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AAPC-ACEA Joint Submission in Response to USTR's Request for Comments Concerning Proposed Transatlantic Trade and Investment Partnership (TTIP) Agreement

Introduction

The American Automotive Policy Council (AAPC) and the European Automobile Manufacturers Association (ACEA) jointly submit the following comments in response to the Office of the United States Trade Representative's *Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement*.¹

As the largest manufacturing and exporting sectors in the United States (U.S.) and the European Union (EU), the U.S. and the EU auto industries have a major stake in the conclusion of an ambitious bilateral trade agreement. The U.S. and the EU together account for 32% of global auto production and 35% of global auto sales.² U.S.–EU auto-related trade is also significant, accounting for 10% of all trade between the two economies. In 2012, in total, the value of bilateral U.S.–EU trade in autos and auto parts exceeded \$40 billion and 1.1 million passenger vehicles.³ Although there is already robust automotive trade and investment between the U.S. and the EU, tariffs (import duties) and non-tariff barriers (divergences in automotive regulations), unnecessarily burden and constitute obstacles to free trade.

This submission focuses on AAPC and ACEA views on auto regulatory convergence. AAPC and ACEA shall provide their views on appropriate tariff phase-out, rules of origin, trade facilitation and other auto-related matters regarding the TTIP negotiations at a later date.

According to the EU Impact Assessment Reports,⁴ current auto non-tariff barriers (NTBs) are equivalent to an *ad valorem* tariff of approximately 26%.⁵ The elimination of tariffs and 10% of

¹ U.S. Federal Register, Vol. 78, No. 62, p. 19566 (April 1, 2013).

² OICA.net (includes passenger and commercial vehicles)

³ U.S. Exports-U.S. Dept. of Commerce & U.S. ITC / EU Exports- Eurostat

⁴ Commission Staff Working Document (2013): "Impact Assessment Report on the Future of EU-U.S. trade Relations". (hereinafter "Impact Assessment") and *See* http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150759.pdf; Centre for Economic Policy Research (2013): "Reducing Transatlantic Barriers to Trade and Investment" (hereinafter "Reducing Barriers") http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf. Note: Estimates based on 2027 projections, ten years after TTIP implementation.

⁵ *See Impact Assessment*, p. 43. *Reducing Barriers*, p. 20. Table 2.

existing U.S. and EU NTBs would increase EU vehicle and parts exports to the U.S. by 71% and increase U.S. vehicle and parts exports to the EU by 207% during the period 2017-2027.⁶ The elimination of tariffs and 25% of existing U.S. and EU NTBs would increase EU vehicle and parts exports to the U.S. by 149% and increase U.S. vehicle and parts exports to the EU by 347% during the period 2017-2027.⁷

Eliminating tariffs and achieving greater regulatory convergence of current and future standards through the TTIP will increase trade, lower costs, create jobs, and improve the international competitiveness of the industry, strengthening the automotive industry and its economic contribution in both economies. In fact, the increase in U.S.–EU auto trade associated with the elimination of tariffs and non-tariff barriers accounts for more than 1/3 of total estimated increase in bilateral trade flows associated with a successful TTIP negotiation.⁸ Thus, to achieve an ambitious TTIP outcome that benefits the auto industry, as well as the U.S. and EU economies as a whole, there must be strong and sustained political support for the effort at the highest levels of government, and the relevant regulatory authorities, particularly with regard to meaningful regulatory convergence.

Achieving Greater Regulatory Convergence

Greater auto regulatory convergence between the EU and U.S. would strengthen the automotive industry and the sector's economic contribution in both regions.

Representing a market of almost 30 million annual vehicle sales, a successful regulatory convergence effort through the TTIP would also set up the EU and the U.S. as worldwide standard setters and encourage third countries to avoid further auto regulatory fragmentation.

Today, significant differences exist in the prescribed test procedures and requirements between the U.S. and EU regulations, although both effectively address the same motor vehicle safety and environmental challenges.

For over two decades, U.S. and EU regulators have long promised to achieve global regulatory uniformity and to encourage a collaborative approach in testing and certification procedures by promoting greater acceptance of comparable regulations and health and safety-related measures.

