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EU and US consumer groups' initial reaction to the announcement of a Transatlantic Trade and Investment Partnership

Dear Ambassador Kirk and Commissioner De Gucht,

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

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

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

As a general principle, we believe that an agreement aiming for regulatory convergence will only be acceptable if it requires high standards of consumer and other protections and related compliance, while affording both trading partners the autonomy to adopt stronger facially non-discriminatory protections. This means that a free trade deal must not limit the US and the EU and its member countries from maintaining or adopting and enforcing standards that provide higher levels of consumer protection than those required by the agreement including in the face of scientific uncertainty; and such protections must not be subject to challenge under the terms of the agreement. The US and the EU should exclude from the pact any sector or regulatory area where they cannot agree on this framework; and clearly, some areas should be excluded at the outset.

Given the breadth of consumer interests and the potential scope of the proposed trade agreement, we cannot analyse all areas of potential concern. But we want to highlight a number of topics:

Safe Food: Food safety and inspection standards must be established at the highest level to ensure consumer protection, and should include animal identification systems for tracing food to its origin, plans to phase out use of antibiotics for non-therapeutic use in animals, and a Transatlantic rapid alert notification system. Trading partners must be free to establish non-discriminatory food safety,

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nutrition and labelling standards that are stronger than the harmonized norm and that meet the objective of consumer protection and environmental and ethical considerations.

Emerging Technologies: Trading partners must be afforded discretion to regulate products of emerging technologies, such as nano and biotechnologies. Non-discriminatory regulations that meet the objectives of consumer protection and environmental or ethical protections, including those addressing consumer labelling, should not be subject to challenge under a Transatlantic agreement.

Financial Protections: The agreement may establish minimal standards for financial institution safety, soundness and consumer protection, but must ensure the freedom of the trading partners to establish more robust regulations. The US and EU must be free without exception to establish limits on financial institutions size; insist on separation of banking, investment banking, insurance and commercial functions; ban or restrict the offering of risky financial services or products; establish fees and taxes for financial institutions and financial transactions; adopt reserve requirements above international standards; impose performance standards and investment obligations; and cap fees and interest rates.

Intellectual Property Rights: Provisions on intellectual property (IP) rights should ensure governments may enact robust limitations and exceptions to rights, and limitations on remedies. IP enforcement should be proportionate and respect the right to a judicial remedy. In some areas, mandatory minimum exceptions should be addressed, such as robust cross-border exceptions for disabilities or distance education. Access to medical technologies and knowledge should not be undermined.

Privacy Rights: Measures related to personal information and privacy should ensure the highest level of data protection for both EU and US consumers, and permit nations to establish more robust privacy-enhancing measures that include new and evolving digital technologies. Comprehensive legislative data protection reforms are ongoing in the EU, and more privacy-friendly mechanisms are being developed in the US, therefore data flows and data protection must not be included in free trade negotiations.

Drugs and Medical Devices: Trading partners must be free to establish high safety and efficacy standards that drugs and devices must meet before being afforded market approval or market access. The US and the EU must be free to institute the testing regimes they deem appropriate.

Energy and Climate Change: The agreement must facilitate a transition to more sustainable consumption and production patterns, and not water down or impose barriers to measures for promoting them. To advance sustainability and avert catastrophic climate change, the agreement must ensure that trading partners can adopt tax policies, mandatory performance standards, carbon and pollution regulations, schemes for self-generation or "feed-in" electricity tariffs and renewable energy standards without being subject to challenge under the agreement.

Investor-State Dispute Resolution: The agreement should not include investor-state dispute resolution. Investors should not be empowered to sue governments to enforce the agreement in secretive private tribunals, and to skirt the well-functioning domestic court systems and robust property rights protections in the United States and European Union. Experience elsewhere shows how powerful interests from tobacco companies to corporate polluters have used investor-state dispute resolution provisions to challenge and undermine consumer and environmental protections. Investors must not be empowered to sue governments directly for compensation before foreign investor tribunals over regulatory policy (including "indirect" expropriation), contract disputes, nor guarantee a Minimum Standard of Treatment for foreign investors.

Competition Policy: The agreement should in no way restrict the ability of the EU and the US to apply robust competition policy without being challenged. This includes establishing their own standards of anti-competitive impacts; proactively addressing anticompetitive merger trends; limiting

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the size of businesses for reasons of their own; mandating licensing of intellectual property; and responding to new anti-competitive challenges certain to arise as technology evolves.

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

With talks now slated for a fully-fledged Transatlantic trade agreement, it is vital that governmental negotiators reform their engagement with consumer organisations and civil society. We must have a fully **open process**. Citizens in Europe and the United States will not accept a closed, secret process, with the results revealed only when negotiations are concluded for an up or down vote.

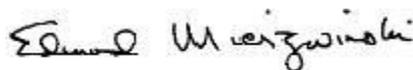
Nothing is more important to an open process than **publication of negotiating texts** as they are developed. Publication should be supplemented with structured and regular opportunity for **public comment**. We also urge the EU and the US to create a formal TTIP **consumer advisory committee** that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

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

Yours sincerely,



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Director General
European Consumers Association
EU Chair of TACD



Ed Mierzwinski
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US Public Interest Research Group
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On behalf of the TACD Steering Committee:

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