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U.S. RELATIONS WITH A CHANGING EUROPE: DIFFERING VIEWS ON TECHNOLOGY ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON EUROPEAN AFFAIRS

OF THE

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U.S. RELATIONS WITH A CHANGING EUROPE: DIFFERING VIEWS ON TECHNOLOGY ISSUES

TUESDAY, JUNE 24, 2003

U.S. SENATE,
SUBCOMMITTEE ON EUROPEAN AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:35 p.m. in Room SD–419, Dirksen Senate Office Building, Hon. George Allen, chairman of the subcommittee, presiding.

Present: Senator Allen.

OPENING STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Senator ALLEN. The Subcommittee on European Affairs of the Senate Committee on Foreign Relations welcomes you all here. As chairman I'm glad to see you all.

I'm calling this hearing of the European Affairs Subcommittee for several reasons, and before I proceed I do want to say how much I know that Chairman Lugar and the Ranking Member, Senator Biden, would like to be here. They're still coming back from the Middle East. Also, we have several votes going on right now; there will be three of them, and so we're going to have to suspend somewhat in between those votes. I'm not sure what sort of participation we will have from other Senators.

I say this to all of those who are interested in this important subject matter of relations between the United States and our friends in Europe, so as we go forward with these technology issues, we can't just do things in a click of a mouse here, we actually have to move back and forth and vote in person. I'm hopeful then we will be able to hear from Mr. Litman, the vice president, Europe and Eurasia, United States Chamber of Commerce, then probably break and I'll try to vote, unless some other Senator shows up and keeps it moving.

Today what I hope to highlight, and we hope to highlight in this committee, is the breadth and the depth of the United States' and European Union's commerce and trade relationship as well as touch on some issues which are having an impact and can have an impact on a variety of technology sectors in the upcoming months and years. This will be the first hearing in a series that we hope to hold on issues confronting our Transatlantic alliance and our economic relationship.

Now, I want to say at the outset that the economic relationship between the United States and the European Union countries rep-

resents the largest and the strongest commercial relationship in all the world. European companies, if you want to look at it on a State by State basis, which is the way I would look at things when I was Governor of the Commonwealth of Virginia—I would always look at where are these companies, and what countries are they from.

In 44 States of our Union, the number 1 investment from overseas are from European country-based companies, and the other four—or, excuse me, the other six States, the second are from European-based companies. European investment in the United States is estimated to be $891 billion, and U.S. investment in Europe is equally impressive. U.S. investment in Europe is valued at approximately $649 billion, comprising 77 percent of all the foreign investment in countries that comprise the European Union, so from a trade perspective, the United States and the EU remain each other's most important partner.

European exports to the U.S., for example, are approximately $333 billion. U.S. exports to Europe total $285 billion, so it's obvious that jobs and the economies of the European Union and the United States are dependent on each other's open markets.

Now, in the face of the recent diplomatic disagreements that we've had with some countries in the European Union, it's important to understand that there is great cooperation that exists between the United States and Europe on a day-to-day basis. It is in the best interests of our country and all of the countries to maintain this great business partnership, even when the views of foreign policy matters may differ.

With many Americans and Europeans going to work each day in foreign-owned businesses, neither the United States nor Europe can afford to allow diplomatic views to negatively impact commerce across the Atlantic. Even with the strong economic relationships, though, there are areas of significant disagreement. On the eve of the United States-European Union ministerial, I would like to explore some of these issues that I hope will be prominently on the agenda in that meeting.

The first issue has to do with the EU VAT tax, or value-added tax. Many of you already know that I have vigorously opposed any effort in this country to discriminatorily tax the Internet or electronic transactions. This technology and business channel is still in its young stages. It's very young, and placing additional burdens on the process could stunt the growth of what will be one of the most predominant channels for purchasing goods and services as well as communication in the coming years.

The perspective in Europe, apparently, is a different one. On July 1, the European Union will begin assessing a value-added tax to electronic commerce that will negatively impact thousands of United States-based firms. While it's still unclear how this tax will reflect on the bottom line, many companies must decide now whether to establish an office in Europe to gain the most favorable VAT tax, or in other words the lowest VAT tax. For businesses that are unable to make that great expense to open a European office, the directive will force them to pay the VAT for wherever their customer resides.

I have researched this sort of an issue here in the United States of America on the issue of Internet taxes and there are some analo-

gies. When you consider, for Europe, though, you have 15 countries that would be implementing different systems and different procedures for what remains for some companies a pretty low volume sales channel, this tax seems to be counterproductive, and an impediment to the growth of e-commerce.

Now, the administrative burden on these companies would be an aggravating problem. Not only will they have to track the location of every transaction, they will be operating in an environment where the very products that they sell are not uniformly defined. Countries within the European Union, just like different States in our country, tax or define services or different products differently. Thus, U.S. firms will now be tasked with understanding 15 regulatory regimes, and supposedly knowing what constitutes a service in Sweden versus what that definition might be in Germany.

With this directive taking effect on July 1, there are many small businesses, I believe or fear, that are simply not aware of this new policy, and such a directive certainly could harm all sectors of business. However, small businesses I believe will be the hardest hit. Many of these businesses simply don't have the resources to establish a European operation, nor do they have the capabilities of charting these different regulations and definitions.

So again, it is unclear what the net effect of this directive will be, but it's clear that doing business in Europe will be much more difficult for small U.S. firms that depend on the Internet as their sole or their main channel for sales, and so this EU VAT issue is one of great importance to the U.S. technology community, and I hope this hearing will provide greater insight into the problems and the possible outcome of what such taxes will have on the relatively new concept of e-commerce.

The other issue, which is really one that is going to be very hard to solve, and we're not going to resolve it here in this committee meeting but people need to be aware of it, and that has to do with the chasm between the United States and Europe on the issue of genetically modified crops. These are very disparate views. They've led to a moratorium on genetically modified crops to Europe, a trade dispute whether the ban on U.S. genetically modified products violates a number of World Trade Organization agreements.

We contend, as the United States, that there is no scientific evidence that genetically modified products are substantially different or any less safe than traditional hybrids, or traditional products. By placing a de facto ban on such products, the EU has only precipitated the fear that scientifically I believe even Europeans have admitted is unfounded.

Now, this ban and moratorium, to get into the labeling issues, and I know our witnesses will talk that even if you lifted it, just the labeling and tracing hardship would make it very difficult to market into Europe, and then we may get into the famine and starvation in sub-Saharan Africa and how this ban or prohibition has harmed people who are not being given, or the availability of these crops and these grains to prevent starvation.

So while I disagree with the EU position, I do think it's very important for us to understand the root of such views. We need to understand what the Europeans' point of view is. Only by understanding their position do I believe that we can at least start mak-

ing steps in the right direction in this area, and so that's the purpose of these hearings.

I want to thank all the witnesses for appearing before the committee today, and look forward to your testimony.

I am going to have to go vote, and when I get back, we will hear from Gary Litman and as many of the witnesses in the second panel as is possible. With your indulgence, this subcommittee will stand in recess until I get back from voting. Thank you.

[Recess.]

Senator ALLEN. Thank you all for your indulgence. We will proceed as far as we can until the third vote is taken.

Now, we're pleased to have Gary Litman, the vice president for Europe and Eurasia at the United States Chamber of Commerce before the committee this afternoon. Mr. Litman has extensive experience in both international commerce and legal matters. Mr. Litman holds a master's of science degree in chemical engineering from the Moscow Steel and Alloys Institute as well as a juris doctor from the National Law Center of George Washington University.

Given Mr. Litman's broad experience and expertise, we appreciate your willingness, Mr. Litman, to provide the committee with an overview of the United States-Europe economic and trade relationships. Mr. Litman, we would be pleased to hear from you now.

STATEMENT OF GARY LITMAN, VICE PRESIDENT EUROPE AND EURASIA, UNITED STATES CHAMBER OF COMMERCE

Mr. LITMAN. Thank you, Mr. Chairman. It's a privilege to be here at this hearing, and I would ask that the written testimony from the U.S. Chamber be made a part of the official record.

Senator ALLEN. So ordered.

Mr. LITMAN. The U.S. Chamber of Commerce, representing more than 3 million companies from every sector and region of the United States, welcomes this opportunity to present its views on U.S. Commercial relations with the European Union.

Tens of thousands of our members derive much of their business from trade with European partners, obtain their capital from European capital markets and creditors, and build their competitive edge on the basis of European supplies and human capital. We therefore agree with you, Mr. Chairman, that relations with Europe are of paramount importance to our members, and that's why the U.S. Chamber of Commerce's first overseas office was opened in Brussels over 3 years ago.

In my remarks I would like to make three points. First, as you have mentioned, the U.S.-European relationship is very complex, but it is also different from other relationships of the United States, because we have created a de facto integrated marketplace of great value to American business.

Second, Europe is undergoing historic change right now, and it is in our interests, at this very moment when new European institutions are being formed, to engage with them in every possible way so that when they are formed they have a better understanding of how they affect American business.

And third, the way to achieve this is to invite Europeans to a serious discussion of a bilateral agreement or arrangement between

us that goes beyond trade rules, because our relationship is beyond an exchange of goods and services.

Mr. Chairman, Europe accounts for half of total global earnings of U.S. companies. As we step into the 21st century, European-owned firms employ over 4 million Americans, 50,000 jobs in manufacturing in the Commonwealth of Virginia, none of them in sweatshops, I hope. It is a very important relationship. We can safely say that it is almost impossible to find a product manufactured in the United States that does not have some European value in it, which makes trade sanctions retaliation so maddeningly difficult for our trade negotiators.

On an even more intimate level of business practice, major American and European companies have overlapping corporate boards. We employ the same accounting, legal and public relations firms, and we run on the same IT platforms. With the advent of e-commerce, we see at the Chamber more and more small companies increasingly comfortable in reaching over across the Atlantic to sell, buy, swap ideas and compare the burden of regulations and tax in order to decide whether the next venture will be in San Diego or Berlin or both.

Mr. Chairman, we operate in a single U.S.-European marketplace, but it is governed by more than two sovereigns. On our side is the United States Government, with its confidence in the spirit of enterprise. On the other side, there is an enlarging union of sovereign States that is in the process of adopting a new set of checks and balances. Herein lies the problem for our companies, because they do business in both Europe and the United States.

You are obviously familiar with the long list of our trade disputes. Most of them in high tech areas, as you mentioned the biotech dispute that is now making its way in the WTO in Geneva. It is important that we use all the leverage we have to keep trade safe from prejudice-driven impediments, so we agree with the way USTR advances on the GMO issue in Geneva. At the same time, we should recognize that these disputes are not classical trade conflicts. Rather, they are the result of different approaches to domestic regulations on both sides of the Atlantic.

Whether it is deliberate or not, the regulations are passed for domestic reasons, but impact players in the shared market. By trying to resolve all of these disputes through trade disciplines, we are simply reducing these disputes to trade disputes, and they are not classical trade issues. They are issues of conflicting regulatory philosophies.

Our members now recognize the European Union as a powerful and sophisticated regulator, and we have to deal with it differently than with other nations. In fact, as we speak, we are in the process of accrediting a new American Chamber of Commerce in Brussels that will deal exclusively with the European Union institutions.

From our point of view, what's going on is a very interesting and historic process. The European institutions in Brussels are trying to assert their authorities in building a single enlarged market. Brussels does so by representing itself as the protector of the European consumer, and belatedly the promoter of European competitiveness. The underlying philosophy is to limit the business activi-

ties in order to avoid any excesses that can later be blamed on a lack of regulatory foresight from Brussels.

Our friends in Europe call this the precautionary principle, and then there is the integrated product policy, and corporate social responsibility, and the sustainable development policy. All of these buzz words reflect political realities there. We cannot afford to dismiss these notions as ineffective or devious. Our members want the European single market to remain single and to prosper, because we are its integral part.

Ultimately, our regulators must have a reliable mechanism of discussing with their European counterparts the impact of every major initiative that affects companies in between. We do it in antitrust matters, and we should be doing it across the board.

The time has come, from our point of view, to start a discussion about a Trade Investment Enhancement Agreement. Our Canadian partners are certainly moving in that direction. We need to do it right now, before the European Union institutions congeal through its new constitutional process and enlargement.

We also think the time is now because of the way the European precaution works, particularly in regulating high tech industries. The Europeans are invariably the first movers in regulating anything new. They are not waiting for the benefit of experience to begin regulating. This is particularly relevant in e-commerce and other areas of innovation. We have seen it in spades in Internet governance and in GMO's. We are seeing it again today with respect to the new chemicals policy which is now up for comments for the next 2 weeks.

We do not want a race as to who gets to regulate first. Rather, we need to have the two sides following sensible, transparent, predictable rules. We need great confidence-building between U.S. and European agencies, and constant awareness that as far as real business is concerned, we are the same. We will still fiercely compete with European companies, or to use the term coined by one of our defense companies, we engage in "cooptition."

In fact, it is precisely because we are at the same level of development and sophistication that we compete. We want to do it on a level playing field and without wrapping ourselves in the flag. We want to compete on merits, not on restrictions.