Yet, there is little to show for these efforts. In the past fifteen years, only seven safety regulations⁹ have been globally harmonized through participation in the United Nations Working Party 29 (UN WP.29 1998 Agreement).

The negotiation of a transatlantic trade agreement presents an opportunity to implement a regime that effectively breaks down regulatory barriers in the auto sector, recognizes regional integration based on existing free trade agreements that benefits both the U.S. and the EU, reduces costs and increases commercial predictability, while respecting U.S. and EU sovereignty and without sacrificing vehicle safety or environmental performance.

AAPC and ACEA's regulatory convergence proposal is guided by the following principles:

⁶ See *Impact Assessment*, p. 43.; *Reducing Barriers*, pp. 68-69. Tables 31-32.

⁷ See *Impact Assessment*, p. 43.; *Reducing Barriers*, pp. 68-69. Tables 31-32.

⁸ See *Reducing Barriers*, pp. 68-69. Tables 31-32.

⁹ Pedestrian safety, head restraints, door locks, safety glazing, electronic stability control, motorcycle controls and displays, and motorcycle braking systems.

- Strong and sustained political support at the highest levels of government, and the relevant regulatory authorities.
- No net increase in U.S. or EU regulatory requirements, as a result of regulatory convergence of existing regulations.
- No new third regulations (in addition to the existing U.S. and EU regulations) or additional certification requirements.

Mutual recognition shall permit an automaker to sell a vehicle built to either recognized standard in either market.

In the past, major efforts have been undertaken to harmonize auto standards, yet progress has been slow. Therefore, AAPC and ACEA propose a new approach:

With regard to existing regulations, mutual recognition should be presumed unless it is demonstrated that a regulation is deficient from a safety or environmental outcome perspective based on a data driven analysis. Mutual recognition would imply that vehicles in compliance with either the U.S. or EU safety or environmental regulations are considered to offer the same level of safety and environmental performance in both markets. An on-going commitment by all parties to work cooperatively to identify and resolve any obstacles to the practical implementation of the regulatory convergence effort will be essential.

With regard to new regulations, (when it is determined that one is needed (e.g. electric vehicles)), AAPC and ACEA recommend that the U.S. and EU implement a joint auto regulatory harmonization process that promotes and facilitates the development and adoption of common future new regulations. This approach will strengthen the U.S. and EU roles as worldwide auto standards setters, providing momentum for global auto regulatory convergence.

Mutual Recognition of Existing Regulations

The AAPC and ACEA propose that acceptance of existing EU regulations in the U.S., and vice versa, should be self-executing. Rather than attempt to analyze and then unify divergent requirements/testing procedures – exercises that have virtually paralyzed harmonization efforts to date – the focus should be a data-driven evaluation of a given regulation.

Acceptance of an existing regulation should be presumed recognizing the significant advancements that the regulations have provided in environmental and safety technologies in both the U.S. and the EU, unless, the analysis of the data conducted by the responsible regulatory agency demonstrates that the regulation is deficient from a safety or environmental perspective.

Rather than wait for the conclusion of FTA negotiations and entry-in-force of the trade pact to initiate this mutual recognition review process, AAPC and ACEA recommend that that process begin in earnest immediately in close cooperation with the industry in order to take advantage of the current increased existing political will and interest in regulatory convergence.

In conjunction with this submission, and for your consideration, AAPC and ACEA have prepared the attached non-exhaustive list of U.S. and EU regulations for mutual recognition during the TTIP negotiations (*See Attachment A*), and respectfully propose the following data driven process for purposes of completing the necessary assessment:

- Within six months of the formal launch of TTIP negotiations, AAPC and ACEA request that the U.S. and EU regulators indicate whether they intend to mutually recognize the regulations on this list.
- For regulations for which recognition is rejected, the regulators should make public the performance outcome data upon which the decision is based, which demonstrates that a regulation is deficient from a safety or environmental perspective.
- Stakeholders should have six months to review and respond to the data.
- Within three months, based on such responses, regulators should review and reconsider those decisions. If a decision denying mutual recognition is not reversed, the regulators would again make public the performance outcome data which demonstrates that a regulation is deficient from a safety or environmental perspective.

