June 2, 2011

Ms. Lori Cooper
Office of the European Union
U.S. Department of Commerce
14th & Constitution Avenue, NW, Room 3513
Washington, DC 20230

Re **Docket ITA–2011–0006**: *Request for Public Comments Concerning Regulatory Cooperation Between the United States and the European Union That Would Help Eliminate or Reduce Unnecessary Divergences in Regulation and in Standards Used in Regulation That Impede U.S. Exports* (*Federal Register* Vol. 76. No. 85, Tuesday, May 3, 2011)

Dear Ms. Cooper:

The following comment is submitted by the Representative of German Industry and Trade (RGIT) on behalf of the Federation of German Industries (*Bundesverband der Deutschen Industrie, e.V.*, BDI) and the German-American Chambers of Commerce (AHK-USA) re Docket ITA-2011-0006.

This office approves of the objective to deepen further the transatlantic economic relationship by identifying barriers to trade and working to remove them through greater cooperation on policy priorities, regulations, and standards, and by engaging in concrete activities ("lighthouse projects") that showcase advanced technology, foster the exchange of best practices, and promote greater dialogue between policymakers, regulators and industry on both sides of the Atlantic.

This office, and its principals, have been strong supporters of the Transatlantic Economic Council (TEC) since its creation at the 2007 EU-U.S. Summit in Washington, D.C. We support and closely monitor the EU-U.S. High Level Regulatory Cooperation Forum, the EU-U.S. Energy Council, and the EU-U.S. Summits. These forums convene public and private stakeholders and thus hold great promise for deepening even further the already vibrant transatlantic economic and investment relationship.

Transatlantic trade and investment are important motors of economic growth, well-paying jobs and prosperity. Liberalized markets can revitalize depressed regions, lower consumer prices and increase societal welfare. Regulations and standards that are divergent, incompatible, unduly burdensome, costly, ineffective or restrictive, can hinder the benefits of trade and investment.

This office circulated the *Federal Register* notice to our principals and their member associations and companies (Members), seeking "on-the-ground" commentary regarding areas where it may be possible to eliminate or ameliorate the effects of divergent standards and regulations without sacrificing protection or quality, and emerging or high-growth sectors that may be benefit from timely transatlantic regulatory cooperation. The comments below come from companies and industry associations that are active worldwide, and in this country, in the electrotechnical/electronics and renewable energy sectors.

About the RGIT

The Representative of German Industry and Trade (RGIT) is the Washington, DC liaison office of Germany's largest trade and industry associations: the Federation of German Industries (BDI), and the Association of German Chambers of Industry and Commerce (*Deutscher Industrie- und Handelskammertag*, DIHK). Dr. Thomas Zielke is President. Founded in 1988, RGIT's mission is to foster free trade and a welcoming business environment on both sides of the Atlantic to achieve sustainable growth, jobs and innovation for companies involved in German-American economic relations.

RGIT is supported by Germany's Federal Ministry of Economics and Technology (BWMi) and serves as the voice of German Industry on behalf of RGIT's principals. The BDI speaks for 37 sector associations, 15 regional offices, and circa 100,000 companies with a total workforce of eight million people. A list of the BDI's members is attached as **Annex A**. The DIHK represents the 80 German Chambers of Industry and Commerce (IHK) and their 3.6 million member companies.

About the AHK-USA

The German-American Chambers of Commerce (AHK-USA) are the foreign representation offices of the DIHK in the United States. The AHK-USA is one of the largest bilateral trade organizations worldwide. The AHK-USA has office locations in Atlanta, Chicago and New York plus branch offices in Houston, Philadelphia and San Francisco. Outside Germany, the German Chamber Network (AHK) provides experience, connections and services worldwide through 120 locations in 80 countries.

1. The Significance of Transatlantic Investment and Trade

Transatlantic trade and investment between the United States (U.S.) and the European Union (EU) are the bedrock of the global economy, accounting for more than $4 trillion in total commercial sales, 68 percent of foreign direct investment (FDI), 30 percent of global trade, 44 percent of world GDP, and 14 million "onshored" jobs. Billions of dollars transact across the Atlantic each day.[1]

Underpinning these impressive numbers is a relationship founded on shared values, trust, dialogue, cooperation, compromise, and hard work. While there are important differences between the two markets, the commonalities and similarities are far greater than the variances. The EU-U.S. economic and investment relationship is more harmonious than many other bilateral trade relationship. The EU and the U.S. may not agree in every instance but they typically are in greater alignment with one another than with the large emerging economies.

