"U.S.-EU High Level Working Group on Jobs and Growth" Docket Number USTR-2012-0001

Comments submitted by the Competitive Enterprise Institute[1]
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The path to economic growth and prosperity is not something readily planned from above but rather is "discovered" by experimentation and experience. Markets are a discovery process – it is not evidence *a priori* which polices do or do not foster growth and employment. The two primary models are the "harmonization" model of seeking to "standardize" rules between those seeking mutually beneficial trading partners and the "competitive" model which seeks to have each party experiment with rules to determine which are superior. Which approach is superior is not always clear. The "harmonization" approach can easily morph into a "cartelization" path – enriching some within the two blocs but harming the overall economies of both. The "competitive" model can needlessly increase the transaction costs of trade.

In this context, let me discuss the question raised in this proceeding. I have some sympathies for both paths; however, as will be obvious, my belief is that the "harmonization" approach is far less likely to advance economic growth. Politics is too uncertain a process to allow top-down rules to become dominant.

Remove Tariffs

The U.S. and the EU are formidable trade partners that represent about 50 percent of the world's GDP. While the U.S. and the EU have dramatically reduced tariffs on goods and services imported to their countries, the countries should agree to eliminate remaining tariffs to spur growth and opportunity.

Eliminating tariffs would create significant economic growth and enhance consumer welfare for both partners. In terms of exports, it has been estimated[2] that getting rid of tariffs on merchandise trade between the EU and the U.S. would increase EU exports to the U.S. by up to $69 billion, while U.S. exports to the EU could increase by up to $53 billion. There would be substantial gains in both economies – GDP in the EU could rise from $58 billion to $85 billion, while U.S. GDP could increase from $59 billion to $82 billion.

In a free-trade lesson the U.S. should study, in November 2011 Canada announced that, to help spur the economy, it was eliminating tariffs on imports that Canadian manufacturers use. Tariffs would be cut on about 70 items, the latest in government moves to get rid of all tariffs by 2015.

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[1] Significant parts of these comments were adapted from CEI's report, "Liberate to Stimulate," 2010. http://cei.org/sites/default/files/CEI%20-%20Liberate%20to%20Stimulate.pdf

[2] Fredrik Erixon, and Matthias Bauer, "A Transatlantic Zero Agreement: Estimating the Gains form Transatlantic Free Trade in Goods," European Centre for International Political Economy, ECIPE Occasional Paper, April, 2010.

Already Canada has abolished tariffs on more than 1800 items — relief that is expected to add about $423 million annually to its economy.

Important too should be the recognition that tariffs on imports are in reality added taxes on the foreign goods and services that consumers and businesses purchase. Trade laws should consider the consumer impact. Consumers benefit from imports that may reduce their costs, increase their choices, provide new technological advances. Eliminating tariffs can provide major "tax cuts" that can help stimulate the economy.

Remove Non-Tariff Trade Barriers

As trade barriers such as tariffs have been reduced between the EU and the U.S., non-tariff trade barriers have become more prominent. Those protectionist policies can take many forms, from food safety standards that aren't based on science to customs and border procedures that put obstacles in the path of free trade to complex regulatory schemes that increase costs to suppliers and consumers.

In the agricultural areas relating to the U.S. and the EU, both parties should look to their domestic support programs, especially in these times of budget deficits and the need to cut federal budget expenditures. In the U.S., direct payments to farmers are being scrutinized and should lead to their elimination in the 2012 Farm Bill. The federal crop insurance program should be evaluated against a private system of insurance that farmers can use. The U.S. sugar program, with its central planning approach of domestic allotments, price supports, and import restrictions, costs consumers about $4 billion per year in higher costs for food products and leads to significant job losses in sugar-using industries. It should be abolished.

The EU is reviewing its Common Agricultural Program, which most independent observers suggest is in urgent need of reform. It also needs to evaluate its domestic support programs and eliminating the direct payments to farmers. In addition, some EU standards-setting and labeling requirements not based on scientific information act as non-tariff trade barriers. Particular attention should focus on the EU's policy on genetically modified organisms (GMOs) – food and feed -- that is based on the Precautionary Principle (see discussion below). That policy looks at the method of production rather than the product and requires labeling of GMOs.