Treatment of Existing Regulations Not Included on the AAPC-ACEA Mutual Recognition List

The best possible outcome for the U.S. and EU auto sectors is comprehensive mutual recognition, where a vehicle certified as compliant with safety and environmental requirements in the U.S. is accepted as compliant in the EU, and vice versa. However, in light of the short time frame designated for the TTIP negotiation, achieving comprehensive mutual recognition is unlikely and as such, AAPC and ACEA have put forth a limited, non-exhaustive list of regulations for consideration for mutual recognition. Thus, even if this mutual recognition is a complete success, there will still be a number of U.S. and EU regulations that remain to be converged.

AAPC and ACEA therefore also recommends that the U.S. and EU include a provision in TTIP establishing a joint auto task force to continue to work towards comprehensive mutual recognition following the conclusion of the trade pact negotiations. Building on the success and experience of the TTIP-related mutual recognition effort, this task force would meet at least twice a year to consider industry proposals for further regulatory convergence of existing regulations. The task force would be coordinated by the Office of the United States Trade Representative (USTR) and the Office of Information and Regulatory Affairs (OIRA) for the United States and the appropriate authorities for the European Union.

The task force would release annual reports to the public on its regulatory convergence efforts, including the status of each industry regulatory convergence proposal and, in instances where U.S. and/or EU officials reject a proposal, the performance outcome data demonstrating that the regulation was deficient from a safety or environmental perspective. Other stakeholders on the task force would have the right to submit their views on the task force's work and its regulatory convergence-related decisions.

Development of Common Future New Regulations¹⁰

When a new regulation is needed, a joint EU-U.S. auto regulatory harmonization process, that takes into account differences in U.S. and EU auto regulatory development and implementation

¹⁰ AAPC and ACEA suggest that the proposal discussed below relating to the development of common future new standards should also apply when either the U.S. or the EU is contemplating the revision of a standard that has been mutually recognized through the TTIP negotiation, or subsequently through the post-agreement regulatory convergence process described above.

timelines, needs to be developed that promotes and facilitates the development and adoption of common future new regulations. Ideally, this process would include a mechanism to foster the development of common voluntary standards in the pre-regulatory environment.

In developing this joint approach, the lessons and experience of the recent U.S.-EU collaboration in developing an electric vehicle plug standard, and other voluntary agreements, should be taken into account.

Key elements of a U.S.-EU harmonized standards development process must:

- Aim at strengthening the automotive industry in both regions, with lower costs and increased predictability;
- Reduce complexity costs and administrative burdens while keeping needed flexibility;
- Have strong and sustained political support at the highest levels of government;
- Engage industry to work together to develop each harmonized approach; and
- Provide a timeline to complete the development of each harmonized approach.

AAPC and ACEA suggest that the aforementioned proposed joint auto task force should play a key role in promoting the development of U.S.-EU common future new regulations, when such regulations become necessary.

The outcome of this joint EU-U.S. auto regulatory convergence process should also be an agreement to help streamline and improve the efficiency of the current global auto regulatory development process (i.e. avoid as much as possible the introduction of options or exemptions under the GTR process of the UN WP29 '98 Agreement or '58 Agreement).

Finally, in addition to the need to address divergent U.S. and EU auto regulations, governmental consumer information (public domain assessments) testing and rating requirements in the U.S. and EU, which also have a significant impact on transatlantic trade, are often divergent. The goal of consistency in these protocols would also contribute to enhanced cooperation and transatlantic trade opportunities.

Conclusion

AAPC and ACEA believe that the TTIP presents an opportunity to break down tariffs and regulatory barriers in the auto sector, recognize regional integration based on existing free trade agreements that benefits both the U.S. and the EU, reduce costs and increase commercial predictability, while respecting U.S. and EU sovereignty and without sacrificing vehicle safety and environmental performance. AAPC and ACEA support a comprehensive approach, which should include the phase-out of tariffs and NTBs as well as improving regulatory convergence. These priorities are directly linked and should thus be considered a single undertaking. To achieve an ambitious outcome, especially with regard to regulatory convergence, there must be overwhelming and sustained political will at the highest levels.

