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Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union

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Abstract

This report catalogs trade-related barriers that U.S. small and medium-sized enterprises (SMEs) perceive as disproportionately affecting their exports to the European Union (EU) relative to large exporters to the EU. Various approaches were used to gather information directly from SMEs and other interested parties ("respondents") for this report.

Respondents reported that numerous EU trade barriers, particularly standards-related measures, limit SMEs' exports to the EU more than those of large exporters. They explained that while complying with standards, technical regulations, and conformity assessment procedures is costly for larger firms, it is potentially prohibitive for SMEs because many costs are fixed regardless of a firm's size or revenue. Respondents also cited difficulties involving trade secrets, patenting costs, and logistics challenges, especially customs requirements, Harmonized System classifications, and the EU's value-added tax system. Trade financing in the EU was reported to be a lesser problem.

Besides these cross-cutting issues, the report describes many industry-specific barriers. Many respondents involved with chemicals and related products singled out high compliance costs for the EU chemical regulation, while SMEs exporting cosmetics expressed difficulties meeting the EU's cosmetics directive. Respondents in the apparel industry highlighted the recent retaliatory increase in EU duties on U.S. exports of women's denim jeans, since most affected producers are SMEs. SMEs producing machinery, electronic, transportation, and other goods cited a lack of harmonized international standards and mutual recognition for conformity assessment, as well as problems complying with technical regulations and conformity assessment procedures.

Respondents in the agriculture sector reported diverse export barriers. Respondents in the corn, dried fruit, animal feed, cheese, and wheat industries cited high tariffs, stringent and inconsistent EU rules and testing mandates, non-science-based regulations (especially for genetically modified traits), lack of harmonization between U.S. and EU standards, and the EU's protected designations of origin (PDOs). The U.S. poultry and lamb industries reported that they are effectively banned from exporting to the EU.

U.S. services SMEs in the healthcare, engineering, testing, and audiovisual industries highlighted a lack of mutual recognition of licensing, credentials, and standards, as well as broadcasting and film quotas, language dubbing requirements, government subsidies, and intellectual property and piracy issues.

In certain industries, respondents also provided suggestions for increasing U.S. SME transatlantic trade with the EU and, at times, stories of successfully exporting to the EU.

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Abbreviations and Acronyms

ACH	Automated Clearing House
AIG	American International Group, Inc.
AMS	U.S. Agricultural Marketing Service
ANSI	American National Standards Institute
APHIS	U.S. Animal and Plant Health Inspection Service
ASME	American Society of Mechanical Engineers
ASTM	ASTM International
BCTT	Business Coalition for Transatlantic Trade
BPR	Biocidal Products Regulation
BRC	British Retail Consortium
BRIC	Brazil, Russia, India, and China
CE	Conformité Européenne
CEN	European Committee for Standardization
CENELEC	European Committee for Electrotechnical Standardization
CFA	California Fashion Association
CHIP	Chemicals (Hazard Information and Packaging for Supply) Regulations
DON	deoxynivalenol
EASA	European Aviation Safety Agency
EC	European Commission
ECHA	European Chemicals Agency
EGIF	Exporters Guide to Import Formalities
ETSI	European Telecommunications Standards Institute
EU	European Union
FCC	Federel Communications Commission
FGIS	U.S. Federal Grain Inspection Service
FSIS	U.S. Food Safety and Inspection Service
FTA	free trade agreement
GAO	U.S. Government Accountability Office
GDP	gross domestic product
GFSI	Global Food Safety Initiative
GM or GMOs	genetically modified organisms
HS	Harmonized Description and Coding System (or “Harmonized System”)
IEC	International Electrotechnical Commission
IP	intellectual property
ISO	International Organization for Standardization
ITU	International Telecommunication Union
KB	Karnal bunt
LLP	low-level presence
MNCs	multinational companies
MPAA	Motion Picture Association of America
MRLs	maximum residue levels
MSDS	material safety data sheets
MY	marketing year
NAFTA	North American Free Trade Agreement
NAM	National Association of Manufacturers
NCGA	National Corn Growers Association
NTBs	nontariff barriers

Abbreviations and Acronyms—*Continued*

NTMs	nontariff measures
OR	Only Representative
PDO	protected designations of origin
PGI	protected geographic indicators
PRTs	pathogen reduction treatments
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
SBA	Small Business Administration
SEPA	Single Euro Payments Area
SIEFs	Substance Information Exchange Forums
SME	small and medium-sized enterprise
SOCMA	Society of Chemical Manufacturers and Affiliates
SPS	sanitary and phytosanitary
SQF	Safe Quality Foods Program
SUSB	Statistics of U.S. Businesses
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TBT	Technical Barriers to Trade Agreement
TIB	Temporary Importation under Bond
TRQs	tariff-rate quotas
TTIP	Transatlantic Trade and Investment Partnership
TVWF	Television Without Frontiers
USDA	U.S. Department of Agriculture
USEAC	U.S. Export Assistance Center
VAT	value-added tax
WCO	World Customs Organization
WFD	Water Framework Directive
WTO	World Trade Organization

Executive Summary

Although U.S. small and medium-sized enterprises (SMEs) saw their merchandise exports to the European Union (EU) increase from $67 billion in 2010 to $76 billion in 2011, many SMEs report that EU technical regulations and other trade barriers limit their exports to the EU more than those of large exporters.[1] The EU accounted for 27–28 percent of world gross domestic product during 2010–12 and is thus an important market for U.S. businesses, including SMEs.[2] As the United States is seeking to enhance the participation of SMEs in transatlantic trade in negotiations for the Transatlantic Trade and Investment Partnership (TTIP), the U.S. Trade Representative requested that the U.S. International Trade Commission (Commission or USITC) catalog trade barriers perceived by U.S. SMEs as disproportionately affecting their exports to the EU compared to large U.S. exporters to the EU.[3]

In response to the Commission's queries, many SMEs reported that to export to the EU, they must meet a large number of EU technical regulations and other requirements. The cost of meeting these requirements is particularly high because in many cases they require U.S. firms to hire representatives in the EU and perform extra tests. SMEs contended that these rules tend to affect them more than large exporters because they relate mainly to the approval process for the product itself; the costs must be borne regardless of the quantity of goods shipped. Large firms have a greater volume of sales over which to spread these costs. Although the situation with tariffs is somewhat different in that the tariff paid varies directly with the value of the goods shipped, SMEs also perceived that tariffs affect them disproportionately.[4]

Other broad issues emphasized by SME respondents included the high cost of obtaining patents and difficulties protecting trade secrets; logistics problems, especially difficulties navigating customs; and, to a lesser extent, challenges related to finance. These are discussed below, along with issues specific to certain industries in the manufacturing, agricultural, and services sectors. Major barriers reported by SMEs and industry associations are summarized in table ES.1.

[1] Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; Commission calculations.

[2] World Bank, World Development Indicators (accessed November 25, 2013). As a single entity, the EU is also considered to be the world's largest trading bloc. WTO, "Trade Policy Review", 2013, 9.

[3] A disproportionate effect implies that a trade measure affects SMEs more than large firms, even though impediments typically do not explicitly discriminate against SMEs.

[4] A previous USITC report also recognized that high tariffs can cause a disproportionate effect on SMEs in an industry in which tariffs are higher than average and SMEs account for most of the industry's exports. USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6-15.

TABLE ES.1 EU Barriers and primary issues reported by SMEs and others, by sectors

Barrier	Primary issues reported by SMEs	Sectors affected by barrier
Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)	High costs of compliance, responsible EU agency difficult to communicate with, time consuming, required EU representation, required to reveal too much about products, evolving lists of restricted substances, documentation, and other issues	Chemicals, apparel, machinery and equipment, computers and electronics, transportation products, miscellaneous manufacturing
Biocidal Products Regulation	High costs of compliance, applies to each component instead of overall product	Biocide chemicals
Water Framework Directive	High costs of compliance	Chemicals
Cosmetics Directive	High costs of compliance, separate approvals required for minor product differences (e.g., different colors), required to hire expensive consultants/testing services in EU	Cosmetics
Antidumping/countervailing duty orders	Increase costs	Biofuel, including bioethanol and biodiesel
High tariffs	Increase costs	Apparel and processed food
Safety of machinery directive	Increase costs, very broad in scope but other directives still apply	Machinery and equipment
Pressure equipment directive and regulations for classifying high-efficiency particulate air (HEPA) filters	Increase costs, difficulty in proving compliance	Machinery and equipment
ATEX (atmospheric explosives) directive	High costs of compliance, different member states certify equipment according to different standards, incompatibility with equivalent U.S. regulations, outside certifications not allowed	Machinery and equipment
Restriction on the Use of Certain Hazardous Substances (RoHS)	Increase costs, no equivalent U.S. regulation, lengthy certification process	Chemicals, machinery and equipment, computers and electronics, transportation products
Waste Electrical and Electronic Equipment Directive (WEEE)	High costs of compliance, lengthy certification process	Machinery and equipment, computers and electronics
Excessive rights of original trademark owner	Block sales of certain original and used equipment with trademarks	Computers and electronics
Automotive parts certification requirements	High costs of compliance, time consuming, requirements vary by region	Transportation products
Lack of harmonization in design standards	Increase costs, standards lack transparency, rules vary by region, prevent SME exports to EU	Transportation products, miscellaneous manufacturing
EU environmental regulations requiring materials tracking	Increase costs, time consuming	Transportation products
Standards and technical regulations in aviation	High costs of compliance, European Aviation Safety Agency difficult to communicate with, lengthy and uncertain approval times, some countries require separate certification	Aircraft, space equipment and parts

TABLE ES.1 Barriers and primary issues reported by SMEs and others, by sectors—***Continued***

Barrier	Primary issues reported by SMEs	Sectors affected by barrier
Obtaining CE mark	High costs of compliance, time consuming, product approval impedes innovation, multiple CE marking requirements for all directives that apply to the product, audit requirement for medical devices too broad, difficulties in finding facility to provide CE certification	Chemicals, machinery and equipment, computers and electronics, miscellaneous manufacturing
Rules on toys	Differ from those of International Organization for Standardization (ISO), testing rules vary by country	Toys
Sanitary and phytosanitary regulations	Lack science-based approach especially regarding approval of genetically modified traits, increase costs, vary among EU countries	Agricultural products
Maximum residue levels for pesticides	Increase costs, vary by EU country	Agricultural products
Global Food Safety Initiative (GFSI)	Extensive and costly certification, specific certification requirements	Agricultural products
Protected designations of origin (PDOs)	Prevent U.S. exports of products with PDOs	Cheese
Lack of mutual recognition of credentials	Increase cost and time or prevents provision of U.S. service	Healthcare services, engineering services
EU accreditation	High costs of compliance, lack of transparency, hard-to-find regulations	Testing services
Local content quotas, local language dubbing requirements; film piracy	Quotas make it more difficult for SMEs to enter certain EU markets; dubbing requirements increase costs; piracy affects independent filmmakers	Audiovisual services

Source: USITC compilation from roundtable transcripts, hearing transcripts, written submissions, and email messages.

The Commission used a variety of approaches to gather information for this report, including a literature review. However, the report mainly relies on information and views provided directly by SMEs and related associations through roundtable meetings across the United States, a public hearing, and written submissions. The roundtables, which were organized with the assistance of the Small Business Administration and the U.S. Department of Commerce, were the principal source of information for this investigation. Commission staff traveled to 21 cities and held 28 roundtables during September 2013.

Cross-cutting Issues

Standards-related Measures

The barriers to exporting to the EU most frequently cited by SMEs involve EU standards, technical regulations, and conformity assessment procedures that are used to determine if products comply with the standards and regulations. Various interested parties reported that differences in the way that the United States and the EU develop standards, regulations, and procedures act as barriers to U.S. SMEs' exports. For example, the Business Coalition for Transatlantic Trade (BCTT) stated that, despite the strong trading

relationship between the United States and the EU, differences in this area remain a significant obstacle to deepening trade.[5]

Protection of Trade Secrets and Patents

Participating SMEs cited difficulties related to protecting trade secrets and the high cost of obtaining a patent in the EU. The SMEs stated that stronger protection of trade secrets is needed, especially when firms are supplying confidential information during the process of regulatory approval. Trade secrets were described as being important to SMEs because unlike patents and trademarks, they can be protected without registration or other formalities and are thought to be less expensive to acquire and maintain. Patent protection issues were also cited as barriers to trade, given the high costs of obtaining a patent in the EU, including meeting varying patenting standards across EU member states. The EU has recently taken steps towards better protecting trade secrets (it has a draft directive in this area) and mitigating the costs of obtaining a patent (it has worked towards creating unitary patent protection).[6]

Logistics Issues, Including Customs, Tax Requirements, Shipping, and Distribution

Many SMEs reported having too few resources to effectively navigate the numerous different, and at times opaque, EU customs procedures across EU member countries. SMEs reported difficulties, for example, in consistently obtaining the correct Harmonized System (HS) classification for their products (which affects the tariff rate applied to a product); understanding and complying with the EU's value-added tax system (VAT); and distributing products within the EU. They indicated that such difficulties create barriers to trade, to the point where they prevent some U.S. SMEs from exporting to the EU at all. However, logistics firms (such as international shipping companies) and other firms, as well as the U.S. government, offer some support to SME exporters in these areas.

Finance-related Issues

SMEs reported certain finance-related challenges, but noted that such issues are not significant obstacles to their EU exports. Among these challenges, SMEs cited the higher costs of exporting to the EU as a result of the longer payment terms customary in the EU, compared with the United States; prohibitively expensive protection against nonpayment by customers; inflated payment transaction fees (e.g., wire transfer fees assessed to both sender and receiver); and differences in regulatory and legal frameworks between the EU and the United States. SMEs and other interested parties said that information about U.S. government assistance in these areas should be streamlined and more widely disseminated.

[5] U.S. Chamber of Commerce for the Business Coalition for Transatlantic Trade (BCTT), Regulatory Cooperation Working Group, written submission to the USITC, December 2, 2013.

[6] European Commission, "Commission Proposes Rules," November 28, 2013; and European Commission, "The EU Single Market: FAQs," November 11, 2013.

Chemicals and Apparel

SMEs and industry associations reported that a number of trade barriers, including high tariffs and a variety of technical regulations, limit exports of chemicals and apparel. One of the most frequently cited barriers is the EU chemical regulatory system—Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)—which imposes stringent requirements on a number of products.

Chemicals

U.S. exports of chemicals to the EU are fairly large, and SMEs have accounted for 30–35 percent of those exports by known value in recent years.[7] However, the expense and effort of complying with REACH's complexities disproportionately affect SME exporters of chemicals and related products, including nanomaterials and biobased chemicals, to the EU. SMEs described problems related to REACH as follows:

- Compliance is expensive and time consuming and can reportedly add over 20 percent to the cost of the product.
- Particularly burdensome for SMEs are testing requirements and the requirement for nonresident companies to have a special representative in the EU.
- Compliance, according to SMEs, requires firms to reveal too much about their products, especially those protected by trade secrets.
- SMEs reported difficulty communicating with the European Chemicals Agency, which they said makes decisions having broad implications without any input from U.S. companies.

SMEs also cited other regulations that disproportionately affect SMEs seeking to export chemicals to the EU, including a new regulation covering the marketing and use of biocides. SMEs said that such products can also be restricted under the Water Framework Directive.

SMEs exporting cosmetics to the EU expressed concerns about difficulties meeting the EU's cosmetic directive. They described the cost of testing as high, particularly for SME exporters. They also cited as problems the need to locate qualified testing companies in the EU and the need to deal with member-country regulations that differ from EU requirements.

Bioproducts and Renewable Products

SMEs reported that several tariff-related barriers on biofuels reduced their exports to the EU. These included an EU antidumping duty on U.S. bioethanol imposed in 2013; EU antidumping and countervailing duty orders that apply to all U.S. biodiesel blends; and changes in HS classifications resulting in higher duties.

[7] Census, Foreign Trade Division, September 19, 2013; Census, Profile of U.S. Importing and Exporting Companies, Exhibit 7, 2013; Commission calculations. The known value is the portion of U.S. exports that Census was able to link to a specific firm. Thus, it is a subset of total U.S. exports.

Apparel

An apparel industry association contended that a recent sharp increase in the EU duty on U.S. exports of women's denim jeans—from 12 percent to 38 percent—damages U.S. producers' ability to export to the EU. The increase in duty is part of a retaliatory action taken by the EU following litigation at the World Trade Organization. Many of these producers are SMEs, which supplied about 94 percent of the known value of U.S. apparel exports to the EU in 2010–11.[8]

Machinery, Electronics, Electrical Equipment, Transportation, and Miscellaneous Manufacturing

SMEs in the machinery, electronics, electrical equipment, transportation, and miscellaneous manufacturing industries pointed to the safety certification process, the need to meet numerous regulations and standards, and complexities with the VAT as principal barriers to exporting to the EU.[9] Complications obtaining *Conformité Européenne* (CE) certification were described as particular barriers for SMEs, as were inconsistencies in clearing goods through customs in different countries and at different times, and a lack of harmonized international standards. SME representatives reported that the VAT is difficult for them to navigate because it is complex and rates vary among EU countries. SMEs also described other standards-related concerns as being important, including lack of mutual recognition for conformity assessment and divergent technical regulations between the United States and the EU, particularly REACH, the Restriction of Hazardous Substances Directive (RoHS), and the Waste Electrical and Electronic Equipment Directive (WEEE). Other challenges that were highlighted included differences between U.S. and EU intellectual property protection regimes, tariffs and market access problems for some products, divergent data privacy rules, and high-burden customs processes.

Machinery and Equipment

SME exporters of machinery and equipment stated that a variety of regulations and standards, such as the multiple tests required to receive the CE mark[10] and the directive for equipment used in potentially explosive environments, constrains their exports to the EU more than those of large firms. Obtaining the CE mark for a single piece of machinery, they said, could require meeting the requirements of the EU's safety-of-machinery directive, the low-voltage directive, and other directives. They noted that the United States, in contrast, has "umbrella regulations" permitting manufacturers to obtain a single certification of the whole product instead of a number of different certifications.

[8] Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; Commission calculations. Note that the U.S. exports of apparel to the EU are fairly small.

[9] Manufacturers are not the only SMEs in a given industry that face export barriers. Distributors, testers, resellers, legal and finance firms, business service providers, and many others are also directly affected by trade barriers in exporting to the EU.

[10] The CE mark, which is required for many products marketed in the EU, signifies that the product conforms to applicable European laws with respect to safety, health, environment, and consumer protection.

Computers and Electronic Products

SMEs exporting computers and electronic products said that REACH, RoHS, and various directives governing eligibility for the CE mark change frequently, draw on safety rules that are not always based on science, and have high compliance costs. SMEs' representatives stated that these requirements weigh more heavily on SMEs, which cannot typically dedicate full-time personnel to deal with certification and compliance. In addition, representatives of independent U.S. resellers (normally SMEs) asserted that trademark owners' rights to control the sale of branded products in EU secondary markets prevented U.S. exports to the EU. These representatives said that opening the EU secondary market could increase their exports by 30–50 percent.

Transportation Products

Transportation products comprise motor vehicles, trailers, aerospace goods, trains, ships and boats, motorcycles, military vehicles, transportation equipment, and parts. SMEs in the motor vehicles industry described a number of barriers to trade, including conventions in measuring truck length, rules on tailpipes, and the need for all motor vehicle parts to be certified. In addition, SME exporters of aerospace parts stated that they must acquire certification from the European Aviation Safety Agency, where certification costs are reported to be among the highest in the world, and must also meet certain additional requirements in individual EU countries.

Other Manufactured Products

SMEs producing medical devices, firefighting equipment, sporting goods, and toys cited a variety of barriers to exporting to the EU. SME makers of medical devices stated that the EU regulatory process is more consistent than that in the United States. Nevertheless, according to these exporters, the complexities of obtaining the CE mark, audits of facilities, and inconsistent, fast-changing regulations greatly increase the cost and time needed to export to the EU. SME exporters of other devices in this category likewise reported that the high costs of meeting safety standards and the difficulty of complying with many technical regulations constrain their exports.

Agriculture

SMEs view EU barriers to U.S. agricultural exports as substantial. While SMEs account for only a small portion of direct agriculture exports, they supply many inputs to large exporting companies and are important exporters of some specialized and processed products. SMEs identified high tariffs, extensive EU regulations, and the difficulty in finding up-to-date information as their primary concerns. According to the literature, U.S. exporters of processed foods face the highest EU tariffs of any major sector; moreover, the estimated price effects of EU nontariff measures on the food and beverages sector are the highest of any sector.[11]

[11] Francois et al., *Reducing Transatlantic Boundaries to Trade and Investment,* 2013, 14–20.

SMEs stated that the EU lacks a science-based focus in establishing sanitary and phytosanitary (SPS) measures, especially in regard to approval of genetically modified (GM) traits. Industry representatives stated that regulations and testing requirements were stringent and often varied among different EU countries. Meeting standards and obtaining certification were reported to be difficult and expensive, especially those involving food safety. SMEs also reported that packaging issues and a lack of cohesive labeling requirements were additional obstacles to exporting agricultural products to the EU.

Corn

The National Corn Growers Association expressed concerns over the EU's treatment of GM traits, reporting that burdensome labeling requirements and unreasonable expectations on "low-level presence" (LLP) of unapproved GM traits[12] in their products limit their exports of corn to the EU.[13] Furthermore, EU government bodies reportedly delay approval of new GM traits after approval by EU scientific panels. An industry spokesman suggested that U.S. trade negotiators work with the European Food Safety Authority and the European Parliament to achieve higher levels of regulatory convergence and cooperation, harmonization, and mutual recognition of standards.[14]

Dried Fruit

According to SME representatives, the fruit industry faces several barriers on exports to the EU, most pertaining to pesticide limits and testing requirements for chemicals and heavy metals. For example, they reported that maximum residue levels (MRLs), or the allowable limit on pesticide residues remaining on a crop, differ in various EU countries, which makes it difficult for producers to be consistent with their pesticide applications.

Animal Feed

SMEs reported that barriers faced by the animal feed industry center around the lack of harmonization between the United States and the EU, as well as strict EU regulations on traceability. The EU requires exporters to submit certifications concerning certain inputs, such as dioxin and additives that originate from marine products, before their products can enter the EU, but neither the U.S. Department of Agriculture (USDA) nor any other U.S. agency has the ability to certify them. As a result of these and other regulations, U.S. SMEs state that their exports to the EU are held up for extensive testing, which results in additional costs.

Cheese

An SME cheese maker stated that it is primarily concerned about the EU's protected designations of origin (PDOs), which identify a good as originating in a specific geographic location and having a particular level of quality.[15] The SME cheese exporter

[12] European Commission, "Questions and Answers," June 24, 2011.
[13] National Corn Growers Association, written submission to the USITC, August 23, 2013, 2.
[14] Johnson, Statement to the House Committee on Small Business, June 26, 2013, 2.
[15] PDOs are defined as being produced or processed in a specific area. They are similar to protected geographic indicators (PGIs), though PGIs must be produced or processed in a specific area and use a method or stage of production unique to that area.

contends that many PDOs (such as muenster and feta) have become generic terms and should no longer be protected.

Wheat

Although wheat exporters are mainly large companies, most growers are SMEs. The U.S. Wheat Associates and the National Association of Wheat Growers reported that EU trade barriers faced by the wheat industry include the EU's non-science-based risk assessments and the EU's lack of acceptance of U.S. certifications.[16] Specifically, they said that the EU does not accept the U.S. Federal Grain Inspection Service (FGIS) certification of mycotoxin tests for deoxynivalenol and ochratoxin, and also does not accept USDA's certification of absence of Karnal bunt disease, even though virtually all countries outside the EU accept it.[17]

Nuts

Trade barriers reported by representatives of SMEs in the nut industry principally concern extensive testing required by the EU, frequent changes in allowable residue levels, and GM and other EU food safety rules that are not science based. For example, SMEs reported that the EU testing requirements for aflatoxin, a naturally occurring substance, were changed without notice. SMEs also reported problems with EU testing results, with products already internally tested for aflatoxin initially failing EU tests and then passing when retested.

Meat

According to SMEs in the poultry industry, restrictions related to poultry processing effectively ban any U.S. poultry from being exported to the EU. The lamb industry also stated that there is an effective ban on exports of U.S. lamb to the EU due to the high costs of obtaining food safety certifications and related issues.

Services

Despite efforts to reach firms across all industries, fewer services SMEs than goods-producing SMEs participated in the Commission's roundtables or communicated with the Commission through other means. Recent literature in this area indicates that nontariff measures affecting U.S.-EU trade in services may be less severe than those affecting trade in goods. Nevertheless, the BCTT has identified several objectives for the TTIP negotiators to consider in order to improve services trade, including regulatory cooperation and removing licensing, quotas, and other impediments to trade. [18]

[16] U.S. Wheat Associates and National Association of Wheat Growers, written submission, September 25, 2013.

[17] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013; U.S. Wheat Associates and National Association of Wheat Growers, written submission, May 10, 2013.

[18] U.S. Chamber of Commerce for the Business Coalition for Transatlantic Trade (BCTT), Services Working Group, written submission to the USITC, December 2, 2013.

Additionally, SMEs and other interested parties representing professional and information services reported that the following measures impede their exports to the EU:

- lack of mutual recognition of medical credentials and varying licensing and credentialing requirements between EU member countries, which make practicing medicine in the EU difficult for U.S. doctors;

- licensing issues related to lack of reciprocity in recognizing engineering licenses, which act as barriers to trade in engineering services;

- lack of transparency in EU regulations on testing and different testing standards between the United States and the EU, which make understanding and complying with EU standards difficult and costly for U.S. SME providers of testing services;

- broadcasting and film quotas, language dubbing requirements, and government subsidies, which reduce trade opportunities, increase costs, and create competitive disadvantages for U.S. SME exporters of audiovisual services, while issues related to intellectual property and piracy undermine revenues and the financing of independent filmmakers.

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CHAPTER 1
Introduction

Purpose and Scope

U.S. small and medium-sized enterprises (SMEs) account for about half of the nonagricultural output of the U.S. economy. Their share of exports, however, is much lower—slightly less than a third.[1] Although some SMEs produce goods or services that are not readily tradable, that is not the only reason for the disparity. A previous study has shown that many impediments to exporting appear to fall disproportionately on small exporters.[2] SMEs report that eliminating or reducing those impediments would enable them to increase their exports.

One of the United States' largest and richest trade partners is the European Union (EU). This report catalogs trade barriers that U.S. SMEs perceive as disproportionately impeding their exports to the EU, compared to larger U.S. exporters to this important market. It also includes suggestions by SMEs on ways to increase their participation in transatlantic trade. In the letter requesting this report, the U.S. Trade Representative stated that the United States is seeking to enhance the participation of SMEs in transatlantic trade and to address barriers that may disproportionately affect SMEs exporting to the EU in the negotiations for the Transatlantic Trade and Investment Partnership (TTIP).[3]

This report, by the U.S. International Trade Commission (Commission or USITC), defines SMEs as firms with less than 500 U.S.-based employees, following the definition used in a previous Commission report on the role of SMEs in U.S. exports.[4] The present report also uses the Commission's prior definition of "disproportionate effect on SMEs."[5] A disproportionate effect implies that a trade measure affects SMEs more than large firms, even though impediments typically do not explicitly discriminate against SMEs.

Trade measures may have a disproportionate effect in diverse ways. Complying with EU standards, for instance, imposes fixed costs that do not vary with the amount traded and must be borne to enter the market, regardless of how much exports contribute to a firm's revenues. Large exporters can more easily spread fixed costs over their sales volumes than small exporters. SMEs reported that to gain access to the EU market they had to deal with a variety of nontariff measures (NTMs)—for example, the EU regulation for chemicals, which typically requires expensive testing. Thus, although NTMs increase the

[1] USITC, *Small and Medium-Sized Enterprises: Overview*, January 2010, 2-9 and 3-1.
[2] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6-1.
[3] See appendixes A and B for the request letter from the USTR and *Federal Register* notices associated with this investigation.
[4] Note that the Commission's third report in a series of three interrelated reports on U.S. SMEs used only the employee-based definition used here, while the others in the series also applied revenue thresholds. USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010.
[5] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6-2.

costs of both small and large firms, they have the potential to affect SMEs disproportionately and may make it infeasible for some SMEs to export to the EU.[6]

In some cases, tariffs, too, may have a disproportionate effect on SMEs. Although tariffs increase in tandem with sales, some sectors have much higher tariff rates than others. When most firms in such a sector are SMEs, then these comparatively high tariffs affect SMEs more than large firms overall, particularly large multiproduct exporters that may face lower tariffs on some products.

The Commission collected original primary data for this report through a variety of methods, which are described in more detail in the next section. These methods, including holding roundtable discussions, soliciting written submissions, and conducting a hearing, relied on the voluntary participation of SMEs. A benefit of this approach is that SMEs were able to provide information and views directly to the Commission and Commission staff.

The need to rely on SMEs' voluntary statements influenced the scope of this report in certain ways. The Commission sought the participation of a broad range of SMEs in agriculture, manufacturing, and services by inviting them to attend the roundtables and offering them an opportunity to provide feedback through other channels. However, manufacturing SMEs and manufacturing associations participated more actively than those in other sectors. Accordingly, the amount of information provided in this report on different sectors varies depending upon the extent to which SMEs in a given sector provided information and views.

Not all responding SMEs and related industry associations singled out barriers that they specifically perceived as disproportionately affecting SMEs compared to large firms. For example, in some instances, SMEs and industry associations reported barriers that they viewed as important, without asserting that those barriers had a disproportionate effect on SMEs. This omission was most evident in agriculture, where large firms are generally the main exporters, even though most growers are SMEs. This report includes both barriers cited by SMEs as affecting their ability to export to the EU relative to large firms and barriers more generally identified by U.S. exporters without claiming a disproportionate impact on SMEs.

