy characterized by global value chains, and the ensuing increased specialization of labour, direct people-to-people interaction is increasingly important. In this context, for many EU companies and particularly SME's the movement of their staff to the US is an essential element in conducting their business. For instance, to respond to offers from the US, especially SME's are often required to establish themselves in the US market. For this to happen, they have to obtain the Visa for their representative in the United States which is often burdensome to get, thereby frequently jeopardizing the whole project for SME's. Therefore an ambitious liberalisation approach based on the “positive list” approach should be pursued for Mode 4. This will enable better comparability with other EU trade agreements regarding this mode of supply.

In relation to Mode IV, EUROCHAMBRES thus pleads for the following:

- Transparency and the exchange of good practices relating to vocational training standards would facilitate the recruitment of workers in the U.S.
- SMEs face difficulties in sending technicians for installation works or setting up machineries in the USA. Particularly these types of activities should be clearly covered by B1/visa waiver programme
- Visa facilitation for the temporary posting of workers, especially of highly qualified technicians without a university degree, but also for general training purposes, should be a major priority
- Special categories for Visa may also be pursued for EU professionals in general, possibly taking as a comparison the E3 Visa modalities for Australians.

#### Cross border data flows

The internet and the ensuing cross border data flow has not only benefitted companies directly involved in this sector, but has had positive multiplier effects across the economy, as it functions as a major trade facilitator and has incremented further the importance of trade in services, also in conjunction with services rendered in the production processes of the manufacturing industry, in which the European Union excels. Hence particularly for

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European companies established in the US and US subsidiaries established in Europe, facilitation of cross border data flows is very important and should not be unnecessarily obstructed.

However the recent revelations regarding potential spying activities by certain agencies in the US, have created insecurities among European business as to the protection of data flowing across borders, including to the US. Particularly the potential risk of sensitive business data from European enterprises getting into the “wrong hands”, is taken very seriously by our network and the companies they represent. The risks of this happening must be avoided as it could entail serious negative repercussions for many highly innovative European firms, and on the long term on the competitiveness of Europe as whole.

In view of this, EUROCHAMBRES does not preclude a controlled facilitation of cross-border data flows from being negotiated in the TTIP, provided that adequate legal protection is offered in terms of privacy and data protection on US territory. In any case, the EC should remain vigilant in ensuring equal compliance of EU and US enterprises with existing and future EU data protection laws.

A full liberalisation of cross border data flows should not be envisaged in the TTIP.

Should a wide-ranging liberalisation of data flows become acute in negotiations, then EUROCHAMBRES pleads for a parallel yet separate track from TTIP negotiations addressing this topic.

Furthermore, and in view of the unfortunate outcome of ACTA, which has been a warning sign for European Business, EUROCHAMBRES calls on EU negotiators to increase transparency and outreach to public stakeholders when negotiating commitments on cross-border data flows in the TTIP.

### **III. Investment Establishment & Investment Protection:**

The EU-US economic relationship is largely based on an unrivalled level of investments in both our economies, with most of the trade and investment taking place in the form of intra-firm trade. Estimates suggest that over 14 million “transatlantic jobs” were already created due to mutual investments on both sides of the Atlantic.

Hence in relation to Investment establishment, EUROCHAMBRES pleads for the following:

- Build on the joint association letter on Principles regarding the Treatment of Foreign Investment<sup>4</sup> so as elaborate future disciplines that are able to improve overall regulatory certainty.
- Ensure national treatment and ample access across all sectors for European companies to the US market, based on a negative list approach
- Opening up areas to EU investors, where restrictions remain, such as in utilities, transportation, maritime or aviation services. Effective liberalization efforts regarding the latter should of course be negotiated in conjunction with the future disciplines in the services chapter.

