

Ambassador Michael Froman  
United States Trade Representative  
Executive Office of the President  
600 17th Street NW  
Washington, DC 20508

Commissioner Karel de Gucht  
Commissioner for Trade  
European Commission  
BE-1049 Brussels

May 12<sup>th</sup>, 2014

Dear Ambassador Michael Froman and Commissioner Karel De Gucht:

The undersigned organizations are writing to express our deep concerns about proposals for "regulatory cooperation"<sup>1</sup> between the United States and European Union under the Trans-Atlantic Trade and Investment Partnership (TTIP, otherwise known as the Trans-Atlantic Free Trade Agreement or TAFTA).

The vast majority of estimates for TTIP's economic benefits are hypothesized to come from tackling "non-tariff" or "technical barriers" to trade. These perceived barriers are also the laws that protect people, the environment, and the integrity of our respective economies. The EU and the U.S. acknowledge that reducing these costs to industry is one of the most important and most challenging aspects of these trade negotiations.<sup>2</sup> Thus, TTIP is more about how national or regional laws and policies are made, rather than international trade in its traditional sense.

To achieve this ambitious goal, EU and U.S. negotiators are discussing various proposals for Trans-Atlantic regulatory cooperation behind closed doors. The recent leak of an EU position paper on "regulatory coherence" provided much-needed insight into how negotiators hope to avoid future "non-tariff" and "technical barriers" to trade.<sup>3</sup> While it is unclear precisely what form such "cooperation" would take, we understand that the proposals would entail several changes to EU and U.S. lawmaking processes. We note that we do not have adequate information from the United States to fully assess its position and the possible implications of their proposals.

The scope of these changes would cover "any planned and existing regulatory measures of general application" and "extend to regulations by US States and EU Member States." Some of the key elements include:

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<sup>1</sup> The term "regulatory cooperation" is meant to include "regulatory coherence" and "regulatory convergence." "Regulatory Coherence" is used in reference to the proposed horizontal chapter with this title, or the EU's position paper on this horizontal chapter, referenced below.

<sup>2</sup> Final Report of the U.S.-EU High Level Working Group on Jobs and Growth (Feb. 11, 2013) <http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg>

<sup>3</sup> DG Trade, Position Paper – Chapter on Regulatory Coherence (undated, leaked Dec 2013), available at: <http://corporateeurope.org/sites/default/files/ttip-regulatory-coherence-2-12-2013.pdf>

- Updates on “any regulatory and legislative initiatives with potential trade impact as of the planning stage”;
- The use of “harmonization, recognition of equivalence, or mutual recognition” as tools for regulatory cooperation;
- The use of “cost-benefit” and “trade impact” analyses for proposed regulatory or legislative initiatives, with a special focus on international trade impacts, to be published with the proposed final measure;
- A requirement for “regulatory dialogues,” with trans-Atlantic governments;
- The creation of a trans-Atlantic scientific body to guide regulatory decision making<sup>4</sup>; and
- The right of stakeholders to table “substantive joint submissions” for this body to consider.

To oversee these elements, the EU has proposed the creation of a Trans-Atlantic institutional framework, the Regulatory Cooperation Council (RCC), consisting of representatives from selected regulatory bodies in the U.S. and EU. The council would oversee the development and implementation of laws in the EU and U.S., including:

- U.S. federal legislation, introduced by members of the U.S. Congress;
- State-level legislation introduced by state legislators;
- Rules and regulations proposed by U.S. federal agencies, U.S. independent agencies, and state-level agencies;
- EU primary legislation;
- EU implementing measures; and
- Legislation at the EU Member State level, including relevant implementing measures.

We are concerned that these procedures could easily facilitate a roll-back of protection provided by existing legislation, and that they would likely impede the development of new legislation and the implementation of what currently exists. Implementation is the key for legislation at any level of government, including the precautionary principle and other important public safeguards.

The top-down coordination of these measures through an institutional framework for transatlantic regulatory cooperation, we feel, would likely become a significant source of delay and preempt a state, a country, or region’s ability to maintain or establish stronger standards when consumers demand such or to respond to emerging technologies, new scientific information, preferred policies by the public, and urgent crises. One of our main concerns is that regulatory cooperation as suggested by the EU will allow business groups and their lobbyists to exert undue influence in the regulatory process.

With an objective to prevent transatlantic regulatory divergence and minimize impacts to international trade, the preemptive power and influence of this institutional framework for regulatory cooperation is of particular concern. As proposed, this body is designed to prioritize potential trade impacts over other factors in decision making. Even without a focus on trade-related impacts, cost-benefit analysis can produce unreliable results and may be heavily tilted against the public interest. Proposals to add yet more layers of analysis and governance to the rulemaking process will increase delays and will impede achieving the central mission of most regulators: to protect the public and the environment.