This report also provides specially tabulated U.S. Census Bureau (Census) data on SME exports of manufactured products to the EU.

Approach

To gather information from SMEs and other interested parties on trade barriers affecting SME exports to the EU within the investigation's time frame, the Commission (1) held roundtable meetings with SMEs across the United States; (2) held a public hearing in Washington, DC (on November 20, 2013) and a public meeting in California (on September 26, 2013); (3) sent letters inviting interested parties to provide information and views; and (4) reviewed the relevant literature regarding trade barriers faced by

[6] David Ellison, owner of an SME that exports test kits to the EU, expressed this idea by stating that with only 10 employees, he does not want to have to dedicate full-time employees to navigating regulations. He said that doing so would leave fewer employees available for sales or distribution tasks—a substantial cost for a small firm. USITC, hearing transcript, November 20, 2013, 157–58.

SMEs including suggestions on ways to increase SME participation in transatlantic trade. Additionally, as mentioned above, the Commission obtained specially tabulated Census data on SME exports to the EU.

Roundtables

The Commission organized more than two dozen roundtable meetings with SMEs to hear their perceptions of barriers that disproportionately affect their exports to the EU. At the outset of this investigation, Commission staff met with the Small Business Administration (SBA) and the Department of Commerce (U.S. Commercial Service) in Washington, DC, to ask for the help of SBA's field offices and the Department of Commerce's U.S. Export Assistance Centers in facilitating meetings with SMEs. Both agencies worked with the Commission in setting up the roundtables: selecting locations; identifying and reaching out to local companies; and either hosting the roundtables at their offices or finding alternative venues.

Through various avenues, the Commission made every effort to include services, agriculture, and manufacturing SMEs in the roundtable meetings. Besides the outreach done by the SBA offices and the U.S. Export Assistance Centers, the Commission provided information about the roundtables through a webpage dedicated to the study and worked with associations and other entities, such as the U.S. Chamber of Commerce, which invited companies to join the discussions. Although several sector-specific roundtables were held in areas with clusters of SMEs in particular industries, SMEs in a variety of industries attended most roundtables.

The Commission held 28 roundtable meetings during September 2013 in 21 locations in 17 states, focusing on areas with concentrations of SMEs (see table 1.1 for roundtable dates and locations). Two Commission analysts or economists moderated each roundtable. Collectively, the roundtables yielded a large amount of material that is the principal source of information for this investigation.[7]

TABLE 1.1 Commission roundtable dates and locations

Day/month	City	Number of roundtables	Day/month	City	Number of roundtables
9 Sep	Lathrup Village, MI	1	20 Sep	Salt Lake City	1
10 Sep	Cleveland	1	23 Sep	Philadelphia	2
11 Sep	Minneapolis	2	23 Sep	Los Angeles	1
12 Sep	Milwaukee	2	24 Sep	New York City	2
13 Sep	Chicago	1	24 Sep	Santa Ana, CA	1
16 Sep	Raleigh	2	25 Sep	Bethpage, NY	1
17 Sep	Centennial, CO	1	25 Sep	Sacramento	2
18 Sep	Albuquerque	1	26 Sep	Boston	1
18 Sep	Atlanta	1	27 Sep	Smithfield, RI	1
19 Sep	Miami	1	27 Sep	Fresno	1
19 Sep	Houston	2			

Source: Compiled by Commission staff.

[7] Roundtables cited throughout this report refer to USITC roundtables, unless otherwise noted.

Washington, DC, Hearing and Field Hearing in California

To gather further information, the Commission held a public hearing in Washington, DC, on November 20, 2013. A public field hearing near San Jose, CA, was also scheduled for September 26, 2013, but later canceled due to lack of participation, and an informal meeting was held instead. The Commission conducted extensive outreach to SMEs, government organizations, associations, and other entities to invite them to participate in the hearings. To encourage SME participation in particular, the Commission provided simplified procedures for filing a request to appear at the hearing. Five groups participated in the Washington, DC, hearing: (1) the U.S. Chamber of Commerce; (2) the Society of Chemical Manufacturers and Affiliates; (3) ASTM International; (4) Government Relations, LLC; and (5) the Owners' Rights Initiative (which provided testimony supported by the Association of Service and Computer Dealers International and the North American Association of Telecommunications Dealers, and by Radwell International).[8]

Letter Sent to SMEs

The Commission also sent letters by U.S. mail to SMEs asking them to report their experiences with trade barriers that disproportionately affect their exports to the EU. The approximately 4,000 recipient firms were identified using a proprietary database.[9] The letters referred companies to the investigation's webpage (where they could find more information about the study and ways to respond to the Commission) and invited SMEs to participate in the Commission's hearings, submit a formal statement, or communicate informally with the Commission via a dedicated phone number or email address. Only 16 usable responses were received as a result of the letter solicitation. [10]

Review of the Literature

The Commission also reviewed the relevant literature on trade barriers including suggestions on ways to enhance SMEs' participation in transatlantic trade. This literature, including the Commission's prior reports on SMEs, does not typically focus exclusively on barriers encountered by U.S. SMEs exporting to the EU. As such, the literature was primarily useful for background information.

Statistics on SME Trade with the EU

At the request of the Commission, Census compiled a special tabulation using data from its export trade information and the Business Register.[11] These data show the value of SME merchandise exports to the EU and the number of SMEs exporting to the EU for

[8] See appendix D for a summary of the positions of interested parties.

[9] Bureau van Dijk, Orbis database, August 27, 2013. The search included active U.S. companies that had up to 500 employees and that were not subsidiaries of larger companies (i.e., they were what Orbis calls "Global Ultimate Owners").

[10] The lapse in federal government appropriations and resulting furlough of October 1–16, 2013, a period during which the Commission's email servers were shut down, likely contributed to the low number of responses, as the due date for receiving responses to the letter was October 15, 2013.

[11] The Business Register is a confidential, restricted-use database of U.S. business establishments and companies maintained by Census. For more information, see https://www.census.gov/econ/overview/mu0600.html.

2010 and 2011. This report presents these data in summary form later in this chapter, and subsequent chapters present more detailed data (at the 3-digit North America Industry Classification System level) for sectors that SMEs reported as facing substantial barriers to exporting to the EU.

Organization

This report contains six chapters. After describing the purpose, scope, and approach of this report, chapter 1 concludes with a brief overview of the importance of the EU market and SME trade with the EU, as well as a summary of EU trade barriers that may disproportionately affect the ability of SMEs to export there. SMEs reported a number of barriers that may be relevant to this study. This information is organized in chapters 2 through 6 by special issue and by sectors.

Chapter 2 includes an overview of issues related to regulations and standards that affect various manufacturing and agricultural sectors. The chapter also examines intellectual property rights as well as finance-related and logistics issues that may affect SMEs in many industries when exporting to the EU.

Chapters 3 and 4 examine trade barriers that disproportionately affect SMEs exporting manufactured goods to the EU. Chapter 3 encompasses the chemical and apparel industries, including pharmaceuticals, plastic resins, cosmetics, and denim, among others. Chapter 4 covers industries manufacturing machinery, electronics, transportation equipment, and other miscellaneous products.

Chapter 5 reports on trade barriers cited by SMEs in the agricultural sector, including SMEs exporting dried fruit, animal feed, cheese, wheat, corn, nuts, and meat.

Finally, chapter 6 covers services firms, including SME exporters in professional, scientific, and technical services as well as information services.

Importance of the EU Market and SME Trade

The EU is an important market for many U.S. businesses, including U.S. SMEs. The EU's size, which has risen to 28 countries; its purchasing power, accounting for 27–28 percent of world GDP during 2010–12;[12] and its relative stability all contribute to its attractiveness as an export destination. As a result, the EU is the most important destination for U.S. merchandise exports after the United States' North American Free Trade Agreement (NAFTA) partners, Canada and Mexico.[13]

The first Commission report on SMEs reported that U.S. SMEs accounted for about 30 percent by known value of U.S. merchandise exports between 1997 and 2007 and that

[12] World Bank, World Development Indicators (accessed November 25, 2013). Also, the EU, as a single entity, is considered to be the world's largest trading bloc. World Trade Organization, *Trade Policy Review: European Union,* 2013, 9.

[13] For example, the EU accounted for about 18 percent of U.S. merchandise exports during 2010–12, while the similar figure for NAFTA is 30 percent. USITC DataWeb /USDOC (accessed November 25, 2013).

Canada and Mexico were the largest markets for those exports.[14] Data for 2010 and 2011 show that the SME share of the known value of merchandise exports to all destinations had grown to 33 percent in 2011, and that the share of SME exports to the EU accounted for approximately 30 percent of the total known value of exports to the EU (table 1.2). A distinctive feature of the data is that large firms account for most of the value of these exports, even though the numbers of SME exporters far exceed those of large firms.

The EU is an important export destination for U.S. SMEs, as their merchandise exports to the EU totaled $67 billion in 2010 and $76 billion in 2011 (table 1.2). By value, U.S. SME exports to the EU represented about 17.5 percent of total U.S. SME exports, which is slightly less than the share of all U.S. exports that go to the EU. In terms of individual firms, the share of all U.S. SME exporters that export to the EU has been about 32 percent, which is similar to the share for all U.S. exporters.

TABLE 1.2 The known value of U.S. exports and the number of exporters, by all U.S. exports and U.S. SME exports, and by all destinations and the EU[15]

	All destinations	EU	EU shares (%)
		2010	
All U.S. exports, known value (million $)	1,140,406	223,795	19.6
U.S. SME exports, known value (million $)	384,940	67,311	17.5
SME share (%)	33.8	30.1	–
Number of known exporters	293,988	96,393	32.8
Number of known SME exporters	287,498	92,261	32.1
SME share (%)	97.8	95.7	–
		2011	
All U.S. exports, known value (million $)	1,319,942	252,612	19.1
U.S. SME exports, known value (million $)	440,099	76,490	17.4
SME share (%)	33.3	30.3	–
Number of known exporters	302,260	98,841	32.7
Number of known SME exporters	295,594	94,584	32.0
SME share (%)	97.8	95.7	–

Source: Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; and Commission calculations.

Barriers to Accessing the EU Market

This section on trade barriers to accessing the EU market is based on a review of the relevant literature.

EU Tariffs

The EU generally applies tariffs at the most-favored-nation (MFN) rate to both World Trade Organization (WTO) members and non-WTO members alike, although certain EU trade agreements may provide better rates to the signatories of those agreements. In 2013, about a quarter of the EU's 9,376 tariff lines (at the 8-digit Harmonized System level) were duty free, and about 9 percent had tariffs above zero but less than 2 percent; the

[14] USITC, *Small and Medium-Sized Enterprises: Overview*, January 2010, 3-1.

[15] The known value is the portion of U.S. exports that Census was able to link to a specific company. Thus, it is a subset of total U.S. exports.

simple average ad valorem MFN tariff rate was 6.5 percent.[16] Tariffs on agricultural products, where seasonal duties may apply, are higher than those on manufactured goods. The EU uses a complex system to set tariffs on processed agricultural products, based on the content of milk fats, proteins, sugar, and starch found in the product; this approach results in a huge number of possible tariffs.[17]

EU tariff levels are low in most sectors and comparable to those on similar products exported from the EU to the United States except in the motor vehicles and processed food sectors.[18] The simple average EU tariff on motor vehicles and parts (8.0 percent) is about eight times the U.S. tariff on comparable products. The average EU tariff on processed foods (14.6 percent) is more than four times the similar average U.S. tariff.

Based on survey data from a previous SME study, the Commission found that manufacturing SMEs consider high tariffs to be greater obstacles to exporting than large manufacturers do.[19] In that study, the Commission combined data on applied tariffs with detailed information on merchandise exports by firm size, and found comparatively high tariffs in certain industries—namely, apparel and certain processed food industries—where U.S. SMEs account for a high share of exports relative to large U.S. exporters.[20]

EU NTMs

The EU and its individual member countries have adopted a large number of technical regulations and conformity assessment procedures.[21] Many, but not all, of these requirements have been harmonized at the EU level; thus, at least in principle, goods lawfully produced in or imported into one EU country can be marketed in another EU country, even if they do not comply with the technical regulations of the destination country.[22] However, the large number of technical regulations can make marketing particularly complex. For example, between January 2011 and February 2013, the EU notified 154 technical regulations and conformity assessment procedures to the WTO.[23] These notifications covered a wide variety of items, including household appliances, electric and electronic equipment, biocides, machinery, motor vehicles and parts, measuring devices, chemicals, food, cosmetics, and textiles. In addition, individual EU member countries made 97 such notifications during this period.

Some WTO members have pointed out that the large number of EU technical regulations and conformity assessment procedures can create obstacles to trade, especially for foreign SMEs.[24] In response, the EU created its "SME test" to analyze the effects of legislative proposals on SMEs.[25] The SME test requires consultations with SMEs or their representative organizations, such as the Network of SME Envoys, which limits

[16] WTO, *Trade Policy Review: European Union*, 2013, 44–45. An ad valorem tariff is a tariff imposed on a percentage basis on the value of a good or service.

[17] WTO, *Trade Policy Review: European Union*, 2013, 48.

[18] Francois et al., *Reducing Transatlantic Barriers to Trade*, 2013, 14. EU tariffs on most sectors were slightly higher than the equivalent U.S. tariffs.

[19] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6–12.

[20] Ibid., 6–15.

[21] Conformity assessment is the process of ensuring that goods and services and the processes used to create them meet certain regulations and standards; it is discussed in more detail in chapter 2.

[22] WTO, *Trade Policy Review: European Union*, 2013, 57. EC Regulation No. 764/2008 states this mutual recognition principle.

[23] WTO, *Trade Policy Review: European Union*, 2013, 58.

[24] Ibid.

[25] The SME test is explained in Europa, "SME Test," October 10, 2013.

participation to EU entities, or the Enterprise Europe Network, which allows foreign participation. The test estimates the impact of legislative changes on SMEs and recommends mitigating measures if appropriate. The Commission found few evaluations of the effectiveness of the SME test in alleviating the compliance burden on foreign SMEs. However, the Association of European Chambers of Commerce and Industry (Eurochambres) reported that the overall quality of the SME tests is disappointing. According to Eurochambres, almost 75 percent of the impact assessments that it reviewed lacked a thorough cost-benefit analysis of the regulation's effects on SMEs. [26]

In an earlier SME study, the Commission summarized the views of U.S. SMEs regarding impediments to trade in all markets and ways to overcome them.[27] U.S. SMEs reported that major obstacles included foreign government regulations—particularly labeling rules and sanitary and phytosanitary regulations—and SMEs' limited knowledge of foreign markets. In that study, SMEs stated that regulations were problematic because of the burden and cost of compliance and also because of the lack of uniform procedures across EU countries. Regulatory burdens included extra record keeping, testing, and certification requirements, and—for agricultural products—the need to tailor production practices to a particular market.

In another previous SME study, the Commission reported findings from a survey that identified trade barriers and other impediments that disproportionately affect the export performance of U.S. SMEs.[28] The survey gathered the opinions of small and large firms on 19 potential impediments to trade, of which 7 were business impediments, 5 were foreign-policy measures or NTMs, 3 were domestic policy measures, and 4 were combinations of the previous measures. SMEs were more likely than large firms to rate most impediments as having a severe negative effect on their exports. The impediments that appeared to weigh on SMEs most disproportionately were "insufficient intellectual property protection," "foreign taxation," and "obtaining financing."[29]

Though it did not differentiate results by business size, a recent study reported that NTMs impose substantial barriers to transatlantic trade in a number of sectors. Based on an index of the perceived restrictiveness of NTMs created from a survey, the researchers found that U.S. exporters to the EU in the chemicals, cosmetics, and biotechnology sectors face the highest NTMs. [30] The researchers then integrated the index with other data and econometrically estimated the price effect of the NTMs. Using this approach, they concluded, in addition, that the greatest price increases imposed on U.S. exports by EU NTMs were on food and beverages (56.8 percent), motor vehicles and parts (25.5 percent), and other transport equipment (18.8 percent).[31]

Another recent study examined trade barriers faced by SMEs exporting in global markets along with organizational impediments, such as a lack of experience and networks.[32] It found that U.S. SMEs encounter a broad range of EU barriers, such as domestic laws, data privacy rules, local-protection measures, ownership control regulations, product

[26] The report is summarized in Eurochambres, "Commission Still a Long Way," November 25, 2013.

[27] USITC, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities*, July 2010, 3-12. Reported barriers were not specific to the EU.

[28] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6-1.

[29] Ibid., 6-10.

[30] Francois et al., *Reducing Transatlantic Barriers to Trade*, 2013, 16–17. They surveyed both EU and U.S. firms and created indexes for EU exports to the United States and for U.S. exports to the EU.

[31] Francois et al., *Reducing Transatlantic Barriers to Trade*, 2013, 19–20.

[32] Lucy, Lepage, and Ghosh, "Going Global," 2011, 21–36.

restrictions, tariffs, taxes and tax laws, and trade protection measures.[33] The study noted, however, that the last three barriers—tariffs, taxes and tax laws, and trade protection measures—were common challenges facing SME exporters to NAFTA partners and the BRIC countries, as well as the EU.[34]

Congressional testimony given by an SME owner provided a firm-specific perspective on exporting to the EU.[35] The owner of this SME, which provides business consulting services and shipping for other SMEs, cited many trade barriers affecting SME exports to specific countries in the EU. These barriers largely involve customs regulations and restrictions. For example, Italian customs regulations require the Italian Ministry of Arts to inspect all imported artwork, which delays delivery by a minimum of 10 days.[36] Also, nonprescription vitamins exported to Germany must be shipped to a German pharmacy with a German doctor's prescription and a copy of the pharmacy order.[37] The owner added that delays in customs clearance are especially onerous for SMEs because they typically are not paid until the customer receives his/her merchandise, and SMEs rarely have the financial resources to wait long for payment.[38] In this regard, the owner suggested that the U.S. government negotiate and enforce fair international rules in services and customs procedures to improve the situation.

Suggested Ways to Enhance SME Participation in Trade

There are very few studies that focus on ways to enhance the participation of U.S. SMEs in transatlantic trade. This section briefly summarizes two general studies that suggest ways for SMEs to improve their own export performance or for governments to assist their SMEs to increase exports. It also includes recommendations for improving transatlantic trade from the Business Coalition for Transatlantic Trade.

An earlier Commission study on SMEs presented approaches that SMEs reported using to overcome trade barriers and increase exports. The top three among these strategies were (1) creating formal or informal coalitions of firms in the same industry, (2) collaborating with a larger firm, and (3) using U.S. government programs to assist exporters.[39]

Overcoming the barriers to trade with the EU reportedly requires substantial time and money, which SMEs often lack.[40] Researchers proposed the following recommendations to help improve the export performance of SMEs:

- SMEs should be active participants in the trade policy process.
- Home governments should assist their SMEs to understand foreign markets better.

[33] Lucy, Lepage, and Ghosh, "Going Global," 2011, 27.
[34] The BRIC countries are Brazil, Russia, India, and China.
[35] Huberman, Statement to the House Committee on Small Business, June 26, 2013.
[36] Ibid., 1.
[37] Ibid., 2.
[38] This is consistent with results from a survey by the National Small Business Association, in which its members who export stated that getting paid was their most significant concern. National Small Business Association, "2013 Small Business Exporting Survey," 2013, 8.
[39] USITC, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities*, July 2010, 3-20.
[40] Fliess and Busquets, *The Role of Trade Barriers*, 2006, 10.

- SMEs should work with their home governments to identify trade barriers that can be acted upon.

- Home governments should negotiate trade arrangements (such as the WTO Information Technology Agreement) to reduce SMEs' compliance costs.

- Governments should keep the constraints of SMEs in mind when developing regulations.[41]

The Regulatory Cooperation Working Group of the Business Coalition for Transatlantic Trade has proposed several objectives for the TTIP negotiations to enhance transatlantic trade for SMEs:[42]

- Ensure that regulations are risk-based, evidence-based, and incorporate cost-benefit analysis.

- Ensure that regulators aim for compatibility and equivalence wherever possible.

- Seek regulatory cooperation including improved transparency and stakeholder consultation.

- Seek to establish common definitions of international standards.

- Develop detailed sector-specific regulatory coherence and cooperation commitments where possible.

[41] Fliess and Busquets, *The Role of Trade Barriers*, 2006, 11, 16–17.

[42] U.S. Chamber of Commerce for the Business Coalition for Transatlantic Trade (BCCT), Regulatory Cooperation Group, written submission to the USITC, December 2, 2013. The U.S. Chamber of Commerce submitted objectives for the TTIP negotiations in other areas as well, including services (covered in chapter 6 of this report), digital trade, intellectual property, and competition.

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CHAPTER 2
Cross-cutting Trade Barriers and Issues

This chapter summarizes information and views provided by small and medium-sized enterprises (SMEs) and other interested parties, who described four cross-cutting trade barriers as disproportionately affecting the ability of U.S. SMEs to export to the European Union (EU) compared to larger U.S. exporters (see also list, table 2.1):

- SMEs frequently cited challenges in complying with EU standards and regulations as a major barrier to their exports to the EU. SMEs' perspectives on this point were also shared by other interested parties, including the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM), among others.

- SMEs also cited the difficulty of protecting trade secrets and the high cost of patenting in the EU as obstacles to trade.

- In addition, SMEs cited logistics difficulties when exporting to the EU, including problems in meeting customs and tax requirements and in handling shipping and distribution. Of particular concern were problems in determining the correct classification of their products or in valuing their products for purposes of the EU's value-added tax (VAT) system.

- Finally, while SMEs indicated that finance-related issues were not critical obstacles in exporting to the EU, they stated that longer payment terms in the EU, inadequate protection against nonpayment by customers, higher fees for payment transactions, and differences in legal and regulatory frameworks add to the costs of doing business in the EU market (compared with the U.S. market).

U.S. government assistance programs were recognized by SMEs and other interested parties as helpful but in need of streamlining and wider dissemination.

This chapter begins with an overview of standards as they relate to SMEs and their exports to the EU. In the chapters that follow, details on industry- or product-specific standards will be discussed. The second section of this chapter examines IP issues. The third and fourth sections describe the logistical and financial issues, respectively, cited by U.S. SMEs exporting to the EU.

TABLE 2.1 Cross-cutting trade barriers and issues

Subject area	Trade barrier/issue	Specific challenges reported by U.S. SMEs and others
Standards and regulations	Standards and technical regulations	Different regulatory approaches in the United States and the EU; U.S. SMEs' lack of participation in development of EU standards; compliance with standards costly and time-intensive for U.S. SMEs
	Conformity assessment procedures	Lack of national treatment of U.S. certification bodies; high cost of procedures, including testing for Conformité Européenne (CE) marking
IP rights issues	Trade secrets	Inadequate protection of U.S. SMEs' trade secrets, particularly in the regulatory and marketing approval process
	Patent protection	High cost of obtaining patent protection in each member state; member states' divergent standards
Logistical issues	Harmonized System (HS) classification	Challenges in determining correct classification for exports, given that HS codes vary between the United States and the EU, and for certain products HS codes vary among EU members; reclassifications result in higher duties and taxes; and incorrect classifications may lead to customs delays
	EU's value-added tax (VAT)	Complexity of VAT and difficulties with providing criteria (documentation and residency) for receiving credits, rendering compliance difficult
	Shipping/distributing products in the EU	Unreliable international deliveries by some domestic postal services in the EU; challenges in distributing products; added costs of working with private couriers and distributors
Finance-related issues	Payment terms	Longer typical payment terms in the EU versus the United States; added costs from financing receivables for longer periods
	Protection against nonpayment by customers	Higher sales costs due to need to protect against nonpayment (e.g., through export credit insurance)
	Payment transaction fees	Higher transaction costs for payments from the EU to the United States than for domestic payments because of higher bank fees (for currency conversion and wire transfers)
	Regulatory and legal framework	Various differences in regulatory and legal framework between the EU and the U.S. pose obstacles to exporting

Source: USITC compilation from roundtable transcripts, hearing transcripts, written submissions, and email messages.

Standards and Regulations

Standards, technical regulations, and conformity assessment procedures in the EU were among the trade barriers most frequently mentioned by U.S. SMEs during this investigation (box 2.1).[1] Industry representatives indicated that there are substantial differences between the regulatory systems in the United States and the EU, and that these differences result in significant barriers that make it disproportionately difficult for U.S. SMEs seeking to enter the European market.[2] SMEs expressed similar concerns

[1] The terms "standard" and "regulation" are used in this report according to the definitions from the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT Agreement) where possible. However, where submissions or roundtable transcripts were unclear as to whether the barrier was related to a standard or technical regulation, the terminology used in this report is that used by industry representatives.

[2] USITC, hearing transcript, November 20, 2013, 9–10 (testimony of Marjorie Chorlins, U.S. Chamber of Commerce); ANSI, written submission to the USITC, October 23, 2013, 7–8; ASTM, written submission to the USITC, n.d., 1–2 (accessed January 9, 2014); USITC, hearing transcript, November 20, 2013, 60–61 (testimony of Jeff Grove, ASTM International).

BOX 2.1 Standards, technical regulations, and conformity assessment

The following definitions of standard, technical regulation, and conformity assessment are from the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT Agreement). The primary difference between a standard and a technical regulation is that compliance with a standard is voluntary, while compliance with a technical regulation is mandatory.

- **Standard:** "Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method."
- **Technical regulation:** "Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method."
- **Conformity assessment procedures:** "Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. . . . Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations."[a]

[a] WTO, Agreement on Technical Barriers to Trade, Annex I, http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

during previous USITC investigations.[3] In a 2010 Commission survey, a higher percentage of large U.S. firms than small firms reported that foreign regulations are a burden; however, among those firms that reported foreign regulations are a burden, a larger percentage of U.S. SMEs (almost 90 percent) reported that they are a major burden.[4]

SMEs may have more difficulty adapting to standards-related measures in other countries/regions for a number of reasons, including the cost and staff time required.[5] According to an EU report, even SMEs based in the EU are less likely to play a role in the process of developing European standards than large firms, due to factors such as a lack of awareness of the process and the cost of participating. In addition, the EU may be less likely to use international standards due to the challenges of identifying, obtaining, and implementing the right ones.[6] This section provides a general overview of the EU's approach to technical standards, regulations, and conformity assessment and their impact on SMEs.[7]

[3] USITC, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities*, July 2010, 3–12 to 3–15; USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6–18 to 6–23.

[4] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6–20.

[5] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6–21; USITC, hearing transcript, November 20, 2013, 9–10 (testimony of Marjorie Chorlins, U.S. Chamber of Commerce); industry representative, email message to USITC staff, September 17, 2013.

[6] European Commission, *Using Standards to Support Growth*, 10, 29–32; de Vries et al., "SME Access to European Standardization," August 2009, 11–16.

[7] More detail on measures in specific sectors will be discussed later in the report.

Different Regulatory Approaches in the EU and the United States

According to the American National Standards Institute (ANSI), U.S. regulations tend to incorporate the standards that best fit regulatory needs, regardless of where or by whom the standard was developed.[8] This includes standards developed abroad. ANSI stated that:

> "U.S. law and policy call for federal agencies to base technical regulations on voluntary consensus standards developed by the private sector—and, in particular, relevant international standards—wherever possible, rather than creating government-unique standards. U.S. regulators are given flexibility to select the standards that suit their regulatory objectives."[9]

ASTM International (ASTM) further notes that EU-based SMEs participate in the development of standards by U.S.-based standards development organizations, and that U.S. regulators use standards from a range of global standards bodies, such as the U.S.-based American Society of Mechanical Engineers (ASME) and the Switzerland-based International Organization for Standardization (ISO).[10]

In the EU, however, under the New Approach Directives adopted in 1985, the three European standards organizations—CEN (European Committee for Standardization), CENELEC (European Committee for Electrotechnical Standardization) and ETSI (European Telecommunications Standards Institute)—develop the technical specifications for products, and products that meet the standards established by these organizations are presumed to be compliant with the relevant regulation (box 2.2). This indirect referencing of standards, according to ASTM, is "exclusive to European standards and those harmonized through the ISO and IEC."[11] The EU officially recognizes only the ISO, International Electrotechnical Commission (IEC), and International Telecommunication Union (ITU)—all based in Switzerland—as international standards bodies, and does not recognize U.S.-based private sector standards development organizations.[12] There is no process that would either enable the use of standards developed by organizations based in the United States or extend the presumption of compliance to these standards.[13] In addition, it is difficult for U.S. SMEs to participate in European standards development, which, according to ASTM, "is limited primarily to European experts working through their national standards bodies to reach a European consensus."[14]

Industry representatives also pointed to differences between the EU and U.S. approaches to regulations in terms of their transparency and responsiveness to public comments on regulations. According to the U.S. Chamber of Commerce, the U.S. process for

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[8] ANSI, written submission to the USITC, October 23, 2013, 7.

[9] Ibid.

[10] ASTM, written submission to the USITC, n.d., 2 (accessed January 9, 2014); USITC, hearing transcript, November 20, 2013, 61–62 (testimony of Jeff Grove, ASTM International).

[11] ASTM, written submission to the USITC, n.d., 2 (accessed January 9, 2014).

[12] USITC, hearing transcript, November 20, 2013, 61–62 (testimony of Jeff Grove, ASTM International); ANSI, written submission to the USITC, October 23, 2013, 7.

[13] ASTM, written submission to the USITC, n.d., 2 (accessed January 9, 2014); USITC, hearing transcript, November 20, 2013, 103–104 (testimony of Jeff Grove, ASTM International). Also ASTM states that it has developed some 12,000 standards that are used currently around the world. http://www.astm.org/ABOUT/overview.html (accessed February 24, 2014).

[14] USITC, hearing transcript, November 20, 2013, 62 (testimony of Jeff Grove, ASTM International); ASTM, written submission to the USITC, n.d., 2 (accessed January 9, 2014).