Thank you, Mr. Chairman. I'd be happy to answer questions.

[The prepared statement of Mr. Litman follows:]

PREPARED STATEMENT OF GARY LITMAN

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 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 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.,

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[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.

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

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

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 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.

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

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 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; and
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; and
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.

[Additional material submitted for the record by the U.S. Chamber of Commerce follows:]

U.S. Chamber of Commerce

REGULATORY ALERT: MAJOR EUROPEAN UNION PUBLIC HEALTH AND ENVIRONMENT POLICY INITIATIVES

JUNE 11, 2003

Powerful political and social activists who share a strong aversion to risk, as reflected in the "precautionary principle" that they advocate worldwide, increasingly influence the European Union (EU). As a direct consequence of this mounting pressure, the EU is generating new public health and environment policy initiatives that have broad repercussions on the business activities of our members. These policies are costly and represent a new form of sophisticated trade barriers that we intend to challenge vigorously, particularly when they affect a wide spectrum of companies.

The most urgent cross-sector challenge is presented by the EU Chemicals Policy initiative. If adopted through a directive, the Chemical Policy will have significant negative bottom-line impact on many of our members based in, or trading with Europe. The EU proposes to adopt a new chemicals control system based on the registration, evaluation and authorization of chemicals, called the "REACH" system. This system would apply to both "new" and "existing" chemical substances, and would extend data requirements, 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 USD 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 business 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 WTO Secretariat of the proposed Chemical Policy and full compliance with WTO disciplines;
2. Sound scientific basis for risk assessment and cost-benefit analysis of all aspects of the chemical policy;
3. Transparent and accessible process of registration, evaluation and authorizations of chemicals;
4. 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 enterprises and users of chemical products; and
7. Clear process for review and appeal of any evaluation and authorization decisions.

Senator ALLEN. Thank you very much, Mr. Litman, for your comments. I just met with President Cox of the European Parliament and shared some of these concerns, and I will just for the record point out that for Virginia there are many Virginia-based U.S. companies that are in every single country of Europe, whether they're in the currency there or not, but just in Virginia from trade missions there are companies from Sweden, the Netherlands, obviously Great Britain, Germany, France, the Swiss, Austria, Poland, Italy, Denmark—so many, and all of this trade does benefit the people of both countries, as well as the newly free, relatively newly free Central European countries, where there are great opportunities for people of Western Europe as well as enterprises from the United States.

In meeting with President Cox, he was talking about, it was very interesting how they're creating their new constitution there, where the countries or the States are creating the Federal Government. I said, we've gone through that ourselves in a similar way, although everyone in this country speaks the same language. Regardless, it was very interesting to me, and it will be, for those who would like to see the formations of governments, very interesting on how they subscribe or circumscribe what the Federal Government or their national union can do versus the nullification or the prerogatives of the individual countries and their sovereignty.

And as we were talking about that constitutional reform, and the process, and they're at the end of the beginning, before they get to the next stage, which he called the beginning of the end. Do you see any implications of this constitution on United States businesses? When you were talking about level playing fields—and one of the good things you would think of a Common Market or a European Union is they'd all have similar regulations, which would make it easier to do business, whether in France or in Italy, or the Netherlands. Do you see this constitutional process having an impact one way or the other on U.S. business?

Mr. LITMAN. Absolutely.

Senator ALLEN. How?

Mr. LITMAN. In several areas. First of all, on the positive side of the ledger, it is critical that the European Union puts its legal basis in order, that it finally gets its own legal identity, and finally becomes an institution that has some ability to present itself in international organizations, many of which are important in writing international trade rules.

This will affect everybody. It will affect European participation in the OECD, in the World Health Organization, in Codex Alimentarius, and in every organization, so we welcome this initiative. In fact, American companies in Europe have been pushing for this for quite some time.

At the same time, as you can imagine, when a new constitution is written, there are many interests at play. For example, we were watching with a certain degree of concern recently when there was a proposal to integrate in the new constitution a special exemption for services of general economic interest.

In European parlance that means utilities, anything from water to trash collection, and the constitution would codify, if passed in the current draft, that these companies that have a unique State function, if you will, should be exempted from many rules and should be set up as paragons of social responsibility. It will be impossible to compete with them. It will be impossible to challenge their practices, and the good thing is that we're able right now to communicate with our colleagues, business organizations in Europe, and get a very, very good picture of what's really going on behind the scenes, and jointly weigh in, to the extent possible.

A second example, if I may, up until last week the the draft convention did not have any reference to competitiveness. Now, for anyone who is trying to generate some economic growth in Europe, it was unthinkable, because in every European document over the last 5 years, competitiveness, which is a euphemism. Which is a euphemism in Europe for investment in R&D and streamlining of regulations and getting the tax burden at some sensible level, was their catchword, and it suddenly disappeared from the final draft. We discussed it again with European counterparts and American businesses in Europe, and it is back in the final draft, just to give you some flavor as to how it has gone on.

And a final thing that is of paramount importance, if the constitution process draws to a stalemate, or the result is unworkable, then the single market in Europe will be in jeopardy, and there's nothing of greater value to American companies than the single European market. Again, 50 percent of our total global sales are there. If there is an institutional gridlock in Brussels, then we all have a problem, because there won't be any growth there.

Senator ALLEN. Let me bring up one specific one. You mentioned the new chemicals policy directive in your testimony. What's the impetus of this new regulation, and how will that impact domestic European companies, and are these regulations which are fairly stringent, let's say, based on any one—is it based on any one country's policies, or is it a collaboration of political parties? What is the origination?

Mr. LITMAN. As are many things in Europe, it's political, it's somewhat a good idea run awry. We all understand the need for certain commonality of rules in handling hazardous materials, and some kind of registration of chemicals, and every country in Europe does that. We do it in the United States. They do it.

At the same time, the Green parties in Europe have seized upon this need as a great new opportunity to start a crusade against chemicals, and everything is made from chemicals. From the dye on your tie, to the rubber in your shoes, to the chemicals you use

to produce the motherboard in your computer, everything is chemicals.

What this draft policy directive would do if passed, is to combine old and new chemicals, everything under the sun into one comprehensive, all-encompassing database, and every chemical will have to be independently registered, certified, tested, and evaluated on every possible risk or hazard, whether or not human beings are ever in touch with this particular chemical.

The cost burden is mind-boggling. We estimated that it's $4 billion a year just to begin implementing the system. Our counterparts in the French business associations are putting the price tag at $30 billion 10 years from now, because of the enormous cost in testing, certifying, and evaluating everything under the sun, with no exception for plastics we deal with every day, or chemicals that are used in processing that never leave the technological chain.

Now, we're going to comment on that. We will challenge it. We will work with our European counterparts to make some sense of it, and we hope that it comes out fine, but it is again an example where European regulators are trying to set the market rules so that business doesn't do anything that officials in Brussels don't completely understand and control. And if something wrong happens, they could always point to a piece of legislation and say, we told you so.

It's a very prevalent, I must say, anti-business bias in some political groups in the European institutions.

Again, on the more optimistic side, if you look at the new members of the European parliament, 166—they are now observers, they will be members, I'm sure President Cox mentioned this to you—only one of them signed up with the Green party. They understand the costs and benefits very well. They need growth. That is what they need in Europe.

Senator ALLEN. Thank you very much. Are you aware of any proposed legislation? There's a lot of legislation around here, but anything you can foresee that strikes you in the U.S. Chamber of Commerce, any legislation that might negatively impact our future economic policies and relations with Europe?

Mr. LITMAN. We're always concerned about economic sanctions, and right now it's a matter of very intense discussions with Europeans. The issue is always the way the U.S. applies sanctions, for example, on Iran, but otherwise we're not aware right now of any piece of legislation that would be very detrimental to U.S.-EU relations, but we remain very, very watchful.

Senator ALLEN. Very watchful, good. A final question. Are you aware of any instances where United States corporations may have suffered financially because of the recent U.S. and some European countries' diplomatic turmoil or impasse, or vice versa, any European companies affected here?

Mr. LITMAN. There are a number of anecdotal stories, and I was with our president and CEO in Paris just last week talking to French companies about this very issue. There are some anecdotes. There is no instance of a confirmed negative impact that could be directly attributed to the diplomatic tensions right now.

Some consumers act out of their own frustrations, but there is no systematic attempt, or any kind of negative effect that we can

trace to this. Much more important is the currency fluctuation, but again, there were, as you know, a few bills that would have punished European companies, and we appreciate the fact that none of them has become law, because again it's very difficult for our members to be sure that tomorrow they won't be European companies through mergers and acquisitions, and vice versa. Every European company looks at the U.S. and is saying, maybe I'll be part of that great venture tomorrow.

Senator ALLEN. Thank you, Mr. Litman. We very much appreciate your testimony, and I hope you'll always stay available to members of this committee, with your insight and your perspective.

Mr. LITMAN. Thank you, Mr. Chairman.

Senator ALLEN. All right, you all can stand at ease for a few more minutes. I have to go vote on one hopefully final amendment before we can hear from our second panel. Thank you all for your indulgence. We stand at recess for a moment.

[Recess.]

Senator ALLEN. I'm glad you're all here for our second panel. On our second panel of witnesses, what I would like to do is to handle the VAT tax first, and then handle the genetically enhanced crops issue separately; so that this doesn't all get lost, because I think both are very important issues, but they are separate and distinct issues, and we will do it that way.

First, I would like to address the issue of the European Union's plan to begin applying a value-added tax to electronic commerce transactions. To address this topic we have two witnesses, one, Karen Myers, the director of tax and trade policy in Electronic Data System's (EDS) Office of Global Government Affairs, and I thank her for appearing, and she also is here today in her role as chairman of the U.S. Council for International Business's Subcommittee on the Taxation of Electronic Commerce. Ms. Myers works on this issue in two capacities, and we look forward to her testimony.

Also appearing before the committee to discuss this issue is Harris Miller, president of the Information Technology Association of America (ITAA). As president of ITAA, Mr. Miller has an extensive knowledge of issues facing the information technology community, and we are pleased to have you, as always, testify, and chivalry being still alive at least in this subcommittee and in principle, we will first hear from Ms. Myers, and then from you, Harris.

Ms. Myers, and by the way, we have your written testimony. This applies to all of you all. If you could summarize the salient points which you wish to present to this committee, we would appreciate it.

Ms. Myers.

STATEMENT OF KAREN MYERS, CHAIRMAN, SUBCOMMITTEE ON E-COMMERCE, UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

Ms. MYERS. Yes. Good afternoon, Senator, and we very much appreciate the opportunity to be here. As you mentioned, I am appearing on behalf of both Electronic Data Systems (EDS) and the U.S. Council for International Business. I am here to express the council's concern with regard to the European Union's directive on

the application of value-added tax to electronically delivered goods and services, a legislative measure adopted by the European Council of Ministers last May.

For the first time, the directive enables, indeed obligates, EU member States to apply their VATS to electronic commerce transactions between non-EU firms and their EU consumers. The directive is effective on July 1.

U.S. firms will be required to register with EU authorities and to levy, collect, and remit the tax applicable in the customer's place of residence on a large majority of goods and services available electronically in the global market. While non-EU vendors will be required to register in only one jurisdiction, they will be required to collect tax according to the implementation requirements in place in each State where they have a customer. In contrast, EU vendors are required only to register and collect under the rules in place in their respective countries of residence.

USCIB has followed the development of EU tax policy in this area for many years. We understand that the Commission has been under strong pressure to remedy a situation whereby EU businesses are required to charge VAT on their EU sales, while non-EU businesses until now have had no such requirement.

Members of my subcommittee and I have consulted directly with representatives of EU and participated in an OECD Advisory Group on Electronic Commerce Taxation. We are pleased that a number of business community recommendations were incorporated in the directive. Nonetheless, we strongly believe that, in trying to level the playing field, the European Commission has created a trading environment that discriminates against U.S. and other non-EU businesses.

In addition to imposing heavier compliance burdens on non-EU businesses, the directive imposes technical and administrative challenges that may result in unwarranted liabilities for non-EU businesses and hinder the growth of electronic commerce. For example, the council is concerned that the requirement for non-EU firms to collect VAT based on the location of their EU customers ignores the fact that for most firms the technical means to verify this information in a cost-effective manner is not available.

We are concerned that the directive is lacking important basic definitions, leaving member States to determine independently what actually constitutes electronically supplied services.

Implementation of the directive will require non-EU firms to make costly systems upgrades. Failure to do so will place businesses at risk of being unable to collect and remit taxes, thus incurring liabilities in up to 15, soon to be 25 EU jurisdictions. This requirement is particularly onerous because the directive has been adopted inconsistently across the EU In some jurisdictions, implementing legislation may not be in place when the directive takes effect.

Unlike their European competitors, non-EU firms will be obligated to subject the records of transactions to audit by 15 different tax authorities, and retain these records for up to 10 years. This burdensome requirement is exacerbated by the potential need to make these records available in more than a dozen official languages.