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<sup>4</sup> See joint association letter to. Mr.Karel de Gucht and Mr. Mike Froman from the November 2011

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Regarding Investment protection, the framework of legal protection between the EU and the US is currently based on bilateral investment treaties (BIT's) and Friendship, Commerce and Navigation (FCNs) treaties, with the latter not reflecting the needs for protection of European investments in today's business environment.

- Therefore in the TTIP, it is necessary to conclude a state of the art European wide legal investment protection framework that will protect EU investors from arbitrary or unjust government interference.
- It should be based on the highest level of protection, commensurate with the best practice of national bilateral investment treaties currently in force.

The TTIP should thus contain the cornerstone principles of investment protection, practice - including but not limited to: *full application of non-discriminatory national and most-favoured-nation treatment; fair and equitable treatment; prompt, adequate and effective compensation in the event of direct as well as indirect expropriation; free transfers of invested capital and returns; effective investor-to-state dispute settlement mechanism, the respect for contracts between foreign investors and host governments; as well as full protection and security of investors and investments*

In the particular case of the US, the EU should make sure that:

- European best practice regarding the “fair and equitable treatment standard”, and expropriation (both direct and indirect) are maintained.
- Ensure the inclusion of the “umbrella clause”, as well a full application of investment protection across all sectors with narrowly drafted exceptions (especially not allowing broadly drafted self-judging national security exceptions)
- Elaborate a state of the art Investor-to-State Dispute Settlement (ISDS) that is commensurate with international best practice, offers a wide choice of arbitration fora and rules, and enables parties a free choice of arbitrators.
- Investor-to-State-Dispute Settlement (ISDS) in the TTIP should be designed to ensure that both the federal and state governments are bound by it. In terms of costs, it must be accessible to companies of all sizes, including SME's (particularly middle sized companies).
- The potential inclusion of an appellate mechanism for ISDS, should not prolong unduly the litigation process.
- Specific time deadlines for the resolution of the dispute falling under ISDS should be enshrined in the agreement, taking as a possible benchmark the Dispute Settlement Understanding (DSU) of the WTO.
- Ensure that potential interpretations of the substantive investment provisions by the Parties to the agreement do not undermine the legal certainty of EU investors in the rights that were negotiated for them.

#### **IV. Public Procurement**

Government procurement is estimated by the WTO to represent a value equivalent to 15-20% of GDP in most countries, the US and the EU being no exception. However comprehensive access to public procurement for EU investors is still not granted. In fact, also after the recent expansion of the Government Procurement Agreement (GPA),

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currently, only 37 of 50 U.S. states are covered under the GPA (of which many exclude sensitive sectors from coverage) and access for EU companies to the public utilities sector in the US limited. Additionally, through trade restrictive legislation such as the “Buy America” provisions, access for EU providers to the US procurement market is further restricted.

Beyond these general market access problems, EU companies face hurdles concerning the US procurement procedure in itself: particularly concerning the number of references demanded and the excessive requirements of liability.

Moreover, 23% of public procurement tenders in the US need to be concluded with SME’s. In this context, European SME’s cannot respond to such offers without being established on the US market or having a relevant US partner for the bid. As stated before, European SME’s, tend to be engaged in international activities more through exports than through direct investment, thus further complicating SME access to these bids. Hence effectively tackling these conditions in the TTIP should be an important focus for negotiators.

Additionally, EUROCHAMBRES calls for the following in the procurement area:

- EU companies need to be granted access to US procurement at all levels of government particularly at the sub federal level by building on the disciplines enshrined in the Government Procurement Agreement (GPA).
- Push for a broader scope of areas to be covered by procurement disciplines, particularly in the utilities sector and improve transparency in relation to procurement related information.
- Ensure the elimination of localization policies, and other restrictive measures in the procurement area, in particular the “Buy America” provisions and the set-asides for US SME’s in US tenders.
- Ensure proper linkages of the Procurement chapter with other inter-linked chapters in the TTIP, such as the services or investment, to enable EU companies to reap the full benefits of extended procurement access.