BOX 2.2 The "Old Approach" and "New Approach" in the EU

In the EU, technical regulations can be developed under either the "Old Approach" or the "New Approach":

- **Old Approach:** EU regulations include the specific product standards that must be met. This approach applies to sectors such as motor vehicles and chemicals.

- **New Approach:** The European Commission defines the "essential requirements" for products, and the technical specifications for meeting these "essential requirements" are developed by one of three European standards bodies—CEN (European Committee for Standardization), CENELEC (European Committee for Electrotechnical Standardization) and ETSI (European Telecommunications Standards Institute). Products that meet the standards developed by these bodies are presumed to comply with the "essential requirements." These standards are not mandatory, but if a producer chooses not to use the standards, according to the European Commission the "producer has an obligation to prove his products are conformant to the essential requirements."[a]

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Sources: ANSI, written submission to the USITC, October 23, 2013, 7; European Commission, "The 'New Approach,'" n.d. (accessed November 5, 2013); CENELEC, "New Approach Directives," n.d. (accessed November 5, 2013); U.S. Department of Commerce, "Which Product Groups Are Covered?" n.d. (accessed November 5, 2013).

[a] European Commission, "The 'New Approach,'" n.d. (accessed November 5, 2013).

developing regulations is more transparent, and stakeholders have more input into the regulations.[15] ANSI expressed the view that European regulators need to more fully consider stakeholder comments when developing regulations.[16] NAM similarly raised concerns about the lack of transparency in the EU's "implementation and the development of regulations and directions."

NAM also expressed concern about the use of the "precautionary principle" in developing regulations.[17] NAM stated that following this principle "leads to regulatory outcomes that are contrary to basic science, risk assessment and cost-benefit principles" and that pose barriers to U.S. exports. Even after regulations are implemented, according to the Society of Chemical Manufacturers and Affiliates (SOCMA), difficulty in communicating with EU regulatory agencies and a lack of transparency by these agencies can create challenges for SMEs.[18]

[15] USITC, hearing transcript, November 20, 2013, 45–46 (testimony of Marjorie Chorlins, U.S. Chamber of Commerce).

[16] ANSI, written submission to the USITC, October 23, 2013, 8.

[17] The precautionary principle, according the European Commission, applies to possible risks to the environment or human, animal, or plant health. The precautionary principle comes into effect "when a phenomenon, product or process may have a dangerous effect," but scientific evaluation "does not allow the risk to be determined with sufficient certainty." In the absence of scientific certainty, the relevant authorities may still choose to act, including implementing measures to address this potential risk. The use of the precautionary principle can have an impact on firms and products sold in the market, since in "the case of an action being taken under the precautionary principle, the producer, manufacturer or importer may be required to prove the absence of danger." NAM added that it remains concerned about EU regulations that lack technical justification and are not proportional with their intended consumer or environmental benefits. NAM, written submission to the USITC, October 23, 2013, 3–4; Europa, "The Precautionary Principle," April 12, 2011.

[18] USITC, hearing transcript, November 19, 2013, 69–75 (testimony of William E. Allmond, SOCMA).

Conformity Assessment Procedures and the Conformité Européenne Marking Perceived as Barriers to SME Exports

Conformity assessment procedures were also widely cited by industry representatives as a barrier to U.S. exports to the EU (box 2.3). One barrier relates to the organizations that are allowed to provide testing and certification services. ANSI indicated that U.S. conformity assessment providers are not treated the same as providers within the EU, and that if the EU were to enable foreign firms to provide the same services as national firms, the move would make it easier for foreign manufacturers to export to the EU.[19] NAM stated that the EU uses different processes in accrediting U.S. conformity assessment bodies than it does for EU bodies. Furthermore, according to NAM, "all avenues for obtaining required third-party certification for EU market access exclude U.S. testing laboratories from the final stage of product certification," resulting in additional testing costs for U.S. manufacturers and delaying the sale of their products in the EU.[20]

Conformity assessment procedures, including testing related to the Conformité Européenne (CE) marking, were reported to add significant costs that are especially burdensome for SMEs.[21] U.S. companies, for example, report spending thousands or tens

BOX 2.3 CE marking

A CE marking "indicates a product complies with the essential requirements of the applicable European laws or directives with respect to safety, health, environment, and consumer protection."[a] Besides attesting that the product meets all applicable laws and regulations, the marking shows that the product can be sold in the European Economic Area—that is, the EU and the European Free Trade Association (EFTA)—and Turkey. The CE marking applies to a wide range of goods (e.g., medical devices, toys, pressure vessels, and measuring instruments), but it is not required for all products.

Manufacturers are required to ensure conformity assessment and to attach the CE marking. They must conduct or arrange for the conformity assessment; prepare technical documentation on the product's conformity assessment; prepare and sign an "EU declaration of conformity" (which must be available upon request); and attach the CE marking. Third-party certification may be required for the CE marking, but for many products, manufacturers can self-certify that their products meet the relevant requirements.

Distributors are required to verify that products have the CE marking and that manufacturers have the relevant documentation. Importers are required to ensure that manufacturers have followed the appropriate conformity assessment process and that documentation is available.

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Sources: USDOC, "CE Marking—Home," April 12, 2011; USDOC, "CE Marking—Program Overview," March 7, 2013; UL, "CE Marking Information," n.d. (accessed October 31, 2013); European Commission. "CE Marking—Basics and FAQs," n.d. (accessed October 31, 2013); UK, Department for Business, Innovation and Skills, "CE Marking," October 8, 2012.

[a] UL, "CE Marking Information," n.d. (accessed October 31, 2013).

[19] ANSI, written submission to the USITC, October 23, 2013, 8.

[20] NAM, written submission to the USITC, October 23, 2013.

[21] USITC, hearing transcript, November 20, 2013, 62–63, 155–156 (testimony of Jeff Grove, ASTM International); USITC, hearing transcript, November 20, 2013, 9–10 (testimony of Marjorie Chorlins, U.S. Chamber of Commerce); USITC, hearing transcript, November 20, 2013, 69–71 (testimony of William E. Allmond, SOCMA).

of thousands of dollars for CE testing.[22] In addition, companies must create a technical file documenting that the product complies with all essential requirements in the EU directive, which European agencies can request to inspect.[23]

Intellectual Property Issues Important to U.S. SMEs Exporting to the EU

The basic insight underlying intellectual property (IP) rights is that the development of innovative products and processes can be expensive, time- and labor-intensive, and risky; however, once the innovations exist, often they can be copied at just a fraction of their original cost.[24] IP rights are intended to protect against unauthorized copying so that innovators can recoup their investments and earn a profit; without this framework, incentives to innovate may be undermined.[25] As NAM stated in its written submission, "IP rights—such as patents, copyrights, trademarks, test data and trade secrets—drive innovation and economic growth."[26]

Although IP protection in the EU is generally considered strong,[27] there are still problems in several areas. SMEs reported that manufacturers need more robust protection of trade secrets, particularly the confidential information that firms compile to obtain regulatory approval. SME representatives also noted that the high cost of patenting in the EU, and divergent patenting standards across EU member states, can create substantial obstacles to trade. By contrast, representatives of U.S. independent resellers asserted that trademark owners' rights to control the sale of branded products within the EU are too strong and can act as a barrier to U.S. exports of new and used electronic equipment. This issue is addressed in more detail in the electronics section of chapter 4, as it mostly deals with sales of used branded electronic items.

Increased Protection of Trade Secrets and Regulatory Data

Industry representatives particularly cited the need for increased protection for trade secrets, a subject which they said has not been addressed extensively in trade agreements.[28] Trade secrets are broadly defined to include business information that derives economic value from not being generally known or readily ascertainable, and that

[22] Industry representatives, email message to USITC staff, September 6, 2013, and September 24, 2013; USITC, hearing transcript, November 20, 2013, 62–63 (testimony of Jeff Grove, ASTM International).

[23] USITC, hearing transcript, November 20, 2013, 164–65 (testimony of Jeff Grove, ASTM International).

[24] Graham et al., "High Technology Entrepreneurs," 2009, 1259.

[25] Similarly, trademark rights give additional support to innovation by protecting firms' investments in the reputation of their products and helping consumers differentiate among products. See, e.g., U.S. Department of Commerce, "Intellectual Property and the U.S. Economy," March 2012, 1; *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 163 (1995); Graham et al., "High Technology Entrepreneurs," 2009, 1259.

[26] NAM, written submission to the USITC, October 23, 2013, 2; U.S. Chamber of Commerce, written submission to the USITC, November 20, 2013, 2. See also U.S. Department of Commerce, "Intellectual Property and the U.S. Economy," March 2012, 1.

[27] NAM, written submission to the USITC, October 23, 2013, 2; U.S. Chamber of Commerce, written submission to the USITC, November 20, 2013, 2.

[28] NAM, written submission to the USITC, October 23, 2013, 2; USITC, hearing transcript, November 20, 2013, 87 (testimony of William Allmond, Society of Chemical Manufacturers & Affiliates).

has been subject to reasonable efforts to maintain its secrecy.[29] Such efforts may include, for example, internal security procedures and contracts with employees and others that restrict disclosure of trade-secret information. Industry representatives identified trade secrets as particularly important to SMEs because, unlike patents, they can be protected without registration or filing formalities and are perceived to be less expensive to maintain and enforce.[30] One industry representative noted that his firm does not own a single patent because of the expenses involved in obtaining and defending a patent in the event of a challenge.[31]

Industry representatives specifically highlighted the need to ensure that trade secret information submitted to obtain regulatory or marketing approval of their products is protected from unauthorized disclosure. For example, under the EU's new Cosmetics Regulation (EU Regulation 1223/2009), which came into effect in July 2013, firms reportedly must provide regulators with detailed information about their products, formulas, ingredients, and manufacturing processes.[32] Industry representatives consider many of these facts to be trade secrets; companies generally require that employees with access to such information sign strict nondisclosure agreements. However, the new regulation reportedly will increase third-party access to the information, and U.S. firms consequently fear that it will increase the risk of disclosure to competitors.[33] Industry representatives raised similar concerns about the need to share trade-secret information with EU regulatory representatives to comply with the requirements of the EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation.[34]

Industry representatives recommended that the United States and the EU work cooperatively with each other to ensure the effective protection of trade secrets in the EU, the United States, and other countries.[35] On a positive note, on November 28, 2013, the EU proposed new rules to help strengthen protections against trade-secret theft. The draft directive includes a common definition of trade secrets, and is intended to make it easier for victims of trade-secret theft to obtain effective relief in all EU member states.[36]

A Unified System for EU Patent Protection

Industry representatives identified the high cost of patent protection in the EU as one of the most substantial IP barriers that SMEs face in Europe.[37] Reportedly, patenting costs

[29] The particular definition of trade secrets varies across EU member states and also by state in the United States, although the Uniform Trade Secrets Act has increased consistency across the 46 U.S. states that have adopted it. European Commission, "Study on Trade Secrets," April 2013, 4; Albert, "Trade Secrets in the United States," July/August 2010, 93.

[30] NAM, written submission to the USITC, October 23, 2013, 2; Hall et al., "The Choice between Formal and Informal Intellectual Property," April 2012, 37–38.

[31] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

[32] European Commission, "Health and Consumers, Regulatory Framework," November 26, 2013.

[33] Industry representatives, roundtable discussions, Centennial, CO, September 17, 2013; Philadelphia, PA, September 23, 2013; and Sacramento CA, September 25, 2013.

[34] Industry representatives, roundtable discussion, Houston, TX, September 19, 2013; USITC, hearing transcript, November 20, 2013, 87 (testimony of William Allmond, Society of Chemical Manufacturers & Affiliates).

[35] NAM, written submission to the USITC, October 23, 2013, 2–3.

[36] European Commission, "Commission Proposes Rules," November 28, 2013.

[37] Industry representatives, roundtable discussions, Albuquerque, NM, September 18, 2013, and Salt Lake City, UT, September 20, 2013.

are much higher than in other markets because of the need to obtain protection in each member state, and because patenting and enforcement standards diverge across the EU.

The European Commission estimates that obtaining EU-wide patent protection costs approximately $48,000 (€36,000), most of which goes to translation and local fees in the member countries, compared to approximately $2,600 in the United States.[38] Moreover, this estimate does not take into account the cost of litigation in the event that a patent is challenged in one or more EU member states. These costs can be prohibitively high for SMEs, who often have limited legal and financial resources.[39]

To address the high costs and complexity of obtaining patent protection, the EU has taken initial steps to create a "unitary patent package" that would be available at an affordable cost and on a one-stop-shop basis in all participating member states. The EU also contemplates unified and specialized jurisdiction for patent cases, to avoid the high costs of duplicative and inconsistent litigation across member states.[40] According to one SME representative, the implementation of unitary patent protection in the EU would be a "dream," bringing substantial market access benefits to SMEs.[41]

Logistical Issues, Including Customs, Tax Requirements, Shipping, and Distribution

According to interviews with industry representatives, U.S.-based SMEs that export to the EU often lack adequate resources to successfully navigate the complex and sometimes inconsistent EU customs environment.[42] SMEs find it challenging to overcome large and often critical information gaps about three areas in particular: EU product classification requirements under the World Customs Organization (WCO) Harmonized Description and Coding System, or "Harmonized System" (HS);[43] the assessment of duties and taxes on EU imports; and the criteria for receiving credits under the EU's VAT system. In some cases, the time-consuming process of researching and complying with EU customs and documentation requirements has deterred U.S. SMEs from exporting to the EU;[44] in other cases, U.S. SMEs have sought export assistance from large, well-established logistic services providers, such as FedEx and UPS,[45] which have expertise in customs management and a commercial presence in many, if not all, EU countries.[46]

[38] European Commission, "The EU Single Market, FAQs," November 11, 2013.

[39] While the Patent Cooperation Treaty streamlines the process for filing for patent protection in multiple countries, applicants must still take action in each country in which they seek the actual grant of the patent.

[40] European Commission, "The EU Single Market: FAQs," November 11, 2013.

[41] Industry representative, roundtable discussion, Salt Lake City, UT, September 20, 2013.

[42] Industry representatives, roundtable discussions, Houston, TX, September 19, 2013, and Philadelphia, PA, September 23, 2013.

[43] The HS is designed to standardize trade procedures across the more than 200 countries to which it applies. According to the WCO, it is also "used by governments, international organizations and the private sector for many other purposes such as internal taxes, trade policies, monitoring of controlled goods, rules of origin, freight tariffs, transport statistics, price monitoring, quota controls, compilation of national accounts, and economic research and analysis." For further information, see WCO, "What Is the Harmonized System?" n.d. (accessed November 5, 2013).

[44] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013.

[45] Industry representative, roundtable discussion, Houston, TX, September 19, 2013.

[46] Industry representative, interview by USITC staff, Washington, DC, November 1, 2013.

U.S. SMEs Encounter Problems Understanding and Complying with EU Customs Requirements

Product Classification

U.S. SMEs that export to the EU report challenges in determining the correct HS classification to use on customs forms (and, by extension, the amount of duties and taxes to be paid on their exports). This problem is made worse by the fact that the last four digits used in 10-digit HS codes may differ by country, including between the United States and the EU.[47] SMEs and other industry representatives reported that in some instances, U.S. exports to the EU are reclassified by EU customs officials (using a broader product description under a 6-digit HS code), and that this sometimes results in higher duties and taxes for U.S. exporters or their customers. They also said that in some cases, HS classifications differ from one EU country to another and that, in other instances, incorrect or unrecognized HS codes on products arriving at EU ports of entry lead to customs delays and extended warehousing of U.S. exports.[48] Both scenarios are costly to the exporter and can be particularly hard on U.S. SMEs.[49]

Roundtable participants cited several examples of difficulty with HS classification issues in the EU. One U.S. manufacturer of retail security devices noted that the closest HS description for the type of product that it sells is smoke alarms. To remedy this issue, the company assigns an HS code to each component of the security devices that it exports (e.g., PCB ports in injection molded plastic and pull cabling). A firm representative commented that although this unconventional approach may make the company vulnerable to adverse judgments by EU customs officials, the company has not found a more effective way to address its dilemma.[50] An SME representative in the semiconductor industry said that one of its biggest challenges in exporting is uncertainty with customs. Another company representative said that although his firm is a known exporter and has frequent and regular shipments, when a shipment is held up for additional examination, it can be delayed for almost a month. The representative said that the process is inconsistent from port to port and shipment to shipment, so it is difficult for the SME to predict when there will be an issue.[51] A representative of yet another firm stated that it has issues determining tariff classifications because its products contain both U.S. and Chinese content. It suggested that U.S. exporters would benefit from greater clarity in EU customs procedures.[52]

[47] Industry representative, interview by USITC staff, Washington, DC, November 1, 2013.

[48] Industry representative, interview by USITC staff, Washington, DC, November 1, 2013. Industry representatives report that, in cases where it is unclear what the proper HS classification of a particular product is, an exporter may apply for a "ruling" by the customs administration of the country to which it is exporting. However, there is no reciprocity between countries with respect to these rulings, so that if the same product is exported to a third country, that country's customs administration may assign the product yet another HS code. For example, the HS code for certain orthodontic equipment is not consistent across EU member states, which has implications on the various duties assessed on the product. Highland Metals, Inc., written submission to the USITC, September 24, 2013.

[49] Industry representative, roundtable discussion, Houston, TX, September 19, 2013.

[50] Industry representative, roundtable discussion, Chicago, IL, September 13, 2013.

[51] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

[52] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013.

Duties and Taxes on EU imports

Lack of clear information concerning duties and taxes on goods imported into the EU is also problematic for U.S. SMEs.[53] An SME exporter said that the inconsistent and sometimes opaque application of the HS code among EU countries can pose difficulties for both SME exporters and the logistics firms with which they partner because the customs duties assessed may be different than those originally anticipated.[54] Without an accurate estimate of the "landed costs" of exports to the EU (which include both customs-related duties and taxes, and transportation costs), U.S. SME exporters reported that they may be at a competitive disadvantage when pricing their products for the EU market.[55] Because of the uncertainty about the precise amount of taxes and duties assessed on EU exports, many SMEs reportedly elect to have such fees paid by their EU customers once the products have cleared customs. Nonetheless, certain EU customers may prefer that these fees be paid before the goods ship, which creates fiscal uncertainty for U.S. exporters.[56]

EU's VAT System

Nearly 30 U.S. SMEs that participated in the Commission's roundtables cited difficulties in meeting the documentation and other requirements of the EU's VAT system.[57] The VAT is a form of consumption tax on goods and services placed on the value that is added to a product at each stage of production and at final sale. The standard VAT rate varies by EU member, ranging from 15 percent to 25 percent (these rates are publicly available to both EU and non-EU residents).

SMEs commented that the complexity of the VAT ledger system, and the requirement for transactions to take place between EU entities, pose challenges to U.S. exporters.[58] For example, a U.S. manufacturer of sporting goods noted that it took the company nearly one year to comply with documentation and residency requirements pertaining to VATs. The company hired both an EU-based sales manager and a consultant to oversee VAT-related issues.[59] Separately, a producer of technical equipment suggested that it would be

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[53] Industry representative, roundtable discussion, Bethpage, NY, September 25, 2013.

[54] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013.

[55] Industry representatives, roundtable discussion, Fresno, CA, September 27, 2013. One industry representative voiced concern over the lack of a central location within the EU to get information on all of the duties and taxes that a customer in the EU pays to receive the imported product. The lack of such a central source of information makes it difficult for the exporter to ascertain how price-competitive his company's products are relative to those offered by EU-based manufacturers.

[56] Industry representative, interview by USITC staff, Washington, DC, November 1, 2013. Returns of computer servers that have been repaired may also cause problems, as duties may be assessed twice if EU customs officials determine that a particular item that has been reexported to the EU contains value-added content. The issue is also applicable to consumer products that have warranties, because EU customs rules regarding the reexport of products or the export of replacement products are not always consistently applied across EU countries. Industry representative, roundtable discussion, Salt Lake City, UT, September 25, 2013.

[57] The EU VAT legislation in effect since January 1, 2007, is Council Directive 2006/112/EC, which is a recast of the Sixth VAT Directive as amended over the years. The Sixth Directive, issued in 1977, sought to harmonize the national VAT systems by providing a uniform basis of assessment. For more information, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006L0112:20110101:EN:HTML and European Commission, "Taxation and Customs Union: General Overview," January 16, 2014.

[58] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013.

[59] Industry representative, roundtable discussion, Salt Lake City, UT, September 25, 2013. The manufacturer in this case exports directly to small retail shops rather than through a distributor, so the company must pay higher taxes and is responsible for coordinating VAT paperwork for many different shipments.

helpful if there were more public resources available for obtaining information on product eligibility and company enrollment requirements related to the VAT, as it is financially burdensome for SMEs to hire consultants for this purpose.[60] In some cases, a U.S. exporter without a commercial presence in the EU will employ an EU-based "fiscal representative" to allow the U.S. firm, and its EU customers, to participate in the VAT system.[61] However, hiring EU representatives to serve in this capacity can be cost-prohibitive for U.S. SMEs.[62]

U.S. SMEs Highlight Challenges with the Transportation and Distribution of Products in the EU

Apart from customs issues, industry representatives also stated that the low reliability and high costs of shipping represent significant barriers to exporting to the EU. They commented that domestic postal services in the EU can be undependable for international deliveries: delays of six to eight weeks are common; items are often lost; and tracking methods are not trustworthy. Industry representatives said that they found the postal services in France, Germany, and Italy to be particularly problematic. They also stated that fees and duties beyond standard shipping costs can be cost prohibitive in certain countries, such as Romania. Cost and reliability problems of EU postal systems have forced industry representatives to use private couriers for shipping, which results in higher costs that are harder for small businesses to absorb.[63] Another industry representative that exports to the EU from the U.S. West Coast cited the amount of time needed to transport machinery to Europe as a trade barrier, in particular because such exports are routed through New Jersey or through Rotterdam (in the Netherlands) before reaching other countries in the EU. According to this representative, it generally used to take between 35 and 45 days for goods to be shipped from the West Coast to Europe, but recently this amount has increased to more than 60 days. The representative suspects that customs processing accounts for the additional delay, which hampers timely delivery of a seasonal product to his EU customers.[64]

U.S. SMEs also noted challenges pertaining to the distribution of products in the EU.[65] Although several U.S. SMEs reported that they benefit from working directly with EU distributors who have knowledge of EU product requirements, as well as of the local language, culture, and business practices, they noted that these partnerships have certain disadvantages. For instance, a representative of a food manufacturing firm stated that hiring a local distributor in the EU added to the company's supply chain costs, which ultimately increased the prices of its products in the EU.[66] Another representative commented that U.S. exporters sometimes encounter difficulties terminating distribution agreements with EU entities: such agreements often contain opaque language that may

[60] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013. A representative of a chemicals firm said that Greece and Italy reportedly delay refunding VATs to qualified entities by as much as eight years due to these countries' precarious financial situation. Industry representatives, roundtable discussion, Houston, TX, September 19, 2013.

[61] Industry representative, roundtable discussion, Houston, TX, September 19, 2013; industry representative, interview by USITC staff, Washington, DC, November 1, 2013.

[62] Industry representative, roundtable discussion, Chicago, IL, September 13, 2013.

[63] Industry representative, email message to USITC staff, October 10, 2013.

[64] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013.

[65] Industry representative, roundtable discussion, Houston, TX, September 19, 2013.

[66] Industry representative, roundtable discussion, Atlanta, GA, September 13, 2013.

inadvertently commit U.S. exporters to paying their distributors after the agreements have expired.[67]

Private and Public Entities Assist U.S. SMEs Exporting to the EU

As noted, large logistics firms often assist U.S. SMEs in understanding and complying with EU customs requirements.[68] These firms maintain sophisticated databases that help users to access customs information online, including global tariff rates.[69] They also employ account representatives with country-specific knowledge of import and export procedures, who can provide guidance on these matters to their clients.[70] In written testimony to the Commission, the U.S. Chamber of Commerce said that FedEx, UPS, and DHL offer education and training seminars to help SMEs learn how to establish an export business and fulfill customs requirements. According to the testimony, other companies, such as Amazon and eBay, also provide support to U.S. SME exporters that sell their products through the Internet. In March 2012, eBay launched a program to facilitate the increased participation of U.S. and EU SMEs in Web-based transatlantic trade. The program introduces a "policy roadmap" for lowering e-commerce trade barriers between the United States and the EU. The U.S. Chamber of Commerce also highlighted the work of the U.S. Foreign Commercial Service's "Gold Key" program, which, among other things, links U.S. exporters with potential overseas distributors.[71]

Finance-related Issues Faced by SMEs Exporting to Europe

At the roundtable discussions held in September 2013, many SMEs mentioned that finance-related issues were sometimes challenging when exporting to the EU.[72] The financial issues cited related principally to longer payment terms, more expensive protection against nonpayment, higher payment transaction fees, and differences in regulatory and legal frameworks. However, nearly all of these SMEs said that the major trade impediments they faced were non-financial. Export trade advisers and consultants concurred that the most difficult problems for exporters were not related to banking and finance, but rather to regulatory compliance for their products. Overall, SMEs reported

[67] Industry representative, roundtable discussion, Smithfield, RI, September 27, 2013.

[68] One SME exporter sought out a capable freight forwarder to overcome issues with warranty products and reimportation/reexportation. The freight forwarder provided assistance to the SME with EU customs procedures and paperwork. The SME noted that there are companies that specialize in the temporary reimportation/reexportation of commercial samples for exhibitions, fairs, and trade shows and that will do customs facilitation for a small fee; these companies generally produce good results. Industry representative, telephone interview by USITC staff, September 17, 2013.

[69] Under its Directorate-General for Trade, the European Commission maintains a customs database called the Exporter's Guide to Import Formalities (EGIF). Industry representatives commented that information on EGIF is both more current and more accessible than that contained in a similar customs database available through the U.S. government website *export.gov*. Industry representatives suggest that as a result, U.S. exporters may be at a disadvantage vis-à-vis their European counterparts when gathering customs information. Industry representative, interview by USITC staff, Washington, DC, November 1, 2013.

[70] Industry representative, interview by USITC staff, November 1, 2013.

[71] U.S. Chamber of Commerce, written submission to the USITC, October 8, 2013, 4; industry representative, interview by USITC staff, Washington, DC, November 1, 2013.

[72] U.S. firms that sell financial services to EU customers did not participate in the roundtables or make a submission; thus, this section does not address trade barriers that such firms might face in exporting to the EU. Instead, this section describes financial issues reported by firms primarily exporting merchandise to the EU and by SMEs' financial services and trade consultants.

that they are able to conduct business with banks in the EU without impediment.[73] Nevertheless, several industry participants cited some market practices and business conventions, especially with regard to the rights of creditors and debtors and the taking of collateral, that make it more difficult for them to sell in Europe than in the United States.

Longer Payment Terms in the EU

A U.S. supplier will likely sell on "open account" terms in order to be competitive in the European marketplace.[74] Several roundtable participants said that payment terms are conventionally longer in EU markets than in the United States. One industry consultant explained that typical payment terms in the EU are around 90 days, while they are normally closer to 45 days in the United States. This means that a U.S. firm exporting to the EU would likely have to finance its receivables for an additional 45 days, which entails an extra cost.[75]

Protection against Nonpayment

As with most sales transactions, nonpayment is a concern for SMEs exporting to the EU. SME representatives discussed three ways a U.S. exporter can protect itself against nonpayment in foreign markets, but each approach is likely to be more expensive than selling at home. The first is to try to confirm the creditworthiness of purchasers by vetting them in advance. This was not judged to be a severe problem; one participant noted that it is much easier to vet a customer in the EU than, for example, in China. There are private credit-reporting services in the EU, just as in the United States, that sellers can use to assess the creditworthiness of their customers. Also, the U.S. Foreign Commercial Service offers a vetting service to help U.S. firms find suitable counterparties in foreign markets.[76]

Second, several participants said that using letters of credit gave absolute security of payment, but added that these were expensive for exporters. A major reason for their costliness, according to these participants, is that local European banks charge fees to convert a U.S. letter of credit into a local bank guarantee conforming to local law (adding 3–5 percent to the cost of the project), on top of the fees charged by the U.S. bank issuing the letter of credit. (Market convention has changed in recent years, and EU customers no longer accept U.S.-issued letters of credit.)[77]

Finally, export credit insurance policies, like letters of credit, are available from both private and public sources. Examples include the American International Group, Inc. (AIG) and the U.S. Export-Import Bank. However, participants stated that market

[73] Industry representatives, roundtable discussions, Cleveland, OH, September 10, 2013; Salt Lake City, UT, September 20, 2013; Smithfield, RI, September 27, 2013; and Cleveland, OH, September 10, 2013.

[74] In the "open account" method of settling payment for trade transactions, the supplier ships required goods to the buyer who, after receiving the goods and checking the related shipping documents, credits the supplier's account in their books with the invoice amount. The account is then settled by the buyer sending a bank draft or wire transfer remittance in favor of the exporter.

[75] Industry representatives, roundtable discussions, Raleigh, NC, September 16, 2013; Salt Lake City, UT, September 20, 2013; Smithfield, RI, September 27, 2013; and New York, NY, September 24, 2013.

[76] Industry representatives, roundtable discussions, Raleigh, NC, September 16, 2013; Salt Lake City, UT, September 20, 2013; and New York, NY, September 24, 2013.

[77] Industry representatives, roundtable discussions, Centennial, CO, September 17, 2013, and Miami, FL, September 19, 2013.

policies may be prohibitively expensive for small exporters because insurers often impose a minimum premium amount, no matter what the value of the shipment.[78]

Industry representatives identified several strategies that producers can use to deal with nonpayment by customers after the fact: an exporter can try to renegotiate payment terms, file a claim with a bank that has issued a letter of credit or guaranteed the receivable, file an insurance claim if the receivable was insured, or sue the customer in the jurisdiction of the purchase contract (i.e., the local EU market). One U.S. exporter described how it succeeded in resolving nonpayment situations by renegotiating payment terms, but it noted that payments were slower from customers in countries with difficult economic conditions, such as Greece or Spain.[79] Lawsuits were described as extremely costly and unlikely to be pursued by SMEs.