The administrative burden of verification and data retention requirements alone will create significant competitive disadvantages for non-EU suppliers. However, since EU suppliers will be allowed to charge VAT on the basis of country of origin, and since EU member States charge different VAT rates ranging from 12 percent to 25 percent, the tax burden for non-EU suppliers will be higher in many situations than that of resident companies in EU jurisdictions.

This disparate tax treatment will distort the EU market to such a degree that the EU's continued compliance with its commitments under the WTO's general agreement on trade in services may be in jeopardy.

We are pleased that Members of Congress are taking an interest in this issue, and we would like to work with you to achieve an acceptable outcome for U.S. business.

Thank you for the opportunity to present our concerns. I will be happy to answer your questions.

Senator ALLEN. Thank you, Ms. Myers. Now we would like to hear from Mr. Miller.

STATEMENT OF HARRIS MILLER, PRESIDENT, INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

Mr. MILLER. Thank you, Chairman Allen. I appreciate the opportunity to appear before you, and I want to thank you and Senator Biden for the invitation and commend you for holding these hearings. I would like to start off by really building on three points, one that you made, a second point that Ms. Myers made, and a third point that Mr. Litman made in his previous testimony.

First of all, I want to say that certainly your opening statement was very correct, Mr. Chairman. The importance of Europe to the United States as a trading partner is something that you emphasized a great deal when you were Governor of Virginia, and continue to emphasize in the Senate. It's very, very critical, and in many ways the Europeans have been great partners in terms of promoting information technology, and promoting the Internet.

For example, Europe has been one of the leaders in bringing competition to telecommunications, which is very important. They've worked alongside the United States in promoting the idea of including in the Doha round of negotiations on global trade trade in services as being a priority, and we appreciate that. Many of the leaders of the European Union, such as Commissioner Erkuleekenin, who was actually in Washington, D.C. this week as part of the meetings that you mentioned before, is one of the visionaries in terms of the future of information technology and Internet.

But having said all of those nice things, let me lay out some of the concerns that we have. First is a point you made in your opening statement, Mr. Chairman. First, we believe there are strong analogies between this EU VAT issue and the issue of Internet taxation in the United States.

The whole basis of the Supreme Court decisions, particularly the so-called Quill decision that basically says we cannot have discriminatory taxes here in the United States, was a recognition that if you're going to force small business people to try to understand the

taxation system in remote locations across the United States, it would be very, very unfair to those small U.S. businesses, and it would make it very difficult for them to sell, because you would have to understand multiple interpretations of what is or is not taxable, as well as multiple rates of taxation across the United States.

That decision is really what we have today and the answer, the Supreme Court said, is if the States can come up with a truly simplified sales tax system, then we could begin to have taxation of remote sellers, but until that is done by the States and localities, we will not be allowed to do that.

Well, here we are in Europe with exactly the same problem. We're asking small businesses throughout the United States to understand different taxation rates, different taxation modalities in 15 different countries, as Ms. Myers said, soon to be 25 different countries, and hoping that they can somehow understand all of these complexities and play by the rules and do all those things right.

Well, frankly, to us it looks like a discriminatory tax, pure and simple, because it is going to lead small businesses in particular either to be afraid of how they're doing their transactions in Europe, or not to move into the European market, the huge market that it is, altogether, and that is not what we want on the Internet, and that's not what we want in global markets generally.

So I think the whole concept we have here today, particularly the application issues that Ms. Myers emphasized in her testimony, disparate rules in different States, the uncertainty about it, is really going to hurt small businesses in the United States, and I think that is a very important point to make, and you made it in your opening statement.

The second point I would like to make is building on something Mr. Litman said, is unfortunately this is not a unique point of tension between the United States and Europe in information technology and the Internet.

If you look back to 1997, which was a watershed year, that was the year that the previous administration, the Clinton administration released what was called the magazine or white paper on the Internet, and the basic starting principle, which was agreed to on a bipartisan basis, was the whole idea is that government regulation of the Internet and information technology should be kept at a minimum. We weren't going to treat the Internet and information technology the way we had done with so many other industries, thinking that government knows best.

And about the same time that the White House issued that white paper, the Japanese Government issued a similar white paper, and the Canadian Government issued a similar white paper, and the Europeans issued a similar white paper, and they probably all pretty much said the same thing.

This is a new technology, as you said, Mr. Chairman, this is a great opportunity to expand it, but in the 6 years subsequent to that, what the Europeans have done, unfortunately time and again, is fall back, as Mr. Litman said, into the idea that government knows best, whether we're talking about the European privacy directive, which to this day continues to be a serious point of conten-

tion between the United States and Europe, and it makes a great deal of difficulty for companies that operate globally to move data back and forth between Europe and the United States, whether we're talking about consumer protection laws, data retention laws—the Europeans are proposing data retention laws, which would be incredibly expensive and incredibly complicated for multinational firms as well as small firms, European levies on IT equipment, a new kind of special tax which they've added onto hardware sold in Europe, all of these are areas where Europe still seems to believe that government knows best, rather than letting the market work and letting competition work and global forces work, and only having government intervene when it's an absolute and clear market failure that must need to be solved by government.

So I think that general trend is one we've seen, and I think your subcommittee, the hearing you're holding today, and you mentioned you will be holding other hearings, is going to focus on the fact that this could become a growing flash point between Europe and the United States over time, unless the Europeans realize over time that they are really harming themselves and harming the growth of the Internet as a global medium by constantly falling back on more government intervention, rather than less.

The last point I'd like to make is in terms of, so what? You're holding this hearing. You're bringing out this issue, but what are the implications? Well, the ITAA members have looked at this issue very carefully, and we're not quite ready to call for the type of conflict that leads to, if we move to the WTO as a point of conflict.

Senator ALLEN. You are not?

Mr. MILLER. Not yet ready, but what I can tell you, Mr. Chairman, our committee has decided to follow this issue very carefully, to monitor the issue very carefully, and if it turns out that this new set of levies that takes effect on July 1 does have the kind of discriminatory impact that we're fearful it's going to have, for the reasons I've outlined in my written statement and the reasons that Ms. Myers gave in her statement, then we certainly will make this subcommittee aware of that; we will approach Ambassador Zoellick and other appropriate people in the Government, but right now, we have a great deal of fear about it, we are very concerned about it, and again, particularly the negative impact on small businesses.

Thank you very much.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF HARRIS N. MILLER

Good afternoon Mr. Chairman and members of the Committee. On behalf of the 400 members of the Information Technology Association of America (ITAA), many of whom are global information technology companies generating 50 percent or more of their sales revenues in overseas markets, I am delighted to appear before you today.

I am sure I do not need to tell you that America competes in a global marketplace. You may not know, however, that the leading economies around the world spend over $2 trillion on information and communications technology products and services. At over $650 billion, the 15 member states of the European Union represent 85 percent of the total U.S. market for IT products and services. As the EU adds new member states next year, even this small gap in market size will close. A larger European market means a larger, more rational target of opportunity for U.S. firms. While it also means more competition, trade in IT products and services remains

one of the few categories in which the U.S. enjoys a global export surplus—an estimated $7.9 billion globally.

The global marketplace brings many good things to the American people, to European, and to individuals around the globe. Lower prices for goods and services. Greater consumer options and choices. More new ideas and innovations. New business growth and employment opportunities. But just as the global market represents new opportunities for growing the U.S. economy, it also poses new challenges for running a truly competitive race.

Best Foot Forward: Competition and the Global Foot Race

In global economics, as in life, not every runner is above sticking out an occasional foot to trip up a foreign competitor. The public policy of nations or groups of nations can become that foot. One might argue, for instance, that the extensive set of European regulatory hurdles that are being erected against genetically modified food fall into this category. U.S. biotech firms are now the unquestioned world leader in this space. Raising market entry barriers gives local competitors the opportunity to catch up.

Other global market "discontinuities" may not be so much a matter of unfair competition but of local norms and conventions; this is particularly when matters are viewed from the often times unconventional perspective of cyberspace. "Disruptive" issues here include privacy rights, Internet governance, consumer protection laws, rules for the international movement of skilled workers, government mandates for use of particular software or hardware, and free speech regulation.

In cyberspace, trade barriers can take a variety of shapes and forms. One of the most significant of these potential barriers is taxation. In this country, we confront periodic attempts to tax Internet access, even though the basic telecommunications service is already taxed. We see attempts to tax in a discriminatory manner goods and services sold over the Internet in widely geographically divergent locations, even though doing so would create substantial if not devastating collection and administration burdens on the part of small and medium Internet retail businesses. In the U.S., we hope the House and Senate will soon pass and send to the President a permanent extension of the Internet tax moratorium, including a ban on discriminatory taxes, in the near future, so as not to stifle small and medium enterprises selling over the Internet.

Looking across the sea, several taxes issues are of concern here, including withholding taxes on license royalties and service fees, tax rule complexity, differential taxation rules for financial organizations that do in-house versus outsourced IT work, and the current movement to eliminate the Foreign Sales Corporation/ETI regime.

I have been asked, however, to focus my remarks on the imminent global application of the EU VAT on "Electronically Supplied Services" by U.S. companies to European customers. This move erects a formidable barrier to non-EU businesses and should be the subject of substantial concern to anyone interested in free trade and open markets. Before I start, I would like to recognize the efforts of the Organization for Economic Cooperation and Development (OECD) and, in particular, the Consumption Tax Technical Advisory Group, to bring simplification to the VAT process.

An Even Hand Should Be the Hallmark of Any Tax Plan

Equal treatment should be the hallmark of any tax proposal, but this effort is obviously directed at non-EU sellers, and particularly those in our industry. How so? I will be frank: the EU VAT plan discriminates against non-EU sellers, which, at least in the short and medium term will be sellers based in the U.S. The EU VAT plan requires such sellers to collect and remit the VAT for each EU country in which they have customers—currently 15 countries, soon to be 25—while an EU-based seller need only deal with the VAT rules and rates applicable to the one country in which it operates. The Directive forces non-EU sellers to shoulder the burden of determining customer location, the cyberspace equivalent of shoveling fleas with a fork. Given the wide disparity in VAT rates in the EU—ranging from 12 to 25%—customers have a clear incentive to falsify their countries of residence, and there is no way to know the actual country of residence of any given EU customer unless a physical, as opposed to digital product, is being delivered.

As a result, the compliance bite on non-EU sellers is far sharper than that for their European counterparts. Administrative overhead will be higher for non-EU competitors, and therefore their costs of doing business will be higher. Indeed, for smaller U.S. exporters of software and other digital material, the compliance burden may effectively close off the European market to them.

The problem seems to be getting worse, not better. In early 2002, after several years of considerable trans-Atlantic controversy and debate, the EU adopted the VAT Directive and indicated that it would apply to undefined Electronically Supplied Services (ESS) provided from outside, to within, the EU. In the early going, the ESS definition was thought to be limited in the IT world to digital downloads of content such music and books. During the period between adoption of the Directive and its implementation by EU member states, however, many countries—with guidance from the EU itself—developed rules that expanded its scope to include marketplace services, for instance, greatly expanding the potential coverage and complexity.

Devil in the Details: Ambiguity Makes a Bad Situation Worse

With a July 1, 2003 start, the new VAT rules are almost upon us. But even so, substantial issues remain to be resolved. Several EU VAT problems stand to trip up non-EU competitors:

- Differing interpretations by member states may generate disparate implementation requirements. EU member states must adopt uniform electronic filing, payment, and record retention standards in order to minimize the cost of compliance for businesses affected by the new rules. VAT uniformity must be encouraged but the extent to which this actually happens remains to be seen;
- Non-compliance is a real concern. Where a vendor takes advantage of the simplified registration scheme, a rule or practice should be adopted whereby that vendor will be regarded as satisfying its VAT obligations to all EU member states in connection with electronically supplied services (ESS) if it complies with the implementation requirements adopted by its state of registration, regardless of where its customers reside. Absent such mutual recognition, the Directive will fail to achieve the administrative simplification that is intended. This would impose unnecessarily high costs on compliant vendors and, equally troubling, would deter voluntary compliance by many smaller non-EU vendors;
- Consistency is critical in a variety of areas, including effective dates, filing dates, deadlines and requirements, tax periods, payment procedures, definitions of ESS subject to tax, treatment of "bundled" goods and services, availability of bad debt relief, use of commercially published exchange rates to convert tax due, and despite the current wording of the Directive which states that tax due should be paid in Euros, a vendor should be allowed to pay the tax in the currency of the sale;
- The VAT may discriminate against the Internet versus other forms of delivery. Clearer ESS definitional guidelines need to be issued. These guidelines should be adopted uniformly within the EU. The European Commission, consistent with the 1998 OECD Framework Conditions agreed to in Ottawa, considers the nature of the service—not its mode of transmission—in determining whether it is an ESS. The Directive should make clear that a service falling outside the ESS definition is not transmuted into an ESS merely because of Internet transmission. For example, legal advice or advertising copy provided by e-mail should not be treated as an ESS solely because the work product is delivered electronically.
- Verification cannot be allowed to delay transactions. Customer status and residence verification requirements must take into account current technical limitations and costs, and the importance of real time online transaction processing. Pending technological developments in this area, companies should be deemed compliant if they use the best information available online in real time during the normal course of a transaction. In the short run, this will prove in many cases to be customer-provided information. This is particularly true for low-value transactions where the costs of compliance can overwhelm the gain from the transaction for both the vendor and the tax authority. Despite urgings from the U.S. e-commerce community to deal with the inability of U.S. sellers to know with any precision where a EU customer resides (particularly in cases where the item being sold is electronically downloaded by the customer), we are not aware of any EU country that has issued any guidance on this issue;
- Member state tax laws are not synchronized with the VAT implementation start date. The Directive anticipates that implementing legislation enactment will take place by July 2003. However, it appears that several EU member states will not have legislation in place by the deadline. Companies should not be expected to collect taxes on behalf of any state until implementing legislation is enacted by such state, and there is sufficient time for companies to become compliant with the legislation;