Accordingly, we are deeply concerned that TTIP will have a chilling effect on the development and implementation of laws to protect people and the environment. We note your stated objective to protect the

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<sup>4</sup> This is contained in the chemical industry’s undisclosed proposal from December 2013, available at: [http://ciel.org/Publications/CH\\_Pro.pdf](http://ciel.org/Publications/CH_Pro.pdf)

“right” to regulate and to preserve existing standards; however, the procedural recommendations advanced could undercut both of these stated objectives.

Therefore, we ask that you (1) publish draft negotiating texts on regulatory cooperation and coherence, sectoral annexes, and SPS/TBT chapters, as well as and the most recent position papers from the EU and U.S., given their direct relevance to lawmaking in the United States and the European Union, including by states and Member States, respectively; and (2) answer the following eight questions:

- 1) What exactly has been discussed and/or agreed upon between EU and US negotiators on regulatory cooperation?
- 2) How do you plan to prevent regulatory cooperation provisions in TTIP from slowing the implementation of existing laws? Proposals indicate extensive regulatory dialogues throughout several stages of regulatory processes on both sides of the Atlantic, with the production and exchange of information on alternative options and impacts, including written responses.
- 3) How do you plan to prevent regulatory cooperation provisions from being an impediment to the development of new legislation? It is proposed that Parties would inform each other of legislative initiatives at an early stage, engage in Trans-Atlantic dialogues during the lawmaking process, and assess impacts to international and transatlantic trade.
- 4) How would these regulatory cooperation provisions apply to states in the United States and Member States in the European Union?
- 5) How do you plan to make the proposed RCC, or another Trans-Atlantic institutional framework for regulatory cooperation, accountable and transparent?
- 6) How would trade impact or cost-benefit analyses account for both the quantifiable and non-quantifiable benefits of prompt and progressive regulatory action, such as the benefits of protecting human health by reducing exposure to toxic chemicals and the benefits of ensuring the stability of our financial systems?
- 7) Are there any plans to prevent dominance of interested business groups in, for example, the sectoral dialogues, or is the proposal intended solely as a platform for a transatlantic business dialogue?
- 8) Will the proposed changes to lawmaking in the EU or U.S. be subject to international dispute resolution or provide a valid legal basis for lawsuits in either the EU or U.S. challenging the legality of adopted legislation or regulation?

The answers to these questions will help us better understand the procedural and substantive questions voiced by the public on both sides of the Atlantic as a consequence of leaked documents drafted by government and industry over the past several months. The public, including lawmakers on both sides of the Atlantic and at all levels of government, have the right to know.

Signed,

US Organizations	EU Organizations
<p> AFL-CIO  Alaska Community Action on Toxics  American Federation of State, County and  Municipal Employees  American Medical Student Association  Americans for Financial Reform  BlueGreen Alliance  Breast Cancer Fund  Center for Biological Diversity  Center for Digital Democracy  Center for Effective Government  Center for Environmental Health  Center for Food Safety  Center for Responsible Lending  Center for Science and Democracy, Union of  Concerned Scientists  Center of Concern  Chicago Consumer Coalition  Citizens' Environmental Coalition  Citizens Trade Campaign  Clean and Healthy Indiana  Clean and Healthy New York  Clean Water Action  Clean Water Action (CT)  Coalition for a Safe and Healthy CT  Coalition for Sensible Safeguards  Concerned Citizens of Wagon Mound and Mora  County (NM)  Consumer Assistance Council, Inc.  Consumer Federation of America  Consumer Federation of the Southeast  Consumers for Auto Reliability and Safety  Consumers Union  Earthjustice  Economic Policy Institute  Farm Worker Association of Florida (FWAF)  Farmworker Association of Florida  Food &amp; Water Watch  Friends of the Earth, US  Global Community Monitor  Global Exchange  Green America  Greenpeace US  Health Care Without Harm  Humane Society International </p>	<p> 11.11.11  abolish fracking  Academia Civica Bihor  Action For Breast Cancer Founbdation  Africa Europe Faith and Justice Network  Afrika Kontakt  Aitec  Amicii Bucovinei  Arbeitsgemeinschaft bäuerliche Landwirtschaft  ASEED Europe  Association for Self Advocacy  Attac Austria  ATTAC Denmark  Attac España  ATTAC France  Berliner Wassertisch  Berliner Wassertisch/Muskauer Straße  BI lebenswertes Korbach e.V.  Both ENDS  BUND e.V.  Bundoran Transition Towns  Bürgerinitiative "Kein CO2-Endlager Altmark"  Central America Women's Network  CENTRE FOR PEACE STUDIES  CHEM Trust  ChemSec  Clean Air Action Group  ClientEarth  Collectif Causse Méjean - Gaz de Schiste NON !  Collectifs Isérois Stop GHRM38  Corporate Europe Observatory (CEO)  Danish Ecological Council  DobroGeea  Earth Watch Media  Ecologistas en Acción  EcoNexus  Environmental Health Strategy Center  European Attac Network  European Environmental Bureau (EEB)  European Environmental Citizens Organisation for  Standardisation (ECOS)  European Federation of Public Service Unions  EUropean Public Health Alliance  Fís Nua  FOE Mauritius </p>