## **(B) . Regulatory issues and Non-Tariff Barriers:**

In terms of overall priorities for EU companies in the area of regulatory issues and non-tariff barriers 3 main area should be taken into account:

- Special labelling requirements for imported products into the US
- Quality standards imposed on imported products into the US
- Administrative hurdles at US Customs

### **1) Regulatory cooperation:**

Divergences in regulations and standards have been identified as one of the main obstacles for effective market access to the US and should therefore be made a priority in the upcoming negotiations for the agreement to unfold its maximum potential.

The United States and European Union both have highly developed regulatory systems, seeking similar regulatory outcomes, and often pursuing the same policy objectives.

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However, the regulations adopted, often differ, creating divergences that unnecessarily restrict trade. The removal of unnecessary regulatory divergences would particularly benefit SMEs, as they are especially affected by complicated certification procedures, duplicate standards and safety requirements. Since many SME engage in international activities more through exports than through direct investment, differences in standards entail very burdensome adaption of products to US-requirements, which constitutes a serious obstacles and sometimes even prevent entirely EU SME's from penetrating and reaping the benefits of the vast US market.

In the past years, the cooperation between EU and U.S. regulatory agencies has increased significantly, thus increasing knowledge and building trust on both sides. Hence we believe it is the right time, to build on the good progress achieved so far and take a step further towards creating a more integrated transatlantic marketplace.

- Thus an effective horizontal framework for horizontal regulatory cooperation should be created.

Such a framework should be built on a maximum extent possible on already existing texts, instruments and agreements, such as the *2002 Guidelines for regulatory cooperation* between the US and the EU as well as the *2011 Principles for Regulatory cooperation*. However, the pace of work and the number of concrete successful negotiating results in regulatory cooperation has to increase significantly in order to achieve ambitious results that negotiators have set when initiating negotiations.

Thus, the scope of a horizontal regulatory cooperation chapter should be as wide ranging as possible. It should encompass far-reaching set regulatory measures and ensure cooperation with relevant regulators and agencies across different fields. Moreover it should provide relevant processes that will allow for increased in-time collaboration among regulators as well as allow meaningful participation by stakeholders including business, for regulations that have an impact on transatlantic trade.

In this sense, regulatory cooperation should be managed through an ex-ante as well as an ex-post mechanism for either proposed or already existing legislation, with the clear aim of assessing regulation according to how practicable, necessary/proportional, science-based and mutually compatible they are for transatlantic trade. Regulator's accountability and the transparency of their decisions towards business should therefore be noticeably increased.

In terms of intuitional set up, we believe strong transatlantic institutions are necessary to maintain high level political commitment to the effective implementation of the commitments in the TTIP. In this sense, existing transatlantic structures should continue to play a vital role, in particular the Transatlantic Economic Council (TEC). It should be the prime political oversight body, vetted with sufficient power to oversee the different bodies/committees established by the TTIP, including the potential set-up of a Regulatory Cooperation Council.

In addition EUROCHAMBRES pleads for the following elements in the process of regulatory cooperation to be taken into account: weight

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- Concerning existing standards: mutual recognition of compatible regimes, as well as the principle of functional equivalence have to be duly considered in compatible sectors and consequently enshrined in the agreement.
  - Mutual recognition agreements should be pursued ambitiously across a wide range of sectors.
  - The equivalence of decisions made by the respective regulators have to be recognized through an appropriate legal mechanism created for this purpose, paired with periodic reviews by regulators on both sides
  - Transitional periods should be included where desired regulatory cooperation in specific sectors cannot be achieved during the negotiation phase.