- If non-established vendors availing themselves of the simplified registration regime will be subject to the rules, interpretation, and compliance regimes of the Member State of identification, then this rule should be embodied within the implementing legislation of each Member State. It would be burdensome and discriminatory if non-EU vendors were to be subject to audit by all 15 (soon to be 25) EU Member States, while EU vendors were subject to audit in only one Member State. As noted elsewhere, this would impose unnecessarily high costs on compliant vendors and, equally troubling, would deter voluntary compliance by many smaller non-EU vendors.
- All Member States, other than the Member State of identification, should rely on the results of the audit conducted by the Member State of identification. Such a system of mutual recognition would avoid situations where a transaction is considered to be taxable in more than one member state or, alternatively, subject to double non-taxation. Absent mutual recognition, the implementation of a system of arbitration between Member States to resolve promptly any conflicts that arise as a result of differences in the interpretation and implementation of the Directive is needed.
- The proposed Directive is not clear regarding non-EU seller obligations with respect to their transaction records. Because non-registered consumers cannot recover VAT on their purchases, the vendor should not be required to issue an invoice. In addition, it is unclear whether these vendors are required to keep records in the language of their customers. For instance, if a vendor sells to a customer located in France, does the vendor need to keep records regarding that transaction in French? It will be burdensome and discriminatory if non-established vendors are required to comply with the record-keeping requirements of all EU Member States, especially when EU vendors are only subject to the record keeping requirements of one Member State. Implementing legislation in each Member State should clarify that it is acceptable to maintain records in English or in the national language of the Member State of identification.

Final Thoughts: Discriminatory Taxes Dress the Protectionist Wolf in Sheep's Clothing

As I said earlier, an even handed approach should be the hallmark of taxing authorities, whether encountered on Main Street or in the global marketplace. When the EU VAT goes into effect on July 1, non-EU competitors will be asked to run an up-hill course while their EU counterparts enjoy a level track. The situation is, to say the least, unfair.

Collect no VAT or the wrong VAT and, as a non-EU seller, you could be asked to make up the difference or face other legal liabilities. For small companies, that could be catastrophic. Be that as it may: non-EU companies have a statutory responsibility to comply, even though they must play by different rules and, as mentioned, cannot verify the buyer's location. Moreover, the EU and its member countries continue to refuse to provide any reasonable safe harbor mechanism based on customer residency declarations.

The barriers are going up all over Europe and could affect the rest of the world. Today we are talking about 15 countries, but, with the accession of several Eastern European countries, the EU will grow to 25 countries. Furthermore, the EU VAT rule may be copied in other parts of the world where VAT systems are prevalent. This will increase the costs for U.S. information technology companies, narrow profit margins, soak up dollars that might otherwise be reinvested in research, new product development, or productivity enhancement.

European taxes and regulatory barriers that impair access to the marketplace for these industries are protectionism plain and simple. In a matter of days, non-EU based companies who have no physical presence in the EU will be compelled to implement complex and often ambiguous EU VAT rules as a part of their billing systems, as well as having to collect and remit the VAT to the proper EU tax authorities and to become subject to potentially onerous tax audits by EU tax administrators.

All of these conditions will impose significant financial burdens on U.S. vendors, and quite likely cause many U.S. vendors—particularly small to medium sized companies—to forego selling to EU customers in order to avoid the financial risks and costs. In effect, then, these new EU VAT rules are protectionist. They have been designed to help EU vendors by severely limiting the competition from abroad.

What can the U.S. Government do about this unfortunate situation? ITM and its member companies will be monitoring the issue very carefully and, if it turns out to be a discriminatory situation, as we are afraid it might be, we will talk to the U.S. Trade Representative about the possibility of bringing a World Trade Organiza-

tion complaint. Claiming free trade and open borders while imposing discriminatory VAT is dressing up the protectionist wolf in sheep's clothing.

Short of considering a WTO complaint, we urge U.S.-EU dialog with the goal of giving U.S. companies more time or flexibility to comply with the VAT Directive.

We think it is highly appropriate that this Committee is now examining all aspects of our relations with Europe, including taxes. The VAT and other tax issues are not isolated technical points to be left to specialists. Tax issues are part and parcel of Europe'soverall approach to dealing with the challenge of global business, especially U.S. business, as its markets become more open to international competition.

The Information Technology Association of America is proud to represent so many successful global IT companies. These companies, producing hundreds of thousands of jobs and multimillions of dollars for investors, depend on fair access to European markets. We look forward to working with the Committee to craft solutions to a problem that goes right to the heart of America's global economic leadership. The race is on. America can still be the winner. But only if the tax rules are fair and square.

Thank you very much for this opportunity to testify.

Senator ALLEN. Thank you, Mr. Miller and Ms. Myers, again for your outstanding statements. Through this, it's clear that there are so many problems with what they are planning to do very shortly, and Ms. Myers pointed out how you can't even determine where the customer is, so that adds to the confusion.

As I best understand it, if you actually put a physical presence in Europe, the place to go is Luxembourg, because they have the lowest taxes, as opposed to other countries, whose taxes are—Luxembourg I think is 15 percent. Others may be 25 percent. Regardless, that's the point.

Not everyone can afford to put a physical presence in Luxembourg, and it clearly in my view would be discriminatory, and maybe it's not just to the U.S., it would be discriminatory towards Japanese, Korean, Taiwan, and others that may not be in the EU, Brazilians potentially, I suppose, and one of the questions I was going to ask of you is, what about WTO, and what's the legal basis, so at this point you do not believe that there are legal grounds yet for a challenge to be brought to the WTO, is that what you're saying?

Mr. MILLER. Yes, Mr. Chairman, the emphasis on the word yet. I think it is going to require careful monitoring and see what the impact is, and if it is as negative as we fear, on small and medium enterprises in the U.S., and as you correctly point out, any non-EU countries—you said it's not just the U.S., but I think the reality of the situation is, the companies that are going to suffer the most are going to be at this point in time, given where the Internet is and information technology, are probably going to be U.S.-based companies.

Senator ALLEN. Sure, and superimposed on the basic facts that I mentioned, and Mr. Litman mentioned earlier, are the fullness and the dominance of U.S.-European trade back and forth. I would think that the Europeans, insofar as the Internet is concerned—I look at the Internet as the modern day Gutenberg Press, and the Gutenberg Press was just a fantastic invention.

Martin Luther never would have gotten his information that he nailed to the church door at Wittenberg out if it weren't for Gutenberg and the press. That would have been torn up, and no one ever would have read it, so the Internet is the modern day Gutenberg Press for the dissemination of ideas and expression and informa-

tion, and you would think that they would be appreciative of that continuing heritage of sharing information.

Are you aware, either of you all, of any other countries that have imposed a value-added tax on e-commerce? If so, what are their practices, and how does that compare to the EU directive, and what has been that impact? If there is another example, what has been the impact in that situation on United States firms?

Ms. MYERS. I think it's important first to distinguish between value-added taxes on tangible property and on intangibles and things that are electronically delivered. Most countries do, in fact, impose their value-added tax on tangible products that are shipped into the country, and those taxes are collected generally by whomever makes the delivery. There are not, to my knowledge, any countries, other than those in the EU, who are currently imposing taxes on electronically delivered services, for multiple reasons, including the fact that it is extraordinarily difficult to do.

I think the important point with what the EU is attempting to accomplish is that it has great precedential value. There are, in fact, more than 100 countries with value-added systems. If you begin with the presumption that what you need in order to trigger an obligation to collect tax is a customer in a taxing jurisdiction, then it follows that anyone who has an Internet site should be prepared to collect tax on behalf of any taxing jurisdiction in the world, and that is a very large presumption, so I think there is great concern that something that sets precedent also sets a very good precedent.

That said, I don't think that USCIB is ready to press for something as dramatic as a WTO challenge. I think we have had a longstanding, very good relationship with Europe. Most of our companies, as has been said earlier, do business in Europe, and consider Europe a very important market. We have worked with the Europeans for nearly 4 years to try to get this directive right. They did take some of our suggestions.

There are still things that European countries can do to be flexible in the application of their directive, and so I think we are in a situation where it is important for the EU and the European countries to understand that the U.S. Government and U.S. Congress is very mindful of the way the directive is being implemented, but not at a point where we want to take the most aggressive possible step to correct that.

Senator ALLEN. So you're saying, your testimony is that for the countries that have a value-added tax, and if it is a physical product, say their UPS or their FedEx is the one who collects the tax—a lot of this is a question of who collects and remits these taxes to 15, potentially 25 different countries who have different definitions of the exact same product.

It sounds very similar to what we talk about here in this country on sales and use taxes, and is it made easier for the tax collector who should be responsible for collecting and remitting those taxes, so if it's tangible for countries that have the VAT tax, it is the deliverer. Would that be—whatever their—the UPS or—

Ms. MYERS. The Postal Service, UPS, it varies from country to country, but generally speaking, whoever touches the end consumer.

Senator ALLEN. So it's their responsibility.

Now, for something that is intangible, a service, first of all I've no idea how in the heck they're ever going to enforce this, unless they invade the privacy of someone's own computer to determine—for example, there's a difference on e-books versus a regular book. Say you buy Harry Potter, the book, well, there's a very low tax or no tax on books, but if you get an e-book electronically, it's a very high tax.

Now, I have no idea how they're going to divine that Jean-Michel has got that, or Franz, or whomever has downloaded or has purchased an e-book. How are they going to be able to determine that somebody has gotten a service, as opposed to something physical over the Internet?

Mr. MILLER. The reality is, Mr. Chairman, you're right, it's going to be very, very hard, but on the other hand, if you're a small business, you run a lot of risks if you don't try to follow the law. Let me just give you one example, intellectual property you send over the Internet.

If you decide, well, I'm going to ignore this law because they're never going to be able to enforce it, but then you have an intellectual property complaint, someone has taken your book that you sold over the Internet and they started to distributed it, and you want to go complain to somebody, and the government says, now, you're asking the government in Europe to help you, and they say, oh, by the way, did you collect the taxes on this?

Or you say, gee, we've been so successful selling our product in Europe, we want to open a business office here in Europe, and the business license authorities in Europe say, by the way, if you know you're so successful in Europe, why haven't you been remitting any taxes on the products you've been selling into Europe? So it is a risk. That's the danger.

You could say, they're not going to catch me, I'm a small business person, so I'm not going to really pay too much attention to this new directive, but if you're an entrepreneur and you expect you're going into Europe initially through the Internet to try to establish whether you have a valid marketplace, it is really hard, if you're expecting to grow and be successful, to say I'm going to ignore this law, because the peril down the road is pretty strong.

I think you're right, the chances of a European tax authority actually going into some individual consumer's home and establishing that they failed to pay the VAT tax is probably pretty slim, but I think again, as a rational business person who is trying to grow your business, and sees Europe as a huge potential market, you're running a lot of risks by ignoring a tax law, and as you know, ignoring tax laws, people tend to take that pretty seriously around the world.

Senator ALLEN. How many small businesses do you think are unaware that this is kicking in on July 1?

Mr. MILLER. All of them. Well, ITAA held a series of seminars last fall and winter in conjunction with one of our members, Deloitte and Touche, throughout the country, and we advertised it far and wide, as did Deloitte and Touche, and we had wonderful attendance at all of our seminars where they were described, and

virtually every single attendee at the seminars was a large business who already had operations in Europe.

It was just so far removed from the radar screen of small business people that even though we tried assiduously to reach out to that community, they just didn't show up. I'm sure organizations which are much more composed of small businesses like the U.S. Chamber have tried to educate their members. You'd have to ask Mr. Litman as to what he has found, but we found it difficult to even get people to find time to come and learn about this issue, let alone realize the difficulties they'd have in actually trying to adhere to the rules.

Senator ALLEN. So there's a potential trap for the unwary on July 1. What do you suppose, if you can envision the reaction of consumers in Europe to any of these taxes, do you think they could have any influence on this?

Mr. MILLER. I don't know. I found consumers in Europe seemingly willing to accept a lot of things that we find more rebellion here in the U.S. They've paid these taxes on IT equipment, which to me is just a new tax.