In the accelerating global race to set standards, norms and precedents that can define markets for years to come, the scope, relative harmony and shared values of the transatlantic relationship should not be underestimated or ignored in favor of newer markets. Policymakers and regulators must bear in mind that market disruptions, whether transatlantic or another dimension, ultimately distort global economic and investment flows, which can impede growth and prosperity across the globe.

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[1] Facts and figures cited in this section come from *The Transatlantic Economy 2010: Annual Survey of Jobs, Trade and Investment between the United States and Europe*, by Daniel S. Hamilton and Joseph P. Quinlan. http://transatlantic.sais-jhu.edu/bin/a/t/te2010_final_text.pdf.

German industry is a leading investor in the U.S.[2] More than 3,000 German companies of all sizes are active here. Combined, the U.S. subsidiaries of German companies directly employ more than 650,000 American workers, 12% of the 5.5 million in-sourced jobs in the country, and contribute tens of thousands of additional indirect jobs. Through December 31, 2009, German FDI in the U.S. totaled $218 billion, nearly 10% of the $2.3 trillion that foreign-based businesses have invested in the U.S. overall. Based on 2008 data, Germany is the 6th largest export market for the U.S., and the 5th largest exporter of merchandise to the United States.

Transatlantic trade and investment are a priority for this office, our principals, and their Members. There is strong support throughout the German business community to enhance transatlantic trade and investment by reducing regulatory barriers that can impede trade flows, increase costs to companies and consumers, and impair the competitiveness of American and European businesses.

2. Introduction

This office welcomes the opportunity to provide comment on how greater regulatory cooperation between the U.S. and the EU can enhance transatlantic commerce and investment by eliminating or reducing divergent regulations and standards, and by identifying emerging or high-growth sectors that may be benefit from timely transatlantic regulatory cooperation. As noted, the comments below come from internationally active companies that are deeply involved in the U.S. market.

3. Contribution from Electrotechnical/Electronics Sector

Companies in the fields of electrical, electronic and optical connection, transmission and networking, plus manufacturing, mechatronics and software creation, submitted following comment:

A. *Standardization Processes & Structure* - The general structure of standardization in the electrical/electronics industry is different between Europe, Asia and the U.S. In Europe standardization often occurs under a single European entity like CEN (The European Committee for Standardization) or CENELC (the European Committee for Electrotechnical Standardization). If country-based standards are still in use they usually are accepted by other countries without further testing.

   In contrast, in the U.S., there are at least 13 different organizations that issue standards. The biggest and best known of these is Underwriters Laboratories, Inc. (UL). UL's standards are well known and widely adopted. But, in a particular situation, a given manufacturer could choose another (non-UL) industry standard and manufacture equipment based on it.

B. *Compliance Testing* – A second key difference is that, in the U.S., final assemblies are often tested against the applicable standard, not necessarily the single components that constitute the assembly. Example: Industrial Control Panels. In the U.S., with respect to automation assemblies, testing of the control panel is governed by UL 508A.

[2] Unless noted otherwise, facts and figures cited in this section come from *RGIT Fact Sheet: German-American Trade, Investment and Jobs*, 2010. http://www.rgit-usa.com/uploads/media/Fact_Sheet_2010.pdf.

The requirements under UL 508A cover "*industrial control panels intended for general industrial use, operating from a voltage of 600 volts or less*," as well as "*industrial control panel enclosures and industrial control panels intended for flame safety supervision of combustible fuel type equipment, elevator control, crane or hoist control, service equipment use, marine use, air conditioning and refrigeration equipment, and for control of industrial machinery including metalworking machine tools, power press controls, and plastic injection molding machinery*."[3]

Accordingly, technically, a connector could fall within the ambit of UL 508A but as a practical matter not be used in the given final assembly, as the standard virtually prohibits the use of connectors. There is no equivalent European standard that causes such a conflicting situation.

The example cited above burdens transatlantic commerce in that, under the present system, a U.S. manufacturer would often have to generate a solution that conforms to the requirements of the U.S. market, and another solution to serve the European market.

C. *Competiveness* – Under the current system, U.S. manufacturers in the electrical/electronics industry may face greater competitive pressure in having to conform to U.S. requirements for the domestic market and satisfy other requirements for foreign markets. Insofar as Asian countries are expressing interest in accepting or adopting the European standardization structure, U.S. manufacturers may benefit from using European standards.