Reduce the Regulatory Burden

Intrusive, redundant, and complex regulations impede the ability of companies to innovate and grow. This harms their meaningful role in creating jobs and improving consumer welfare. In all sectors of the economies of the EU and the U.S., the regulatory burden on the private sector continued to mount alongside increases in spending. The Competitive Enterprise Institute cites U.S. regulatory costs of well over $1 trillion—a hidden tax one-third the size of the federal budget. Yet regulatory costs draw much less public rebuke than taxes, because they are concealed in the prices of goods. Thus, when politicians find it difficult to raise taxes to pay for their policy goals, they regulate. This is justified under the notion that government must help society manage risks. Yet the state rarely provides the best answers to societal risks. Instead, we must turn to the marketplace's disciplining role in consumer protection, which boosts safety as a competitive feature. We must improve competitive markets' ability to impose discipline in the form of reputation and disclosure.

Reining in excessive delegation of power to federal agency bureaucrats would help close the breach between lawmaking and accountability, while forcing Congress to demonstrate regulatory benefits.

One current example shows how the Sarbanes-Oxley Act and the Dodd-Frank Act undermine the ability of entrepreneurs to create new jobs and contribute to economic growth. In its recent IPO, in fact, Facebook specifically singles out the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010 as "risk factors" that will impose substantial costs to the company and its shareholders and divert resources from the firm's core mission of innovation.

Dodd-Frank's "Volcker Rule" would prohibit banks from trading on a proprietary basis and restrict their investments in hedge funds and private equity. Policymakers should be concerned with the possible wide-ranging effects of this rule on banks, security markets, jobs, and the economy. It will likely raise the cost of credit, reduce security firm's liquidity, increase costs for firms planning to expand and add jobs, and decrease financial institutions' international competitiveness. The fact that Her Majesty's Government in the United Kingdom has already formally complained about this rule should indicate that it will become a substantial barrier to trade in financial services.

Reject Regulatory Harmonization That Creates Obstacles to Growth and Job Creation

Often policymakers on both sides of the Atlantic, in reviewing the regulatory state's complexity and lack of uniformity, call for "harmonization" of regulations. However, such harmonization can lead to conformity and stagnation – resulting in superior alternatives not being explored. Rather, policymakers should look to competition among regulatory regimes. This "discovery process" is a better way to reduce transaction costs and thus increase voluntary wealth creation.

Providing companies with a choice of regulatory regimes often works better than a single uniform regulatory structure or a harmonized system. Centralized regulators can suffer from limited information and pressures from special interest groups. Dispersed regulatory structures can satisfy different preferences, try varied approaches to regulating, gain information about what works and what doesn't, and provide feedback to learn more about the cost effectiveness of specific rules. Regulatory competition provides these benefits.

Freeze antitrust regulation

Antitrust regulation continues to enjoy broad support among the business community, in the popular press, and among policymakers. Despite its popularity, antitrust constitutes a serious hazard for successful, wealth-creating businesses, and it threatens innovation and economic growth.

A growing body of economic evidence shows that mergers, acquisitions, and single-firm behavior—no matter the size or market power of the firm in question—tend to benefit, rather than hinder, competition and innovation. Even when big companies misbehave, they do not act in a vacuum. Providing the necessary competitive responses to abusive business organizations is often the superior market approach – not bureaucratic industrial policy.

Antitrust enforcement and the resulting uncertainties scuttle innovative new product offerings, preclude efficient market arrangements, and thwart the natural evolution of the marketplace and competition itself. The availability of antitrust as a competitive weapon frequently attracts firms seeking entry or price regulation as a means of hobbling more nimble rivals. Persuading antitrust enforcers to penalize successful competitors undermines competition, ultimately harming consumers by driving prices higher and output lower. Antitrust regulation destabilizes the very industries it purports to foster by depriving consumers of competitive marketplace responses to aggressive firms. Resisting such interventions—whether against "collusion," "predatory pricing," or "vertical integration"—should be a top priority for U.S. and EU policy makers in today's competitive, dynamic, global marketplace

Policymakers should carefully review the potential damage antitrust actions can wreak on dynamic markets and infrastructure investment. From mobile broadband to Internet search to software, interfering in competitive market processes is hindering the evolution of entire sectors of the economy. Antitrust regulations are inherently anti-infrastructure and undermine large scale competitive shareholder responses that expand GDP.

Reform the U.S. Department of Homeland Security and its Transportation Security Administration

Reform of the Transportation Security Administration (TSA) is long overdue—as the recent passenger backlash against both the TSA's new backscatter full body scanners and the enhanced pat-downs for those who opt out of the machines suggests. These new measures merely attempt to "fight the last war" rather than genuinely increase security for flyers. Such intrusive policies discourage both business and leisure visitors from the EU and other areas from flying to the U.S. – resulting in decreased business and leisure spending from abroad. Meanwhile long lines at airports impose a significant economic cost on all passengers. Instead, the TSA should be reformed to allow more flexibility and to introduce risk-based security into passenger flights.