The ostensible reason that the Europeans levy these taxes on IT equipment is so they can collect this money and then give it to the artists who aren't otherwise being compensated, but there are all kinds of other mechanisms for doing that, and Europeans continue to buy.

Of course, the power of the Internet is that people wake up in Europe and say, why am I paying this much for a pair of blue jeans in Europe, when I can order them off the Internet and get them for 30 percent less? Why am I continuing to face the bricks and mortar world, where they think they can mark these things up just because I happen to live in London or live in Berlin, rather than living in Boston or living in San Francisco?

What we know is the real power of the Internet is, it empowers consumers in a way that has never been possible in the history of humankind before. You're not locked into your local merchant as your source of goods and services. You can go on the Internet and find others.

And so over time I suspect the consumers in Europe will become more empowered, but right now they seem to be a little passive on these issues.

Ms. MYERS. But I would like to follow on to what Harris said, because the power of the Internet has been to first enable businesses to be much more efficient, and second, to enable consumers to get goods and services at a lower cost, and one of the points that we have made consistently in talking with people in the European Union is that it's very important, if there is to be a tax collection obligation, that companies be able to do whatever they need to do based on the information that is available to them at the time of the sale.

If it becomes necessary to go through a complex verification process that causes consumers to abandon transactions, or causes businesses to abandon transactions because they cannot get the information they need to complete them—

Senator ALLEN. And worried about the liability.

Ms. MYERS. Then that basically undercuts the reason for using the Internet in order to make it a more efficient means of getting things to people better, cheaper, and faster.

I would also like to follow up on what Harris said about small businesses. I never met a small business that didn't want to be a big business, or didn't think it was going to be a big business sometime soon, and very often those businesses in their early days will reach out to a third party to provide them with sort of the administrative infrastructure to enable them to comply with all of the laws and regulations that may be too burdensome for them, or to deal with financial institutions or remit payments.

And so I'm sure that once they determine that they have an obligation, they will want to be able to go to someone to do that for them, and whoever it is that is doing that for them has to be able to assure them that they're doing it right, and so it is important to have a system in place that is comprehendible, that is understandable and consistent, so that small businesses who want to do things right, and be big businesses, will have the means of doing that.

Mr. MILLER. Mr. Chairman, before you go to your next question—

Senator ALLEN. I want to know from you all, and you can follow up on Ms. Myers' comments, is what do you think that we can do in the Senate? Obviously, having this hearing is to bring the issue up, and it is very important for our European friends and allies to recognize that this is an important issue, one of the top, in my view top two key trade issues between good friends with long relationships and a lot of jobs at stake, but is there anything specific that either of you all would recommend that we do in the United States Senate, the Congress, or the administration, but particularly anything legislatively at this time?

Mr. MILLER. The answer is yes. In response to your earlier question, you asked Mr. Litman, he wasn't aware of a particular issue. He and I discussed this at the break.

Senator ALLEN. It's a good thing we had a break. You all could huddle.

Mr. MILLER. The House has recently concluded a provision that was altered by the Chairman of the House Armed Services Committee, Congressman Hunter, and it's basically in the defense authorization bill, a Buy America provision. In these days of patriotism, and some conflict with our friends in Europe, Buy America sounds like a good thing. Who isn't for Buying American?

But if you think particularly of the IT industry, your average PC, you can't Buy American. There's no such thing as an American-made PC, where every part and component in it is made in America. Much of the manufacturing components, while they may be assembled by U.S.-based companies, many of the components are purchased abroad, and already I understand the British Government has, of course our strong ally in the Iraq conflict, has put forth a strong conflict. So I would urge you, Senator, when this issue comes to the Senate as part of the authorization bill for the Department of Defense, you and of course your colleague, Senator Warner, who is the chairman of the relevant committee, take a good, hard look at that provision.

It sounds like a good thing to do, Buy American, who could be against that, but in fact it could be a very, very destructive kind of amendment, and I think will create and exacerbate a lot of tensions with Europe at a time when we have some issues on our side that you're appropriately covering today.

Senator ALLEN. I will take that into consideration.

Ms. Myers.

Ms. MYERS. In terms of specific recommendations, I don't believe there's anything legislative that we would recommendat this point, but what we have urged those who understand the dilemma to do is to communicate with their counterparts in Europe, either directly or by means of communicating to the administration.

We have written to Secretary Snow and others urging them to make statements noting that the U.S. Government is aware of potential problems and is monitoring the situation. Monitoring may sound like a small thing to do, but we think that to the extent that our friends in Europe understand that this is a potential problem, they have a lot of flexibility to make things go more smoothly, and perhaps we can avoid taking this to a more intense level if we can have a little dialogue between the people who have responsibility.

Senator ALLEN. Well, thank you both for your testimony. I hope that as this kicks in on July 1 there are not too many people or businesses that are unwary, and whatever happens, maybe that will be the impetus to say let's get some rationality in here.

People want to comply with the laws. Let's do it in a way that is number 1 reasonably facile—in other words, not overbearing and burdensome—and the other is nondiscriminatory. Those are our two principles, and I would think that the Europeans would agree to that, I would hope, and if not we will have to go further, but let's assume the best, but it's unfortunate it's coming up too quickly for a lot of companies, I think, to be in compliance.

But again, thank you both for your leadership and your principled statements and advice here this afternoon. Thank you both.

I also want to add, by the way, into the record—I don't have to say this publicly, but for everyone's information a statement from Mark Bohannon of the Software and Information Industry Association requested that I include their letter as part of the record.

Insofar as the European Union value-added tax, the details of the letter are similar to some of the testimony, and why it is detrimental to U.S. businesses operating in Europe, consistent with the tenor and discussions here, and that letter was sent to me and the Ranking Member, Senator Biden, so that will be made a part of the record. [The information follows:]

Senator ALLEN. Now, we would like to hear from our final two witnesses on the issue of genetically enhanced crops. Obviously, this is a topic of passionate and intense discussion these days, and the committee looks forward to hearing your views and differing perspectives this afternoon. I would like to welcome Jean Halloran, the director of the Consumer Policy Institute of the Consumers Union. Ms. Halloran has long had an interest in the area of GMO's, and we look forward to her testimony.

I would also like to thank Fred Yoder, president of the National Corn Growers Association, for appearing before the committee today. Mr. Yoder also has extensive knowledge of biotechnology,

and the committee looks forward to hearing the perspectives of the U.S. agricultural community, and thank you both for being here.

Now, we will first hear from Ms. Halloran, and if you have a statement, Ms. Halloran, we would be happy to receive it, and then of course hear from Mr. Yoder.

Ms. Halloran.

STATEMENT OF JEAN HALLORAN, DIRECTOR, CONSUMER POLICY INSTITUTE, CONSUMERS UNION

Ms. HALLORAN. Thank you. I appreciate the opportunity to testify. Consumers Union, which most people know as the publisher of Consumer Reports, has been interested keenly in this topic for at least a decade, and I'm also personally involved with the Transatlantic Consumer Dialogue, an organization of the major consumer organizations on both sides of the Atlantic, and as well I play an active role in Consumers International, which has 250 members in 110 countries. I'm not speaking for these other organizations today, but my remarks will reflect some of what I've learned from those people.

Consumers Union believes that genetically engineered food offers both potential benefits and potential risks for consumers. For that reason, we have long advocated that there should be an approval process at the Food & Drug Administration similar to that for food additives, and that these foods should be labeled.

We therefore think it is unfortunate and misguided that the United States has chosen to address a trade problem it has with the European Union on genetically engineered food by bringing a case at the World Trade Organization. We see little potential benefit for U.S. farmers or the biotechnology industry by taking this course, and we see many risks for the EU-U.S. relationship, and I would like to elaborate on those points a bit.

The European Union regulatory framework for what they refer to as genetically modified organisms, or GMO's, requires a premarket safety approval, labeling, and traceability. We think this is an entirely reasonable scheme. In fact, we wish we had a similar framework here, and a bill has been introduced by Senator Boxer in previous years that would institute a large part of what they have there. We don't think that their scheme is in fact any way trade-illegal under the GATT, and as of 2004, 35 countries, encompassing half the world's population, will actually have mandatory premarket safety approval systems. These include India and China, as well as Australia, New Zealand, Japan, Thailand, Indonesia, and Korea, so I think the U.S. needs to think about whether it may be becoming out of step with the rest of the world, and what that may be doing to our trading relationship.

In the trade challenge which has been filed, the United States is not objecting to all of the EU's regulations, of course, but rather is most concerned about the de facto moratorium on new approvals which has been in effect for the last several years. The EU initially approved a number of genetically modified organisms, but then halted further approvals while it considered revamping its laws to implement full labeling and full traceability of products throughout the food chain.

This process is taking several years, and the process of making laws in the EU, given that it is not one country, like we are, but 15 countries, is somewhat cumbersome, to say the least, but while the U.S. may be impatient and feel the process is going very slowly, we should really note that our Government can also be slow. It took us 12 years, for example, to implement the organic labeling program from the time the law was originally passed.

The key point is that countries that belong to the World Trade Organization have the right to revamp their regulatory schemes as long as they treat domestic and imported goods the same, and in fact the European Union has done so. They have halted the sales of seeds produced by Syngenta and Aventis, which are European-based biotech companies, as well as Monsanto and Dupont. The laws are not trade-discriminatory, and the moratorium isn't, either.

I think it would be also useful if the Congress devoted some effort to thinking through what would happen if we actually do win this WTO suit. What happens then? Will this be, in fact, good for us?

One possibility is that the European Union could approve some additional types of GMO corn, but will this benefit our corn farmers? Let's look for a minute at the soybean industry. The soybean variety which is grown in the U.S. is in fact, already approved in the European Union. Nevertheless, sales have dropped almost by a half in the last 3 years, declining $1 billion.

Why is this? This is because European consumers don't like genetically engineered soy. If the consumer doesn't want your product, it's very hard to sell it, and the corn farmers are not going to be any better off if their product is legalized if they don't have a market for it.

One other possibility, of course, is that the EU may refuse to approve any new corn varieties, in defiance of the WTO ruling, as it did in the beef hormones case, and that the U.S. will then impose retaliatory tariffs. In that case, other innocent bystanders will suffer.

If you take, for example—I believe Hermes scarves were one of the things on which we imposed tariffs in the beef hormone case. This harms the French company that produces them, but it also harms U.S. companies who sell Hermes scarves here, and it harms consumers who have to pay more for the product.

Finally, we are concerned that the U.S. may not realize that it could establish some precedents in this case which could be damaging in the future. Just a few weeks ago, we banned all imports of Canadian beef while we figure out how big a problem we may have with mad cow disease. We have excluded all European beef products from the U.S. for a number of years. What if the European Union, who believes that they have their problem under control, decides that we should now take their beef, and that we're taking too long to figure out how serious the problem is?

Therefore, in terms of the European market, the WTO challenge is, in our view, in some sense a wasted effort, in that it is unlikely to increase our corn exports to any significant degree, and could damage other industries and consumers.

I would like to touch just very briefly also on the issue of hunger in Africa, since President Bush and Ambassador Zoellick have said

that the European caution in this area is making it difficult to fight hunger in Africa. I think it is important to note that the immediate crisis which loomed so severe last winter has passed. The drought has ended. They have had a good harvest in Zambia, and the mass starvation which loomed as a threat is no longer an immediate problem.

The root causes of hunger in Africa do need to be addressed, but as an African colleague of mine said recently, hunger in Africa has many fathers. These include armed conflict, natural disasters, lack of infrastructure to ship foods from one place to another, unfavorable trade rules, and unequal distribution of wealth, to name just a few. Genetically engineered food is fairly low on the list among the Africans I've spoken to, of what they need in terms of fighting their hunger problems. If there is a civil war, it is hard to grow food no matter what the characteristics of the seed.

In sum, Consumers Union believes that the challenge that the U.S. has filed against the EU will be of little benefit to our country, and could do damage, continued damage to the EU-U.S. relationship. In our view, a better strategy at this point for U.S. farmers and industry might be to effectively segregate their genetically engineered and nonengineered output so that we can meet the demand that exists abroad. The trade relationship between the EU and U.S. is enormously important, and nurturing it will have significant benefits.

Thank you.

[The statement of Ms. Halloran follows:]

PREPARED STATEMENT OF JEAN HALLORAN

Introduction

I appreciate the opportunity to testify on the subject of the European Union moratorium on genetically engineered crops. I am Director of the Consumer Policy Institute, a division of Consumers Union (publisher of Consumer Reports) which has taken a keen interest in genetically engineered food for over a decade.

Consumers Union believes that genetically engineered food offers both potential benefits and potential risks for consumers. We have therefore long advocated that these foods should have to go through an approval process at the Food and Drug Administration, like a food additive, that would insure that these foods are as safe and nutritious as conventional foods. We also think, given the newness of this technology and the fact that it is different from conventional food, that genetically engineered food should be labeled. Polls consistently show that more than 80 percent of Americans think genetically engineered food should be labeled. Unfortunately, neither labeling nor mandatory safety approvals are required in the United States, although companies do conduct voluntary safety consultations with the FDA.