Consider again UL 508A. This UL standard requires U.S. manufacturers to hardwire connections from the control panel to the various drives, robots etc. This limits the serviceability of such assemblies and therefore increases downtime. This lowers the competitiveness of the products on the European market, as serviceability and MTTR (mean time to repair) are important criteria for the economical evaluation of automation projects.

The relative fragmentation of the U.S. standards structure in this sector limits the opportunities of U.S. suppliers and increases their cost. It also creates long-term issues for their products, which limits competitiveness in the European markets.

The issues noted with respect to UL 508A are similar to issues with other UL standards.

[3] http://ulstandardsinfonet.ul.com/scopes/0508a.html.

D. *Excess Cost* – the additional cost created by dual standard solutions and/or dual developments for a single application reduces export opportunities for U.S. manufacturers relative to the high level of demand present in international markets. In some cases companies may elect to rely on offshore development and manufacturing of products to serve international markets rather than to export the products and devices from the U.S.

Solutions

1) Harmonizing such divergent standards would be beneficial and lower business and compliance, costs but this may be difficult to achieve given differences in the way in which standards are established and promulgated in the U.S. and the EU.

2) Given the systematic differences, an important first step would be to compile all available, applicable U.S. standards and then integrate them with European standards under IEC (the International Electrotechnical Commission).

4. Contribution from Wind Sector

Companies engaged in the manufacture of wind turbines and other components, submitted following comment:

A. *Divergent Electrical/Technical Standards* – one of the greatest challenges in marketing our products (wind turbines) in North America is the lack of a harmonization of electrical and other technical standards between U.S. norms and industry, and EU-wide accepted IEC norms. Example: in many countries a threshold question is whether a wind turbine should be classified as a building, and therefore subject to local building codes and standards, or as a standalone technical system, akin to a gas turbine or other electrical generator.

B. *Self-Certification* – under the terms of the European Machinery Directive, European manufacturers and companies can self-certify technical products that fill within the scope of the Directive. In the U.S., third party certification through Nationally Recognized Testing Laboratories (NRTLs) is required. This leads to greater compliance costs and potentially greater processing time before a product can go to market.

Solutions

1) Harmonizing standards between the U.S. and EU markets, or, ideally, adopting and recognizing IEC norms for technical products in the U.S., would promote substantial growth in the wind sector for U.S. and EU companies by moving beyond discussions whether to apply local building codes to wind turbines and which UL standards should apply to a given wind park.

2) Permitting manufacturers and companies covered by the European Machinery Directive to self-certify products also for sale and use in the U.S. market would stimulate transatlantic activity in the wind sector. Even if the U.S. regulatory authorities would not

be able to permit self-certification, a harmonized and more clear set of technical norms would deliver substantial value.

5. Contribution from ZVEI

The German Electrical and Electronic Manufacturers' Association (Zentralverband Elektrotechnik- und Elektronikindustrie e. V., ZVEI) represents the economic, technological and environmental policy interests of the German electrical and electronics industry. The ZVEI promotes the development and use of innovative technologies by proposals concerning research, technological, environmental protection, educational and scientific policy. It supports market-orientated European and international standards-making activities. The electrical industry manufactures and creates a wide range of products varying from electronic components to system solutions for automation, energy, transportation, safety and medical technology.

The ZVEI submitted comment directly. This is a recap of its comments and suggestions:

A. *Self-certification* – the ZVEI reiterates arguments for permitting limited use in the U.S. of self-certification as an alternative or accepted variant to the current U.S. process, which requires that compliance testing be performed by NRTLs such as UL.

B. *Multiple Standards* – citing as a test case the interplay of UL standards 508A (mentioned above), 2237 and 2238, the ZVEI questions the necessity for all three standards to be required in a given circumstance, where a relatively small change to the underlying process can trigger a time-consuming and costly process to obtain the additional certifications.

C. *Technical Data and Design Documents* – the ZVEI questions the rationale behind requirements set forth by UL testing facilities in Europe relative to the provision of technical data and design documentation, where the necessary link between the data required and the need to test and certify the underlying components and sub-assemblies and products is absent or unclear.

D. *International Cooperation* – the ZVEI cites U.S. national standards, often issued by UL or NEMA (the National Electrical Manufacturers Association), which typically do not correlate to similar internationally-adopted standards, as market barriers.