Due to their size SME's bear a disproportionate weight in terms of regulatory costs and administrative burdens. Thus EUROCHAMBRES pleads for the following SME specific elements regarding regulatory cooperation to be taken into account:

- Legislation to be considered of relevance to transatlantic trade and investment flows should duly take into account the specific impact on SME's in the relevant impact assessments.
- Efforts within the EU should thus be geared towards improving and making the SME Benchmark Test clearer through a specifically dedicated section for that purpose in relevant Impact Assessments. Equally an effective in-time consultation with SME representatives from both sides should take place. For this purpose, interoperability with US analysis of SME impact for proposed legislation should be ensured to the largest degree possible to facilitate transatlantic monitoring and oversight regarding regulatory impact for SME's on both sides.
- Effective monitoring and oversight should be undertaken by a specific SME committee with its findings being reported to the TEC.
- Additionally a specific set of regulations in the EU and in the US should be identified each year that have the biggest negative impact on SME's. Such an initiative could mirror what has been already done at EU level in mapping out the "10 most burdensome regulations for SME's". This list should be updated and monitored each year with the participation and input of relevant stakeholders, to assess progress in their removal and increase regulators accountability.

On an overall note, EUROCHAMBRES would like to highlight that regulatory cooperation is not about starting a race to the bottom concerning environmental, consumer or social standards, but rather to streamline and recognize as mutually compatible regulatory processes where those can be regarded as essentially equivalent on both sides of the Atlantic. This will open vast business opportunities for our companies and particularly our SME's, entailing more job creation for citizens, while preserving the right to regulate on each side.

## **II. Sanitary and Phytosanitary measures and Technical regulations:**

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In terms of SPS and TBT measures, the TTIP should build upon the relevant disciplines in the WTO Agreements and the EU-US Veterinary Agreement<sup>5</sup> in relation to SPS, to effectively make them TBT + and SPS+ agreements.

Overall, the SPS and TBT chapters in the TTIP should be well embedded in the overall regulatory framework of the agreement as already described above. Thus for both agreements a framework needs to be put in place, which will provide a clear and predictable basis for establishing possible equivalence of EU sanitary and EU technical requirements with relevant US Sanitary and technical measures, where there is mutual interest. The process of establishing mutual equivalence should be handled by appropriate technical body and reported to and be overseen by the TEC.

In addition negotiators should principally seek to achieve full transparency in SPS and TBT measures, make commitments binding on all levels of governments, and ensure clear and predictable rules and processes, having particular regard to the needs of SME's.

Moreover TTIP should aim for full reciprocity in terms of applicable fees, and gear efforts towards reducing bureaucratic burdens, such as removing unnecessary burdensome rules and formalities, in areas such as risk assessments.

- A special emphasis deserves the issue of mandatory labelling requirements for EU companies in the US, which are considered extremely burdensome and which should be reduced accordingly and/or sought to be made more compatible with EU requirements. Mandatory labelling requirements should be limited to the essential policy objectives pursued, and be least trade restrictive.
- New technical regulations and standards that should be elaborated jointly where they affect transatlantic trade should only prescribe the essential requirements in terms of health and safety, without mandating detailed technical requirements; these should, elaborated by those using them, businesses, and be voluntary to allow sufficient flexibility for companies.
- Streamlining TBT and SPS measures should be pursued to the largest amount possible on the basis of standards, technical and sanitary requirements elaborated in relevant international bodies, such as the ISO, IEC, and ITU. Deviations from them should be avoided and mutual efforts should be stepped up in terms of increasing international standard setting, being the most effective approach to cut costs for businesses.

The following examples of different standards and regulations have been highlighted to us, as particular obstacles for doing business with the US:

- Divergences between EU and US environmental norms, such as for instance, the divergences the French HQE (haute qualite environnementale) norm and the US FEED standard
- Adaptation to the norms of the FDA (Food and Drug Administration)

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<sup>5</sup> Agreement between the United States of America and the European Community on sanitary measures to protect public health and animal health in trade in live animals and animal products

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- Incompatibility between EU and US electric and electrical norms (so called UL Norms)
  - Differences in ATEX and FM norms in the EU, and the U.S standards concerning explosion prevention and protection as well as electric shock protection.