We think it is unfortunate that the United States has chosen to address a trade problem it has with the European Union on genetically engineered food by bringing a case at the World Trade Organization (WTO). We see little potential benefit to U.S. farmers or the biotechnology industry from taking this course, and we see many risks. We are concerned that if the U.S. succeeds in winning this case, precedents could be established which could actually be detrimental to U.S. farmers and consumers.

EU Regulations Are Legal Under the WTO

The EU regulatory framework for genetically modified organisms, or GMOs, which requires premarket safety approval, labeling and traceability for GMO products, is an entirely reasonable one. In the EU, a government agency conducts a safety assessment to insure that a GMO contains no dangerous toxins or allergens before it goes on the market. Soon, all movement of GMOs in the market will tracked, and all products containing GMOs will have to be labeled. We wish the US had a similar framework. Indeed, it is important to realize that most of the developed world and much of the developing world is adopting the EU regulatory approach. As of 2004, 35 countries, who encompass half the world's population, will have man-

datory premarket safety approval systems. They include India and China, as well as the EU, Australia, New Zealand, Japan, Thailand, Indonesia and Korea, among others. All these countries except India also require mandatory labeling of genetically engineered food.

The United States is not objecting to EU regulations per se, but rather is most concerned about the de facto moratorium on new approvals which has been in effect for the last several years. The EU initially approved a number of GMOs, but then halted further approvals while it considered revamping its laws to implement full labeling of all GMO products and full traceability, with various thresholds. This process is taking several years. The process of making laws in the EU, given that it is not one country like the United States but 15 countries, is somewhat cumbersome to say the least. But while the U.S. may think this process is going slowly, our Government can also be slow. It took us twelve years, for example, after passage of the National Organic Standards Act, for us to develop an organic labeling program we were satisfied with. During this entire period, it was illegal for anyone to call their food "USDA Organic."

The key point is that countries that belong to the WTO still have the right to revamp their regulatory schemes as long as they treat domestic and imported goods the same. Thus, in our view, the countries of the EU are perfectly within their rights to say that after a brief experience with GMOs, that they want to extend their labeling and traceability rules, and they do not want to implement any further approvals until their complete regulatory scheme is in place. This moratorium has halted sales of seeds for Syngenta and Aventis, which are European-based biotech seed companies, as well as for Monsanto and DuPont.

Winning a Suit May Not Benefit U.S. Farmers

But let us assume that a WTO dispute resolution panel agrees not with me or with the EU lawyers, but with the United States, and decides that the EU, by failing to allow importation and sale of products which a scientific committee had deemed safe, has violated WTO rules. What then?

One possibility is that the EU will approve some additional types of GMO corn. Will this open the EU market to U.S. corn? Let us look at soybeans for a moment. The variety of genetically engineered soybeans that is grown in the United States is already approved in the EU. Yet sales have declined by about $1 billion a year, to almost half of what they were three years ago. Why is this? Because European consumers don't like genetically engineered soy. There is a fundamental law at work here, that is even more fundamental that the GATT agreement. That is the law of supply and demand. If the consumer doesn't want your product, it is very hard to sell it. In Europe, genetically engineered food is as popular as the Edsel.

One other possibility is that the EU may refuse to approve any new corn varieties in defiance of the WTO ruling, as they did in the beef hormones case. What happens then? The U.S. imposes retaliatory tariffs, in which case innocent bystanders will suffer. These tariffs will penalize industries that have nothing to do with this dispute—for example we put tariffs on Hermes scarves, I believe, in the beef hormones case. This damages the French scarf maker. But it also damages the U.S. retailer who previously made a living selling French scarves. It will also harm consumers who want to purchase the scarves, who will have to pay a lot more for them.

Finally, we are concerned that the U.S. may not realize that it could establish some precedents with this case that could come around and damage U.S. agriculture. The U.S. is concerned about delays in approvals in the EU. Just a few weeks ago, we banned all imports of Canadian beef while we figure out how big a problem we think we have with mad cow disease. Would we be happy if Canada began arguing that we were taking too long with restarting imports? Indeed, we currently exclude all European beef products from the U.S. even though the EU believes they have the problem under control. Suppose the EU decided we should take their beef?

Therefore in terms of the EU market, the WTO challenge is in some sense a wasted effort that is very unlikely to increase our corn exports to any significant degree and could damage other industries and consumers, not to mention the negative effects on EU–U.S. relations as a time when they are already strained for other reasons.

WTO Challenge Does Not Address Hunger in Africa

President Bush and Ambassador Zoellick, the U.S. Trade Representative, have said that there is another reason for filing the challenge, however, and that is because European caution is making it difficult to fight hunger in Africa. They were especially concerned when Zambia, a country where mass starvation seemed like a real possibility earlier this year, rejected U.S. GMO corn as food aid.

Fortunately, the rains returned in southern Africa this spring, and there is no mass starvation. We hear from our colleagues in the consumer movement and in food aid work, that Zambia expects to be self-sufficient in food this year. It is even projecting that it could be a net food exporter next year. Thus, there is no food emergency now in Africa.

The root causes of hunger in Zambia and elsewhere should be addressed. But these are multifaceted and GMOs have little to do with most of them. As an African colleague said to me the other day, hunger in Africa has many fathers. They include armed conflict, natural disasters, lack of infrastructure to ship food from regions with surpluses to regions with shortages, unfavorable trade rules, and unequal distribution of wealth and resources, to name just a few. Poverty-stricken African subsistence farmers are not going to be able to buy patented herbicide-tolerant seeds, one of themain types of genetically engineered seeds produced in the United States, and the herbicides to go with them. Subsistence farmers rely on saved seed. There is certainly a theoretical possibility that someday bioengineered crops may be developed that can help African farmers. But civil wars will make it hard to grow food, no matter what the characteristics of the seed. Unless these root causes of hunger are addressed, Africans may conclude that the US is just pursuing its own trade interests with this WTO challenge. Africans also have significant concerns about the environment. African countries were the leaders in developing the Biosafety Protocol which was ratified by 50 countries and went into effect last week. Under the Protocol countries can set up systems for tracking shipments of live GMOs, and have the right to reject them.

Finally, if the U.S. is pursuing this WTO case in the hopes that it will create an impression around the world that GM foods are safe and beneficial, we would urge the US to consider whether this strategy may backfire. What we hear from our consumer colleagues, especially in developing countries, is that some see this case as the U.S. "throwing its weight around." Congress should at least consider the possibility that this case may heighten suspicion about safety, and heighten concerns that this case is part of US efforts at global economic dominance.

Summary

Consumers Union believes that the challenge that the U.S. has filed at the WTO against the EU in regard to genetically engineered food will be of little benefit to U.S. farmers or industry, either in terms of exports to Europe, or in terms of building confidence and markets for our genetically engineered crops elsewhere in the world. In our view, the EU is within its rights under the GATT agreement with regard to its current policies. A better strategy at this point for U.S. farmers and industry might be to effectively segregate their GM and non-GM output, so that we can meet the demand that exists abroad. The trade relationship between the EU and US is enormously important, and nurturing it will have significant benefits.

Senator ALLEN. Thank you, Ms. Halloran.

Mr. Yoder, thank you for your patience. I just got a message, we have a vote at 4:25, so Mr. Yoder, I know you've got a lot of rebuttal points, and that means we have actually another 15 plus minutes. Thank you for your perseverance. We want to hear from you.

STATEMENT OF FRED YODER, PRESIDENT, NATIONAL CORN GROWERS ASSOCIATION

Mr. YODER. Thank you, Mr. Chairman, members of the committee. My name is Fred Yoder. I'm president of the National Corn Growers Association, and I'm past chairman of the Biotech Working Group for National Corn Growers, and I'm also a corn grower from Plain City, Ohio. I would like to thank the subcommittee for giving me the opportunity to testify today and speak regarding the different views about biotechnology between the United States and Europe, and I do have a different perspective than Ms. Halloran.

Today's hearing is very timely, and I commend the chairman and the committee for convening it. As you know, corn is the largest crop grown in the United States, with more than 79 million acres planted last year, and we produced over 9 billion bushels of corn.

Corn acreage is likely to increase this year, with more than one-third of that crop devoted to varieties derived from biotechnology.

Despite this growth, corn growers and farmers across the country are facing various challenges in the international marketplace, and unfounded fears regarding biotechnology is one of the largest. This reality is no clearer than in the European Union. For the past 5 years, corn exports from the United States have been shut out of the EU due to a de facto moratorium on products derived from biotechnology. Prior to the moratorium, U.S. corn exports to Europe totalled 2.3 million metric tons annually. Today, we ship a mere 26,000 metric tons to Europe.

Lacking confidence the Europeans would resolve this dispute quickly through negotiation, the administration initiated a WTO dispute settlement complaint last month against the EU's long-standing moratorium on the approval of biotech products. The National Corn Growers Association pushed strongly for this action, and we were very pleased with the administration's decision to move forward on it.

We would have preferred to avoid a confrontation. We believe we have shown considerable patience over the last 5 years while the moratorium has been in effect, despite the loss of more than $300 million per year in corn exports to the EU We were hopeful that the European leaders would find their way through this regulatory problem and come into compliance with their international obligations. However, we became convinced for a number of reasons that the time had come to act.

First, we lost faith in the willingness of EU officials to resolve the problem without outside pressure. The EU commission has promised many, many times over the past 5 years to restart the approval process for new biotech products, but has always failed to deliver. A determined group of anti-biotech member States has succeeded repeatedly in moving the goalposts by imposing new conditions.

Second, the EU policies are beginning to affect market access for biotech products around the rest of the world. Under pressure from consumer groups influenced by European attitudes, a number of governments have already adopted versions of the EU's current labeling regime, and some are threatening to even restrict imports of commodities.

Third, EU policies are undermining WTO rules. One of the most important achievements of the Uruguay Round of WTO negotiations was the agreement on sanitary and phytosanitary measures, which establishes the rules that help WTO members distinguish between legitimate and illegitimate health and safety regulations. EU policies openly flaunt these rules. It is clear that the EU restrictions have to do with political and regulatory incompetence and misinformation and old-fashioned protectionism, rather than scientific uncertainty. If we refrain from asserting our WTO rights against so blatant a violation, we will see other countries behaving similarly and will find it increasingly difficult to enforce the SPS rules.

It is ironic that many of the European activists who are agitating against biotechnology are citing environmental reasons for their opposition. On the basis of the U.S. experience with biotech crops, it

is already clear that the environmental effects of biotechnology are overwhelmingly positive.

We hope that this trade dispute is very short-lived. It is in the EU's hands. All they need to do is end the case by lifting the moratorium, the illegal moratorium, and start approving. We must note, however, that ending the moratorium will not be the end of our trade problems with Europe.

As I mentioned before, the EU has made adoption of new legislation on labeling and traceability of biotech products a political precondition of restarting the product approvals, and there are calls for yet even more legislation in the works. However, the sampling, testing, and administrative costs required to assure compliance with the proposed European regulations are, we believe, well beyond the ability of the bulk grain handling system without massive cost increases that would destroy competitiveness of imported grain in Europe.

Consumers in Europe and everywhere else should have choices in the food selections they make. This starts with allowing the marketing of safe products and not holding them in perpetual regulatory limbo. Congress understands the need to confront the European Union, and the WTO case has the overwhelming support of Members from both sides of the aisle, from all regions of the country. In fact, the Senate recently adopted a resolution supporting the case, and NCGA thanks you, Chairman Allen, for all of your support.

Again, we thank you for addressing this important issue and providing NCGA the opportunity to address the committee. We look forward to working with your committee on other issues of importance in the future, and I just must say, when she mentioned the hunger in Africa, myself as a corn grower was absolutely incensed when we tried to get corn to be moved into southern Africa to feed the hungry, and when it was refused because they thought it was poisoned, or something like that, it really hurt deeply to me as a producer, because I think that I help produce some of the finest quality corn in the world, and when people die because they're afraid of eating my product it hurts. People died because they did not get a chance to eat that food that was at the dock, and it breaks my heart.

I would welcome your questions. Thank you.

[The statement of Mr. Yoder follows:]

PREPARED STATEMENT OF FRED VODER

Good afternoon. Chairman Allen, Ranking Member Biden and members of the Committee, my name is Fred Yoder. I am President of the National Corn Growers Association (NCGA), former Chairman of NCGA's Biotechnology Working Group and a corn farmer from Plain City, Ohio. I would like to thank the Subcommittee for giving me the opportunity to testify and speak today regarding differing views of biotechnology between the United States and Europe. Today's hearing is very timely, and I commend the Chairman and the Committee for convening it.

NCGA was founded in 1957 and represents more than 32,000 dues-paying corn growers from 48 states. The Association also represents the interests of more than 350,000 farmers who contribute to corn checkoff programs in 19 states.

The National Corn Growers Association's mission is to create and increase opportunities for corn growers in a changing world and to enhance corn's profitability and usage across this country. Biotechnology and trade remain vital to the future of corn growers as we search for new markets and provide grain that is more abundant and of better quality.