Solutions

1. The U.S. should increase participation in the work of international standards setting bodies such as IEC; the U.S. should adopt, e.g. through ANSI (the American National Standards Institute) internationally-recognized standards; and the U.S. should withdrawal, as done by EU member states, national standards that conflict with the international counterparts.

2. The UL should review its policies, procedures and rationale for requiring additional standards certifications where relatively minor changes are made to operational and manufacturing processes, and it should review its policies, procedures and rationale for

requiring technical data and design documentation that do not appear to have a link to the underlying components, sub-assemblies or products that are the focus of the test procedures.

6. Conclusion

As evidenced by the comments noted above, there are multiple ways in which the EU-U.S. economic and investment relationship, still the most prosperous and robust in the world, can be enhanced even further. This office appreciates the effort required to carefully assess regulations and standards, identify gaps that may be susceptible to harmonization or convergence, and commit the political and regulatory will that may be necessary to implement concrete solutions. This office welcomes the attention placed on identifying emerging areas where up-front, timely dialogue between policymakers, regulators and other stakeholders can help to avoid divergent approaches at a future point in time.

While dismantling or minimizing extant market barriers or challenges may not be easy, when done properly, substantial rewards can accrue to companies, consumers investors. This should provide sufficient motivation to ensure that the transatlantic marketplace continues to set the gold standard for open markets, liberalized investment policies, and high-performance goods, products and services.

This office appreciates your consideration of this public comment and would be pleased to answer any questions that you may have.

Sincerely,

Dr. Thomas Zielke

ANNEX A

Verband der Automobilindustrie e.V. (VDA)

Hauptverband der Deutschen Bauindustrie e.V.

Bundesverband Baustoffe – Steine und Erden e.V. (BBS)

Verband Beratender Ingenieure (VBI)

Verband der Chemischen Industrie e.V. (VCI)

Zentralverband Elektrotechnik- und Elektronikindustrie e.V. (ZVEI)

Bundesverband der Deutschen Entsorgungs-, Wasser- und Rohstoffwirtschaft e.V.

Wirtschaftsverband Erdöl- und Erdgasgewinnung e.V. (WEG)

Bundesvereinigung der Deutschen Ernährungsindustrie (BVE)

Verband Forschender Arzneimittelhersteller e. V. (vfa)

Bundesverband der Deutschen Gießerei-Industrie (BDG)

Bundesverband Glasindustrie e.V.

Zentraler Immobilien Ausschuss e.V. (ZIA)

Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e.V. (BITKOM)

Verband der Kali- und Salzindustrie e.V. (VKS)

Bundesverband Keramische Industrie e.V. (BVKI)

Wirtschaftsvereinigung Kunststoff (WVK)

Flughafenverband ADV (Arbeitsgemeinschaft Deutscher Verkehrsflughäfen)

Bundesverband der Deutschen Luft- und Raumfahrtindustrie e.V. (BDLI)

Verband Deutscher Maschinen- und Anlagenbau e.V. (VDMA)

WirtschaftsVereinigung Metalle e.V. (WVM)

Mineralölwirtschaftsverband e.V. (MWV)

Arbeitgeber- und Wirtschaftsverband MoVe e.V.

Verband Deutscher Papierfabriken e.V. (VDP)

Bundesverband der Pharmazeutischen Industrie e. V. (BPI)

Die Vereinigung Rohstoffe und Bergbau e.V. (VRB)

Verband für Schiffbau und Meerestechnik e.V. (VSM)

Bundesverband der Deutschen Sicherheits- und Verteidigungsindustrie e.V. (BDSV)

Wirtschaftsvereinigung Stahl

Wirtschaftsverband Stahlbau und Energietechnik e.V. (SET)

Wirtschaftsverband Stahl- und Metallverarbeitung (WSM)

Gesamtverband der deutschen Textil- und Modeindustrie e.V.

Bundesverband der Deutschen Tourismuswirtschaft e.V. (BTW)

Verband der TÜV e.V. (VdTÜV)

Verband der deutschen Verbundwirtschaft e.V. (VdV)

Verein der Zuckerindustrie e.V.

Industriengruppe – Börsenverein des Deutschen Buchhandels e.V.

Industriengruppe – Bundesverband Schmuck, Uhren, Silberwaren und verwandte Industrien

Industriengruppe – Verband der Deutschen Automatenindustrie e.V. (VDAI)

Industriengruppe – Verband der Deutschen Dental-Industrie e.V. (VDDI)

Industriengruppe – Verband der Deutschen Lederindustrie e.V.