ATTACHMENT A

AAPC-ACEA Non-Exhaustive List of Candidate Regulations for Mutual Recognition¹¹

Safety Regulations

	EU Regulation	Description	U.S. Regulation
1	ECE R94	Front impact	FMVSS 201 & 208
2	ECE R 95	Side impact	FMVSS 214
3	ECE R34	Rear impact	FMVSS 301 303 & 305
4	ECE R64	Tyre pressure monitoring	FMVSS 138
5	ECE R11	Door locks and latches	FMVSS 206
6	ECE R121	Controls and Tell Tales	FMVSS 101
7	ECE R 13H & 13	Braking incl. BAS, ESC, HD , etc.	FMVSS 126 & 105 & 106 & 116 & 121 & 135
8	ECE R48 & 7 & 6 & 4 & 23 & 31 & 37 & 38 & 77 & 87 & 91 & 98 & 99 & 112 & 119 & 123	Lighting	FMVSS 108 & Part 564
9	ECE R100 & 12 & 94 & 95	Electric safety	FMVSS 305
10	ECE R116 & 18 & 97	Anti-theft	FMVSS 114 & Part 541 and 543
11	ECE R17	Seat strength and head restraints	FMVSS 202a
12	ECE R14 & 16	Seatbelt anchorages	FMVSS 210
13	ECE R16 & 44	Seat belt and restraint systems	FMVSS 208, 209 & 213
14	EU 672/2010	Defrost / demist	FMVSS 103

¹¹ Those regulations identified by bold red text are regulations that do not apply to light-duty motor vehicles. They apply to heavy-duty commercial and transit vehicles and are included in this list at the request of ACEA members that produce such heavy-duty vehicles and may also be of interest to U.S. producers of such vehicles.

15	ECE R14, 16 & 44	Child restraint anchorage systems	FMVSS 213 & 225
16	EU 1008/2010	Wash / wipe	FMVSS 104
17	ECE R43	Safety glazing	FMVSS 205
18	ECE R30 & 54 & 64 & 106 & 117	Tyres	FMVSS 109 & 110 & 119 & 120 & 129 & 139
19	ECE R118	Flammability of materials	FMVSS 302
20	ECE R 14 & 16	Seat Belt Assembly and Seat Belt Assembly Anchorages	FMVSS 209 & 210
21	ECE R17 & 80	Seating System	FMVSS 207
22	ECE-R12	Impact from Steering Control	FMVSS 203 & 204
23	ECE-27 & 13 & 13H & 65	Warning Devices	FMVSS 125
24	ECE R89	Accelerator Control System	FMVSS 124
25	ECE R21	Power Operated Windows, etc.	FMVSS 118
26	ECE R46	Rear Visibility	FMVSS 111
27	ECE R21	Interior Fittings	FMVSS 201
28	ECE R58, 73 & 93	Rear, Side and Front under run	Part 393

Environmental Regulations

	EU Regulation	Description	U.S. Regulation
1	ECE R 83	Light duty emissions regulations <i>[Note: In this case, AAPC and ACEA seek the development of a harmonized test cycle for use in both markets.]</i>	40 CFR Part 86
2	ECE R 49	Heavy-duty engine emissions	40 CFR Part 1065 & 40 CFR part 86 subpart N. Concerning OBD: 40 CFR Part 86, 89, 90, 1027, 1033, 1042, 1048, 1054, 1060, 1065 and 1068.

3	ECE R 85	Measuring of engine power	40 CFR § 86.094-8 and §86.096-8. This incorporates by reference standard SAE J1349, Engine Power Test Code—Spark Ignition and Compression Ignition, June 1990. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.
4	ECE R 51	European pass-by noise regulations as equivalent to U.S. for trucks > 10,000 lbs.	40 CFR Part 205.54
5	ETSI 300	Radio Frequency Interference	47 CFR 15 C