Biotechnology offers corn growers improved efficiencies and potential profits when managed wisely and with regulatory oversight based on sound science. The introduction of new varieties and their proliferation across the Corn Belt is redefining current systems of price discovery, consumer information, health regulation and trade management.

NCGA believes consumer acceptance and confidence in our regulatory agencies is vital to the success of this technology. As producers, corn growers have to be mindful of our customers and ensure there is open communication with grain handlers, millers, processors and food retailers across the country. Our association works closely with our partners in the food chain and has an open dialogue to head off any problem before it occurs. We also believe consumer acceptance of biotechnology will increase with the dissemination of science-based information. Responsible and accountable management by biotechnology providers, producers, suppliers, and grain merchandisers is imperative.

As you know, corn is the largest crop in the United States, with more than 79 million acres planted last year, producing 9 billion bushels of grain. Corn acreage is likely to increase this year with more than one-third devoted to varieties derived from biotechnology. While corn producers across the country already understand the benefits of biotechnology, farmers around the globe are beginning to realize the true potential of this exciting technology.

According to a new report from the non-profit International Service for the Acquisition of Agri-biotech Applications (ISAAA), the amount of land planted worldwide with biotech crops increased by 12 percent in 2002. This is the sixth straight year that farmers from around the world have adopted biotech crops at a double-digit pace. While the majority of the global area planted to biotech crops is in the United States, accounting for 66 percent of global plantings, the adoption of biotech crops in 2002 was more than twice as fast in developing countries as it was in developed countries.

In the world market, two out of every three bushels of corn originate in the United States, and we account for more than 40 percent of the total production worldwide. Last year, we exported more than $4.5 billion of corn more than $1 billion of value-added processed corn products.

Despite this growth, corn growers and farmers across the country are facing various challenges in the international marketplace. Unfounded fear of biotechnology is the largest challenge facing corn growers. This reality is no more apparent than in the European Union (EU).

European Union Biotechnology Moratorium

For the past five years, corn exports from the United States have been shut out of the EU due to a de facto moratorium on products derived from biotechnology. In the three years prior to imposition of the moratorium, U.S. corn exports to Europe averaged 2.3 million metric tons annually. Today, we export only 26,000 metric tons.

Lacking confidence the Europeans would resolve the dispute quickly through negotiation; the administration initiated a WTO dispute settlement complaint last month against the EU's long-standing moratorium on the approval of biotech products. The NCGA pushed strongly for this action, and we were pleased with the administration's decision.

We would have preferred to avoid a confrontation in the WTO on this issue. We believe we have shown considerable patience over the five years while the moratorium has been in effect, despite the loss of more than $300 million per year in corn exports to the EU. We were hopeful that European leaders would find their way through their regulatory problems and come into compliance with their international obligations. However, we became convinced for a number of reasons that the time had come to act.

First, we lost faith in the willingness of EU officials to resolve the problem without outside pressure. As the attached chronology illustrates, the EU Commission has promised many times over the past five years to restart the approval process for new biotech products—but has always failed to deliver. A determined group of anti-biotech Member States has succeeded repeatedly in moving the goal posts by imposing new conditions.

We have heard the same kinds of promises recently. The Commission now says that the moratorium will be lifted by the end of the year when new rules on traceability and labeling of biotech products are adopted. However, there is no evidence that the opposition to biotechnology in certain Member States has lessened. Indeed, some Member States have already begun to demand the development of new rules on liability and the co-existence of biotech and non-biotech crops before lifting their opposition to new product approvals. Moreover, even under the Commission's most optimistic scenario, the price for lifting the moratorium is the implementation

of a WTO-inconsistent traceability and labeling regime that could be just as effective a barrier to access as the moratorium itself.

We sincerely hope that the launching of a WTO complaint will prompt EU officials to reexamine their biotech policies and lift the moratorium. On a recent trip to Europe we saw some encouraging signs. Through our experience, officials in the European Commission and farmers throughout the Continent understand the benefits and want access to the technology.

However, according to USTR, the results of last Thursday's dispute settlement consultations in Geneva were not encouraging. We therefore fully support the decision of the Administration to request establishment of a dispute settlement panel at the earliest opportunity.

Second, EU policies are beginning to effect market access for biotech products around the world. Under pressure from consumer groups influenced by European attitudes, a number of governments have already adopted versions of the EU's current labeling regime, and some are threatening to restrict imports of commodities.

The longer we go without asserting our WTO rights, the greater the tendency will be for other countries to impose EU-style policies. On the other hand, a clear victory in the WTO would be a powerful deterrent to countries that may be tempted to follow the EU.

Third, EU policies are undermining WTO rules. One of the most important achievements of the Uruguay Round of WTO negotiations was the Agreement on Sanitary and Phytosanitary (SPS) Measures, which establishes rules that help WTO members distinguish between legitimate and illegitimate health and safety regulations. EU policies openly flaunt those rules.

The SPS Agreement requires that SPS measures be based on a scientific assessment of risks. Every risk assessment performed by the official EU Scientific Committees on products submitted for approval has found that the product in question posed no risk to human health or the environment.

Indeed, the Commission's own Directorate-General for Research concluded:

> Research on the GM plants and derived products so far developed and marketed, following usual risk assessment procedures, has not shown any new risks to human health or the environment, beyond the usual uncertainties of conventional plant breeding.
>
> Indeed, the use of more precise technology and the greater regulatory scrutiny probably make them *even safer than conventional plants and foods.* . . . On the other hand, the benefits of these plants and products for human health and the environment become increasingly clear. [1]

Just last week, in an article in the *San Francisco Chronicle,* two of the world's leading scientists working in biotechnology addressed the question about the safety and testing of these products. In their article, they wrote:

> The reality is that crops developed through plant biotechnology are among the most well-tested, well-characterized and well-regulated food and fiber products ever developed. This is the overwhelming consensus of the international scientific community, including the British Royal Society, the U.S. National Academy of Sciences, the World Health Organization, the Food and Agriculture Organization of the United Nations, the European Commission, the French Academy of Medicine, and the American Medical Association. [2]

Like the data generated to support it, the regulatory process itself is comprehensive. In the United States for example, the regulatory framework includes at least nine distinct opportunities where a regulatory decision in favor of the safety of the biotech product is required before the process can move forward. Five of these decision points include the opportunity for public comment or participation. Combine this with the fact that in the eight years these crops have been grown, there has not been a single adverse health effect. You then realize very quickly that the science, the oversight and our experience all land on one key point, these crops are safe.

However, the EU has repeatedly refused to approve products even after receiving a positive risk assessment and has offered no scientific rationale for its actions. Indeed, it is clear that the EU restrictions have to do with political and regulatory incompetence, misinformation and old-fashioned protectionism rather than scientific uncertainty. If we refrain from asserting our WTO rights against so blatant a viola-

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[1] D-G Research, GMOs: Are There Any Risks? Brussels, 8 October 2001.

[2] C S. Prakash, Martina Newell-McGloughlin, "Listen to Sound Science on Agricultural Technology," *San Francisco Chronicle,* June 20, 2003.

tion, we will see other countries behaving similarly and will find it increasingly difficult to enforce SPS rules.

That would be a potentially disastrous development at a time when countries around the world are beginning to implement the Cartagena Protocol on Biosafety. Now especially is the time to assert the applicability of the disciplines of the SPS Agreement to trade in biotech products.

Finally, EU policies are putting at risk the future of a technology that has already brought great benefits and that holds great promise. A study by the National Academy of Sciences and six other national science academies concluded:

> Foods can be produced through the use of GM technology that are more nutritious, stable in storage . . . and health promoting—bringing benefits to consumers in both industrialized and developing nations . . . GM technology, coupled with important developments in other areas, should be used to increase the production of main food staples, improve the efficiency of production, reduce the environmental impact of agriculture, and provide access to food for small-scale farmers.[3]

However, because the EU is such an important trading block, its restrictions on biotech products have effects far beyond EU borders. The logjam in product approvals has affected the investment decisions by biotech firms and the pace of introduction of new products.

Some U.S. corn farmers have been forced to forgo the use of the technology because of concerns about the marketability of corn byproducts in the EU. Several countries, even biotech-friendly ones like Argentina, have officially restricted the types of biotech products they will permit for similar reasons. And we saw the most egregious manifestation of the effects of the EU ban recently when several famine-stricken African countries refused U.S. food aid, in part because of food safety concerns stemming from European misinformation, and in part because of fears of losing markets in the EU. As Nobel Laureate Norman Borlaug wrote:

> The affluent nations can afford to adopt elitist positions and pay more for food produced by the so-called natural methods; the one billion chronically poor and hungry people of this world cannot. New technology will be their salvation, freeing them from obsolete, low yielding, and more costly production technology.[4]

It is ironic that many of the European activists who are agitating against biotechnology are citing environmental reasons for their opposition. On the basis of the U.S. experience with biotech crops, it is already clear that the environmental effects of biotechnology are overwhelmingly positive. A recent study found that cultivation of biotech crops in the U.S. reduced pesticide use by 46 million pounds. The same study estimated that the adoption of 32 new products currently under development would result in an additional cut in pesticide use of 117 million pounds.[5] In Europe of all places, where per-acre chemical input use is much higher than in the United States, you would think that people who care about the environment would welcome such benefits.

We hope that this trade dispute is short-lived. It is in the EU's hands; all they need to do to end the case is lift the illegal moratorium. Lifting the moratorium does not just mean acting on one or two of the applications that have been delayed over the years, but demonstrating that the entire system has been re-started, and that all products are given timely consideration. However, if they refuse to do so, the U.S. should be ready to take the case to its conclusion.

Labeling & Traceability

We must note, however, that ending the moratorium will not be the end of our trade problems with Europe on biotechnology. As I mentioned before, the EU has made adoption of new legislation on labeling and traceability of biotech products a political pre-condition of restarting product approvals, and there are calls for yet more legislation in the works.

We are concerned that even with a resumption of approvals, our trade in bulk corn with the EU could remain disrupted because of provisions of the pending

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[3] Royal Society, U.S. National Academy of Sciences, Brazilian Academy of Sciences, Chinese Academy of Sciences, Indian National Science Academy, Mexican Academy of Sciences, and Third World Academy of Sciences, *Transgenic Plants and World Agriculture* (2000).

[4] Borlaug, Norman. "Ending World Hunger: The Promise of Biotechnology and the Threat of Anti-science Zealotry. *Plant Physiology,* 124: 487–490.

[5] Leonard P. Gianessi, et al., *Plant Biotechnology: Current and Potential Impact for Improving Pest Management in U.S. Agriculture,* National Center for Food and Agricultural Policy. June 2002, page 1.

traceability legislation. There are numerous types of biotech corn in the U.S. market, tailored to attack different pests or increase production efficiency. These varieties are generally comingled after harvest and in the storage and transportation system since there is no difference in end-use utility or value of the harvested grain. The pending traceability regulation in the EU would require grain handlers to identify each specific biotech event that is present in bulk shipments that can be from 20,000 to 80,000 tons each. These shipments are the equivalent of the corn harvest from 5,000 to 20,000 acres and could come from literally hundreds of farms.

Corn growers pride themselves on their ability to provide high-quality specialty grains to end users who seek improved performance and are willing to help create market-based systems that can supply these products. We have been very successful in serving markets for products like waxy corn, high oil corn, and in the limited area where users will pay the costs of testing and certification, non-biotech corn. However, the sampling, testing, and administrative costs required to assure compliance with the proposed European regulations are, we believe, well beyond the ability of the bulk grain handling system without massive cost increases that would destroy the competitiveness of imported grain in Europe.

We are also concerned that the massive extension of the EU's current biotech food labeling legislation could threaten markets for some of the highest value food products made from our corn. U.S. processors use hundreds of millions of bushels of our corn to produce highly refined food ingredients and food additives. Some of these are exported directly to Europe, and some find their way to that market after being used in food manufacture in the U.S.

The refining processes for these ingredients remove all traces of the DNA or protein introduced in the genetic modification of corn, and there can be no question that there is any food safety issue with these products. The pending EU legislation would require biotech labeling for any product made using modified corn, even if you cannot differentiate it from a conventional product by any objective standard. When the EU first introduced biotech labeling for the limited number of food ingredients where DNA or protein could be detected, the European food industry immediately reformulated their products to remove these ingredients, or source them from other countries. We believe there will likely be a similar response to the new rules and we risk loosing additional markets for U.S. food products.

Food manufacturers in Europe will not label their products because of a widespread public climate of suspicion about food biotechnology. In large part that public attitude has been generated by unfounded claims by activist groups. However, by adding layer upon layer of new legislation, without any scientific demonstration of risk, the European authorities have contributed to this unfounded fear.

Conclusion

Consumers in Europe and everywhere should have choices in the food selections they make. This starts with allowing the marketing of safe products and not holding them in perpetual regulatory limbo. It also means operating a regulatory system that assures consumers that only safe foods are permitted on the market, irrespective of their source. Requiring onerous tracing and labeling requirements for biotech products only contributes to an attitude that there must be extraordinary risk to these products and, in the long run, denies consumers the choice they deserve.