Payment Transaction Fees

SMEs said that payment transaction fees, even if payments are made as agreed and on time, are likely to be higher in the EU than in the United States. Banking representatives explained that wire transfer fees are now charged to both the sender and the receiver, rather than being absorbed by the bank. In addition, most U.S. banks will only accept payments made over the Society for Worldwide Interbank Financial Telecommunication (SWIFT)[80] network (because its higher security fulfills requirements of U.S. anti-money-laundering regulations), while EU counterparties often prefer to send payments through the local bank payment networks, where the fees are lower. However, payments sent to the United States from local networks sometimes get lost, although security will be improved in the new EU-wide Single Euro Payments Area (SEPA) network. In addition, these payments have the potential to be canceled by the sender. U.S. exporters therefore have to consider the need to pay higher SWIFT fees when they negotiate terms with their EU customers.[81]

Additional Obstacles Related to Regulatory and Legal Frameworks

SMEs and their financial services and trade consultants cited other differences in regulatory and legal frameworks between the United States and the EU (including EU national markets) that also make exporting from the United States to the EU somewhat more complex than doing business at home. For example, according to participants, product liability insurance requirements for suppliers are more onerous in the EU than in the United States, and they vary from country to country. Taxation of certain inputs and VAT compliance is also a challenging issue for SMEs. The EU's more stringent privacy

[78] Industry representatives, roundtable discussion, Smithfield, RI, September 27, 2013.

[79] Industry representative, roundtable discussion, Salt Lake City, UT, September 20, 2013.

[80] SWIFT is a member-owned cooperative that provides communication services to over 10,000 banks, securities institutions, and corporations in over 200 countries, enabling members to exchange automated financial information reliably and securely.

[81] Before 2014, the EU payments landscape was complex, with local Automated Clearing House (ACH) payment networks in 17 European national markets, each requiring separate accounts by companies. Beginning on February 1, 2014, the EU's SEPA initiative will harmonize how retail payments denominated in euros between EU counterparties are processed, and errors are likely to be significantly reduced by the introduction of a unique bank ID system; note, however, that SEPA does not include payments to parties outside the EU. Boston Consulting Group, "Global Payments 2013," September 24, 2013; J.P. Morgan Treasury Services, "SEPA Compliance for U.S. Corporations" (accessed December 6, 2013); industry representatives, roundtable discussions, Smithfield, RI, September 27, 2013; Salt Lake City, UT, September 20, 2013; and New York, NY, September 24, 2013.

regime was mentioned by a few roundtable participants, but generally was not deemed a significant issue. However, according to one participant, the United States' anti-money-laundering and know-your-client regulations have made some EU and Swiss banks less willing to work with U.S. companies.[82] The risk of adverse currency movements reducing the value of export sales, as well as the transaction costs associated with currency conversion and hedging, are also ever-present problems that, in the view of participants, need to be addressed. Participants felt that recent U.S. financial regulations with respect to using foreign-exchange options have restricted currency-hedging opportunities for companies.[83]

U.S. Government Assistance

Financial assistance is available to U.S. exporters from the Small Business Administration (SBA) and the U.S. Export-Import Bank. As indicated above, bank guarantees or letters of credit are available from the private sector, as are export credit insurance vehicles to lock in expected export receivables payments, but these are often costly. The SBA provides U.S. companies with funding to fulfill foreign sales contracts.[84] The SBA guarantees working capital loans (for foreign receivable financing, purchase order financing, etc.) up to $5 million, which allows up to $30 million of financing per year based on a 60-day payment cycle. The Export-Import Bank's export credit insurance program and working capital financing program also help provide SMEs with necessary financial protection as they engage in exporting.[85] Export credit insurance is helpful when trying to secure a SBA working capital loan or a private sector bank guarantee, and the U.S. Export-Import Bank is able to offer this at a discounted price to SMEs (usually less than one-half of 1 percent of loan value).[86] While there are minimum U.S. local-content requirements for covered exports, industry representatives indicate that this is normally not an important issue for SMEs.[87] Industry representatives also say that while undertaking export credit insurance agreements might remove some flexibility for the exporter in situations of nonpayment (i.e., they are forced to file a claim against the

[82] Several U.S. banking laws and regulations have provisions to help law enforcement detect financial fraud and embezzlement, to identify schemes by U.S. persons involving tax evasion, money laundering, terrorist financing and other criminal activities. The key U.S. anti-money-laundering laws and regulations are the Bank Secrecy Act of 1970 (BSA) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (known as the USA PATRIOT Act). U.S. anti-money laundering rules require reporting from U.S. branches and agencies of foreign banks about customer accounts if there is potentially "suspicious activity," i.e. activity with no business purpose or apparent lawful purpose. At the same time, all U.S. holders of foreign bank accounts (both individuals and corporate) must file a report of their foreign bank and financial accounts (FBAR). In addition, the Foreign Account Tax Compliance Act 2010 (FATCA) requires foreign banks to report to the IRS information about financial accounts held by U.S. taxpayers or by entities in which U.S. taxpayers hold a substantial interest." Protiviti Consulting, *Guide to U.S. Anti-Money Laundering Requirements*, 2012.

[83] Industry representatives, roundtable discussions, Smithfield, RI, September 27, 2013; Santa Ana, CA, September 24, 2013; Philadelphia, PA, September 23, 2013; Salt Lake City, UT, September 20, 2013; and Miami, FL, September 19, 2013.

[84] Industry representatives, roundtable discussions, Raleigh, NC, September 16, 2013; Salt Lake City, UT, September 20, 2013; New York, NY, September 24, 2013; Centennial, CO, September 17, 2013; and Smithfield, RI, September 27, 2013.

[85] See the U.S. Export-Import Bank's website for a description of the types of financial assistance it can provide to SMEs at http://www.exim.gov/products/.

[86] Industry representatives, roundtable discussions, Raleigh, NC, September 16, 2013; Salt Lake City, UT, September 20, 2013; New York, NY, September 24, 2013; and Miami, FL, September 19, 2013.

[87] Industry representatives, roundtable discussions, Raleigh, NC, September 16, 2013, and Los Angeles, CA, September 23, 2013.

customer and cannot renegotiate payment terms with them), they view the advantages as outweighing this drawback, especially for very large sales contracts.[88]

Several industry representatives noted that it would be helpful to have information about SBA, U.S. Export-Import Bank, and other government programs made more widely available. The website www.export.gov was viewed as very helpful, but some participants expressed concern that many SMEs are not aware of all the types of assistance offered. Improving communication with SMEs about available government assistance was seen as particularly important to encouraging companies to start exporting for the first time.[89] Statements from the U.S. Chamber of Commerce reinforce this point. They note the U.S. Government Accountability Office (GAO) findings that "the 17 federal agencies with export promotion programs could be made more effective through better coordination, elimination of duplicative activities, and better allocation of resources."[90] They found helpful the new collaborative initiative by several federal agencies to combine their trade financing programs and export marketing services into a one-stop platform—"U.S. Global Solutions." However, they noted that this program was still only in its pilot phase (scheduled to be completed in early 2014).[91]

[88] Industry representatives, roundtable discussion, Raleigh, NC, September 16, 2013.

[89] Industry representatives, roundtable discussions, Raleigh, NC, September 16, 2013; Cleveland, OH, September 10, 2013; New York, NY, September 24, 2013; Miami, FL, September 19, 2013; Centennial, CO, September 17, 2013; and Philadelphia, PA, September 23, 2013.

[90] U.S. Chamber of Commerce, written submission to the USITC, October 8, 2013, 6; U.S. Government Accountability Office (GAO), "Export Promotion: Better Information Needed about Federal Resources," July 17, 2013.

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CHAPTER 3
Chemicals and Apparel

Overview

Although the U.S. chemical and apparel industries have different characteristics, SMEs in both industries reported difficulty complying with the EU chemical regulatory system. The U.S. chemical industry includes large multinational companies (MNCs) and SMEs that produce a wide variety of products using both traditional and emerging technologies (e.g., biotechnology and nanotechnology). Many SMEs in the sector not only contribute to MNCs' supply chains but also export goods themselves. As noted in the Commission's January 2010 report on SMEs, the U.S. chemical industry was one of the United States' largest exporting sectors in 2007; SMEs accounted for about one-quarter of the sector's world exports in that year.[1] In contrast, the U.S. apparel sector, which uses natural and manmade fibers along with chemicals to make a wide variety of garments, is small and has been in decline during recent years. Apparel exports in 2010–11 were dominated by SMEs, in terms of both the number of exporters and the known value of exports.

SMEs and industry associations listed the following trade barriers as affecting SMEs' exports of chemicals to the EU: the EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation; tariff classifications under the international Harmonized System (HS); EU legal definitions, particularly those that differ from U.S. definitions; the process for obtaining Conformité Européenne (CE) marks; and rules related to the use of advanced materials and emerging technologies, such as biotechnology and nanotechnology. While REACH was identified as a substantial trade barrier by most chemical and apparel industry SMEs participating in this study, other nontariff measures (NTMs) discussed in this chapter also potentially affect SMEs disproportionately.

Apparel companies and related industry organizations also expressed concern about REACH and about high tariffs, particularly those relating to women's premium denim jeans. As SMEs account for most apparel exports to the EU, such tariffs can have a disproportionate effect on small companies. SMEs in both sectors also reported issues addressed in more detail in other chapters of this report, including inconsistent levels of value-added taxes (VATs) and other taxes in different EU countries (chapter 2); problems related to certificates of resale (chapter 4); and the varying levels of documentation required by EU member states (chapter 2).

[1] USITC, *Small and Medium-Sized Enterprises: Overview*, 3-11.

Chemicals and Related Emerging Technologies

The U.S. chemical industry is the world's second largest,[2] accounting for about 15 percent of the global industry in 2012.[3] The industry produces a wide variety of chemicals—e.g., adhesives, dyes and pigments, pesticides, pharmaceuticals, cosmetics, and plastics resins—that are used in all segments of the U.S. economy. U.S. chemical shipments were valued at almost $800 billion in 2012, continuing more than a decade of growth (with the exception of a decline in 2009 because of the global economic slowdown).[4] Sector employment levels, however, averaged about 785,000 annually during 2010–12, the lowest in a decade.[5]

Technologies used by the sector range from conventional chemical processes to multidisciplinary emerging technologies such as biotechnology and nanotechnology (box 3.1), with companies often integrating conventional and novel production processes in individual product lines. Companies participating in this study represented a diverse set of product groupings, including, among others, biologicals and other pharmaceuticals, biobased and renewable chemicals, biocides, colorants, cosmetics and other personal care products, industrial chemicals, lubricants, plastics, specialty intermediate chemicals, and various nanomaterials and other nanotechnology products.

BOX 3.1 Use of biotechnology and nanotechnology in the chemical sector

Biotechnology: According to the Biotechnology Industry Organization (BIO), "At its simplest, biotechnology is technology based on biology."[a] Products are made using biological products and/or processes. The three major segments of the biotechnology industry include[b] (1) healthcare (in the EU, this is referred to as "red biotechnology")—the production of biopharmaceuticals and other medical products; (2) agricultural ("green biotechnology")—the production/modification/improvement of products, plants, or animals or the development of microorganisms for specific agricultural uses; and (3) industrial biotechnology ("white biotechnology")—the production of bioproducts such as biofuels and biobased chemicals.

Nanotechnology: Refers to the application of science and engineering at the nanoscale in a wide variety of sectors to create novel products, tools, and technologies using unique properties of matter that emerge at that scale.[c] A number of U.S. SMEs are beginning to commercialize and export nanotechnology products along the entire value chain, ranging from upstream nanomaterials (e.g., carbon nanotubes) to downstream products such as solar cells, pharmaceuticals, cosmetics, and nanocomposites.[d]

[a] BIO, "What Is Biotechnology?" (accessed October 4, 2013).

[b] BIO, "Glossary of Agricultural Biotechnology Terms," February 14, 2011; EuropaBio, "What Is Biotechnology?" (accessed September 25, 2013).

[c] The nanoscale ranges from about 1 nanometer to about 100 nanometers (a nanometer is one-billionth of a meter). Products incorporating nanomaterials and nanoprocesses include advanced composites, high-performance batteries, automotive electronics in hybrid vehicles, and cancer treatments, among others.

[d] Nanotechnology can be applied across a variety of sectors, ranging from chemicals to electronics to aerospace, to name a few.

[2] For purposes of this study, the U.S. chemical industry encompasses all firms included in the North American Industrial Classification System (NAICS) code 325.

[3] American Chemistry Council (ACC), *Guide to the Business of Chemistry 2013*, 2013, iii, 9.

[4] ACC, *Guide to the Business of Chemistry 2013*, 2013, 9, 41. ACC defines shipments as "equivalent to the term 'turnover,' or value of output."

[5] ACC, *Guide to the Business of Chemistry 2013*, 2013, iii, 9.

The EU is a major trading partner for the U.S. chemical industry. In 2010–11, about a third of the known value of U.S. exports of chemicals (both by all exporters and by SME exporters) were to the EU (table 3.1), and over half of all U.S. firms exporting chemicals exported to the EU. SMEs accounted for about 15–21 percent, by known value, of U.S. exports of chemicals in 2010–11 and represented over 90 percent of the number of companies exporting, both overall and to the EU.

TABLE 3.1 The known value of U.S. exports and the number of exporters of chemicals (NAICS 325), by all U.S. exports and U.S. SME exports, and by all destinations and the EU[6]

	All destinations	EU	EU shares (%)
		2010	
All exports, known value (million $)	121,468	43,748	36.0
U.S. SME exports, known value (million $)	20,553	6,566	31.9
SME share (%)	16.9	15.0	–
Number of known exporters	4,904	2,624	53.5
Number of known SME exporters	4,703	2,435	51.8
SME share (%)	95.9	92.8	–
		2011	
All exports, known value (million $)	124,821	38,038	30.5
U.S. SME exports, known value (million $)	23,317	8,065	34.6
SME share (%)	18.7	21.2	–
Number of known exporters	4,959	2,689	54.2
Number of known SME exporters	4,751	2,502	52.7
SME share (%)	95.8	93.0	–

Source: Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; and Commission calculations.

Trade Barriers Related to Chemicals

REACH

A large number of SMEs in the chemicals sector, including producers of biobased chemicals and nanomaterials, cited REACH (box 3.2) as disproportionately affecting their exports to the EU. The Society of Chemical Manufacturers and Affiliates (SOCMA), a U.S. trade association,[7] reported that REACH reduced exports by U.S. SMEs to the EU. SOCMA and numerous SMEs stated that REACH has a disproportionate effect on SMEs versus larger companies—a view

[6] The known value is the portion of U.S. exports that Census was able to link to a specific company. Thus, it is a subset of total U.S. exports.

[7] SOCMA's members are batch, custom, and specialty chemical manufacturers; in 2013, over 90 percent of SOCMA's North American members were SMEs. SOCMA website, http://www.socma.com/assets/File/socma1/PDFfiles/membership/SOCMA-Member-List-for-print.pdf (accessed November 7, 2013). These data refer to 2013 and can change annually.

BOX 3.2 Background information: REACH and the chemical industry

REACH entered into force June 1, 2007. According to the European Chemicals Agency (ECHA), in principle REACH applies to all chemical substances and, therefore, affects most companies operating in the EU.[a] SOCMA states in its testimony that REACH is different from the U.S. chemical regulatory system in that it was "founded on the precautionary principle rather than the U.S. risk-based approach to regulation."[b] As one source defines it: under the precautionary principle, a product is not allowed/approved if there is a chance it can cause harm; in comparison, a risk-based approach "attempts to balance potential for harm against the potential for benefits."[c]

Under REACH, U.S. companies need to register the chemical substances they export to the EU and are required to have EU representation, usually in the form of an "Only Representative" (OR).[d] Costs for ORs can vary, largely depending on their cost structures and the number of products covered. For example, although polymers are exempt from registration, a U.S. chemical company marketing a polymer with 10 inputs in the EU has to register each input as individual substances, even if those substances are already registered by another U.S. company, significantly raising registration and OR costs.[e]

Registration dates run through 2018 and are phased in by tonnage and toxicity levels. Phase 1, implemented December 1, 2010, covers products shipped in quantities either greater than 1,000 metric tons per year (mtpy), if the product does not pose certain hazards defined under the Chemical Hazard Information and Packaging for Supply (CHIP) regulations; or greater than 100 mtpy, if the product is classified under CHIP as being hazardous to aquatic organisms; or greater than 1 mtpy, if the product is classified under CHIP as a carcinogen, mutagen, or reproductive toxicant.[f] Phase 2, effective June 1, 2013, covers all products shipped in quantities between 100 and 1,000 mtpy. When Phase 3 is implemented (June 1, 2018), the quantity levels will be reduced to 1 mtpy or greater.[g]

REACH's broad coverage not only affects manufacturers of specific chemicals but also companies in the consuming sectors, such as textiles and automotive and airplane parts. (For example, as cited in the Commission's July 2010 report, General Motors had to ensure that the thousands of parts it imports into the EU from SMEs and others in its global supply chain meet REACH requirements.) Of the 3,215 companies that registered products for the 2013 deadline, ECHA reports that 34 percent were characterized as "micro, small or medium-sized companies"; moreover, of the 9,084 registrations, about a quarter "were made by 'only representatives' on behalf of non-European companies."[h] Most other registrations would have been submitted by EU companies.

The high costs of complying with REACH have reportedly caused companies to exit the EU market, resulting in a market shakeout. Registration costs vary greatly depending on variables such as tonnage shipped, the amount of data needed, the number of companies that may group together for a product, and the number of products each company must register. Cost estimates presented in the Commission's July 2010 SME report ranged from about $1 million to place a product on market once to as much as $5 million over several years per product (an amount that reportedly could, however, be divided among companies participating as a group).[i]

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[a] ECHA, "Understanding REACH," n.d. (accessed December 28, 2013).

[b] SOCMA, prehearing submission to the USITC, September 20, 2013.

[c] DeLisi, email message to USITC staff, October 29, 2013.

[d] If a U.S. firm does not have a legal presence in the EU, it must appoint an Only Representative (OR) to carry out the required registration of imported substances under article 8(1) of REACH. The OR is a legal entity established in the EU that has sufficient background in the practical handling of substances and the necessary information to fulfill all registration obligations. The OR is then responsible for fulfilling all obligations under REACH for the imported substances that the firm appointed the OR to cover. ECHA, "Guidance on Registration," May 2012. Various EU consulting firms and laboratories offer these types of services.

[e] Some examples of costs are presented in this box and throughout this chapter.

[f] "Basically, chemicals manufactured or imported in large volumes and certain substances with particularly hazardous properties will need to be registered earlier than those manufactured or imported in smaller volumes." UK, Health and Safety Executive (HSE), *REACH—Pre-registration,* November 2012. See this document for more information about the CHIP classifications.

[g] UK, HSE, *REACH—Pre-registration,* November 2012.

[h] ECHA, "REACH 2013" (accessed November 27, 2013). The EU generally identifies SMEs as having less than 250 employees (versus 500 as in the United States). Also, although no information is available about the size of the companies represented by ORs, it is likely that many of them are SMEs, as larger firms would generally already have representation in the EU. (EU definition cited in USITC, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities,* July 2010**,** 2–3.)

[i] USITC, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities*, July 2010, 4-13.

SOCMA says was also expressed by the European Commission in reporting on its review of REACH—and said that REACH poses diverse challenges to SMEs:[8]

SOCMA stated that REACH is "very expensive and time consuming for all chemical companies doing business in the EU," adding that "Bloomberg Government estimated that the regulatory costs [under REACH] add 22.2 percent to the goods tariff on chemicals."

- SMEs in various segments of the chemical industry, including SOCMA members, stated that the requirement for non-EU companies to be represented in the EU by an "Only Representative" (OR; see box 3.2) was expensive and provided little benefit to them.[9]

- Compliance and testing costs associated with REACH, which can vary widely, were also described as trade barriers that caused some companies to exit the EU market.[10] According to SOCMA and individual SMEs in the chemicals sector, whereas some SMEs reportedly can incur costs of as much as $2 million over five years, companies exporting less than 10 metric tons per year to the EU may still be liable for as much as $40,000 in testing costs.[11] An SME with one registered, non-hazardous chemical reported a one-time payment of $200,000 for registration and testing and then $35,000 annually for their OR. The SME stated that it paid these additional costs from cash reserves that would have otherwise been reinvested in its plant. It added that the costs incurred had a disproportionate impact on it, as a larger company could instead "spread [the cost] over a diverse product line."[12] An apparel company stated that tests required by REACH on individual pieces of apparel can exceed $1,000 per item.[13] Companies also noted they had hired consultants to help them comply with REACH.[14]

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[8] SOCMA, prehearing submission to the USITC, September 20, 2013; Dickson of Nation Ford Chemical, written submission to the USITC, September 5, 2013; industry representatives, roundtable discussions, Milwaukee, WI, September 12, 2013; Houston, TX, September 19, 2013; Los Angeles, CA, September 23, 2013; New York, NY, and Santa Ana, CA, September 24, 2013; Sacramento, CA, September 25, 2013; Boston, MA, September 26, 2013; and Smithfield, RI, September 27, 2013; Thyfault, written submission to the USITC, December 1, 2013. Additional sources are noted below as appropriate. Most of the participating companies citing REACH were involved in chemicals, but some companies in other sectors—such as apparel—also mentioned concerns about REACH, including its testing requirements. SMEs also reported concern that countries outside the EU are adopting EU precautionary principles and legislation (e.g., REACH) as part of their chemical regulation system. Krygsman, written submission to the USITC, September 30, 2013; USITC, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities*, July 2010, 4–13; Hepeng Jia, "China Updates Chemical Legislation," April 1, 2010.

[9] SOCMA, prehearing submission to the USITC, September 20, 2013; industry representatives, roundtable discussions, Milwaukee, WI, September 12, 2013; Houston, TX, September 19, 2013; Los Angeles, CA, September 23, 2013; New York, NY, September 24, 2013; Sacramento, CA, September 25, 2013; Boston, MA, September 26, 2013; and Smithfield, RI, September 27, 2013.

[10] The costs included are said to relate to testing, translating documents like material safety data sheets (MSDSs) into multiple languages, compliance (e.g., exposure and environmental impact studies), participating in a Substance Information Exchange Forum (SIEF), and hiring the requisite OR.

[11] SOCMA, prehearing submission to the USITC, September 20, 2013; industry representative, telephone interview by USITC staff, September 20, 2013; industry representatives, roundtable discussions, Milwaukee, WI, September 12, 2013, and Santa Ana, CA, September 24, 2013.

[12] Dickson of Nation Ford Chemical, written submission to the USITC, September 5, 2013. Mr. Dickson stated that Nation Ford approached REACH compliance proactively by not only learning about the system but also hiring a consultant and treating compliance as a priority.

[13] Industry representative, roundtable discussion, Los Angeles, CA, September 23, 2013.

[14] Dickson of Nation Ford Chemical, written submission to the USITC, September 5, 2013; industry representatives, roundtable discussions, Los Angeles, CA, September 23, 2013, and Santa Ana, CA, September 24, 2013.

- The cost related to registering chemical additives, which can either be the product exported or may account for less than 1 percent by weight of the exported product, can be prohibitive for an SME and may discourage the SME from entering the EU market. The impact on SMEs is said to be disproportionate, as the larger firms can more readily absorb the additional costs.[15]

- SMEs stated that they have to reveal too much about their products under REACH, including products protected worldwide by trade secrets.[16]

- U.S. SMEs reported that it is very difficult to communicate with the European Chemicals Agency (ECHA). Issues cited include slow response times and difficulty both in obtaining answers and having ECHA follow up on previous requests.[17]

- An opaque rulemaking process is also an issue for U.S. SMES.[18] SOCMA states, "In this, and likely soon to be many similar instances, ECHA will be taking an action on substances which will have worldwide implications, without any input from U.S. companies."

In addition, SMEs reported that the Substance Information Exchange Forums (SIEFs) maintained under REACH hinder SME exports to the EU. Reported goals of the SIEFs are to foster the exchange of information, among companies, about specific products and their classification and labeling and also to facilitate the preparation of the lead registration dossier using this information through a consensus approach.[19] All companies registering the same product(s)—whether large companies or SMEs—are legally required to join the SIEFs and share data, potentially resulting in very large groups. A REACH requirement is that a "lead registrant" will be identified to produce the dossier, which will be the primary reference document. As stated by one source, the lead registrant for a given product would likely be a large supplier of the product.[20] SOCMA and other industry representatives state that although SIEFs are intended to prevent duplication of testing and other costs, SIEFs can hinder competition in that SMEs may have challenges accessing the necessary information and negotiating with the larger companies in a SIEF.[21] Also, as mentioned by one source, nothing compels the larger companies in a SIEF to cooperate with the smaller companies or to do so in a timely fashion.[22] Another concern raised by SOCMA is that some SMEs have reportedly been required to join a SIEF even when their product is not exactly the same as that covered by the SIEF, which creates issues related to the hazard classification of the product.

[15] Industry representative, telephone interview by USITC staff, August 29, 2013. This issue would also affect non-SMEs who are small-volume traders.

[16] Industry representatives, roundtable discussions, Centennial, CO, September 17, 2013, and Houston, TX, September 19, 2013.

[17] SOCMA, prehearing submission to the USITC, September 20, 2013; industry representative, telephone interview by USITC staff, September 20, 2013; industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.

[18] SOCMA, prehearing submission to the USITC, September 20, 2013; industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.

[19] UK, HSE, *REACH - Substance Information Exchange Forum*, Nov 2012. The document also states that SIEFs will end as of June 1, 2018.

[20] Ibid.

[21] SOCMA, prehearing submission to the USITC, September 20, 2013; industry representatives, telephone interviews by USITC staff, August 29 and September 20, 2013.

[22] Industry representative, telephone interview by USITC staff, August 29, 2013.

SMEs also reported that the level of detail needed for EU material safety data sheets (MSDSs) is very burdensome for them. Each chemical is required to have an MSDS for each market in the language of that market. The MSDS contains safety information related to the product for employees and emergency personnel (including the product's physical characteristics, handling and storage specifics, toxicity information, necessary protective equipment, disposal, etc.).[23] Although the MSDS requirements were implemented in the EU in 2009 under the regulation on classification, labeling, and packaging of substances and mixtures[24] rather than REACH, requirements for extensive additional information have recently been implemented simultaneously with REACH that take information directly from REACH dossiers.[25] Sources cited EU MSDS requirements that differ from those of other countries, particularly regarding the amount of required additional information. One company said that SMEs not only have to "create a unique MSDS for each product [in English] for the EU" but then have to translate this EU document into the national languages of the member states in which the product is sold, with translations reportedly costing about $200 per language.[26]

SOCMA also states that REACH's pending phase 3 deadline in 2018 will have a big impact on SMEs:[27]

> But the majority of [SOCMA's] members' products exported to the EU will fall in the 2018 deadline when the quantity threshold falls to 1 metric ton . . . per year. This smaller quantity threshold makes it much more difficult to amortize compliance costs at a rate that will make sense, even though the data requirements are lower. It is highly unlikely that our member companies will be able to follow through with registration dossiers for all of the substances that they initially pre-registered.

Many SMEs in the chemical industry are reportedly deciding that REACH's "no data, no market" approach is too complex and the costs too high, and are either not entering the EU market or leaving it.[28] As an example, SOCMA described a member company that was marketing a product derived from renewable inputs. The company is said to have chosen to forego the EU market because of the costs associated with REACH and, instead, has focused on markets in the United States, Asia, and South America. (The firm decided this despite the fact that, as noted by SOCMA, the renewable chemical was potentially a safer alternative to its petrochemical-based counterpart—a goal purportedly espoused by REACH.) A chemical company involved in nanomaterials stated that it made a similar decision not to export to the EU because of the complexity of the

[23] Oregon OSHA, "Oregon OSHA Factsheet Plus: What Is a Material Safety Data Sheet (MSDS)?" February 2008.

[24] Regulation EC No. 1272/2008.

[25] DeLisi, email message to USITC staff, November 8, 2013.

[26] Dickson of Nation Ford Chemical, written submission to the USITC, September 5, 2013. Also, industry representatives, roundtable discussions, Milwaukee, WI, September 12, 2013; Raleigh, NC, September 16, 2013; Houston, TX, and Miami, FL, September 19, 2013; DeLisi, email message to USITC staff, November 8, 2013.

[27] Many SMEs export small quantities of product to the EU, and in 2018 shipments over 1 metric ton per year will become subject to REACH. SOCMA, prehearing submission to the USITC, September 20, 2013. See box 3.2 for more information on REACH's three phases.

[28] SOCMA, prehearing submission to the USITC, September 20, 2013; industry representatives, roundtable discussions, Milwaukee, WI, September 12, 2013, and Sacramento, CA, September 25, 2013.

regulations, even though it believes that there is a market in the EU for its products/technology.[29]

Regulations/directives and Other Regulatory Issues

Chemicals are also subject to other regulations and directives besides REACH, both at an EU level and at a member state level. These requirements are cited by U.S. SMEs as trade barriers in that the regulations and directives not only adhere to the precautionary principle (versus the U.S. risk-based regulatory approach) but can also overlap and create contradictory results. (The precautionary principle is discussed in box 3.2.)

