STATEMENT
on
U.S. COMMERCIAL REALTIONS WITH THE EUROPEAN UNION
before the
SENATE COMMITTEE ON FOREIGN RELATIONS
for the
U.S. CHAMBER OF COMMERCE
by
Gary Litman

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Introduction

I am Gary Litman, Vice President for Europe and Eurasia of the United States Chamber of Commerce. The U.S. Chamber is the world's largest business federation, representing more than three million businesses and professional organizations of every size, sector and region in the country. Tens of thousands of our member companies derive much of their business from trade with European partners, obtain their capital from European creditors and investors, and build their competitive edge on the basis of European supplies and human capital. The Chamber welcomes this opportunity to present its views on U.S. commercial relations with the European Union (EU) and the sometimes differing approaches to technology regulation and innovation.

We believe that the European dimension of American commercial policy and practice will be a dominant feature in the drive to advance American global leadership in years to come. Europe has emerged as a unique political and economic construct, which must be understood on its own terms. Recognizing these facts and the rapid development of the European Union's internal structures and regulatory powers, the U.S. Chamber chose Brussels as the site of our first overseas office four years ago. We are also currently in the process of accrediting a new American Chamber of Commerce that will focus exclusively on the European Institutions.

Highly-integrated U.S.-EU marketplace

The U.S. commercial relationship with the European Union is unlike any other we have in size, complexity and degree of integration. We have extraordinary investments in each other's economies, our executives sit on each other's boards, our capital markets are highly integrated, our major corporate law firms, accounting firms and IT providers are genuinely transatlantic, and our research and development moves across the Atlantic with almost seamless ease. In the first quarter of 2003, U.S. exports of goods to Western Europe stood at $55 billion, which is over three times more than our exports to Japan, over six times more than exports to China, and over ten times more than all of our exports to the Organization of Petroleum Exporting Countries (OPEC).[1] Notwithstanding the impressive volume of trade, the starting point in any discussion of U.S.-Europe commercial relations is the recognition that they are no longer as much about trade as about investments. In fact, trade accounts for less than 20% of transatlantic commerce. The U.S. assets in Germany alone – $300 billion in 2000 - were greater than the total U.S. assets in all of South America.[2] U.S. companies' affiliates in the EU market are the primary means by which they deliver goods to consumers and their most important sources of non-domestic revenues. Over the last decade, U.S. subsidiaries of foreign companies spent over $30 billion on research in the United States and EU-owned firms, whose assets in the U.S. were

[1] U.S. Department of Commerce Census Bureau.
[2] Joseph P. Quinlan, "Drifting Apart of Growing Together? The Primacy of the Transatlantic Economy," Center for Transatlantic Relations, John Hopkins University, 2003.

worth $3.3 trillion in 2000, spent most of this money.[3] Two-thirds of all U.S. corporate research and development conducted outside the United States is conducted in Europe.

These numbers show that the U.S. and EU economies, with a joint GDP of almost $18 trillion, have forged a highly-integrated marketplace, which however lacks the efficiencies of a single market. The major problems for U.S. business are not found at the borders. They are not related to tariffs and quotas, which in the wake of the Uruguay Round play a relatively minor role in U.S.-EU relations. Since American companies see themselves very much as part of the European economy and vice versa, it is the EU and member state domestic regulations and public policies which concern us most of all. Internal regulations and practices directly affect U.S. economic interests at least as much as they crimp the business of European companies in the same jurisdictions.

The Changing U.S.-EU Regulatory Coordination

The uniquely intertwined commercial relationship between the EU and the United States is changing because our partner is undergoing a historic change. The European Union is at the threshold of a profound transformation through enlargement and the Convention process. Eighteen months from now, the EU will have new membership, a new Constitution, a new legal identity, and a new President, Commission and Parliament. American companies learned a long time ago how to thrive in Europe. The American Chambers of Commerce in France and Germany are over a hundred years old. What is different now is that in the run up to a dramatic enlargement, the European Union has embarked on a

[3] Headline Fact sheet, the Organization for International Investment, January 2003.

feverish campaign to establish strong disciplines and institutions that will survive the expected shock of having to admit political actors who do not have the same historic experience of building the European Union as other members.