<p>Institute for Agriculture and Trade Policy</p> <p>Institute for Policy Studies, Global Economy Project</p> <p>International Brotherhood of Teamsters</p> <p>International Campaign for Responsible Technology</p> <p>International Center for Technology Assessment</p> <p>International Fund for Animal Welfare</p> <p>Just Foreign Policy</p> <p>Just Transition Alliance</p> <p>League of Conservation Voters</p> <p>Los Jardines Institute (The Gardens Institute)</p> <p>Maryland Consumer Rights Coalition</p> <p>Mossville Environmental Action Now</p> <p>National Association of Consumer Advocates</p> <p>National Family Farm Coalition</p> <p>National Legislative Association on Prescription Drug Prices</p> <p>Network for Environmental &amp; Economic Responsibility of United Church of Christ</p> <p>Oregon Consumer League</p> <p>Parents Against Lindane</p> <p>Physicians for Social Responsibility</p> <p>Public Citizen</p> <p>Safer Chemicals Healthy Families</p> <p>Sierra Club</p> <p>Southwest Workers Union</p> <p>TEDX, The Endocrine Disruption Exchange</p> <p>Texas Environmental Justice Advocacy Services (T.e.j.a.s )</p> <p>Trauma Foundation</p> <p>U.S. PIRG</p> <p>United Church of Christ Justice and Witness Ministries</p> <p>United Steelworkers</p> <p>Women's Voices for the Earth</p> <p>World Society for the Protection of Animals</p>	<p>Food &amp; Water Europe</p> <p>Frack Free Romania</p> <p>Fracking Free Ireland</p> <p>Free World</p> <p>Friends of the Earth Europe (FOEE)</p> <p>Friends of the Earth Scotland</p> <p>Fundacion Vivo Sano</p> <p>Gene-ethical Network</p> <p>Générations Futures</p> <p>GEOTA</p> <p>German NGO Forum on Environment and Development</p> <p>Germanwatch</p> <p>GLOBAL 2000 Friends of the Earth-Austria</p> <p>Global Social justice</p> <p>Grupo Portugal TTIP</p> <p>Health and Environment Alliance (HEAL)</p> <p>Health Care Without Harm Europe (HCWH)</p> <p>IG Übersetzerinnen Übersetzer</p> <p>Initiativ Liewensufank</p> <p>INKOTA-netzwerk</p> <p>Irish Doctors' Environmental Association (IDEA)</p> <p>Kairos Europe</p> <p>Keep Ireland Fracking Free</p> <p>LobbyControl</p> <p>Minea Marius Sorin</p> <p>NABU (Nature and Biodiversity Conservation Union)</p> <p>narcisa florentina arsinte</p> <p>Naturschutzbund Vorarlberg</p> <p>ÖBV-Via Campesina Austria</p> <p>Person</p> <p>PowerShift e.V.</p> <p>PROVIEH VgtM e.V.</p> <p>Quantic Association</p> <p>Quercus - National Association for Nature Conservation</p> <p>Réseau Environnement Santé</p> <p>Rodica Cruceanu</p> <p>Romania Fara Ei (Romania Without Them)</p> <p>Scottish Environment LINK</p> <p>Scottish Wild Land Group</p> <p>Seeds Action Network - SAN Germany</p> <p>SOMO</p> <p>SPEhRo</p> <p>The Cancer Prevention and Education Society</p> <p>The Swedish Society for Nature Conservation</p>
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	Transnational Institute Transparency International Germany Transport & Environment Tschecho-Slowakisch-Österreichisches Kontaktforum Vira Association VOICENCU LILIANA WECF - Women in Europe for a Common Future WEED - World Economy, Ecology & Development Wemos WWF European Policy Office
<b>Transatlantic Organizations</b>	<b>Other International Organizations</b>
ActionAid International Center for International Environmental Law (CIEL) Environmental Investigation Agency SumOfUs.org	BRAZILIAN RESEARCH NETWORK IN NANOTECHNOLOGY, SOCIETY AND ENVIRONMENT Elisabeta Iosipescu ES ASSOCIAÇÃO - ENERGIA SUSTENTÁVEL Sivil Toplum Dayanışma Derneği