The multiple and diverse EU and member state requirements reportedly have a negative effect on SMEs. For example, the EU requires more test results than the United States, often at different/multiple times within the product-approval cycles.[30] The multiple requirements also force SMEs to hire additional staff to keep up with and to appeal (as necessary) changes/differences within the EU (e.g., reconciling labeling requirements),[31] and increase the costs for compliance. In addition to paying administrative fees, one SME said that to register biocides:

> Acute toxicology, product chemistry and ecotoxicity data for each formulation are necessary in the EU at an average cost of 75[,000]–100,000 euros [about $100,000–$140,000][32] per product whereas, aside from California, only fees and a copy of [the] product label are required in the U.S. for state registration. Cost[s] for registering one biocide formulation in the continental U.S. are approximately $11,000 versus the multiple registration costs in the EU.[33]

Separately, some SMEs reported being reluctant to export nanotechnology products to the EU, despite favorable test results for those products,[34] because they regard the status of EU regulations about nanotechnology as uncertain.[35] Similar regulatory concerns were cited in regard to U.S. exports of biologics.[36] One SME also cited a lack of harmonization in EU testing standards, resulting in laboratories using different—and not always compatible—testing methods, at costs ranging from about $500 per test for individual heavy metals to about $30,000 for individual biological species. The EU also requires such tests to be repeated over certain intervals, adding to the costs.[37] Concerns related to

[29] Industry representative, email message to USITC staff, September 23, 2013.

[30] Industry representatives, roundtable discussion, Milwaukee, WI, September 12, 2013; Albuquerque, NM, September 18, 2013; Los Angeles, CA, September 23, 2013; and Santa Ana, CA, September 24, 2013.

[31] Industry representatives, roundtable discussions, Milwaukee, WI, September 12, 2013; Centennial, CO, September 17, 2013; Los Angeles, CA, September 23, 2013; and Santa Ana, CA, September 24, 2013.

[32] Using exchange rates as of January 8, 2014.

[33] Krygsman, written submission to the USITC, September 30, 2013.

[34] Industry representatives, roundtable discussion, Albuquerque, NM, September 18, 2013.

[35] Ibid.

[36] Industry representative, roundtable discussion, Albuquerque, NM, September 18, 2013. The SME stated that such certification was available in the United States at the state level, but added that different EU countries have different requirements and are reluctant to accept documentation from U.S. states as opposed to the federal government.

[37] The EU reportedly requires testing for individual heavy metals. Industry representatives, roundtable discussion, Albuquerque, NM, September 18, 2013.

biocides, cosmetics, and endocrine disruptors are described next, but all chemicals are subject to REACH and other regulations and directives in the EU.[38]

Biocides

Biocides are covered by EU legislation such as the Biocidal Products Regulation (BPR) and the Water Framework Directive (WFD).[39] One SME in the chemical industry states that even if a biocide is approved under the BPR, its use can be restricted or revoked if it does not meet the criteria of the WFD.[40] The SME also states that the EU requires each active ingredient to be registered by product type/application, imposing additional costs of as much as €2 million (about $2.7 million)[41] for each active ingredient; this amount would be multiplied by the number of active ingredients that individual companies register.[42] The SME in question, for example, "support[s] seven active substances and multiple product types," and characterizes the costs as "excessive."[43] Each member state also requires registration of products (e.g., product formulations containing biocides), including products already registered in other states, and maintains different legal procedures.[44]

Cosmetics

Concerns were also raised by SMEs about a new cosmetics regulation effective July 11, 2013.[45] SMEs have cited requirements to submit details about their products that are considered trade secrets; substantial testing requirements (and a reported related lack of clarity about those requirements); bans on animal testing that conflict with those of some other countries; and large expenditures related to compliance.[46] One SME involved with personal care products mentioned that it was currently not selling an entire product line in the EU because of prospective changes in 2014–15 in labeling requirements for cosmetics; the company stated that even sales in 2013 would have required recalling and relabeling each container in the affected line.[47] Another SME said that it had recently been notified that its products would be taken off store shelves because the product labeling did not include an EU address.

[38] Industry representatives, roundtable discussions, Chicago, IL, September 13, 2013, and Centennial, CO, September 17, 2013.

[39] The BPR is Regulation (EU) No. 528/2012 of the European Parliament and of the Council of 22 May 2012 Concerning the Making Available on the Market and Use of Biocidal Products. The WFD is Directive 2000/60/EC of the European Parliament and of the Council Establishing a Framework for the Community Action in the Field of Water Policy.

[40] Krygsman, written submission to the USITC, September 30, 2013.

[41] Using exchange rates as of January 8, 2013.

[42] Krygsman, written submission to the USITC, September 30, 2013.

[43] Ibid.

[44] Industry representative, roundtable discussion, Milwaukee, WI, September 12, 2013.

[45] The new regulation is Regulation (EC) No. 1223/2009 of the European Parliament and of the Council of 30 November 2009 on Cosmetic Products.

[46] Industry representatives, roundtable discussions, Centennial, CO, September 17, 2013; Los Angeles, CA, September 23, 2013; and Santa Ana, CA, September 24, 2013.

[47] Industry representative, roundtable discussion, Los Angeles, CA, September 23, 2013.

SMEs in this sector also reported:[48]

- Excessive time and costs related to testing required by the cosmetics regulation (about $2,000–$2,500 per product, with separate testing for each color in a product line);

- Difficulties finding qualified testing companies in the EU;

- Changes in member state requirements that differ from EU-wide requirements (e.g., unlike the rest of the EU, Germany no longer allows zinc in sunscreens, so the company involved cannot sell its products in Germany until it reformulates them); and

- Additional costs associated with hiring consultants (with one SME citing a cost of $15,000 per year for four products) and paying a representative in the EU.[49]

Endocrine disruptors

Endocrine disruptors are defined as "chemicals that may interfere with the body's endocrine system and produce adverse developmental, reproductive, neurological, and immune effects in both humans and wildlife."[50] One SME states that whereas the U.S. Environmental Protection Agency has an established evaluation process for endocrine disruptors (including definitions and testing), the EU is just starting to develop its process. The EU's approach is expected to be applied across the entire EU chemical regulatory system (e.g., through REACH).[51] The SME states:[52]

> While it would be advantageous for the EU community to evaluate and utilize an approach similar to the U.S., this is not happening. Rather the EU is considering different criteria to assess these compounds. Not only are they "re-inventing the wheel" member states have proposed the use of the precautionary principle in the evaluation of endocrine screening tests which will again force many products off the market needlessly.

Obtaining a CE Mark

An SME that manufactures pipeline coatings, construction waterproofing, and anti-corrosion products reported problems obtaining a CE mark (for more information on the CE mark, see box 2.3). The company stated that the process is costly and does not always work for non-European companies with innovative products, thereby limiting its access to the EU market. The company stated that obtaining the CE mark requires meeting "defined tests linked to European standards and [Harmonized Schedule] codes," and that its innovative products "are excluded under that methodology" because they do not

[48] Industry representative, roundtable discussion, Los Angeles, CA, September 23, 2013.
[49] Industry representatives, roundtable discussion, Los Angeles, CA, September 23, 2013, and Santa Ana, CA, September 24, 2013.
[50] HHS, National Institutes of Health, National Institute of Environmental Health Sciences, "Endocrine Disruptors," June 5, 2013.
[51] Industry representative, telephone interview by USITC staff, January 9, 2014.
[52] Krygsman, written submission to the USITC, September 30, 2013.

conform with existing EU standards and do not match the expected HS classification. The SME said that whereas almost 9 percent of its sales are exports, only about 0.1 percent of these exports are to the EU. The SME further noted that "it has been our company's experience that the very nature of the European product approval system, which includes rigid definitions of testing parameters, impedes innovation and free market competition for U.S. exporters."[53]

Harmonized Schedule (HS) Classifications

Industry representatives said that EU member countries sometimes misinterpreted HS classifications of products involving emerging technologies and/or advanced materials. Such errors can delay entry of goods, particularly causing problems for time-sensitive products (e.g., perishable or radioactive products, including biologics).[54] SMEs also reported that changes in HS classifications for biofuels resulted in higher duties.[55]

EU Definitions

Several sources stated that EU legal definitions can also act as trade barriers, presenting challenges to SMEs. The definition of an SME itself, whether for tax purposes or in terms of the SME's relationship to other companies, was cited as an issue. For tax purposes, the EU requires that SMEs have a legal entity in the EU to make sales within the EU (an EU "legal entity" is said to be similar to the OR under REACH). This requirement reportedly results in many complications for SMEs and requires additional time and expense, particularly if a company hires someone to help them with this process.[56] In defining SMEs, the EU considers a company's headcount and revenue, and also its partnership links. For example, one SME producing biobased chemicals stated that it has a subsidiary in the EU. But because the U.S. SME is involved with a large company in a joint venture in a third country, the EU subsidiary is not considered to be an SME and is ineligible for SME benefits (e.g., funding).[57]

Companies also noted that definitions of terms such as "hazardous" created challenges for SMEs. A chemical SME involved in nanomaterials, for example, said that the EU and the United States define "hazardous" differently. The company says that it would have to change its product formulations—removing materials defined by the EU as "hazardous"—to market the products in the EU. The SME adds that the costs of changing the formulations would outweigh the benefits of participating in the EU market, especially if the costs of participating in REACH are factored in, and the company chose not to export product to the EU.[58] An SME in the renewable energy sector mentioned that differing definitions also exist for the term "commercially ready." The SME noted that these differences can require firms to complete costly duplicative studies and/or tests to qualify for various commercial readiness programs in the EU and the United States.[59]

[53] Muncaster, written submission to the USITC, September 6, 2013.
[54] Industry representatives, roundtable discussion, Raleigh, NC, September 16, 2013.
[55] Thyfault, written submissions to the USITC, September 11, 2013, 6–7, and December 1, 2013.
[56] Industry representative, telephone interview by USITC staff, August 29, 2013.
[57] Ibid., August 28, 2013.
[58] Industry representative, email message to USITC staff, dated September 23, 2013.
[59] Industry representative, telephone interview by USITC staff, August 7, 2013.

Barriers Associated with Bioproducts and Renewable Products

SMEs exporting biobased chemicals to the EU cited REACH as a major trade barrier (see the section above on REACH for more information). In addition, the following EU trade barriers related to biofuels were said to reduce exports of biofuels to the EU:[60]

- The EU antidumping duty imposed in February 2013 on U.S. exports of bioethanol, which was said to be in addition to the duty of €102 (almost $140)[61] per 1,000 liters.[62]

- The inclusion since 2011 of all biodiesel blends under 2009 EU antidumping and countervailing duty measures that originally only covered biodiesel blends containing 20 percent or more of biofuels.[63]

- The imposition in the EU of nontariff barriers (NTBs) such as the EU's Renewable Energy Directive, which requires biofuels to meet sustainability criteria that impose extra costs and liability, as well as caps on first-generation biofuels. These NTBs could temper two-way trade between the United States and the EU in bioethanol and biodiesel.[64]

Apparel

The U.S. apparel industry has been declining in recent years.[65] During 2006–12, U.S. shipments decreased from $30.4 billion to less than $13.0 billion, and the number of employees fell from almost 200,000 to 148,000.[66] The decline has largely been attributed to the combined impact of outsourcing of apparel manufacturing to low-cost overseas producers, fueled by the elimination of U.S. quotas on apparel imports in January 2005, and the increase in trade preference programs. Low-cost imports from China, the largest foreign apparel supplier, and more recently from Vietnam, a small but fast-growing apparel supplier, have taken over most of the U.S. market.[67] In turn, U.S. producers are focusing on specific markets, including high-end fashion and niche markets; U.S. government defense contracts under the Berry Amendment; and performance

[60] Thyfault, written submissions to the USITC, September 11, 2013, 6–7, and December 1, 2013.

[61] Using exchange rates as of January 8, 2014.

[62] Council Implementing Regulation (EU) No. 157/2013 of 18 February 2013 imposing a definitive antidumping duty on imports of bioethanol originating in the United States of America. In regard to biofuels, industry representatives also note that the predominance of biodiesel in the EU (versus bioethanol in the United States) will also affect EU import levels of bioethanol. Thyfault, written submission to the USITC, December 1, 2013.

[63] Thyfault, written submission to the USITC, December 1, 2013. Regulation 193/2009 and Regulation 194/2009.

[64] Thyfault, written submission to the USITC, December 1, 2013.

[65] For purposes of this study, the U.S. apparel manufacturing encompasses all firms in NAICS 315.

[66] Census, *M3 Survey* (accessed January 10, 2014); U.S. Department of Labor, Bureau of Labor Statistics, *Quarterly Census of Employment and Wage*s (accessed July 2, 2013).

[67] China's growth has slowed recently as its competitiveness vis-à-vis other low-cost suppliers weakened because of its stronger currency and rising material and labor costs. Fangqing, "Sourcing Shifts," June 3, 2013.

textiles for medical and industrial purposes requiring specialized materials such as nonwoven, antiballistic, or flame-resistant fabrics.[68]

In 2010–11, almost all U.S. exporters of apparel to all destinations (about 97–99 percent by number of exporters) were SMEs, including exporters of apparel to the EU (table 3.2). Apparel was also somewhat unique in that SMEs accounted for the majority of the sector's exports by known value during those years, including almost all the known value of EU exports (about 94 percent). Most such exports, however, did not go to the EU; the EU accounted for less than 9 percent of the known value of all U.S. apparel exports and for less than 11 percent of the known value of U.S. SME apparel exports for this period.

TABLE 3.2 The known value of U.S. exports and the number of exporters of apparel (NAICS 315), by all U.S. exports and U.S. SME exports, and by all destinations and the EU[69]

	All destinations	EU	EU shares (%)
	2010		
All U.S. exports, known value (million $)	1,409	116	8.2
U.S. SME exports, known value (million $)	1,031	109	10.6
SME share (%)	73.2	94.0	–
Number of known exporters	1,453	542	37.3
Number of known SME exporters	1,434	528	36.8
SME share (%)	98.7	97.4	–
	2011		
All U.S. exports, known value (million $)	1,902	112	5.9
U.S. SME exports, known value (million $)	1,199	105	8.8
SME share (%)	63.0	93.8	–
Number of known exporters	1,512	534	35.3
Number of known SME exporters	1,495	524	34.8
SME share (%)	98.9	98.1	–

Source: Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; and Commission calculations.

The apparel industry makes a variety of knit and woven products, but as stated above, one strategy that it has employed in the face of international competition is to focus on niche or specialty markets. An example is the premium denim jeans market. Although several large manufacturers of denim apparel are located throughout the country, they generally make denim work clothes and casual sportswear.[70] In contrast, many apparel SMEs are concentrated in California, particularly Los Angeles. This area has become a major location for manufacturers of premium denim apparel, particularly premium denim jeans.[71] These SMEs are reportedly becoming important global suppliers.[72]

[68] USITC, *The Economic Effects of Significant U.S. Import Restraints,* 2013, 2-17.

[69] The known value is the portion of U.S. exports that Census was able to link to a specific company. Thus, it is a subset of total U.S. exports.

[70] Industry representatives, telephone interviews by USITC staff, Washington, DC, September 3–4, 2013.

[71] According to the California Fashion Association, companies in Southern California produce 75 percent of the premium denim market. "Premium" refers to higher-priced apparel that sells in upscale department and specialty stores.

[72] California Fashion Association, written submissions to the USITC, September 11, 2013.

Trade Barriers Related to Apparel

Apparel companies and an industry association stated that high tariffs, particularly those on premium denim jeans, impede SME apparel exports to the EU. SMEs in the apparel industry also cited REACH as a trade barrier, due to the chemicals (such as dyes) in fabric used to make garments. A third set of barriers involved differences in customs clearance procedures in different EU countries and problems with computing the VAT, which are described in more detail in chapter 2.[73]

The California Fashion Association (CFA) and an apparel company alleged that additional EU duties of 26 percent on women's premium denim jeans, on top of the already somewhat high duties of 12 percent (for a total of 38 percent), would effectively price U.S. exports of those items out of the EU market.[74] The additional duties were part of a retaliatory action taken by the EU following litigation at the World Trade Organization (WTO) related to the U.S. Byrd Amendment.[75] According to the CFA, "The resulting rise in cost will likely put U.S.-made jeans out of [EU consumers'] financial reach, and the growth of California denim brands in EU markets is doubtful for at least the next full year."[76]

Suggested Ways to Enhance SME Participation in Trade

Several industry associations and SMEs made suggestions concerning modifications to EU regulations or standards or changes in U.S. assistance programs that, they say, would increase exports by U.S. SMEs.

SOCMA, the chemical society, states in its prehearing submission that "[Our] members understand [REACH] is a regulatory reality and this legislation will not be repealed. However, there are ways to make this legislation more workable."[77] In particular, SOCMA suggests several ways to make REACH more accessible for SMEs, including creating a position for a small-business ombudsman within ECHA and other regulatory

[73] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013.

[74] Industry representative, roundtable discussion, Los Angeles, CA, September 23, 2013; CFA, written submissions to the USITC, September 11, 2013. The participant in this roundtable was from a large firm, but stated that the effects of the additional EU tariff were especially difficult for small companies.

[75] The Byrd Amendment (the Continued Dumping and Subsidy Offset Act of 2000) authorized U.S. Customs and Border Protection to distribute antidumping and countervailing duties assessed on or after October 1, 2000, pursuant to antidumping and countervailing duty orders in effect on or after January 1, 1999. The duties were distributed to firms in the domestic industry that supported the original petition that resulted in the orders. The EU, Japan, and several other WTO members challenged the Byrd Amendment under the WTO Dispute Settlement Understanding, and in 2003 a WTO panel and the WTO Appellate Body found the Byrd Amendment to be inconsistent with U.S. WTO obligations. In 2005, the EU and several other WTO members began applying retaliatory measures in the form of additional duties on imports of certain U.S. goods. The United States repealed the Byrd Amendment in 2006, but continues to distribute previously collected duties. The EU periodically notifies the United States of new lists of goods subject to retaliatory duties, and the list announced by the EU in May 2013 included women or girls' cotton denim trousers and breeches. See USDOC, ITA, "Current Retaliatory Actions: Byrd Amendment," July 29, 2013; WTO, "Dispute DS217: United States—Continued Dumping and Subsidy Offset Act of 2000" (accessed January 23, 2014).

[76] CFA, written submissions to the USITC, September 11, 2013. CFA's submission consisted of letters that it had sent to Ambassador Froman (USTR) and Senator Feinstein.

[77] SOCMA, prehearing submission to the USITC, September 20, 2013.

agencies within the member states;[78] making ECHA staff more available to SMEs; increasing transparency; and following up on regulatory review. Suggestions from other SMEs include mutual recognition of testing, approval, and certifications (e.g., good manufacturing practices), as well as harmonized labeling.[79] SOCMA also cited recommendations published by the European Commission (EC) in its May 2, 2013, review of REACH. The EC recommended that ECHA give more guidance to SMEs regarding REACH, and called for increased communication between industry and European entities; continued EU monitoring of costs; and an emphasis on greater collaboration between ECHA and the industry on protecting intellectual property as information is exchanged under REACH. (See the SOCMA submission for more details about the EC recommendations.)[80]

Several organizations suggested ways to enhance U.S. SMEs' exports of bioproducts and renewable products to the EU. The National Corn Growers Association (NCGA) emphasized the importance of biotechnology and value-added bioproducts, such as biobased chemicals made from renewable resources, stating: "From a corn grower's perspective, new trade initiatives will result in benefits far beyond increasing international markets for U.S. corn. NCGA recognizes any opportunity to increase access to downstream, value-added products as a benefit to the U.S. economy." Recommending "EU acceptance of internationally agreed standards and the adoption of science-based risk assessments," NCGA also stated that "trade disruptions caused by barriers to biotechnology stand to hurt the entire value chain, from technology developers to grain exporters and international customers."[81]

An SME in the renewable energy sector also states that some export assistance programs in the energy sector are not well coordinated with the Small Business Administration's programs for technology companies that have commercialized products or are in the process of commercializing products. The company said that small companies need technical assistance (e.g., via workshops, webinars, etc.) in having their technology evaluated for commercial readiness and in understanding the terminology used.[82]

[78] See also Muncaster, written submission to the USITC, September 6, 2013.
[79] Industry representatives, roundtable discussion, Milwaukee, WI, September 12, 2013.
[80] SOCMA, prehearing submission to the USITC, September 20, 2013.
[81] Johnson, written submission to the USITC, August 23, 2013. These recommendations generally discuss the downstream, value-added derivatives from corn. The trade barriers directly addressing corn are discussed in chapter 5.
[82] Industry representative, telephone interview by USITC staff, August 7, 2013.

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CHAPTER 4
Machinery, Electronics, Electrical Equipment, Transportation, and Miscellaneous Manufacturing

Overview

U.S. manufacturers whose products are covered in chapter 33 of the North American Industry Classification System (NAICS) fabricate a broad spectrum of goods, ranging from heavy machinery to sporting goods to automobiles to medical devices. This chapter describes trade barriers that U.S. small and medium-sized enterprises (SMEs) in fabricated metal manufacturing (NAICS code 332); machinery manufacturing (NAICS 333); computer and electronic product manufacturing (NAICS 334); electrical equipment, appliance, and component manufacturing (NAICS 335); transportation equipment manufacturing (NAICS 336); and miscellaneous manufacturing (NAICS 339) perceive as disproportionately affecting their exports to the European Union (EU) compared to larger U.S. exporters. The value added to the U.S. economy in these industries totaled $808.7 billion in 2011, making up 35.2 percent of total U.S. manufacturing value added and 5.3 percent of U.S. gross domestic product (GDP) in 2011,[1] while their workforce in the same year numbered 3.9 million employees compared to 10.6 million in all U.S. manufacturing industries.[2] SME manufacturers made up 91.8 percent of all domestic establishments in these industries in 2011.[3]

As indicated in chapter 1, manufacturing SMEs and manufacturing associations responded in greater numbers to the Commission's outreach efforts than those in other industries. Many of those SMEs and associations represent manufacturing industries that are included in this chapter. Barriers in these industries can be particularly troublesome for SMEs because manufactured products tend to be more complex than many other goods. For example, some SMEs reported barriers for each component in the supply chain, rather than just for the final product. Some SMEs reported that they find barriers to exporting to the EU insurmountable and therefore focus on other markets. A number also reported encountering costly nontariff measures (NTMs) when exporting to the EU. For example, according to one research study, NTMs impose the second-highest costs on the

[1] Calculations use value-added data from the U.S. Census Bureau's Annual Survey of Manufactures and GDP data from the U.S. Department of Commerce's Bureau of Economic Analysis. Total manufacturing value added refers to products found in NAICS chapters 31–33.

[2] Census, Annual Survey of Manufactures (accessed January 2, 2014). Employment figures refer to NAICS 332–336 and 339 and NAICS 31–33, respectively.

[3] Industry SME shares are based on data from Census Statistics of U.S. Businesses (SUSB) and correspond to NAICS 332–336 and 339. Although SMEs account for over 90 percent of all establishments in the industries that are the focus of this chapter (NAICS 332–336 and 339), these NAICS codes cover only establishments that manufacture products. Goods manufacturers are not the only SMEs in a given manufacturing industry that face potential export barriers; there are also distributors, testers, resellers, legal and finance firms, business service providers, and many others elsewhere classified who are also directly affected by trade barriers in exporting to the EU.

motor vehicles industry of any U.S. industry exporting to the EU, and NTMs impose higher costs on almost all U.S. manufacturers exporting to the EU than on their services industry counterparts.[4]

SMEs with a foreign affiliate abroad reported that their physical presence in another country allowed them to more easily navigate potential trade barriers. However, SMEs are less likely than large firms to sell products through foreign affiliates rather than to export them directly.[5] As is true in many other industries, SMEs in the U.S. machinery, electronics, transportation, electrical equipment, and miscellaneous manufacturing sectors account for a high share of exporting establishments and a sizable share of export value[6] (97.2 percent of all exporting establishments and 14.7 percent of all export value in 2011).[7] Additionally, because many products in these manufacturing industries contain component parts and can have complex supply chains, even SMEs that never export directly can be affected by NTMs in the EU if they are part of a supply chain that faces barriers.

SMEs most often cited standards and regulations as affecting their ability to export to the EU, and accordingly this chapter focuses on such measures. For example, many SMEs cited differences between U.S. and EU standards and technical regulations, and difficulties meeting EU requirements, as negatively affecting their exports to the EU.[8] The U.S. Chamber of Commerce and the National Association of Manufacturers, whose members include a large number of exporting SMEs, expressed similar concerns, citing a lack of mutual recognition for conformity assessments and different technical regulations between the United States and the EU as factors limiting SME exports.[9] One technical regulation widely cited by firms in the manufacturing sector as posing compliance challenges for exporting SMEs is the Conformité Européenne (CE) mark.[10] Other cross-industry regulations noted by U.S. SMEs include the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), the Restriction of Hazardous Substances (RoHS) Directive, and the Waste Electrical and Electronic Equipment (WEEE) Directive.

In addition to technical regulations and standards, SMEs and industry associations provided feedback on other issues that create obstacles to exporting to the EU. The U.S. Chamber of Commerce cited tariff barriers as being a challenge that disproportionately affects SMEs.[11] The National Association of Manufacturers reported that U.S. manufacturing SMEs view tariffs and market access for some products, differences between U.S. and EU intellectual property protection regimes, divergent data privacy

[4] Francois et al., "Reducing Transatlantic Barriers to Trade and Investment," March 2013.

[5] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 4–6.

[6] The share of SME export value varies across industries; see tables in chapters 1, 3, and 5 on the known value of U.S. exports and the number of exporters.

[7] Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; and Commission calculations.

[8] See discussion of standards and technical regulations in chapter 2.

[9] U.S. Chamber of Commerce, written submission to the USITC, October 8, 2013; NAM, written submission to the USITC, October 23, 2013.

[10] As noted earlier, the CE mark is a visible marking denoting a guarantee by a given product's manufacturer that the product meets all relevant EU regulations and directives for that product. CE marking requirements vary from product to product and range from safety regulations to conformity assessment rules. Manufacturers must test and ensure that products meet EU rules and put the CE marking on products before exporting them to and/or selling them in the EU, and distributors and importers must ensure that products they plan to sell bear the manufacturer's CE mark. European Commission, "CE Marking—Basics and FAQs" (accessed November 26, 2013). CE mark certification is discussed in box 2.3.

[11] U.S. Chamber of Commerce, written submission to the USITC, October 8, 2013.

rules, and high-burden customs processes as their biggest non-regulatory challenges.[12] Other issues cited by associations and SMEs include preferences for local products, difficulty in bringing warranty or replacement products into the EU, visa concerns, and many industry-specific challenges, including those related to complying with the EU's value-added tax (VAT) and customs inconsistencies (discussed more completely in chapter 2).

This chapter contains five sections. The first four sections describe trade barriers reported by SMEs in the following industries: (1) machinery and equipment, (2) computers and electronic products, (3) transportation products, and (4) other manufactured products.[13] The final section of this chapter concludes with suggestions from SMEs on how to strengthen U.S.-EU cooperation to enhance the participation of SMEs in transatlantic trade.

Machinery and Equipment

Products in the machinery and equipment sector include industrial, agricultural, mining, construction, commercial, metalworking, and manufacturing equipment, as well as engines; heating, ventilation, and air conditioning (HVAC) systems; and other general-purpose machinery. "Machinery and equipment" is primarily covered by NAICS code 333, "Machinery Manufacturing." U.S. SME representatives across a variety of machinery industries provided information for this section.

The machinery industry as a whole added $177.5 billion in value to the U.S. economy in 2011, making up 7.7 percent of total manufacturing value added under NAICS 31–33 and 1.0 percent of domestic GDP in 2011.[14] Employment in the industry was 964,668 in that year.[15] SMEs play a prominent role in manufacturing machinery and actively export to the EU. According to the U.S. Census Bureau (Census), 90.5 percent of domestic machinery manufacturing establishments were SMEs in 2011.[16] And as shown in table 4.1, SMEs in this industry exported $3.4 billion in product to the EU in 2011, making up 21.5 percent of the total known value of machinery exports to the EU in that year.[17]

[12] NAM, written submission to the USITC, October 23, 2013.

[13] Due to product similarities and the limited number of industry respondents providing feedback, comments from SMEs in NAICS 332 (Fabricated Metal Manufacturing) are discussed in the "other manufactured products" section of this chapter, and comments from SMEs in NAICS 335 (Electrical Equipment, Appliance, and Component Manufacturing) are discussed in the "transportation" section.

[14] Calculations use data on value added from the U.S. Census Bureau's Annual Survey of Manufactures and data on GDP from the U.S. Department of Commerce's Bureau of Economic Analysis.

[15] Census, Annual Survey of Manufactures (accessed December 30, 2013).

[16] Based on data from Census, SUSB (accessed November 18, 2013).

[17] Census export data for this NAICS code do not take into account peripheral businesses such as legal, financial, logistics, and business service providers that were also involved in the manufacture and export of those products.

TABLE 4.1 The known value of U.S. exports and the number of exporters for machinery manufacturing (NAICS 333), by all U.S. exports and U.S. SME exports, and by all destinations and the EU

	All destinations	EU	EU shares (%)
	2010		
All U.S. exports, known value (million $)	73,599	13,643	18.5
U.S. SME exports, known value (million $)	16,576	3,258	19.7
SME share (%)	22.5	23.9	–
Number of known exporters	11,036	5,435	49.2
Number of known SME exporters	10,827	5,236	48.4
SME share (%)	98.1	96.3	–
	2011		
All U.S. exports, known value (million $)	85,410	15,652	18.3
U.S. SME exports, known value (million $)	17,830	3,362	18.9
SME share (%)	20.9	21.5	–
Number of known exporters	11,163	5,512	49.4
Number of known SME exporters	10,945	5,305	48.5
SME share (%)	98.0	96.2	–

Source: Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; and Commission calculations.

Trade Barriers Related to Machinery and Equipment

Many SME machinery-industry representatives cited difficulties complying with EU technical regulations as disproportionately impeding their exports to the EU. Multiple SME manufacturers cited other barriers as well, including visa and personnel concerns, local non-regulatory preferences for EU products, market information access, and differing enforcement procedures from country to country within the EU.