Another important driver of the European transformation is the demise of smugness. By the turn of this century, the Europe of civil servants and the Europe of entrepreneurs both recognized that the EU was again falling behind the United States in the areas of innovation and competitiveness. In GDP per capita terms, Europe has been lagging behind the U.S. In 2001, GDP per capita in the U.S. was about $36,000 a year, and about $23,000 in the EU15. In the enlarged Europe it would have been only around $18,000.[4] One factor that explains the more rapid growth of per capita income in the U.S. is the increasing share of knowledge-intensive output in total GDP. In 2001, these sectors constituted 44% of GDP in the U.S., compared to 33% in the EU.[5] Our European counterparts in the business community recognize the need to boost productivity and growth. A specific reference to "a highly competitive Europe" was included in the final draft of the EU Convention last week as one of the EU's objectives. We welcome this ambition because competitiveness will lead to economic growth and benefit our shared transatlantic market. Our challenge is to make sure that in its drive for higher competitiveness and rapid restructuring, the European Union remains fully aware of the impact of new regulatory initiatives on U.S. business.

As the European Union restructures itself, it develops a plethora of new regulatory agencies and policies. Many of the regulatory initiatives from Brussels are based on a philosophy of regulation that is different from the United States. They are

[4] World Development Indicators database, World Bank, April 2003

[5] UNICE, Benchmarking Report "The Renewed Economy: Business for a dynamic Europe", 2001

known under various euroterms as the “sustainable development principle,” the “precautionary principle,” the “integrated product policy,” and others. The main characteristic of these principles is that the EU regulators believe that they should anticipate business and consumer behavior as much as possible and establish fairly rigid boundaries of this behavior from the top down. Well-known examples of this approach are the Data Privacy Directive that has not really improved anyone’s privacy and the VAT taxation of digital supplies that will come into effect on July 1, 2003. In both cases, EU regulators attempted to anticipate and circumscribe e-commerce, which was still in its infancy when the regulations were drafted and debated. The result is that Europe still lags far behind in the development of IT-based sectors. According to the Federation of European Employers’ Organizations (UNICE), by 1999, the value of business-to-consumer transactions per capita in the U.S. was ten times higher than in the European Union. Yet, it was the European Union that felt the urge to spend vast administrative resources to develop new e-commerce regulations that they are still not sure how to apply. The current discussions of new data retention laws by the European Ministers for Telecommunications and Justice and Home Affairs seem to be heading in the same direction of regulating-before-learning. Current European government plans would require communication service providers to bear the cost of retaining all communications data passing through their networks. By comparison, the U.S. Congress in the wake of September 11, opted for a data preservation policy that relies on preserving data on a suspect rather than on all users.

This regulatory approach is obviously not conducive to innovation in science or business methods. The on-going dispute over the regulation of genetically modified organisms is a well-known example of employing metaphysical arguments about unknowable risks to keep consumers from making educated choices. However, its abstract nature makes it appealing to countries around the world and makes European regulations an easy sell to international organizations and developing countries.

Here are some more examples. The EU is integrating environmental considerations with scant scientific foundation in all regulatory activities. Every regulation now has to be interpreted with a reference to the so-called "sustainable development" (SD) principle, which lumps together un-quantified social, economic and ecological aspirations of European regulators.

Our members – and many European firms - are particularly concerned by the recent efforts of some EU politicians to shift from voluntary SD reporting to mandatory SD reporting, which would require transnational companies to publish an independently verified annual report integrating social, environmental and economic criteria. The so-called "triple bottom-line" reporting would put a costly, unnecessary and subjective burden on companies. In the U.S., it might lead to spurious litigation.

In addition to SD policies, the EU is currently proposing several regulations with an environmental overtone that are adverse to American-owned or indigenous business. The so-called Integrated Product Policy (IPP) is a new EU policy, which consists of a mix of instruments aimed at improving the environmental performance of products. This is a noble goal. However, the experience of companies in dealing with EU regulators has been difficult. Science and practice-based arguments are seldom heard. Consequently, they create unnecessary barriers to business, particularly to U.S. corporations and their affiliates based in Europe.

A related problem of enforcement and liability arises for American business. According to the EU Commission, much (sometimes as much as 40 %) of EU regulatory output is never implemented by member-states. For American companies this creates the potential problem of selective enforcement and uncertain liability as they are caught between the EU Commission, regulations of different member states and U.S. regulations.