In addition, to facilitate the flow of goods from the EU to the U.S., while taking security precautions, policymakers should review alternatives to the implementation this year of the law that requires all seaborne containers bound for the U.S. to be scanned for security threats. Such a Draconian measure would impose high costs and complex procedures that would considerably add to the customs burden. Some possibilities for alternatives include mutual recognition of countries' security procedures after evaluation, or, as has been suggested, recognition of U.S. and EU "secure traders" programs.

Reject the Precautionary Principle

Increasingly, governments and environmental activists in both the EU and the U.S. are demanding that producers of both new and old technologies prove that their products are totally safe. Although this "better safe than sorry" attitude may seem like a reasonable approach to risk regulation, health and environmental risk issues are not so simple. Nothing is totally without risk, and the reason for adopting new technologies in the first place is that they often improve our well-being by protecting us from the risks of older, more established products. Even very risky new technologies may often be better than the alternatives. However, from industrial chemicals to consumer products and everything in between, advocates of precautionary regulation insist that the mere possibility of increased risk should be sufficient to take useful products off the market or prevent them from ever being used.

New medicines protect us from diseases, even though there is always a risk of side effects. And food and agriculture technologies—such as preservatives, pesticides, and bioengineered crops—help make our food supply safer and less expensive, and lighten farming's impact on the environment. So, by demanding perfect safety, a precautionary regulatory philosophy can actually make our world less safe by denying society the benefits of new technologies. Regulation's proper goal should be to permit experimentation and the introduction of new technologies, while balancing the risk of moving too quickly into the future against the very real risk of lingering too long in the past.

Where possible, before restricting technological advances, both EU and U.S. regulatory authorities should be required to demonstrate with clear and convincing evidence (from a source other than the regulatory authority itself) that new products and practices will do more harm than good before they can keep those products and practices off the market.

In the recent past, the EU has attempted to have the Precautionary Principle enshrined in some of the international food safety standards being developed by the Codex Alimentarius. The U.S. rightly resisted those efforts, which would diverge from the scientifically based principles on which Codex is based – and which the World Trade Organization defers to in disputes relating to food safety.

Improve Food Safety and Quality through Greater Information, Consumer Choice, and Legal Accountability

Few issues are as important to consumers in both the U.S. and the EU as the safety and quality of their food—from microbial contaminants to pesticides, and from organics to obesity. Recent health scares—from salmonella-contaminated eggs to E. coli-contaminated spinach and tomatoes—show just how fragile the food chain can be. But, while these tragic events have led to calls for greater government oversight of the food supply, the nature of these scares shows that additional regulations or inspections are likely to do little to improve food safety. Poorly conceived government regulation often does as much to compromise food safety, affordability, and choice as to promote it—especially when the regulatory framework is focused on a fear-driven activist agenda rather than on basic principles of science and genuine safety.

Too often, the government's regulatory agenda favors politically expedient outcomes over those that would actually promote safety and availability. For example, the U.S. government maintains outmoded visual examination and employs "poke and sniff" food inspectors who cannot detect microbial pathogens. At the same time, heavy regulatory burdens make it difficult to introduce technologies, such as irradiation, that could cut the incidence of those pathogens by half or more. Americans consume nearly 1 billion meals every day, and microbial pathogens can be introduced at any stage in the food production and distribution system. Merely adding additional inspectors cannot realistically be expected to prevent downstream contamination. Instead, the legal system should punish producers and sellers who are negligent in the handling or purchasing of the foods we eat. Food companies should be allowed the flexibility to adopt technologies and practices that can cut the incidence of food borne contaminants.

Reject Regulatory Imperialism

The risk of regulatory imperialism has been brought to the fore by the recent decisions of the EU's Court of Justice in favor of the EU's plan to charge airlines — domestic and foreign — for their carbon emissions. The EU scheme covers aviation in its controversial — and collapsing — cap-and-trade system for reducing carbon emissions. All planes landing or taking off in the EU are forced to pay for their emissions, whether those were emitted over EU airspace or not. Expanding the flawed carbon trading system during a period of failing economies is an act of economic self-flagellation by the EU in the name of environmentalism. One study has indicated that the EU's emissions trading scheme has cost the continent's consumers $287 billion for "almost zero impact" on cutting carbon emissions, and has warned that the EU's carbon pricing market is on the verge of a crash next year.

If the EU stands by its plan to exert control over airlines of other countries and to charge them for emissions, it would threaten the sovereignty of other countries, destroy the international legal system in place for airlines – the Convention on International Civil Aviation – put onerous economic burdens on airlines, and raise the cost of international travel and delivery services.

Regulatory regimes that have failed to demonstrate that the regulatory benefits exceed their costs should not be exported.