Standards and Technical Regulations Barriers

In the machinery industry, SMEs cited a variety of technical regulations as barriers relevant to this study. Many SMEs specifically mentioned the CE mark and the Atmosphères Explosibles Directive (ATEX Directive 94/9/EC), though many other standards and regulations inhibited SME exporters as well.[18] Issues associated with these rules included lack of harmonization with U.S. standards, high costs of testing and compliance, and different application of rules depending on whether the product's country of origin is inside or outside the EU.

SMEs said that complying with these standards and regulations can be both costly and complex. One U.S. SME stated that when it was new to exporting, the volume of information it needed to learn about EU standards and exporting was overwhelming, and it was also required to buy copies of the applicable standards that concerned its products.[19] Initially, the company hired a third party to certify its machines, which resulted in extra costs per machine. To reduce that cost, the company learned how to self-certify its products.

[18] ATEX Directive 94/9/EC concerns "equipment and protective systems intended for use in potentially explosive atmospheres." The full text of this directive is available at http://ec.europa.eu/enterprise/sectors/mechanical/documents/legislation/atex/index_en.htm.

[19] Industry representative, email message to USITC staff (relayed by the Philadelphia USEAC), September 6, 2013.

Another SME exporter stated that even though it works with a U.S. Export Assistance Center (USEAC), both the SME and the USEAC have sometimes had difficulty determining if some of the SME's products are required to have EU certifications.[20]

Conformité Européenne (CE) mark [21]

CE markings are required for any product that falls within the scope of the Safety of Machinery Directive (98/37/EC) and is intended for sale within the EU. The directive is said to be broad in scope, covering any equipment that has moving parts, except manually operated machines. Also, some products may be covered by more than one directive (e.g., the Machinery, Electromagnetic Compatibility, and Low Voltage Directives). In that case, the manufacturer must meet the CE marking requirements for all directives that apply to the product.[22]

In reference to complying with CE product certification markings for machinery, several industry SMEs reported that their limited resources put them at a competitive disadvantage with larger global companies trading in foreign markets because SMEs cannot achieve the same economies of scale. They stated that it costs SMEs the same to test their products and comply with regulations as it costs the larger manufacturer, but on a per-unit basis the SME's cost is higher because they produce, test, and trade a smaller number of goods.[23]

One SME machinery exporter determined that the cost of third-party CE mark certification exceeded the total expected profits from a particular model of machine over the next five years. Therefore, it decided that it would not export the machine to the EU.[24]

A machinery-sector SME stated that in the United States, its product is regulated under an umbrella regulation that is the same throughout the United States. In the EU, although certification may be theoretically equivalent in different EU countries, certification was reported to often be based on different criteria in different EU member states.[25]

SMEs also experienced challenges with their inventory management when navigating EU country differences regarding the placement of CE marks on products. Some countries require exporters to print CE marks directly on the product's packaging, while other countries accept stickers affixed to the packaging. As a result, a manufacturer may decide to keep a double inventory of the product.[26]

[20] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013.

[21] CE markings are discussed in detail in chapter 2, box 2.3.

[22] For CE marking information, see TÜV SUD America, "CE Marking Compliance Overview" (accessed October 30, 2013), and Export.gov, "Safety of Machinery" (accessed October 30, 2013).

[23] Industry representative, roundtable discussion, Cleveland, OH, September 10, 2013.

[24] Cost of certification included the company's personnel time as well as actual certification costs. Industry representative, roundtable discussion, Lathrup Village, MI, September 9, 2013.

[25] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

[26] Industry representative, roundtable discussion, Chicago, IL, September 13, 2013.

ATEX

Manufacturers of equipment and protective systems that are intended for use in potentially explosive atmospheres are required to meet the ATEX 94/9/EC Directive.[27] SME representatives expressed concerns that ATEX represents a barrier to exports because it is incompatible with equivalent regulations in the United States.[28] The ATEX directive does not allow the EU to accept outside certifications. One industry representative explained that the additional certification for the ATEX directive could cost $10,000 or more per product, which is a significant cost for small manufacturers to bear.[29]

One machinery manufacturer described the difficulties it had meeting ATEX certification requirements for equipment manufactured in the United States for export to a customer in Spain. The equipment was delayed by 6–8 months, significantly driving up its price, and in the end it was never shipped to the intended purchaser. The product was kept in storage for a couple of years before being sold to a company in China.[30] Another industry representative stated that ATEX product certification can vary among EU countries, creating additional burdens for SME exporters.[31]

Parts regulations

SMEs reported that the Pressure Equipment Directive (Directive 97/23/EC) and the regulations (EN 1822:2009) for classifying high-efficiency particulate air (HEPA) filters were trade barriers that could disproportionately impede their exports. They stated that even if a company's parts meet the EU requirements, it may also have to struggle to convince its European customers that its parts are compliant. They stated that these and other regulations have led them to source filters and other parts in the EU rather than in the United States.[32]

Scope of guidelines

One industry representative said that regulation guidelines are frequently overly broad or vague for new products whose descriptions fall between those of two or more regulated products, and it becomes a guessing game to decide which regulations apply and which do not. This situation results in repeated requirements for certification documentation, which adds to U.S. SMEs' product costs.[33]

[27] TÜV SUD America, "How ATEX Can Benefit Your Business" (accessed November 4, 2013).

[28] Industry representatives, roundtable discussions, Minneapolis, MN, September 11, 2013 and Philadelphia, Pennsylvania, September 23, 2013.

[29] Industry representative, roundtable discussion, Philadelphia, Pennsylvania, September 23, 2013.

[30] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013.

[31] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

[32] Industry representative, interview by USITC staff, Raleigh, NC, September 17, 2013; industry representative, email message to USITC staff, September 25, 2013.

[33] Industry representative, roundtable discussion, Cleveland, OH, September 10, 2013.

Certification issues

One U.S. trade association representing machinery producers stated that for U.S. exporters, self-certification of products is technically allowed, but customs and other officials appear to look more closely at products from outside the EU. The association said that having a third-party certification helps avoid the extra attention, but also requires additional time and fees, resulting in higher overhead costs. The association said that EU firms that self-certify their products do not have to deal with this added burden of scrutiny.[34]

This association cited other EU regulations that U.S. machine tool exporters must comply with, including the WEEE and RoHS directives (box 4.1). To meet rules under those directives, the U.S. exporter must have third-party certification.[35] In creating a product, the U.S. producer can either hire the third party for consultations during the design process to incorporate features that ensure compliance, or hire the third party to certify the final product, making any adjustments the third party recommends.[36]

Self-certification of products is possible, according to one SME in this industry, but the process is not easy. This company has performed some internal testing, but for some types of tests, such as for noise, the SME contracts to outside parties for lack of the right

BOX 4.1 Restriction of the Use of Certain Hazardous Substances (RoHS)

The Restriction of the Use of Certain Hazardous Substances (RoHS) Directive was commonly reported by SMEs to be a barrier. RoHS currently limits—to a specified maximum concentration—the amount of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated diphenyl ethers in electrical and electronic equipment. This equipment includes a range of products such as household appliances; information technology and telecommunications equipment; consumer equipment; lighting equipment; electrical and electronic tools; toys, leisure equipment, and sports equipment; and medical devices.

RoHS permanently excludes some items from coverage (e.g., military and space equipment, large-scale industrial tools, and photovoltaic modules), and temporarily exempts others (e.g., certain compact fluorescent lamps and medical devices), though the exemption can be renewed. Manufacturers of products that are not excluded or exempted must ensure that their products meet the RoHS requirements and attach the CE marking to the product. Importers must ensure that manufacturers have followed the correct procedures and must include their own name on the product, maintain the relevant documentation, and make documentation available to the relevant authorities upon request.

The RoHS 1 Directive was adopted in 2003 and went into effect in July 2006. The RoHS 2 Directive, which added electronic instrumentation and most medical devices to the coverage, was adopted in 2011, with EU member states required to adopt the necessary laws and regulations by January 2013.

Sources: European Parliament and Council, Directive 2011/65/EU, July 1, 2011 (accessed September 5, 2013); European Parliament and Council, Directive 2002/95/EC, January 27, 2003 (accessed September 5, 2013); U.S. Department of Commerce website, "RoHS: Restriction of the Use of Certain Hazardous Substances," May 16, 2013 (accessed September 5, 2013).

[34] Industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.

[35] Third-party certification organizations that are subsidiaries of EU organizations have facilities in the United States.

[36] Industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.

equipment and personnel. The certification process must be performed on actual production runs, not on prototypes. Further, the company reported it had to have safety and health instructions translated into 26 EU member country languages. Given the many requirements, the certification process usually takes six months or more.[37]

Safety regulations

SMEs stated that complying with EU product and safety regulations added significant costs to exporting that made it difficult for U.S. SMEs to compete in European markets. They stated that requirements to obtain CE certification for each component of certain products (e.g., those intended for use with hazardous materials or at high pressures) added major expenses and complications in the supply chain—even though the United States and EU regulations appear functionally equivalent.[38] U.S. SMEs also found difficulty in complying with regulations that differed among EU member states.[39]

Different burdens for traded items compared to EU-produced items

One SME reported that some EU companies whose products do not conform to EU standards are able to sell in the EU market because they do not pass through EU customs authorities and may therefore have a cost advantage over foreign firms.[40] One U.S. trade association representing machinery producers noted that EU producers do not have the same obligations as U.S. exporters to the EU, including required documentation, presenting a burden to exporting SMEs that their EU competitors do not face.[41]

Other Barriers to Trade

SMEs in the machinery industry experienced non-regulatory issues as well as the regulatory problems already mentioned. Particularly noteworthy were those pertaining to local preferences and to a firm's lack of physical presence in country. "Home bias" came up in the form of inconsistent enforcement of rules as well as local residents' interest in domestic products. Local presence was relevant as an issue when it came to business intelligence, marketing, inventory management, showing products, and obtaining employment visas.

One industry representative stated that the Danish Working Environment Authority seemed to unfairly target its company's machinery for regulatory violations compared with products manufactured by their local or non-U.S. competitors. In the representative's opinion, the competitor's product did not come close to meeting the regulation requirements.[42] Another SME cited the Scandinavian countries, Germany, Italy, and Austria as having the most inconsistent enforcement of regulations between

[37] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013.
[38] Industry representative, interview by USITC staff, Raleigh, NC, September 17, 2013; industry representative, roundtable discussion, Philadelphia, Pennsylvania, September 23, 2013; industry representative, email message to USITC staff, September 25, 2013.
[39] Industry representative, roundtable discussion, Chicago, IL, September 13, 2013.
[40] Industry representative, email message to USITC staff, September 6, 2013.
[41] Industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.
[42] Industry representative, roundtable discussion, Cleveland, OH, September 10, 2013.

U.S. products and locally manufactured products because these countries have strong local manufacturing caucuses.[43]

Significant pressure to "buy EU" was also cited as a barrier. An industry representative stated that this pressure to buy EU kept them from securing a sale to an Italian university, despite the university's preference for the SME's model. The representative noted that its industry-specific models are used around the world and believes the firm would have closed the deal except for the pressure on the university to buy EU products.[44]

One machinery exporter stated that its customers have asked it to establish a presence on the ground in the EU. However, in each of the countries where this SME is setting up inventory, it must spend a lot of time and money on VAT and EU registrations, which imposes significant burdens on a small company.[45]

Another SME exporter stated that it is difficult to attract customers and perform market analysis without personnel on the ground in the EU.[46] The same SME noted that it had investigated hiring employees in the EU, but the company's lawyer advised against it because of costs and other problems connected with EU employment laws.[47]

The reluctance of EU authorities to extend short-term employment visas was also a barrier cited by machinery SMEs. For example, when a company sends a work team into the EU to install a piece of machinery, completion could be delayed due to unforeseeable environmental or work conditions. If the work permit expires before a project is completed, the company has to fly the team out of country and then fly them back in or fly in other technicians to take over, adding to business costs.[48]

Computers and Electronic Products

Firms in the computer and electronic products industry (which is primarily covered by NAICS code 334) produce or export information and communications technology products, instrumentation, media, semiconductors, electronic components, consumer electronics, search and navigation systems, and other electronic goods. This section is based on information from SMEs in the computer and peripherals, communications, audiovisual equipment, semiconductor, instrument, and solar energy equipment industries that export to the EU.

The value added to GDP from the U.S. computers and electronics industry was $208.0 billion in 2011, which was 9.1 percent of the total value added by NAICS chapters 31–33 manufacturing and 1.4 percent of GDP.[49] Employment in the industry was 816,676 that year.[50] As with other manufacturing sectors, SMEs comprise a large share of the industry (87.1 percent of domestic computer and electronics manufacturing

[43] Industry representative, roundtable discussion, Cleveland, OH, September 10, 2013.
[44] Industry representative, email message to USITC staff, September 10, 2013.
[45] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013.
[46] Ibid.
[47] Ibid.
[48] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.
[49] Calculations use data on value added from the U.S. Census Bureau's Annual Survey of Manufactures and data on GDP from the U.S. Department of Commerce's Bureau of Economic Analysis.
[50] Census, Annual Survey of Manufactures (accessed December 30, 2013).

establishments in 2011),[51] and approximately a quarter of sector exports to the EU were from SMEs (table 4.2). As shown in table 4.2, SMEs in this industry exported $4.9 billion in product to the EU in 2011, making up 25.7 percent of the total known value of computer and electronics exports to the EU in that year.[52]

TABLE 4.2 The known value of U.S. exports and the number of exporters for computer and electronic product manufacturing (NAICS 334), by all U.S. exports and U.S. SME exports, and by all destinations and the EU

	All destinations	EU	EU shares (%)
		2010	
All U.S. exports, known value (million $)	83,829	18,850	22.5
U.S. SME exports, known value (million $)	19,729	5,074	25.7
SME share (%)	23.5	26.9	
Number of known exporters	7,632	4,965	65.1
Number of known SME exporters	7,413	4,748	64
SME share (%)	97.1	95.6	
		2011	
All U.S. exports, known value (million $)	96,614	18,999	19.7
U.S. SME exports, known value (million $)	20,214	4,883	24.2
SME share (%)	20.9	25.7	
Number of known exporters	7,770	4,967	63.9
Number of known SME exporters	7,557	4,758	63.0
SME share (%)	97.3	95.8	

Source: Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; and Commission calculations.

Trade Barriers Related to Computers and Electronic Products

Because of the complexity and composition of their products, U.S. SMEs in this industry primarily reported standards and technical regulations as obstacles to exporting to the EU. In particular, representatives cited CE mark rules, REACH, and RoHS regulations as presenting difficulties. Other barriers cited included used electronics tariffs, preferential procurement ("buy EU"), and difficulties in exporting products with globally sourced components.

Standards and Technical Regulations Barriers

Industry representatives indicated that the CE mark, REACH, and RoHS pose obstacles because they differ from comparable U.S. regulations; change frequently, raising the cost of compliance; and involve safety rules that are not always science based. These representatives said that even when product regulations are comparable between the United States and EU, separate testing may be required to meet each region's regulations, adding time and cost between production and sale. They reported that although these issues may be costly for larger firms, they are potentially prohibitive for SMEs because the cost of certifying a product is often the same regardless of a firm's size or revenue.

[51] Based on data from Census, SUSB (accessed November 18, 2013).

[52] Census export data for this NAICS code do not take into account peripheral businesses such as legal, financial, logistics, and business service providers that were also involved in the manufacture and export of those products.

CE mark

One SME manufacturer of small electronic products stated that certification costs are higher in the EU than in the United States, and disproportionately so for an SME. Goods sold in the EU must bear the CE mark, attesting that the electronic product bearing the mark conforms to electromagnetic compatibility regulations. Testing requirements for the CE mark for this manufacturer's product differ from requirements in the United States. In addition, the CE mark requires compliance with more restrictive standards than the Federal Communications Commission (FCC) Part 15 regulations, a comparable certification system in the United States.[53]

According to a communications equipment firm, obtaining the CE mark is burdensome in terms of cost and timing, because the required testing can take three to six months unless the company pays extra to have it completed more quickly. However, the firm said that the difficulties encountered in obtaining the CE mark are less severe than those related to receiving Underwriters Laboratories (UL) certification in the United States.[54]

Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

Representatives of SMEs in the electronics industry stated that complying with REACH requires keeping up with constantly evolving lists of restricted substances and of substances of potential concern. According to the representatives, these changes have a disproportionate effect on SMEs, which unlike large firms often cannot afford to have personnel devoted solely to REACH issues. The SMEs stated that new additions to the lists are not always science based and force the manufacturer to make expensive changes to the manufacturing and design of their electronic components if they wish to export to the EU.[55]

Restriction of Hazardous Substances (RoHS)

A representative of an SME in this industry stated that the need to comply with RoHS causes some U.S. manufacturers to delay exporting to the EU until they can comply.[56] The representative said that there is no U.S. equivalent to RoHS.[57] U.S. manufacturers were aware of the directive before it went into effect, and some larger U.S. manufacturers reportedly were already making goods in compliance with this directive when it was implemented.

Country-specific standards and certification rules

Electronics industry representatives said that individual EU countries sometimes have additional safety requirements that go beyond the CE certification. SME representatives stated that country-level requirements are often not transparent and differ from one EU

[53] Industry representative, roundtable discussion, Albuquerque, NM, September 18, 2013.
[54] Industry representative, roundtable discussion, Chicago, IL, September 13, 2013.
[55] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013. This issue is discussed further in chapter 3 of this report.
[56] For example, RoHS restricts the concentration that products can contain of six hazardous substances, including lead. Lead is a heavy metal element that is hazardous to humans if ingested; however, it is also a principal component in the solder used to connect electrical and electronic parts.
[57] Industry representative, roundtable discussion, Albuquerque, NM, September 18, 2013.

country to another. Often, their firms only discover the differences by hearing about them from their customers. These representatives further stated that the extra certifications add delays to placing a product on the market and occasionally create the need to modify the product.[58]

Certification rules were also mentioned as an issue. A solar equipment producer stated that certain product component certification requirements differ among EU countries. For example, the producer stated that Italy has a unique standard for power conversion designed to benefit manufacturers who produce and operate only in this market.[59]

Other Barriers to Trade

Electronics industry SMEs stated that a preference for buying EU products for use in EU-funded projects—particularly environmental management projects—created difficulties for U.S. firms exporting to the EU. Industry representatives also stated that they occasionally experienced challenges in getting timely payment for goods sold.[60]

Industry representatives expressed concern that tariffs and taxes on used electronics create barriers to exporting to the EU. They stated that tariffs could be especially problematic for customer returns because the EU authorities do not always refund the tariffs paid by U.S. manufacturers when an EU customer returns a U.S. product.[61]

Problems were also reported in the area of trademarks. Representatives of U.S. independent resellers, who are predominantly SMEs, asserted at the Commission's hearing and in written submissions that the EU's trademark regime operates to block a substantial volume of potential U.S. exports of new and used branded electronic equipment.[62] They reported that in the EU, "the trademark owner has the absolute right to block imports of genuine branded products, new or used, unless the branded product was first sold in the EU."[63] They contrasted this regionally delimited approach to trademark exhaustion with that of the United States, which reportedly recognizes an "international exhaustion" principle—that is, that trademark rights are exhausted upon a first sale regardless of location, subject to certain limitations.[64]

Representatives of independent electronics resellers estimated that if the EU were to open its secondary market to U.S. competition, their exports could increase by 30–50 percent. Moreover, they contended that the benefits of such an opening could extend beyond trade to the promotion of innovation and the environmentally sound management of products at the end of their working lives.[65]

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[58] Industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.

[59] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013.

[60] Industry representative, email message to USITC staff, September 16, 2013.

[61] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013; industry representative, email message to USITC staff, October 10, 2013.

[62] See Owners' Rights Initiative (ORI) and the Association of Service and Computer Dealers International and the North American Association of Telecommunications Dealers (AscdiNatd), written testimony to the USITC, November 20, 2013; USITC, hearing transcript, November 20, 2013, 77–84 (testimony of Joseph Marion, AscdiNatd, and Anthony Chwastyk, ORI, and Radwell International, Inc. (Radwell)); and ORI, AscdiNatd, and Radwell, post-hearing submission to the USITC, December 2, 2013.

[63] ORI, AscdiNatd, and Radwell, post-hearing submission to the USITC, December 2, 2013, 5.

[64] ORI, AscdiNatd, and Radwell, post-hearing submission to the USITC, December 2, 2013, 4–5; see also Calboli, "Market Integration," 2011, 1249–50.

[65] ORI, AscdiNatd, and Radwell, written testimony to the USITC, November 20, 2013, 6.

Transportation Products

Firms in this industry produce and export motor vehicles, trailers, aircraft, missiles and space vehicles, railroad rolling stock, ships and boats, motorcycles, military vehicles, and transportation equipment and parts. "Transportation products" are primarily covered by NAICS code 336, "Transportation Equipment Manufacturing." However, this section also contains feedback from a small number of SME exporters of products in NAICS 335, "Electrical Equipment, Appliance, and Component Manufacturing." The following discussion is mainly based on information from U.S. SME representatives from the motor vehicles, parts and batteries, and aerospace industries.[66]

Transportation manufacturing, the largest of the industries discussed in this chapter, added $264.5 billion in value to the U.S. economy in 2011. That accounted for 11.5 percent of manufacturing value and 1.8 percent of total GDP.[67] 1,235,431 people were employed in the transportation equipment manufacturing industry in 2011.[68]

SMEs account for a significant share of the firms producing and exporting in this industry: in 2011, 82.1 percent of domestic transportation manufacturing establishments were SMEs.[69] This share was, however, lower than the average share of SMEs among manufacturing sectors. Moreover, most exports to the EU were made by large firms that year. As shown in table 4.3, U.S. SMEs in this sector exported $1.7 billion in product to the EU in 2011, making up only 3.9 percent of the known value of transportation equipment exports to the EU in that year.

TABLE 4.3 The known value of U.S. exports and the number of exporters for transportation equipment manufacturing (NAICS 336), by all U.S. exports and U.S. SME exports, and by all destinations and the EU

	All destinations	EU	EU shares
		2010	
All U.S. exports, known value (million $)	160,346	30,618	19.1
U.S. SME exports, known value (million $)	8,957	1,332	14.9
SME share (%)	5.6	4.4	–
Number of known exporters	4,308	2,045	47.5
Number of known SME exporters	4,036	1,827	45.3
SME share (%)	93.7	89.3	–
		2011	
All U.S. exports, known value (million $)	195,784	42,723	21.8
U.S. SME exports, known value (million $)	10,082	1,669	16.6
SME share (%)	5.1	3.9	–
Number of known exporters	4,485	2,086	46.5
Number of known SME exporters	4,188	1,852	44.2
SME share (%)	93.4	88.8	–

Source: Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; and Commission calculations.

[66] Census export data for this NAICS code do not take into account peripheral businesses such as legal, financial, logistics, and business service providers that were also involved in the manufacture and export of those products.

[67] Calculations use data on value added from the U.S. Census Bureau's Annual Survey of Manufactures and data on GDP from the U.S. Department of Commerce's Bureau of Economic Analysis.

[68] Census, Annual Survey of Manufactures (accessed December 30, 2013).

[69] Based on data from Census, SUSB (accessed November 18, 2013).

Trade Barriers Related to Transportation Goods

In the transportation industry, the lack of harmonization of standards and testing rules, both among EU member states and between the EU and the United States, was the most frequently cited barrier for SMEs attempting to export to the EU. SMEs in both the motor vehicle and aerospace industries stated that regulations and enforcement differed so much from country to country that trying to enter a new EU country after becoming established in another can be similar to trying to enter a brand-new market. SMEs reported that these barriers are especially difficult for SMEs with few exports, because they have fewer sales over which to spread the extra costs of meeting standards and conducting additional tests. Along with these barriers, SMEs cited additional costs for logistics and documentation as being obstacles to exporting. They also commented that while added costs are high in this sector, they are compounded by state support for domestic enterprise and preferential procurement.

Motor Vehicle Barriers

The motor vehicle industry includes automobile, truck, trailer, and parts manufacturing. SMEs in this industry cited a lack of harmonized standards and high costs of both logistics and regulation as barriers for SMEs hoping to export products to the EU.

Standards and technical regulations barriers

SMEs cited differences in design standards and environmental regulations between the EU and United States as adding to the costs of exporting motor vehicles. Multiple manufacturers stated that EU and U.S. regulations share similar goals but use different testing standards to arrive at those goals, and these different approaches increase the cost of exporting. Some U.S. SME manufacturers also find that EU standards lack transparency and that some EU rules vary from member country to member country, confusing U.S. SME exporters.

Vehicle design rules

Multiple SMEs in the motor vehicle industry cited standards and regulations as barriers to exporting to the EU. One firm reported that the EU and United States measure commercial truck length differently, which has led to a problem with standards harmonization. Although manufacturers from each region create trucks that are the same length, U.S. design standards result in a U.S. truck with significantly less cargo space than an EU truck. Such U.S.-made trucks do meet EU technical regulations, but because of the cargo space issue, most consumers of trucks in the EU do not wish to buy them. When U.S. firms maintain U.S. design standards but expand their trucks to include the same amount of cargo space as an EU truck, the EU requires them to add aerodynamic back flaps to the truck trailer. This SME has not found it cost-effective to export to the EU thus far.[70]

Similarly, another U.S. SME stated that vehicle rules on taillights differ slightly between the United States and EU, requiring U.S. exporters to convert or pay someone to convert

[70] Industry representative, roundtable discussion, Chicago, IL, September 13, 2013.

taillights to the EU format before a vehicle can be registered in the EU. The SME representative stated that this conversion can add $2,000–$3,000 to the price of a car.[71]

Parts certification

An SME automotive parts manufacturer stated that the EU's automotive parts certification requirements, most often dealt with through EU standards and testing organizations known as TÜVs (Technischer Überwachungsvereine), are a barrier for SMEs. All motor vehicle parts in the EU must be certified by a regulatory body through a process that can be time intensive and prohibitively expensive, especially for SMEs with limited financial resources. The firm also stated that TÜVs vary by region and can be territorial and inconsistent; according to the SME, a product approved in northern Germany may not be considered certified in southern Germany. The SME posited that this process gives local firms an advantage.[72]

Environmental regulation

An SME parts manufacturer indicated that a new EU environmental regulation requiring firms to list and track all material inputs to its products is extremely time- and cost-intensive. Specifically, these regulations govern recyclable materials and inputs sourced from high-conflict regions of the world. They were implemented less than two years ago and impose a large cost on small firms. The manufacturer also reported uncertainty about how long it is required to maintain the database of its products' material inputs.[73]

Aerospace Barriers

The aerospace industry includes aircraft, space equipment, and parts manufacturing. SME manufacturers in this industry reported that inconsistently applied regulations and programs that aid their EU-based competitors are export barriers.

Standards and technical regulations barriers

Difficulty complying with the standards and regulations administered by the European Aviation Safety Agency (EASA) is a major challenge to SMEs in the aerospace industry. Because EASA has not centralized certification requirements and individual member states maintain aviation regulatory agencies, firms in this industry struggle to implement EASA regulations and move compliant products from country to country. An SME in this industry also cited the cost of complying with "apostille" requirements (discussed below) as a barrier to exporting.

EASA certification challenges

An aerospace industry representative stated that the cost of obtaining certifications for aerospace parts in Europe is among the highest in the world. There are various challenges with EASA beyond the cost, including duplicative certification requirements, EASA staffing turnover, and diverging implementation of directives at the EU member state

[71] Industry representative, roundtable discussion, Miami, FL, September 19, 2013.
[72] Industry representative, telephone interview by USITC staff, September 17, 2013.
[73] Ibid.

level. EASA was established in 2002[74] and has not fully centralized all certification for all EU member states. As a result, companies must, in some cases, receive separate certifications from each country's civil aviation authority to sell parts to airplane operators in that country. EASA is staffed with experts on assignment from member countries' aviation authorities, and the responsible case officer may change at any point in the certification procedure. As a result, firms applying for certification may have to deal with many different representatives, disrupting the continuity of the process. Another challenge is that member states have discretion in how they implement EASA's directives. Each country's civil aviation authority issues its own aeronautical information publication, which may include slightly different requirements than those stated by EASA and other EU member states. This can cause confusion and rejection of applications in one country that are accepted in another.[75]

Apostille requirement

An SME representative stated that EU governments require any official document to have an authentication or "apostille" to ensure recognition.[76] An apostille is an international document certification, similar to notarization, for items being shared between countries party to the Hague Apostille Convention.[77] This process has a minimal cost but adds time, and it creates an additional burden on SMEs that are trying to send official documents to European countries.[78]

Other barriers to trade

Aerospace industry representatives alleged that many EU companies receive subsidies or state aid in various ways from their host governments. They said that this allows European companies to produce products at a lower cost and puts U.S. aerospace companies making similar products at a competitive disadvantage.[79]

An industry representative stated that the procurement rules of the European Space Agency favor European companies. As a result, U.S. SMEs are unable to sell satellite parts and components in Europe. This has continued to be the case, according to the representative, even though the EU passed Directive 2009/81/EC in 2009 to open defense procurement in Europe and create open and transparent markets. The representative said that this directive leaves substantial leeway for governments to exempt defense and security contracts from the rules of the directive.[80]

[74] More information on the creation of EASA can be found at European Aviation Safety Agency, "The Centrepiece of the European Union's Strategy," n.d. (accessed November 18, 2013).

[75] Industry representative, roundtable discussion, Albuquerque, NM, September 18, 2013; Aviation Suppliers Association, written submission to the USITC, September 20, 2013.

[76] For more information on apostille requirements, see Hague Conference on Private International Law, *The ABCs of Apostilles*, n.d. (accessed November 12, 2013).

[77] For example, see http://www.businessdictionary.com/definition/apostille.html.

[78] Industry representative, roundtable discussion, Albuquerque, NM, September 18, 2013.

[79] Industry representatives, roundtable discussions, Cleveland, OH, September 10, 2013, and Salt Lake City, UT, September 20, 2013.

[80] Industry representative, roundtable discussion, Salt Lake City, UT, September 20, 2013.