The recently unveiled EU Chemicals Policy Directive is another telling example of regulation that can become a threat to many U.S. chemical manufacturers and to a wide array of down-stream users of chemicals, including for example toy, computer hardware, and furniture and car manufacturers. The Chemicals Directive would introduce a new system of registration and testing called REACH (Registration, Evaluation, and Authorization of Chemicals). The dangers posed by the Directive are such that it was discussed by the full Board of the United States Chamber of Commerce earlier this month. The REACH system would apply to both “new” and “existing” chemical substances, and would extend data requirements of reporting burden and potential liability to downstream users of any chemicals, e.g., manufacturers of computers, automobiles, textiles, detergents, toys, plastics and paper products. In addition to being costly (the initial price tag to industry is estimated at $4 billion a year), this regulatory proposal would be incredibly disruptive and anti-competitive. Many chemicals will simply be phased out without replacement, which will force companies to change entire technological systems. Many specialty producers will not be able to manufacture or trade in Europe altogether. All businesses will be subject to a new overlay of testing and certification requirements enforced by European labs with questionable transparency.

The Chamber opposes the proposed EU Chemical Policy unless substantially modified in accordance with the following general criteria:

1. Immediate notification to the WTO Secretariat of the proposed Chemical Policy and full compliance with WTO disciplines;
2. A sound scientific basis for risk assessment and cost-benefit analysis of all aspects of the chemical policy;
3. A transparent and accessible process of registration, evaluation and authorization of chemicals;
4. A clear articulation of liability from producers to users to certification agencies;
5. Recognition of international standards and certification procedures;
6. Full consideration for the effect of proposed regulations on small and medium-sized enterprises and users of chemical products;
7. A clear process for review and appeal of any evaluation and authorization decisions.

Services

Over 70% of total U.S. foreign direct investments flows to Europe over the second half of the 1990s were in services as opposed to manufacturing. This sector faces significant obstacles in Europe, which should be tackled on a bilateral basis above and beyond what is feasible within WTO GATS negotiations.

The recent ambitious services proposal from the EU Commission in the WTO Doha Round shows that any significant breakthrough will have a major impact beyond the border crossing. At the same time the Commission is making this proposal, its staff has developed a Green Paper on Services of General Economic Interest, which may effectively fence off major European utilities from any competition in the EU market. The services of general economic interest include everything from utilities to trash collection. The idea is to provide block exemptions for these services from many regulations imposed on private businesses and set them up as paragons of corporate social responsibility. That would distort competition, state-aid and internal market rules in favor of government-controlled interests. And of course, the underlying argument for contemplating such exclusions is that the private sector is environmentally irresponsible. The facts don't support this argument. Private companies in Europe invest heavily in environmental compliance while the record of state-owned entities is very mixed.

Conclusion

As the EU is devising new and much strengthened regulatory agencies and centers of regulatory power, it is remarkable how little strategic coordination exists between most of the relevant U.S. and EU agencies. Among the many new agencies in Europe currently at different stages of development are the European Food Safety Agency, Cyber Security Agency, European Environment Agency, Office for Harmonization in the Internal Market, the Joint Research Centre and probably an inter-governmental defense procurement agency. Nothing would be more helpful to the interest of American business than to have certainty that regulators of the transatlantic marketplace coordinate their regulatory activities in a transparent, strategic and efficient way. Nothing could be more damaging to business than ad hoc regulatory forays in the new Europe driven by political expediency, the absence of regulatory benchmarks and a lack of understanding of how transatlantic business will be impacted.

It would be particularly valuable to build strong linkages during the process of establishing new regulatory bodies in Europe. The existing U.S.-EU guidelines on Regulatory Cooperation of April 2002 seem to have produced limited results and are in need of being updated. Priority agencies that need to develop better lateral coordination with emerging European counterparts include:

1. National Institute of Standards and Technology (NIST);
2. Food and Drug Administration (FDA);
3. Federal Communications Commission (FCC);
4. Environment Protection Agency (EPA);
5. Securities and Exchange Commission (SEC);
6. Department of Homeland Security;
7. International Trade Commission (ITC);
8. Federal Trade Commission (FTC);
9. Department of Energy;
10. Department of Transportation (DOT & FAA).

A vigorous and systematic dialogue between U.S. and European regulators similar to that in effect on anti-trust matters would allow us to better understand the impact of European regulations and avoid the surprise in Brussels when a new draft proposal suddenly becomes another bone of contention with the United States. We hope that a strategic regulatory dialogue will soon lead to negotiations and strong mutual commitments. In fact, the chamber believes that it is time to start discussing with the European Union a way to negotiate a bilateral trade and investment enhancement agreement that would recognize the unique and highly integrated nature of our common business with Europe and establish clear ways of resolving regulatory differences. The transatlantic business community does not want the two regulating juggernauts to impede the exciting business opportunities that constantly emerge in our extraordinary shared marketplace.

That concludes my testimony. I will be happy to try to answer any questions you may have.