Additionally, businesses found different transfer pricing rules as also constituting an obstacle to their operations.

## **(C) Rules Addressing Shared Global Trade Challenges and Opportunities**

### **I) Trade facilitation/Customs:**

SME's have a key interest in trade facilitation and reducing red tape in relation to custom procedures. Due to their size, SME's have to invest more resources in complying with Customs requirements and usually do not have an export unit or even an expert specialised in customs issues. The information costs concerning rules and documents that are necessary in order to enjoy the preferential tariffs are thus very high.. Therefore streamlining and reducing the administrative burdens associated with customs procedures; harmonizing standards; arranging mutual recognition of certification; and taking steps to ease the movement of people is key.

Therefore, in terms of priorities with the US, the EU should:

- Raise de minimis levels for the threshold under which goods do not have to pass US custom controls.
- Focus on eliminating unnecessary custom controls: ,i.e. have controls at place of origin, but not again upon arrival
- Ensure transparency, predictability (including prior publication) as well as access to trade regulations and procedures. For our businesses and particularly SME's, clear and understandable procedures as well as a maximum degree of transparency is key.
- Avoid extra-territorial application of US legislation, such as in the field of dual use goods and trade sanctions. Here, European exporters have to ask for an export license to relevant US authorities if their products contain American components, technologies or software, which is expensive, burdensome and hindering EU exports.
- Ensure the electronic submission of customs declarations,
- Establish a single administrative document (SAD) in digital form for the purpose of establishing customs declarations. This should entail that both customs administrations systems are able to share and process relevant information provided
- Establish a single window for custom procedures

- Ensure a consistent application of the harmonised system code (customs tariff code). The first six figures of the HS-Code used for the export procedures should be accepted for import procedures. Thus if the exporting or the importing company has received a binding tariff information/ruling from the competent customs authority of a country this ruling should be accepted by other involved customs authorities in other countries
- While not expressing a position on the applicability of mandatory origin marking as such, a diminishment of administrative burdens related to the US “Made In” requirements should be undertaken through the TTIP. Through US “made in” requirements, EU companies are confronted with challenging conditions to reveal detailed information as to their sources of production, which are very difficult to meet, especially for SME’s, without risking to reveal sensitive business information.
- Strengthen the EU-US Mutual Recognition Agreement for trusted traders in terms of benefits for participating companies. The administrative burdens should also be reduced, by applying for instance a single online application and validation process.
- Make the harmonisation of non-preferential rules of origin a priority, as the differences between these rules cause much uncertainty on the level of our companies.

*Example of costs incurred for European companies: A foreign validation by US customs can be estimated with 2 headcounts for preparation of the audit in a period of 3-6 month or longer, as well as approximately 15,000 USD in travel expenses. In addition, there is additional cost to maintain the programme and implement changes US Customs (or EU Customs) has recommended. Any exam or other hold on imports can cause costs, due to a delay or full stop of serving the supply chain.*

*In this context, EU companies have experienced significant delays in US customs due to, for example FDA controls, with Customs or for that matter the FDA being under no obligation nor prescribed deadline to inform the exporter of the incurred intervention nor granting the exporter any viable means of communicating with the authorities to provide explanations, except, in some instances, through a locally hired customs broker, which incurs extra costs on companies. Especially for SME’s this can have a more than substantial negative impact on their balance sheets, as well as potentially damaging the brand name in the US due these delays.*

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## **II. Horizontal trade related SME provision(s):**

Relevant studies have shown that an ambitious and comprehensive Transatlantic Trade and Investment Agreement will particularly benefit export oriented medium sized companies. Therefore in terms of trade related provisions for SME’s, the main focus

<sup>6</sup> Example stemming from internal survey’s conducted by the Association of German Chambers of Commerce and Industry (DIHK)

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should lie in promoting their competitiveness as well as highlighting the role of their representative organizations.