Other Manufactured Products

Firms in this category produce and export products that do not fit clearly into the transportation, machinery, computers and electronics, or electric products categories. Items in this category are quite varied: U.S. SME manufacturers in the medical devices, firearms, fire equipment, security systems, sporting goods, and children's toys and equipment industries provided information for this report. "Other manufactured products" are primarily covered by NAICS code 339, "Miscellaneous Manufacturing."[81]

The miscellaneous manufacturing industry contributed $100.2 billion in value added, or 0.6 percent, to the U.S. GDP in 2011. That represented 4.4 percent of all manufacturing value in that year.[82] NAICS 339 firms employed 564,709 individuals in the U.S. in 2011.[83] SMEs account for a significant share of the miscellaneous manufacturing industry and exported over one-fourth the value of all exports to the EU in this sector. According to the Census Bureau, 95.4 percent of miscellaneous manufacturing firms were SME establishments in 2011.[84] As shown in table 4.4, SMEs in miscellaneous manufacturing exported $3.0 billion in product to the EU in 2011, making up 33.7 percent of the total known value of miscellaneous manufacturing exports to the EU in that year.[85]

TABLE 4.4 The known value of U.S. exports and the number of exporters for miscellaneous manufacturing (NAICS 339), by all U.S. exports and U.S. SME exports, and by all destinations and the EU

	All destinations	EU	EU shares (%)
		2010	
All U.S. exports, known value (million $)	22,016	8,261	37.5
U.S. SME exports, known value (million $)	8,936	3,274	36.6
SME share (%)	40.6	39.6	–
Number of known exporters	6,641	3,668	55.2
Number of known SME exporters	6,517	3,556	54.6
SME share (%)	98.1	96.9	–
		2011	
All U.S. exports, known value (million $)	27,121	9,016	33.2
U.S. SME exports, known value (million $)	9,202	3,042	33.1
SME share (%)	33.9	33.7	–
Number of known exporters	6,793	3,719	54.7
Number of known SME exporters	6,678	3,607	54.0
SME share (%)	98.3	97.0	–

Source: Census, Foreign Trade Division, September 19, 2013; Census, *Profile of U.S. Importing and Exporting Companies*, Exhibit 7, 2013; and Commission calculations.

[81] Due to product similarities and the limited number of industry respondents providing feedback, comments from SMEs in NAICS 332 (Fabricated Metal Manufacturing) are also discussed here.

[82] Calculations use data on value added from the U.S. Census Bureau's Annual Survey of Manufactures and data on GDP from the U.S. Department of Commerce's Bureau of Economic Analysis.

[83] Census, Annual Survey of Manufactures (accessed December 30, 2013).

[84] Based on data from Census, SUSB (accessed November 18, 2013).

[85] Census export data for this NAICS code do not take into account peripheral businesses such as legal, financial, logistics, and business service providers that were also involved in the manufacture and export of those products.

Trade Barriers Related to Miscellaneous Manufactured Products

Miscellaneous manufacturing SMEs cited problems with standards, obtaining the CE mark, REACH, constantly changing regulations, and regulations that do not account for advances in technology as disproportionately affecting exports from SMEs to the EU compared to those of large firms. Non-standards barriers stated by SMEs in this industry included audits, market access issues, duties on globally sourced goods, and issues bringing trade show and replacement products into the EU.

Fire Equipment Barriers

The fire equipment industry produces fire safety and firefighting products. Representatives of SMEs in this industry cited the CE mark, REACH, design standards, and obstacles to accessing original equipment manufacturer (OEM) markets as barriers disproportionately impeding exporting from SMEs to the EU.

Standards and technical regulations barriers

Fire equipment representatives stated that for SMEs, compliance with the CE mark and REACH rulings can be incredibly costly, particularly when attempting to export cutting-edge technologies that require large costs in initial testing and submission. SMEs from the industry also reported concerns with voluntary EU standards that differ from U.S. standards, because EU consumers were significantly more inclined to adopt the EU-compliant model over the U.S.-compliant model. [86]

CE mark

For extremely small companies in this industry, obtaining approval for the CE mark can be a major barrier because it requires documentation and testing that can be confusing and costly.[87]

REACH

For fire equipment SMEs exporting to the EU, complying with REACH can be very time- and cost-intensive. Companies that are on the cutting edge of technology may easily spend almost $200,000 on initial testing and submission for new products. The many exemptions and preregistration capabilities in place do allow numerous preexisting products to access the EU market, but one SME argued that this discourages innovation. It can reportedly take an extra year or more to bring a new product to market just because of REACH restrictions.[88]

Standards

An SME industry representative producing a wearable firefighting product stated that for their product, all firms in the United States follow the standards set by their industry association, so all U.S. products look similar. However, producers in the EU follow a

[86] Industry representative, roundtable discussion, Santa Ana, CA, September 24, 2013.
[87] Industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.
[88] Industry representative, roundtable discussion, Milwaukee, WI, September 12, 2013.

French standard, which means that U.S. producers cannot export to the EU market without substantially modifying the design of their product. Middle Eastern and African countries have also started adopting the EU standard in their markets as well. As design, production, and testing to meet the separate set of standards would be prohibitively expensive for SMEs, this firm does not produce for EU-standard markets.[89]

Medical Devices and Supplies Barriers

This industry includes manufacturers of non-pharmaceutical medical products, including instruments, tests, appliances, dressings and supplies, and other goods that treat, diagnose, or otherwise address medical concerns.

Standards and technical regulations barriers

Although many SMEs in the industry stated that the EU's regulatory processes in this industry are more consistent and easier to use than those in the United States, SMEs stated that they still find regulatory and standards barriers to be obstacles that disproportionately affect SMEs exporting in this industry. Their primary concerns were the difficulty of obtaining the CE mark for medical products and the high cost of audits, as well as opaque, inconsistent, confusing, and frequently changing regulations.

CE mark

To be approved for sale throughout the EU, all medical devices must have a CE mark. Two sources stated that the process of obtaining a CE mark lacks transparency and is extremely time consuming.[90] One stated that the process is so confusing that it requires a U.S. commercial service contact to navigate it.[91] Another source reported that even accessories to a medical device exported to the EU require a CE mark. For instance, in order to export surgical kits to the EU, firms need a CE mark for the surgical sutures, the needle, and the thread. This can be very time consuming and burdensome to SMEs.[92] In addition to time, the cost of obtaining a CE mark can be significant for SMEs. One source indicated that the cost of obtaining a CE mark was $76,000 per device from one certifying body approved by the EU.[93]

Before receiving the CE mark for one of its products, a medical device firm's manufacturing facilities must be audited. This process entails paying for an EU inspector to visit the manufacturer's domestic facility. Three sources commented on the cost of these audits. One source reported that this costs $8,000 the first year and then $5,000 each year thereafter.[94] Another source reported that the EU can send auditors whenever they deem appropriate, and according to one estimate, these officers can visit up to five

[89] Industry representative, roundtable discussion, Santa Ana, CA, September 24, 2013.

[90] Industry representatives, roundtable discussions, Minneapolis, MN, September 11, 2013 and Raleigh, NC, September 16, 2013.

[91] Industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.

[92] Industry representative, roundtable discussion, Miami, FL, September 19, 2013.

[93] These costs also reflected auditing expenses. Industry representative, roundtable discussion, Philadelphia, PA, September 23, 2013.

[94] Industry representatives, roundtable discussions, Salt Lake City, UT, September 20, 2013, and Santa Ana, California, September 24, 2013.

times per year to inspect a manufacturing facility and test products.[95] Another source described how the failure of the EU to "grandfather" in devices that were approved for sale in Europe before the EU's formation has imposed significant burdens on the firm.[96] In particular, the firm described the sales and revenue lost during the time when the devices needed to be retested to obtain a CE mark under the new regulatory regime; the devices could not be sold while they were undergoing review, and the SME was forced to lay off employees.[97]

Frequently changing and inconsistent regulations

One roundtable participant stated that constantly changing regulations and standards are significant trade barriers for SMEs exporting to the EU.[98] A device that has been approved under one set of standards may not necessarily meet the requirements set by a new series of regulations. For instance, before September 2011, Italian customs did not require medical devices to have a "health clearance." Since September 2011, however, the EU has required Italy to meet this standard (Medical Device Legislation Directive 93/42/EC) and has required Italy to install a new electronic system that checks all medical devices that are imported to Italy. The importer is now required to provide a list of documents, including a health and safety clearance, before Italian customs will release the product.[99] This change in policy enforcement was not conveyed to the exporter, and in one particular instance, Italian customs retained the device.[100]

In another example, a medical device start-up company asserted that a European Commission (EC) directive will replace the three existing medical device directives and may impose a more stringent testing and control process.[101] While the directive (2012/0267 COD) was updated in September 2012, it has not yet been officially approved by the EC. This source suggested that the directive may delay the CE mark approval process while the rules are devised and implemented into law.[102]

Another SME representative listed problems with country-specific regulations, which require manufacturers to register their products, in addition to displaying the CE mark, in order to export to several EU economies.[103] A device that is approved for sale in Germany, France, and Italy might not meet the requirements of the UK, for example.[104]

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[95] Industry representatives, roundtable discussions, Salt Lake City, UT, September 20, 2013, and Bethpage, NY, September 25, 2013. In the U.S., a central regulatory body—the Food and Drug Administration—considers medical devices for clearance or approval through a few different routes, ranging from less-stringent 510(k)s to clinical trial-backed premarket approvals. By contrast, Europe's system gives that responsibility to private companies known as notified bodies, which are paid by medical device manufacturers to carry out their reviews.

[96] Industry representative, email message to USITC staff, October 17, 2013.

[97] Industry representative, email message to USITC staff, October 17, 2013. This firm found success by contacting the Mid Atlantic Trade Act Assistance Center to explain their situation and were able to obtain a grant that covered the costs of obtaining a CE mark.

[98] Industry representative, roundtable discussion, Philadelphia, PA, September 23, 2013.

[99] Industry representative, email message to USITC staff, September 24, 2013. This policy was imposed in 1993 and applies to the entire EU, but Italy did not enforce it until recently.

[100] Highland Metals Inc., written submission to the USITC, September 24, 2013.

[101] This proposal can be accessed at European Commission, "Revision of the Medical Device Directives," December 12, 2013.

[102] Industry representative, SBA roundtable discussion, July 26, 2013.

[103] The countries for which specific registration requirements are imposed are Bulgaria, Estonia, Finland, France, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, and Spain. Highland Metals Inc., written submission to the USITC, September 24, 2013.

[104] Industry representative, roundtable discussion, Salt Lake City, UT, September 20, 2013.

In some cases, these hurdles have made exporters more selective in choosing the EU countries to which they will export. One source mentioned that due to such country-specific regulations and the associated cost of gaining approval to sell to every EU country, they only export to France, Italy, and Spain.[105]

The occasional incompatibility of regulations in the United States with those in the EU was also cited as regulatory burden by U.S. SMEs. For instance, the EU requires a puncture test to be conducted on pacifiers for premature infants. These pacifiers are sold as medical devices because they can reportedly calm premature infants and lessen the need for drugs. The test, which is not required for this product in the United States, is required in the EU despite the fact that (1) premature infants do not have teeth and cannot puncture the device, and (2) a somewhat thin material is needed due to the smallness of premature infants' mouths. Further, the EU requires the nipple size of a pacifier to be larger than what is permitted for sale in the United States. Such inconsistencies require additional certification costs and occasionally mean that a firm must produce separate products to serve both markets.[106]

Sporting Goods Barriers

Members of the sporting goods industry produce products that are used for athletics and sports, including skates, skis, balls, and exercise equipment. In the sporting goods industry, SMEs listed a variety of barriers to exporting, including barriers involving technical regulations, market access, and customs and duties.

Standards and technical regulations barriers

Industry representatives experienced standards issues in three areas: cost of obtaining a copy of regulations, difficulty in finding testing facilities that work with their products, and EU regulations that are stricter than their U.S. counterparts.

CE certification

An SME representative indicated that companies are required to pay for a copy of each CE standard that they request. This representative also indicated that the SME has experienced difficulties in finding a facility to provide CE certification for its product because facilities that test and certify tend to be clustered in the United Kingdom and Germany. The representative added that for his firm's equipment, CE certification is mandatory, whereas the United States only has voluntary industry standards to follow. Overall, this firm's biggest challenge in exporting product to the EU is accessing important information about the CE process, which would be less of a burden for large firms that could afford to dedicate personnel to information gathering.[107]

[105] Highland Metals Inc., written submission to the USITC, September 24, 2013.
[106] Industry representative, roundtable discussion, Santa Ana, CA, September 24, 2013.
[107] Industry representative, telephone interview by USITC staff, September 17, 2013.

Other barriers to trade

Other barriers in exporting to the EU cited by representatives from the U.S. sporting goods industry included difficulties showing products and researching new markets in the EU, high duties, and customs barriers.

One firm stated that its biggest barrier is the need to conduct market research before determining if a market in the EU is right for its product. It manufactures a large piece of equipment that does not ship easily and is subject to a variety of certifications and regulatory requirements, and the firm has no way to provide consumers with test models or determine if a market is a good fit before it ships products. The firm said that because the regulatory environment is different, they have a much easier time shipping product to Japan and testing the market there.[108]

A representative of a recently acquired SME stated that one of its products falls under U.S. Hazardous Materials (HAZMAT) regulations. The representative said that although the product does not face any specific barriers in being tested, certified, and shipped to a central processing location in Germany, distributors do not want to move the product outside of Germany for fear of violating stricter regulations in other EU countries. The representative did not state whether this refers to stricter country-level regulations or to an inconsistent application of EU-wide regulations.[109]

Toy and Children's Products Barriers

The toy and children's product industry produces toys such as dolls, games, puzzles, and other children's products, such as play mats and children's hairbrushes. SMEs in this industry cited diverging international standards and high-cost testing as barriers to trade.

Standards and technical regulations barriers

This industry's SMEs face exporting barriers due to safety standards and testing issues. SMEs found that a lack of harmonization between the United States and EU creates high-cost obstacles, but that they also have concerns with country-specific safety regulations and the regionalization of testing rules.

Safety standards

EU and U.S. rules for toys differ from each other and from the International Organization for Standardization (ISO)-8124, the international toy safety standard. This means that all products that U.S. firms want to export to the EU must fit all certification criteria and be tested for each region. A representative stated that for one firm, testing to meet the EU safety rules for toys can make up almost half of the cost of a toy.[110]

Individual countries also add requirements for toy certification. For example, one SME cited a stricter rule on the formamide content of play mats in France than in the rest of the

[108] Industry representative, roundtable discussion, Lathrup Village, MI, September 9, 2013.
[109] Industry representative, telephone interview by USITC staff, September 17, 2013.
[110] Industry representative, roundtable discussion, New York, NY, September 24, 2013.

EU. They also said that Germany is currently attempting to tighten rules on the content of several substances, including barium, in toys and children's products.[111]

Until last year, both U.S. and EU toy regulations were consistent with respect to limits on heavy metals. In July 2013, however, the EU toy safety directive 2009/48/EC was amended to cover additional chemicals and metals. Electrical toys are another point of divergence. The FCC in the United States excludes low-powered products like toys from its broader regulations, but the EU requires an extra layer of testing and certification under EN-62115, the electrical toy standard.[112]

SMEs also stated that toy standards in the United States and Canada are jointly developed through an open process with industry and government, but that is not the case in the EU.[113]

Testing barriers

Testing rules vary by EU country. Although a company can self-test and self-certify to obtain the CE mark and confirm REACH compliance, customs agents in the EU also irregularly require further testing to prove that products do not contain any chemicals listed as Substances of Very High Concern (SVHC).[114] This adds to the firm's expenses, because it has to pay storage duties and the cost of testing again at the border. Tests in addition to the standard ones also exist for any products coming from China, even when they are produced by U.S. firms.[115]

Regionalization of testing can also cause difficulties, because different EU member countries verify and enforce certifications at different levels. In Germany, for example, enforcement happens at the state level rather than at the federal level, so different states may interpret rules differently.[116]

Suggested Ways to Enhance SME Participation in Trade

Manufacturing SMEs participating in roundtables and industry associations making written submissions shared numerous suggestions about ways to bolster manufacturing trade between the United States and the EU. Many suggestions focused on policy changes that could improve transatlantic trade, such as better harmonization or mutual recognition of standards and technical regulations. Other suggestions concerned alternative approaches that SMEs themselves could consider to boost their exports.

Suggested Policy Adjustments to Enhance Trade

An SME in the machinery industry suggested that if the EU were to accept or recognize U.S. standards and technical regulations in areas covered by the CE certification, the

[111] Industry representative, roundtable discussion, New York, NY, September 24, 2013.
[112] Ibid.
[113] Ibid.
[114] Chemicals on the SVHC list can be found at European Chemicals Agency (ECHA), *Candidate List of Substances of Very High Concern for Authorisation*, n.d. (accessed November 12, 2013).
[115] Industry representative, roundtable discussion, New York, NY, September 24, 2013.
[116] Ibid.

Pressure Equipment Directive, and HEPA classification, it would improve the competitiveness of U.S. SME exports to the EU.[117] Similarly, SMEs in the toy industry stated that mutual recognition of certification and safety regimes would reduce the trade costs of exporting to the EU for SMEs in that industry.[118]

An SME in the automotive industry indicated that harmonization of technical regulations between the EU and United States for motor vehicle parts would lower export barriers. The SME stated that the EU and the United States have the same goals for many regulations but a different method of achieving them, which often requires automotive parts to be tested in both the EU and the United States. For example, the U.S. vehicle emissions regulation Environmental Protection Agency (EPA) 2010 certification is functionally equivalent to the EU's Euro VI vehicle certification, but these regulations require different tests to be performed.[119]

The National Association of Manufacturers (NAM) suggested several policy changes to strengthen SME exports. They suggested that future agreements should be free from product- and industry-specific exemptions from intellectual property protection and that rules protecting trade secrets, such as the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, be strengthened. NAM suggests that further addressing burdens faced by U.S. SMEs in transferring data across borders while ensuring that IP rights are adequately protected would benefit U.S. SME manufacturers. NAM also supports reforming the EU's General Data Privacy Regulation to improve data flows and to reduce compliance concerns for SMEs while still protecting data rights.[120]

NAM suggested that the immediate removal of tariffs between the United States and the EU and the end of regulations that require local content or technology transfer would benefit U.S. SMEs. They suggest harmonization of standards and regulations where possible, and mutual recognition otherwise, to reduce costs and resource burdens for exporting SMEs in both the EU and the United States. NAM also suggested that the United States and the EU mutually recognize each other's conformity assessment organizations, because being able to meet EU regulations through domestic testing would remove one obstacle to exporting for U.S. SMEs. NAM stated that the creation of regulations and technical standards should be more transparent and better founded on science. NAM added that customs procedures should be improved; the U.S. and EU should work together to expand trade facilitation; and the *de minimis* threshold for imposing regular tariff rates should be increased to $800 or more (and increase with the consumer price index) to allow U.S. SMEs to send low-value shipments to the EU with a lower customs burden.

SMEs also suggested some actions the U.S. government might take to enhance their exports to the EU. An SME in the electronics industry stated that when companies in the sector are seeking to fulfill compliance requirements in new export markets, it would be helpful to receive more U.S. government support in the form of public certification and testing laboratories and/or help meeting certification requirements. They stated that added assistance in testing would help them to be more competitive.[121] An SME in the satellite industry suggested that the U.S. government continue its ongoing reform of export controls. Specifically, it suggested that moving regulation of trade in satellite parts and

[117] Industry representative, email message to USITC staff, September 25, 2013.
[118] Industry representative, roundtable discussion, New York, NY, September 24, 2013.
[119] Industry representative, roundtable discussion, Chicago, IL, September 13, 2013.
[120] NAM, written submission to the USITC, October 23, 2013.
[121] Industry representative, roundtable discussion, Minneapolis, MN, September 11, 2013.

components from the State Department's International Traffic in Arms Regulations to the Department of Commerce's Export Administration Regulations would offer exporters more access to the world market.[122]

Suggested Alternative Approaches to Enhance SME Exports to the EU

SMEs experienced in exporting to the EU suggested that trying different approaches could increase other SMEs' exports. A machinery-sector SME currently exporting to the EU suggested that it was best to select the largest EU market for an SME's particular product, to establish personal contacts with people who speak the language, to learn the rules and regulations for that market, and to conform to the way of doing business in that market before expanding to other EU markets. He advocated starting in Germany, the largest market for many products. This same SME suggested working with several local regional distributors (e.g., 5–6 in Germany alone) rather than a central importer.[123]

A consultant who works with U.S. SME machinery exporters to the EU made multiple suggestions for SMEs seeking to export to the EU. First, SMEs should ensure that their required technical, customs, and certification documents are coherent and accurate, because if the documents are accessed at a future date, the European staff person that originally read and accepted them may no longer be with that organization. Second, the decisions of third-party certifiers for the CE mark may take an extraordinary amount of time to reverse, even when an appeal is successful. Third-party certifications may contain mistakes, so it is important to verify that third-party materials are correct. Third, in designing a product for the EU market, it may be desirable to incorporate components that already have the CE mark, so that the U.S. exporter will not have to certify the components. However, the U.S. exporter should also keep up with the latest components so that their product certification will not be tripped up by the use of out-of-date components. Finally, SMEs may want to test their products for compliance in large EU country markets first, rather than in smaller markets. The product might be accepted in a particular small market, but fail compliance in a much larger market. Finding out as early as possible which features need to be changed to become compliant minimizes the amount of redesign work to be done by the U.S. exporter.[124]

Several SMEs suggested that one way to deal with the irregularities of regulation enforcement against U.S.-manufactured products compared with EU-manufactured products is to open a manufacturing facility in the EU. For example, an SME machinery manufacturer familiar with the EU and other global markets suggested opening a facility in a large market (e.g., Germany) to establish local credentials and participating in that market and possibly expanding into other EU markets later.[125]

[122] Industry representatives, roundtable discussions, Cleveland, OH, September 10, 2013, and Salt Lake City, UT, September 20, 2013.
[123] Industry representative, roundtable discussion, Cleveland, OH, September 10, 2013.
[124] Industry representative, roundtable discussion, Atlanta, GA, September 18, 2013.
[125] Industry representative, roundtable discussion, Cleveland, OH, September 10, 2013.

Another SME suggested using a free-zone warehouse in the EU to avoid tying up resources (personnel costs and funds) and paying the VAT and customs duties at the border. [126] The SME explained that the free-zone warehouse will provide product storage, customer billing, and logistics services; will transmit the VAT and customs duties to the respective government authorities that in turn bill the SME's customer; and will take the SME product out of inventory and ship it to the customer. This SME stated that it ships its products to the warehouse under bond. Thus, the SME is able to reduce its shipping costs, increase the volume of product shipped and stored in the EU, and avoid having to pay the VAT and customs duties directly. By using this strategy, the SME lowered its up-front capital costs of exporting to the EU.[127]

Not all SME representatives focused on barriers to exporting to the EU. For example, an automotive industry SME exporter reported an overall positive experience. The exporter stated that two factors contribute strongly to this: first, in his industry, the buyer bears all the regulatory cost and risk. Second, the exporter sells a specialized product that has value because it is uniquely American and cannot be purchased without importing from the United States, so any exporting issues he experiences also apply to all competitors, and his customers consider the product worth the cost.[128] Another industry representative echoed the first one's sentiments on moving the logistics risk to the customer, stating that doing so not only ensures that the process runs more smoothly but also means that the SME exporter need not worry about complications like duties. [129] Finally, a semiconductor industry representative expressed the view that exporting to the EU is more advantageous than exporting to China, because intellectual property protections are stronger in the EU.[130]

[126] Industry representative, roundtable discussion, Lathrup Village, MI, September 9, 2013. Free zones in the European Community are "special areas within the customs territory of the Community. . . . On importation, free zones are mainly for storage of non-Community goods until they are released for free circulation. No import declaration has to be lodged as long as the goods are stored in the free zone. Import and export declarations have only to be lodged when the goods leave the free zone. In addition, there may be special reliefs available in free zones from other taxes, excises or local duties. . . .The free zones are mainly a service for traders to facilitate trading procedures by allowing fewer customs formalities." European Commission, "Free Zones" (accessed January 13, 2014).

[127] Industry representative, roundtable discussion, Lathrup Village, MI, September 9, 2013.

[128] Industry representative, roundtable discussion, Miami, FL, September 19, 2013.

[129] Industry representative, roundtable discussion, Raleigh, NC, September 16, 2013.

[130] Ibid.

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CHAPTER 5
Agriculture

Overview

Although a significant share of U.S. farm output is exported,[1] small and medium-sized enterprises (SMEs) supply only a minor portion of all direct U.S. agricultural exports. Generally, U.S. agricultural exports are non- or minimally processed products shipped in bulk by large multinational enterprises. However, SMEs are involved in U.S. agricultural exports in two distinct ways.

First, SMEs often supply products that are incorporated into the exports of large firms. For example, while most U.S. farms qualify as SMEs, their products are typically consolidated by wholesalers and brokers, cooperatives, or large corporations to be exported. Such products are sometimes called indirect exports. In addition, products grown on SME farms may be further processed in manufacturing items for export, such as fruit going into distilled spirits or grains being used in baked goods that are then sold abroad.

Second, SMEs directly export certain specialized and processed agricultural products, including products that are segregated from normal supply chains due to unique characteristics. Examples include food products using certified organic ingredients, or non-genetically modified crops. Only in this second case do barriers to trade have the potential to affect the exports of SMEs disproportionately, because the large exporters in the first case will be tasked with addressing European Union (EU) trade barriers. Most agricultural SMEs participating in the roundtables appeared to be direct exporters, and many were exporters of processed foods.[2]

U.S. exports of processed food to the EU are small, given the size of the EU market and the size of total U.S. exports to the EU. The EU accounts for almost a fifth of the total known value of all U.S. exports, but only about 9 percent of the known value of U.S. processed food exports. SMEs' share of U.S. food exports to the EU ranged from 13 to 15 percent during 2010–11 (table 5.1).[3] Similarly, SMEs' share of total U.S. exports of processed food by known value is small; it ranged from 14 to 15 percent for all destinations and was 23 percent for EU exports for this period. The number of SMEs

[1] Based on volume, about 20 percent of U.S. farm output is exported. USDA, PSD Online (accessed November 4, 2013).

[2] Nevertheless, some agricultural SMEs and growers' associations whose products are mainly exported by large firms provided information through roundtables or written submissions. Because the views of indirect agricultural exporters were presented to the USITC, and their views are somewhat entwined with those of direct exporters, the viewpoints of indirect exporters are also presented, but with the disclaimer that they are not disproportionately affected by EU trade barriers.

[3] As noted above, wholesalers and brokers, many of which are large firms, export a substantial amount of agricultural products in bulk or in a minimally processed form, but those data are not disaggregated in a way that permits reporting SME shipments to the EU.

TABLE 5.1 The known value of U.S. exports and the number of exports for food manufacturing (NAICS 311), by all U.S. exports and U.S. SME exports, and by all destinations and the EU[4]

	All destinations	EU	EU shares (%)
	2010		
All U.S. exports, known value (million $)	49,194	4,542	9.2
U.S. SME exports, known value (million $)	6,991	1,030	14.7
SME share (%)	14.2	22.7	–
Number of known exporters	2,808	925	32.9
Number of known SME exporters	2,497	756	30.3
SME share (%)	88.9	81.7	–
	2011		
All U.S. exports, known value (million $)	56,975	4,858	8.5
U.S. SME exports, known value (million $)	8,374	1,114	13.3
SME share (%)	14.7	22.9	–
Number of known exporters	2,912	929	31.9
Number of known SME exporters	2,598	757	29.1
SME share (%)	89.2	81.5	–

Source: Special Census tabulation; Census, Profile of U.S. Importing and Exporting Companies, Exhibit 7; Census, Foreign Trade Division; and USITC staff calculations.

Note: Almost all agricultural products fall under the North American Industry Classification System (NAICS) category 311. Raw products, which have had no processing at all, generally fall under NAICS 111 or 112, but are not tabulated here because they are exported in such small amounts.

exporting processed food to the EU was also fairly small, totaling less than 800 in both 2010 and 2011.[5]

Previous studies have found that in the EU, the U.S. agricultural sector faces some of the most significant trade barriers—both tariffs and nontariff measures (NTMs)—of any U.S. sector. For example, as reported in chapter 1, Francois et al. found that processed foods faced the highest tariffs of any major U.S. sector in the EU and that the estimated price effects of EU NTMs on the food and beverages sector were the highest of any sector.[6]

Similarly, in analyses conducted for a previous study, the Commission found that tariffs are high in many agricultural subsectors where SMEs supply a majority of exports. The Commission examined average applied tariff rates on all U.S. exports to all destinations, as well as the shares of exports accounted for by SMEs in different manufacturing and processed food sectors.[7] It found that SMEs accounted for a high share of exports, and faced applied tariffs above the average, for manufactured food exports in the following agricultural industries: meat and meat packaging, grain and oilseed milling, sugar and confectionery, dairy, foods not elsewhere classified, fruit and vegetable preserves, prepared seafood, and animal foods.

During the roundtables, SMEs identified several barriers in different agricultural segments that they view as disproportionately affecting their exports to the EU. High tariffs and complex, extensive EU regulations were the most common concerns cited by many roundtable participants. For example, SME representatives stated that the ever-

[4] The known value is the portion of U.S. exports that Census was able to link to a specific company. Thus, it is a subset of total U.S. exports.

[5] For more information on the role of SMEs in U.S. agriculture, see USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010.

[6] Francois et al., *Reducing Transatlantic Barriers to Trade and Investment,* 2013, 14–20.