The detractors of biotechnology want to hold onto an aesthetic of farming that no longer exists. With over 6 billion inhabitants, the Earth needs biotechnology to feed developed and developing nations alike. Without a doubt, the images used by Greenpeace activists are frightening. Even more frightening is the potential result these irresponsible actions will have on starving populations. If we adhered to the internationally politically correct standard of farming, the level of starvation in Sub-Saharan Africa and other parts of the world would be much worse.

Congress understands the need to confront the European Union, and the WTO case has the overwhelming support of members from both sides of the aisle from all regions of the country. In fact, the Senate recently adopted a resolution supporting the case and NCGA thanks subcommittee chairman Allen and subcommittee ranking member Biden and the members of the subcommittee for their support.

Without a doubt, the EU moratorium and other types of non-tariff protectionism are detrimental to the free movement of goods and services across borders. I wholeheartedly agreed with Speaker Hastert when he recently testified, stating, "Non-tariff protectionism is detrimental to the free movement of goods and services across borders. We all know that free trade benefits all countries. However, free trade will be rendered meaningless if it is short-circuited by non-tariff barriers that are based on fear and conjecture—not science."

Thank you again for addressing this important issue and providing NCGA the opportunity to address the Committee. We look forward working with the Committee on other issues of importance in the future. I welcome your questions.

[Additional material submitted by Fred Yoder follows:]

EU Moratorium Chronology

"The fact is, some members states are opposed [to biotech products] and will never lift their opposition." Commission Spokesperson Pia Ahrenskilde, October 18, 2001.

1994–1998: Functioning Approval Process—EU authorizes nine crop products under Directive 90/220 between 1994 and 1998. Process becomes progressively more difficult and politicized. Direct, Ministerial-level U.S. intervention necessary to win approval of last two corn products (summer 1998).

October 1998: Moratorium Begins—EU authorizes two biotech carnations in October 1998, the final approvals granted under Directive 90/220.

- Commission officials blame cessation of approvals on lack of confidence in regulatory system.
- They assure U.S. they will restart the process as soon as they develop a proposal for rewriting Directive 90/220, provided companies agree to abide by proposed revisions before they became law.
- Proposal is published, applicants agree to voluntary compliance, but moratorium continues.

June 1999: "Blocking Minority" Calls for Official Moratorium—Ministers from France, Denmark, Greece, Italy and Luxembourg call for suspension of approvals until implementation of the new approval legislation development of rules on traceability and labeling. Ministers from Austria, Belgium, Finland, Germany, the Netherlands and Sweden declare intention to "take a thoroughly precautionary approach" to new authorizations.

July 2000: Commission Promises Restart by End of Year—Environment Council supports continuing the moratorium until Commission prepares proposals on traceability/labeling. Commission assures U.S. proposals will appear before end of year and moratorium will be lifted.

July 2001: Commission Promises Restart Within Weeks—Commission delays release of traceability/labeling proposals until July 2001. Commission assures U.S. approval process will be restarted promptly.

October 2001: Member States Select Commission Proposal—Environment Council rejects Commission proposal for progressive lifting of moratorium. Eight Member States—France, Austria, Finland, Luxembourg, Denmark, Italy, the Netherlands, and Sweden—declare that T/L rules must to be *implemented* new before approvals granted.

January 2002: Commission Promises Restart in October—Commissioners Lamy and Byrne indicate that approval process will restart October 17, 2002, when Directive 2001/18 (successor to Directive 90/220) is implemented.

October 2002: Environment Council Refuses to Operate New Regime—Member State ministers make clear once again that they will block approvals until T/L rules are in place.

December 2002: Restart Linked to Adoption of Liability Rules—At Environment Council meeting, Danish delegation (echoing previous statements by other Member States) declares that the moratorium should remain in place until EU has implemented environmental liability legislation for biotech products. Commissioner Wallstrom says that Member States might use liability as a way to "move the goal posts" again.

January 2003: Restart Linked to Adoption of Rules on Co-existence—At Agriculture/Food Safety Council meeting, nine Member States (Italy, Austria, Denmark, France, Sweden, Belgium, Luxembourg, Greece and Germany) demand that no biotech seeds be approved for planting until legislation regarding coexistence of biotech and non-biotech crops is in force.

March 2003: Commission Says No Restart Before October—Commission Wallstrom tells the Environment Council that the regulatory committee charged with considering applications under Directive 2001/18 will not meet until October 2003 at the earliest.

May 13, 2003: United States and Cooperating Countries File WTO Case— U.S. Trade Representative Robert B. Zoellick and Agriculture Secretary Ann M. Veneman announced the United States, Argentina, Canada, and Egypt will file a World Trade Organization (WTO) case against the European Union (EU) over its illegal five-year moratorium on approving agricultural biotech products.

May 20, 2003: United States Requests Consultations on Measures Affecting the Approval and Marketing of Biotech Products—Complaining parties and respondent hold consultations prior to establishment of a dispute settlement panel.

Senator ALLEN. Thank you, Mr. Yoder, Ms. Halloran. I feel the same way. I will be straightforward with you on the starving people in southern Africa. While the drought may be over, and they had a good growing season and so forth, I don't know how many hundreds or thousands of people died last year from malnutrition, or have permanent injuries, or other problems—especially if they're young people—because of malnutrition when they're young.

I would also like to make my own observations on the issue of Bovine Spongiform Encephalopathy (BSE), mad cow disease. Whether it's Canadian beef or beef from Great Britain, I don't consider potentially contaminated beef to be the same sort of issue as GMO crops. BSE beef clearly is a danger. There could be serious health problems, obviously, to both humans and other herds. You don't want that coming into your country.

And maybe it is just my feeling that scientifically GMO crops may not be desirable; People would like to have something that is all natural, or just like organic foods; some may not want foods irradiated and so forth, but it is not really a question of consumer safety, and I just don't think it has been proven by the evidence that GMO crops, or genetically enhanced crops, are a danger.

Maybe some people may not think they are as nutritious, but do you think that there's an actual harm from somebody eating corn or soybeans or any other genetically enhanced product that is on the market in the United States?

Ms. HALLORAN. No. I think you're misunderstanding, or perhaps I wasn't clear about my point on that. That was not my point at all, and in fact the products that are on the market in the United States appear to be quite safe, although we would prefer to have had a stronger review process. Still, there is no evidence that they pose any harm.

The point I was trying to make related to setting a precedent at the WTO, where we are questioning an internal regulatory process within the European Union, and we are saying that their effort to establish tighter regulations is proceeding too slowly.

My concern is that they could turn around to us and say, well, on this other issue you are acting too slowly, or we question your domestic regulatory decision. We're eating this beef, we think the beef is perfectly safe over here, you should open your doors to our beef, and that we would begin establishing precedents for the future at the WTO that could be turned against us.

Senator ALLEN. All right. I understand the nuances there. I just think the science is different on the two issues.

Ms. HALLORAN. Absolutely.

Senator ALLEN. But regardless of the veracity or persuasiveness of what the Europeans would do trying to make that argument, I take your point.

Ms. HALLORAN. It's a legal point, not a scientific one.

Senator ALLEN. Thank you.

Let me ask you, both of you, in this country—in fact, I think I was a cosponsor of this measure in Virginia, where people do like organically grown products, or some people like goat milk that is not pasteurized, and some babies can't take anything but unpasteurized goat milk, and there are constant battles on these measures, but why not have and, allow voluntary market forces such as a company adding a label, or an advertising claim, as is currently done with organic labeling, and that be the preferred way to respond to consumer desires for this type of information, as opposed to this mandatory process, labeling and traceability regime concerning products produced using biotechnology, if both of you all respond to that comment.

Mr. YODER. Well, one of the things that I think it is important to realize in this country—and we believe in voluntary labeling. We think that is the way to do that, because these products we have on the market today have been deemed by the EPA to be substantially equivalent, which means there is no difference in the quality, the efficacy, anything about the product than what the conventional part is, but we also have a system here with organics now, and we support organic farming, that if somebody wants a non-genetically enhanced food variety, they can always buy organic, but organic costs more to produce, and so that has to be borne in the cost of purchasing it.

We think it is a pretty good system, and that the problem with the labeling and traceability regime we hear about in Europe that they're calling for is basically that with the adventitious presence of genetically modified parts, it's 0.5 percent. It's too, everything is going to have to be labeled, so my question is, what benefit is this to the consumer to go ahead and pay for that additional labeling when they can buy organic?

I mean, there's been a huge effort in the European Union—in fact, in Germany they would like to have eventually 20 percent of the food as organic, and that's fine if that's what they prefer. They have choice with that. Well, why can't we just go ahead and have biotechnology- enhanced foods in there, but there is no choice right now, and that's all we're wanting.

You know, by lifting the moratorium and having regulatory approval, it doesn't mean that the Europeans have to buy this stuff. It just simply means that it's okayed by science. It can be if the consumer wants to buy it. They don't have to. So what we're after is choice here, so we don't have to have the extra cost.

Senator ALLEN. Ms. Halloran.

Ms. HALLORAN. If I could respond, there is choice in the European Union. There is currently a labeling law, but there's so little demand for products that are labeled as genetically engineered that the supermarkets simply don't stock them. We have a lot of labeling requirements in the United States that are mandatory. If juice comes from concentrate, it has to be labeled. If it is frozen, it has to be labeled. If it is irradiated, the ingredients have to be listed, additives have to be listed. People really want to know a lot of things about the food they eat.

Food is really different from almost anything else. You are what you eat, and therefore people want to know a lot more about it than they want to know about other things.

Polls have shown that, consistently shown that 80 percent and up of the public in both Europe and the United States wants labeling of genetically engineered food. It is something they want to know about so they can choose whether or not to eat it themselves.

Mr. YODER. I've been to Europe 3 years in a row now on missions concerning biotechnology, and I've given the growers' perspective to various consumer groups, to members of Parliament, members of the European Commission; one thing that is obvious to me is the fact that this is not a safety issue.

The first 2 years I went we heard about food safety. I just returned from Europe about 2 weeks ago, and I never heard anything about food safety. Now it's coexistence. It is something new. It's another thing. It's another block, and the biggest reason we want the WTO ruling is the fact that this is an example set to other countries.

If nothing else, it is going to send a message to the other countries of the world that this is not acceptable to blatantly flaunt the law. We think it is going to be very beneficial to have this thing settled in the European Union, but it also sends a message to the rest of the world that you have to abide by the WTO laws, and that's why I think it is more important to make sure that we base this on science, we base this on choice, and we base this on what is right.

Senator ALLEN. Well, I'm going to have to get off to this vote, and we will conclude this hearing. The bottom line here, it seems like there should be a convergence or a consensus that whatever food is consumed, that is put on the shelves in this country or any other country, you would expect consumers would want to have a certification based on science, not on fear, but based on science, that that food is wholesome, it is safe. Safety, the bottom line is safety, then with practical labeling and practical methods allow consumers to make that choice.

Do you both agree? Is that just the basic fundamental principles we're trying to get at here?

Ms. HALLORAN. Yes, I would agree with that.

Mr. YODER. That fundamental labeling is for choice?

Senator ALLEN. No. The fundamental point is, you use science, the best scientific methods you can to determine that whatever this food is, whatever's going to be consumed—it could be a food, it could be a drink, it could be a beverage, candy, whatever it may be, that it is safe to consume, within reason—

Mr. YODER. Absolutely.

Senator ALLEN. —like everything else, within moderation, that if you consume this it's not going to cause you any harm.

Obviously, there are people that are allergic to this, that, and the other, but you can't worry about every eggshell skull in the world, but nevertheless, for the vast majority of people, unless there's something unique, this will be safe, and then let the consumers make that decision, and if we could agree on that, and we could get the Europeans to agree on it and also have reasonableness as far as these certifications, it would seem to me that it may be that

in Europe they like organically grown strawberries, or asparagus, or corn, and that's a consumer choice. Let's just have that opportunity to provide that product.

Now, how that affects the rest of the world, that probably does have a matter—it seems to me on this issue we're almost—and not you two, necessarily, but sometimes you were, but for the U.S. and our European friends we're just completely talking past each other, and we can't even get a basic agreement of what are going to be the criteria that we're going to use to determine how to go forward on this, and if we could get at least the basic criteria agreed upon, then we maybe can work toward something that is beneficial to consumers there, if they so desire, but also to our farmers in this country, and ultimately, as you say, Mr. Yoder, the rest of the world, many of whom rely on the United States, or they rely on Europe.

And I saw, talking to the President of the European Parliament, they're very proud of all the efforts they make on world hunger as well, so in the midst of this we ought to be having frank discussions but realize they are with friends, and if we can base it again on science and trust consumers to make decisions on what kind of safe food they want to eat, or have their children eat, I think we can move forward with it.

Well, let me thank all of you for bearing with the schedule on the Senate floor and a variety of votes on a medicare measure, and thank you for your testimony, your insight, and also your wonderful patience. We appreciate it.

The hearing is adjourned.

[Whereupon, at 4:40 p.m., the subcommittee adjourned.]

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