In this context, we would like to stress that the EU strategy of supporting SMEs to access the US market, needs to be developed through public-private partnerships. This means the full involvement of private sector representatives, both in the target market and at home, on the basis of shared ownership, shared responsibility and privileged information relations

Trade related SME provision should build on the work and the exchange of best practices achieved in the Transatlantic Economic Council (TEC), and should be complementary and foster the implementation of to the commitments undertaken in the MoU signed last year<sup>7</sup>.

In relation to the TTIP, **EUROCHAMBRES** would like to highlight some main points of importance for SME's. which should be strengthened :

- In view of the complex regulatory environment in the US, with often differing legal requirements among US states, and different certification, testing and labelling requirements depending on the product exported, the EC should offer personalized and tailored support to SME's to support their efforts in achieving regulatory compliance in the US.

For this purpose an online platform or database (potentially broadening the Market Access Database) should provide comprehensive guidance on applicable US regulations and standards to different products. As a second step, more personalized help should be available from EC officials focusing on the particular regulatory compliance needs of the SME, be it on certification requirements or the compliance with relevant standards.

- In addition, Trade related support mechanisms for SME's should be accompany the agreement, particularly in the following areas:
  - the promotion of business linkages, partnerships, business networks and competitive intelligence;
  - the promotion of the exchange of experiences and best practices;
  - the identification and reduction of obstacles for SME's to access financial sources and work towards exchanging practices on new innovative financing mechanisms tailored to SME's;

As stated in the regulatory part of this paper, a specifically installed SME committee, should monitor and oversee all aspects of relevance to SME's, with the active participation of stakeholders, in particular SME's and their representative organisations.

### **III. State owned Enterprises**

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<sup>7</sup> Memorandum of Understanding signed between DG Enterprise and Industry and the US Department of Commerce, and the International Trade Administration (3.12.2012)

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In an increasingly intertwined global economy, it is essential that companies can rely on a level playing field. In this context, government accorded advantages for State owned enterprises, be it in the form of favourable regulatory measures or the allocation of subsidies, can have detrimental effects for other companies, not enjoying those benefits. The TTIP can thus strive towards setting the foundations for potentially future multilateral or plurilateral rules on this topic, thereby helping strengthening fair global competition.

EUROCHAMBRES sees increased transparency as the key starting point to help enable fair competition between State owned enterprises and private enterprises. Mandating more transparency in line with international best practice, be it in relation to ownership, decision making structures, or other financial benefits not granted on market terms, is crucial. The aim should be to ensure that State owned enterprises act according to commercial considerations, thus competing equally with other companies.

- Disciplines established in the Rules section on State owned enterprises should have a link with the investment chapter, particularly the disciplines on investment protection, as the aim of these should be protecting enterprises acting on commercial terms.

#### **IV. Energy/Raw Materials:**

The current state of multilateral trade rules provides a solid framework of rules regarding import restrictions; yet export restrictions are to a large extent not covered. Particularly discriminatory taxation on exports has remained outside of the coverage of international trade rules. Therefore any rules on energy and raw materials in the TTIP should be elaborated with a view to completing the framework of the multilateral trading system, and aim to become a part thereof in the future.

The economic crisis and high energy prices (especially when compared to the US), highlight the importance and the dependency of our companies and our economy on stable, secure and reliable supply chains for the import of energy and raw materials.

In terms of potential obligations in the TTIP, disciplines should ensure coherence with key mutual objectives such as reindustrialization, and provide for more transparency in terms of the granting of licenses for the exploitation of raw materials/energy and ensure that foreign companies are not discriminated once these licenses have been granted.

Rules protecting the free transportation/transit of energy should also be included. In this regard, the TTIP should solidify current efforts to facilitate exports of liquified natural gas (LNG) to the entirety of the European Union without restricting such facilitation to NATO partners only, as it is currently envisioned.

Rules in the energy field should be inspired where possible from relevant disciplines in the EU Energy Charter Treaty.

Beyond elaborating on these core principles, EUROCHAMBRES believes the TTIP can set the foundation for strengthening future cooperation on energy policy and transatlantic energy trade. The TTIP presents a unique opportunity for the EU and the US to take the

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lead in setting rules and standards for the global energy market. This is highlighted by the fact that, according to estimates, EU dependency on imported petrol will increase from 84% in 2010 to more than 90% in 2030, and its reliance on imported gas from 63% to 73%. We therefore propose the following:

- We see increased room for cooperation regarding a possible closer alignment of the EU Emission Trading System (ETS) with regional emission trading systems in the US, with a view to help path the way for transatlantic emission trading in the future.
- Cooperation provisions could also be included and/or strengthened in the terms of an exchange of know-how and best practices regarding renewable energy sources, such as hydro power or indigenous fossil fuels (e.g. shale gas) or safety standards in terms of off shore drilling.
- Moreover, sustainable climate protection can only be guaranteed globally by comprehensive, coordinated actions, especially by industrialised countries. This will also be an important step towards levelling the playing field for energy intensive industries. Hence pledges should be included in this part of the agreement aiming for more cooperation bilaterally and in relevant international fora on this topic. This is particularly relevant with a view to a legally binding climate change agreement which should take effect in 2020, comprising all major greenhouse gas emitters.

#### **V. Intellectual Property:**

Given the growing importance of intangible assets, and the need to preserve European innovative power, intellectual property needs to feature prominently in upcoming negotiations of the TTIP.

- Divergent approaches particularly in the area of patents, trademarks and design rights are a hurdle for EU companies, thus the TTIP should aim for to ensure compatibility in these areas.
- Additionally, European Geographical Indications should be adequately protected such as Prosecco Wine or Grana Padano, taking as a possible benchmark the protections afforded in this area under CETA.

Moreover due to worrying inflections on European IP holders in third countries, EUROCHAMBRES sees an increased need for cooperation between the EU and the US in relevant international bodies, such as the World Intellectual Property Organisation (WIPO).

- Special emphasis should thereby be given to cyber theft, the misappropriation of trade secrets and counterfeiting.
- The exchange and the benchmarking of best practices and enforcement strategies should be facilitated. This should be undertaken among public authorities at all levels, and among private and public sectors so as to pool efforts effectively to combat counterfeiting and piracy.

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## **VI. Transparency:**

As Business has a deep understanding of the purpose and function of different regulations in the different sectors to be covered in the TTIP, **EUROCHAMBRES** pleads for Chambers of Commerce and the private sector in general, to be consulted regularly by negotiators during the negotiations, as well as provided with (non-sensitive) documents so as to be able to offer reliable advice to their Members, as well as engage in a constructive dialogue with civil society if needed.

- For the agreement itself, we cannot overstate the need and the importance of having transparent, easily understandable and clear rules and obligations for EU businesses.

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**Further information:** Mr. Dominic Boucsein, Tel +32 2 282 08 53, [boucsein@eurochambres.eu](mailto:boucsein@eurochambres.eu)  
**Press contact:** Ms. Sustete Sampaio, Tel +32 (0)2 282 08 66, [sampaio@eurochambres.eu](mailto:sampaio@eurochambres.eu)

All our position papers can be downloaded from  
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*EUROCHAMBRES – The Association of European Chambers of Commerce and Industry represents over 20 million enterprises in Europe – 93% of which are SMEs – through members in 44 countries and a European network of 2000 regional and local Chambers.*

ASSOCIATION OF EUROPEAN CHAMBERS OF COMMERCE AND INDUSTRY

Chamber House, Avenue des Arts, 19 A/D • B - 1000 Brussels • Belgium

• Tel +32 2 282 08 50 • Fax +32 2 230 00 38 • [eurochambres@eurochambres.eu](mailto:eurochambres@eurochambres.eu) • [www.eurochambres.eu](http://www.eurochambres.eu)