[7] USITC, *Small and Medium-Sized Enterprises: Characteristics,* 2010, 6-15. The export data to all destinations were reported at the 4-digit NAICS level. Also, survey results found that SMEs were more likely than large firms to identify tariffs as a significant impediment to exporting.

changing list of EU regulations and SMEs' inability to find up-to-date information on allowable inputs disproportionately imposed a barrier to their exports, compared to large firms that have the resources to dedicate to personnel solely to navigating the latest regulations.[8]

The remaining sections of this report examine specific impediments to trade cited by participants in the roundtables and written submissions. The first part looks at broad barriers, and the second part breaks barriers down by product.

Overall EU Measures Affecting U.S. Agricultural Exports to the EU

Several broad EU barriers specific to agriculture surfaced in roundtable discussions and industry submissions. According to several participants, the EU lacks a focus on science-based decision making in creating sanitary and phytosanitary measures, specifically regarding approval of genetically modified (GM) traits (box 5.1).[9] Industry representatives also stated that regulations and testing requirements are burdensome and often inconsistent among EU countries. For example, maximum residue levels (MRLs), which limit the amount of pesticide that may remain in a product presented for import, vary between EU countries.[10] Additionally, the aquaculture industry noted that EU requirements for testing heavy metals are more difficult to meet than those of other countries and impose a barrier on U.S. aquaculture firms seeking to export to the EU.[11] Other participants view the process of obtaining standards and certifications, especially in the area of food safety, as expensive and poorly consolidated.[12] The certification requirements for the Global Food Safety Initiative (GFSI)[13] or for non-GM and sustainable inputs were viewed as extensive and requiring substantial investment, which especially disadvantages SMEs. Issues with packaging and inconsistent labeling requirements were also raised by a number of roundtable participants.[14]

[8] Industry representatives, roundtable discussions, Salt Lake City, UT, September 20, 2013; Philadelphia, PA, September 23, 2013; and Sacramento, CA, September 25, 2013. As an example, the nut industry explained that the allowable level of bromide in walnuts is 200 parts per million in most countries, but the EU limits bromide levels to 50 parts per million. Many SME walnut producers run into problems because they are not aware of this restriction, even though they would easily be able to comply. Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

[9] U.S. Wheat Associates and National Association of Wheat Growers, written submission to the USITC, September 25, 2013, 3; National Corn Growers Association, written submission to the USITC, August 23, 2013, 1.

[10] Industry representatives, roundtable discussions, Lathrup Village, MI, September 9, 2013, and Fresno, CA, September 27, 2013.

[11] The EU has more stringent regulations than the United States for heavy metals in food destined for human consumption, and has banned codfish due to traces of heavy metals in EU imports from the United States. Industry representative, SBA roundtable discussion, July 26, 2013.

[12] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

[13] The GFSI is discussed in more detail later in this chapter.

[14] Industry representatives, roundtable discussions, Sacramento, CA, September 25, 2013, and Fresno, CA, September 27, 2013.

BOX 5.1 Sanitary and phytosanitary measures

The following definition of sanitary and phytosanitary measures is from the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures. A sanitary or phytosanitary measure is one that is intended:

- "to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests."[a]

The definition notes that such measures

> include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.[b]

[a] WTO, WTO Agreement on the Application of Sanitary and Phytosanitary Measures, Annex A, http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.
[b] WTO, WTO Agreement on the Application of Sanitary and Phytosanitary Measures, Annex A, http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.

Other concerns raised by industry representatives, which are not covered in further detail in the remainder of the chapter, included (1) EU production subsidies;[15] (2) a lack of U.S. government export financing and export assistance;[16] (3) high duties on imports from the United States, including tariff-rate quotas (TRQs) for certain goods;[17] (4) more favorable EU tariffs on imports by third-country competitors, such as Chile and Canada, that make U.S. exports to the EU less competitive relative to those countries;[18] (5) customs delays;[19]

[15] California Citrus Mutual, written submission to the USITC, September 20, 2013.
[16] California Citrus Mutual, written submission to the USITC, September 20, 2013; industry representatives, roundtable discussions, Lathrup Village, MI, September 9, 2013, and Sacramento, CA, September 25, 2013.
[17] U.S. Wheat Associates and National Association of Wheat Growers, written submission to the USITC, September 25, 2013, 1; industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.
[18] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.
[19] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013.

and (6) inability to obtain U.S. government certifications needed to sell in the EU, such as for dioxin.[20]

Product-specific Barriers Affecting Agricultural Exports to the EU

Corn

The United States is by far the world's largest corn producer, supplying about one-third of global corn production every year.[21] The most widely produced feed grain in the United States, corn is used as an input for further processed products (animal feed, corn syrup) or used as a feedstock in the production of ethanol. Corn is mostly grown in the north central United States, and over 80 million acres are planted each year.[22]

Historically, the United States has also been the world's largest corn exporter, due to its modern production methods, expansive acreage, and efficient transportation. Though the 2012 Midwestern drought curbed exports substantially,[23] about 20 percent of U.S. produced corn is exported, representing the largest net contribution to the U.S. agricultural trade balance.[24] In 2012, U.S. exports of corn were valued at just under $10 billion.[25] Asian countries, including Japan, China, and the Republic of Korea, are generally the largest markets for U.S. corn, while exports to the EU market are negligible.[26] Corn tends to be exported mainly by large firms, and the trade barriers identified in this subsection are not considered to disproportionately affect exports of SMEs compared to those of large firms.

Trade Barriers Related to Corn

The corn industry expressed serious concern over the EU's treatment of genetically modified organisms (GMOs). Representatives reported that EU labeling requirements, and what they consider to be unreasonable expectations about low-level presence (LLP),[27] are limiting their exports of corn to the EU.[28] GMOs are seeds or organisms that have been genetically manipulated to achieve certain desirable characteristics, including resistance to herbicides or increased nutritional value. New GM developments are known as traits, and need to be approved in the country of production and importation before they can be sold or imported. Several GM crops, including corn, wheat, and soybeans,

[20] The U.S. government does not offer certifications for certain substances, such as dioxin, because they are not seen as a science-based threat to food safety. Therefore, the U.S. government does not test for or regulate dioxin, nor does it issue a certificate to prove testing. Industry representatives, roundtable discussions, Atlanta, GA, September 18, 2013, and Philadelphia, PA, September 23, 2013.

[21] USDA, PSD Online (accessed November 12, 2013).

[22] USDA, ERS, "Corn Briefing Room" (accessed November 12, 2013).

[23] McConnell, Fry, and Lynch, "King Corn versus the Safrinha," March 2013, 3.

[24] USDA, ERS, "Corn Briefing Room" (accessed November 12, 2013).

[25] GTIS, Global Trade Atlas database (accessed November 12, 2013).

[26] Ibid.

[27] European Union, "Questions and Answers," June 24, 2011. Low-level presence is a term that refers to traces of non-approved genetic traits in import shipments.

[28] National Corn Growers Association, written submission to the USITC, August 23, 2013, 2.

have been adopted all over the world: the corn grown in Brazil and the United States, both large global producers, is over 50 percent and 90 percent GMO respectively.[29]

However, the EU, because of concerns about the health impact of GMOs in both food and animal feed, passed legislation regulating GMOs in those products. EU regulations 1829/2003 and 1830/2003 set out mandatory labeling requirements for GM crops and testing procedures for imports, and allow only very small trace amounts of unapproved traits.[30] According to the Biotechnology Industry Organization, the EU actively restricts imports of GM products by backlogging the approval of newly developed traits.[31] Although EU scientific panels may approve the trait, government bodies were reported to hold the applications without giving final approval, leading to the presence of "not yet approved" traits in shipments and subsequent delays at EU ports.[32] In addition, the EU does not automatically allow stacked traits,[33] which is the combination of two previously approved single traits into one product. This lengthens the approval process in the EU and, along with the mandatory labeling of all GM products, acts as a barrier for new U.S. corn products.[34]

Dried Fruit

Dried fruit production takes place throughout the United States; depending on the year, between 10 and 15 percent of total U.S. fruit production is dried. Approximately 2.2 million metric tons (mt) of fresh fruit were dried in the United States in 2012.[35] The dried fruit industry consists of growers and processors, most of which are SMEs. Typically, fruits are dried either by mechanical dehydration or, more commonly, by laying them out in sun. Raisins account for more than half of all dried fruit production and consumption in the United States, but plums (prunes), figs, apricots, peaches, apples, pears, cranberries, blueberries, cherries, and strawberries are also commonly dried.[36] At the retail level, dried fruit is packaged and marketed either as a single dried fruit variety or as mixtures of different dried fruits and nuts.

While the U.S exports a variety of dried fruits, in 2012, raisins and prunes accounted for almost 80 percent of the total U.S. exports of dried fruit, including dried fruit in mixtures of fruits and nuts.[37] In 2012, the United States exported $384 million worth of raisins and was the second-largest exporter in the world, behind Turkey. The United States is the world's largest exporter of prunes and exported $178 million worth in 2012. The EU is an important market for U.S. raisin and prune exporters, accounting for approximately 30 percent of total exports in both products each year.[38]

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[29] USITC, *Brazil: Competitive Factors*, May 2012.

[30] Europa, Summaries of EU Legislation, Regulation (EC) No. 1830/2003, "Traceability and Labelling of GMOs," April 19, 2011, http://europa.eu/legislation_summaries/consumers/product_labelling_and_packaging/l21170_en.htm; Europa, Summaries of EU Legislation, Regulation (EC) No. 1829/2003, "Food and Feed (GMO)," January 19, 2011, http://europa.eu/legislation_summaries/agriculture/food/l21154_en.htm.

[31] BIO, written submission to USTR, [May 2013], 14.

[32] Ibid., 15.

[33] Ibid., 15.

[34] National Corn Growers Association, written submission to the USITC, August 23, 2013, 2.

[35] USDA, NASS, *Noncitrus Fruit and Nuts: 2012 Preliminary Summary*, January 2013.

[36] Huntrods et al., "Raisin Profile," February 2013.

[37] USITC DataWeb/USDOC (accessed November 7, 2013).

[38] GTIS, Global Trade Atlas (accessed November 8, 2013).

Trade Barriers Related to Dried Fruit

According to industry representatives, the fruit industry faces several barriers on exports to the EU, mostly pertaining to pesticide limits and testing requirements for chemicals and heavy metals.[39] First, MRLs, or the limits on pesticide residues remaining on a crop, differ in various EU countries, making it difficult for producers to be consistent with their pesticide applications.[40] Representatives reported that, as an example, allowable cadmium levels are set at 0.4 parts per million (ppm) in some countries and 0.2 ppm in others,[41] which producers say often leads them to segregate production based on the destination.[42] The combination of wind patterns and proximate farms also leads to pesticides being swept across fields—including pesticides from other products, such as walnuts, that are not allowed into the EU—so growers are not always aware of the type or levels of pesticides present on their products.[43] In addition, new fruit-damaging pests, such as spotted wing drosophila, need new pesticides to treat them, and those pesticides may not be approved in the EU.[44]

Second, SMEs reported that a general safety certification by the GFSI used to be accepted by most EU countries, but now an EU country may restrict entry of products that do not have a particular type of GFSI certification.[45] The GFSI is an association composed of leading international food companies and is globally recognized as the top food-safety benchmarking organization. GFSI recognizes several different certification schemes as meeting its criteria for food safety;[46] the fact that some may be preferred over others is said to be a significant problem for some U.S. exporters. For example, an EU company or country might prefer or mandate that any U.S. firm it imports from be certified under the Safe Quality Foods Program (SQF) (one of GFSI's certification schemes), but the U.S. company that wants to export to them is certified under another GFSI certification scheme, such as the British Retail Consortium (BRC) certification.[47] Thus, in order to export to that market, the SME must also obtain the SQF certification. SME representatives report that both of these are certified GFSI schemes and achieve the goal of ensuring food safety but require different tests, which are time-consuming and expensive and can be a particular burden for SMEs with tight resources.[48]

Third, there is concern among the dried fruit industry about the changeable nature of and lack of transparency in EU chemical regulations, as well as the fact that they are often not based on scientific evidence, in the view of SME representatives. For instance, the industry reported that there has been an increase in testing for dioxins, perchlorates, and other chemicals not traditionally subject to scrutiny, and the allowable limits are not clear or consistent among EU member states. Staying abreast of the latest information can be especially difficult for SMEs, which often lack the resources to dedicate full-time

[39] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.
[40] Industry representative, roundtable discussion, Lathrup Village, MI, September 9, 2013.
[41] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013; Oosterhuis, Brouwer, and Wijnants, *A Possible EU Wide Charge*, April 2000. This cadmium issue was also raised by the wheat industry. Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.
[42] Industry representative, roundtable discussion, Lathrup Village, MI, September 9, 2013.
[43] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.
[44] Industry representative, roundtable discussion, Lathrup Village, MI, September 9, 2013.
[45] Industry representatives, roundtable discussion, Sacramento, CA, September 25, 2013.
[46] GFSI, "Certification against a GFSI-Recognised Scheme" (accessed December 4, 2013).
[47] GFSI, "GFSI Recognised Schemes" (accessed December 4, 2013); CERT ID Services, "GFSI Food Safety Certification" (accessed December 4, 2013).
[48] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

personnel to master the nuances of regulations, as well as track their changes. Additionally, representatives noted that the lists of prohibited pesticides and pesticide residue ceilings are occasionally not published until U.S. producers have already applied pesticides for the season. Growers reported instances of being required to find new export markets for their products because a given pesticide was allowed in the EU at the time of application, but was added to the list of banned pesticides later in the year. The EU also reportedly requires growers to list chemicals that were used near their fruit plants, such as chemical gopher bait, even if those chemicals are never absorbed into the trees or fruit and could not be detected.[49]

Lastly, the industry shared concerns over other regulatory issues. These included packaging, which is subject to extensive EU testing; packaging must also be labeled with the percentage of recyclable content, and meeting these requirements require time and financial resources. In addition, one representative said that Scandinavian countries have outlawed palm oil as an input for dried fruits.[50]

Animal Feed

Animal feed is a large business in the United States and globally; U.S. shipments are valued at over $30 billion annually.[51] The industry encompasses both inputs and end uses: several different types of grains, oilseeds, and additives such as vitamins and minerals are used to feed a variety of animals, including poultry, swine, cattle (dairy and beef), and fish. The United States is one of the world's leading producers of feed, and the industry generally concentrates on production of feed for poultry and other livestock.[52] Approximately one-third of annual U.S. corn and soybean production is used in animal feed.[53] Exports of animal feed can be composed of individual feed ingredients, such as soymeal or specific vitamins, or complete feeds. The United States exports approximately 1,000 to 1,500 mt of complete feeds per year.[54]

The animal feed industry is relatively concentrated among a few major companies that are generally involved in both domestic and export markets, unless the product is very specialized and fills a niche market.[55] Farmers typically sell their product to large feed companies that blend ingredients to their specifications for sale to customers, including customers overseas.[56] While the United States is a relatively large producer of animal feed, the domestic poultry and livestock industries absorb much of the U.S. output, substantially limiting exports.

[49] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

[50] Ibid. Palm oil is rarely used as an input for dried fruit in the United States.

[51] IbisWorld, "Farm Animal Feed Production in the US," December 2012.

[52] Johns Hopkins Center for a Livable Future, *Feed for Food-Producing Animals*, 2007. China and Brazil are also large producers of animal feed.

[53] USDA, PSD Online (accessed November 12, 2013); American Soybean Association, Soy Stats 2013 (accessed November 12, 2013).

[54] HighQuest Partners and Soyatech, *Opportunities and Challenges*, n.d. (accessed January 23, 2014).

[55] Amanor-Boadu and Ross, "Industry Trend Report: Animal Feed Manufacturing," NAICS Report 2011–05.1, May 2011.

[56] Thus, the barriers reported below by SMEs directly exporting animal feed do not typically disproportionately affect SME exports.

Trade Barriers Related to Animal Feed

According to representatives of animal feed SMEs, the barriers faced by the industry center around two issues: the lack of harmonization between the United States and EU, and the EU's strict regulations on traceability. The EU requires U.S. certification on the safety of certain inputs before the animal feed products are allowed to be imported into the EU. However, the United States does not have programs in place to certify these particular inputs.[57] One set of EU requirements involves allowable levels of dioxin, a naturally occurring substance that the industry described as similar to lead.[58] According to the industry, because dioxin is naturally occurring, the U.S. Department of Agriculture (USDA) does not have an associated certification process, leaving the exporter with nothing to provide the EU to satisfy this requirement.[59] Additionally, the EU has requirements for certifying the safety of animal feed additives, used for aquaculture, that originate from marine products, such as fish and krill oils or meals, but there is no U.S. classification for these products as inputs into aquaculture feed.[60] Therefore, no U.S. agency can certify animal feeds containing these products under the EU's Chapter 1 health certificates.[61] Industry representatives report that this lack of harmonization between the United States and EU has led to both entities trying to place classification responsibilities on the other, leaving the exporters in a gray area and unable to ship their product to the EU.[62]

An industry representative also expressed concern over the growing importance of traceability from both the United States and the EU. The representative said that the United States, through the Animal and Plant Health Inspection Services (APHIS), and the EU are placing more emphasis on paperwork showing the supply chain of a given product,[63] even though each entity in the supply chain has been previously certified by the EU.[64]

Several representatives of animal feed sector SMEs stated that the EU restricts imports using measures that are not based in science. One representative said that animal feed exports are being held up by extensive testing requirements for chemicals and heavy metals,[65] which result in lost time and extra expenses. The industry noted that this is especially pertinent for businesses shipping animal feed containing GM products, as the multitude of regulatory layers and the cost of testing are reported to erase much of the competitive advantages of U.S. animal feed companies.[66]

Though barriers in specific EU countries were not brought up by the animal feed industry, SMEs expressed concern that countries that are currently looking to join the EU, such as Turkey, are implementing testing and regulations that attempt to mirror those

[57] Industry representatives, roundtable discussions, Atlanta, GA, September 18, 2013, and Philadelphia, PA, September 23, 2013.

[58] Industry representative, roundtable discussion, Atlanta, GA, September 18, 2013.

[59] Industry reported that no U.S. agency has a dioxin certification program, including USDA, the Food and Drug Administration (FDA), and the U.S. State Department.

[60] Industry representative, roundtable discussion, Philadelphia, PA, September 23, 2013.

[61] Ibid.

[62] Ibid.

[63] For example, the supply chain could include the supplier, the buyer, the warehouse/shipper, and the final importer or processor.

[64] Industry representative, roundtable discussion, Philadelphia, PA, September 23, 2013.

[65] Industry representative, roundtable discussion, Atlanta, GA, September 18, 2013.

[66] In addition to testing, the EU also has a low limit on the presence of "carriers" (extra residues, such as rice hulls) in shipments. Industry representative, roundtable discussion, Atlanta, GA, September 18, 2013.

of the EU. Some of these regulations act as barriers to U.S. products; as a result, industry representatives report problems in continuing to export some products to Turkey.[67]

Cheese

The cheese industry is an important component of the U.S. dairy industry, with roughly one-third of U.S. milk supplies annually going to the production of cheese.[68] The value of cheese shipments in 2012 is estimated at about $36 billion, almost 30 percent higher than the $28 billion in shipments in 2009.[69] Cheese manufacturing supports between 40,000 and 50,000 employees,[70] with Wisconsin and California by far the leading producing states, followed by Idaho, New York, and New Mexico. Excluding changes in stocks,[71] U.S. cheese consumption grew 8 percent annually between 2009 and 2012 (26 percent over the period), with mozzarella and cheddar the most popular cheese types.[72]

U.S. international trade (imports and exports) in cheese is very small relative to total domestic production. U.S. cheese exports did see rapid growth over this time period, increasing from $437 million in 2009 to $1.1 billion in 2012, representing annual growth of over 36 percent. In 2012, the United States for the first time became a net exporter of cheese. But U.S. exports of cheese to the EU countries were negligible, totaling $6 million in 2012, primarily to Germany, the Netherlands, and the United Kingdom.[73] Shipments to the EU consisted of cheddar and colby cheese, processed cheese, and grated or powdered cheeses.[74]

SME cheese producers in the United States often produce specialty and premium cheeses rather than bulk cheddar and mozzarella; these cheesemakers increasingly compete with imports from the EU in the U.S. market.[75]

Trade Barriers Related to Cheese

The major barrier expressed by the cheese industry was the EU's use of protected designations of origin (PDOs). PDOs are used to identify a good as originating in a specific geographic location and with a particular level of quality.[76] One industry representative said that the EU uses PDOs to signify that the product is unique, but the United States contends that many PDOs have become common generic terms and should no longer be protected. For example, Parmiggiano Reggiano is a protected term in the

[67] Industry representative, roundtable discussion, Atlanta, GA, September 18, 2013.

[68] About one-third of the milk is processed into fluid milk and cream products, one-third into cheese, and the remaining one-third into all other manufactured dairy products, such as butter, ice cream, and yogurt.

[69] USDOC, Census, Annual Survey of Manufactures 2010 (accessed May 16, 2013).

[70] Ibid.

[71] Stocks refer to end-of-period inventory.

[72] International Dairy Foods Association, "Cheese Sales & Trends," December 2012.

[73] USITC DataWeb/USDOC (accessed November 7, 2013).

[74] GTIS, Global Trade Atlas (accessed November 8, 2013).

[75] Dobson, "The Future Role of the U.S.," 2008, 6.

[76] PDOs are defined as being produced or processed in a specific area. They are similar to protected geographic indicators (PGIs), though besides being produced or processed in a specific area, PGIs must use a method or stage of production unique to that area.

EU, while the United States sees parmesan as a generic type of cheese.[77] The SME representative added that "these PDO's effectively close the entire [EU] market to us."[78]

Wheat

Wheat is the most prevalent cereal grain grown in the United States and is found primarily in the Plains states, from Texas to North Dakota. The USDA classifies wheat into five major classes, though the spring wheat and winter wheat varieties make up about 70 to 80 percent of U.S. production.[79] Generally, exporters of wheat and other grains are large international companies that buy grain from SME growers.[80] The United States is the world's fifth-largest wheat producer, and generally exports about half its production.[81] In marketing year (MY) 2011/2012, the United States produced over 54 million mt of wheat, of which over 1.2 million mt ($362 million) were exported to the EU.[82] Traditionally, Italy is the largest European export market for U.S. wheat, followed by Spain.[83]

Trade Barriers Related to Wheat

Feedback by U.S. wheat industry representatives on trade barriers faced by the industry echo the concerns voiced by other agricultural industries, focusing on the EU's non-science-based risk assessments and the lack of harmonization between U.S. and EU certifications. Specifically, the EU does not accept the certified mycotoxin tests for deoxynivalenol (DON) and ochratoxin that are conducted by the U.S. Federal Grain Inspection Service,[84] nor does it accept USDA Karnal bunt (KB) certification, even though virtually all other countries accept it.[85] KB is a fungal disease found in wheat, and according to EU reports, USDA certification does not meet the level of protection mandated by the EU.[86] The EU requires testing even when the USDA certifies that the exported wheat originated from an area that is free of KB.[87]

The wheat industry also commented on the disparity in allowable cadmium levels that has already been discussed in the dried fruit section as impeding trade,[88] and brought up

[77] Sartori, written submission to the USITC, September 3, 2013, 1.
[78] Ibid.
[79] USDA, ERS, "Wheat Briefing Room" (accessed November 12, 2013). The five wheat varieties include hard red winter, hard red spring, soft red winter, white, and durum.
[80] Thus, the barriers discussed in this section are not viewed as disproportionately affecting SMEs compared to large firms.
[81] USDA, PSD Online (accessed November 4, 2013). The largest producers include the EU, China, India, and Russia.
[82] U.S. Wheat Associates and National Association of Wheat Growers, written submission to the USITC, September 25, 2013, 1.
[83] Ibid., 1.
[84] Ibid., 3.
[85] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013; U.S. Wheat Associates and National Association of Wheat Growers, written submission to the USITC, September 25, 2013.
[86] EFSA, PLH, "Scientific Opinion on a Quantitative Pathway Analysis," 2010.
[87] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.
[88] Allowable cadmium levels range from 0.4 ppm to 0.2 ppm in different countries. Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

GM issues similar to those raised by the corn industry.[89] These include the slow trait-approval process, which the industry states is not based on science, and the LLP requirement for food, which, according to the industry, is arbitrary and exceedingly difficult to meet.[90] Lastly, industry representatives noted the increasing global focus on sustainability, which is leading a growing number of EU companies to harbor a negative view of U.S. wheat because it is irrigated.[91] Although the irrigation water comes from natural sources, such as a river, the representatives said that it is seen as less acceptable and less sustainable than alternative sources like direct rainfall.[92]

While these issues act as trade barriers in the entire EU, certain EU countries are more restrictive regarding KB shipments and specific testing procedures than others. Industry representatives especially noted that the United Kingdom (UK) and Greece require testing on wheat shipments even though KB has not been found in tests in the United States before shipping. The representatives stated that false positives and port delays have occurred as a result. The representatives also reported that Italy has encouraged pre-certification for mycotoxins, even though the U.S. Federal Grain Inspection Service "follows a rigorous sampling and testing procedure to provide independent third-party assurance to buyers of their contract specifications"[93]

Nuts

The U.S. almond industry is centered in California, the only U.S. state with commercial production. According to the 2007 USDA Agricultural Census, there are around 6,500 California almond farms. Of those, most are SMEs: 72 percent are family owned and 51 percent are less than 50 acres.[94] In 2011, there were approximately 104 almond packers ("handlers") in California.[95] The world's largest almond handler is the Blue Diamond Growers Cooperative, which is located in Sacramento, California. Blue Diamond is owned by over two-thirds of California growers and markets one-third of California's crop.[96] Almonds are the largest agricultural export from California, and rank in the top three consumer foods exported from the United States.

In 2012, U.S. almond production reached 920,800 mt, valued at $4.3 billion, and was produced on 780,000 bearing acres.[97] This volume accounted for 84 percent of global production that year.[98] Australia and Spain were the next-largest global producers, at 70,000 mt and 40,000 mt, respectively, in 2012.[99]

[89] Industry representatives, roundtable discussions, Salt Lake City, UT, September 20, 2013, and Smithfield, RI, September 27, 2013.
[90] U.S. Wheat Associates and National Association of Wheat Growers, written submission to the USITC, September 25, 2013, 3.
[91] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.
[92] Ibid.
[93] U.S. Wheat Associates and National Association of Wheat Growers, written submission to the USITC, September 25, 2013, 3. Mycotoxins are a form of mold.
[94] Almond Board of California, *Almond Almanac*, 2012.
[95] Ibid.
[96] Huntrods, "Almond Profile," July 2013.
[97] USDA, NASS, *Noncitrus Fruits and Nuts: Preliminary Summary*, January 2013.
[98] USDA, FAS, "Tree Nuts: World Market and Trade," October 2012.
[99] International Nut and Dried Fruit Council, "Global Statistical Review: Almond," March 2013, 50.

The U.S. almond industry exported over 70 percent of its total production and accounted for about 80 percent of global exports in 2012.[100] The U.S. almond industry exports to markets around the world, but its top five export markets in 2012, by volume, were the EU, China/Hong Kong, India, the United Arab Emirates, and Japan.[101] About 70 percent of U.S. almonds are exported as shelled almonds, with the remainder being either unshelled (in-shell) or manufactured.

U.S. almond production has grown significantly in the last decade. Improvements in efficiency and technology as well as new tree varieties, improved planting patterns, mechanization, and better orchard agronomy have increased almond yields significantly.[102] Demand for almonds continues to grow in the United States and abroad owing to wider awareness of almonds' health attributes. In addition to being a good source of protein, almonds have also been marketed as a good source of vitamin E, dietary fiber, and monounsaturated fat—the latter of which has been associated with decreased risk of heart disease.[103]

Trade Barriers Related to Nuts

Trade barriers reported by the nut industry closely follow the themes expressed by other agricultural industries: extensive testing done by the EU, frequent changes in allowable residue levels, and a focus on GM and other "food safety" issues. First, the EU testing requirements for aflatoxin, a naturally occurring substance, were reportedly altered with no notice from a minimum sample of 38 pounds to 44 pounds.[104] SMEs say they have noticed that products that had already passed internal tests for aflatoxin have failed the testing in the EU, but when a re-test was requested the sample then passed.[105] Second, as other industries reported, the EU sets allowable residue levels relatively low and changes them frequently, rejecting even residue levels that are accepted in the United States; sometimes the levels change in mid-shipment.[106] Third, almond producers state that they are required to provide statements that their product is non-GMO to EU buyers even though GM almonds do not yet exist.[107] Lastly, an SME reported that there have been changes in tariff harmonization codes, making trade more difficult, and duty rates appear to vary depending on the wording in entry documents and on the country of entry.[108]

Meat

The U.S. livestock and meat industry includes the production of poultry (chicken and turkey), lamb and mutton,[109] and other meats, primarily beef and pork. The supply chain is similar for all meats. Once an animal has reached market weight, it is taken to a

[100] GTIS, Global Trade Atlas database (accessed November 8, 2013).
[101] Ibid.
[102] Huntrods, "Almond Profile," July 2013.
[103] Almond Board of California, *Almond Almanac,* 2012.
[104] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013. It should be noted that per EC Regulation Number 165/2010, the maximum amount of aflatoxin allowed on certain nuts, including almonds and pistachios, was raised in the EU in 2010 to be in line with Codex Alimentarius standards. USDA, FAS, "New EU Aflatoxin Levels and Sampling Plan," March 9, 2010.
[105] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013.
[106] Ibid.
[107] Ibid.
[108] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013; Almond Board of California, "Summary: Applied Tariffs on U.S. Almonds," August 2009.
[109] Mutton is the meat of sheep.

processing plant where it is slaughtered and turned into uncooked meat, which can be sold as an end product or as an input to a further processor.[110] Further processing covers a variety of activities, including cooking, dehydrating, and marinating, that create products for end use (such as microwave meals or pre-marinated products for home cooking) or as inputs into yet other products (such as cooked meat chunks or broths for soups).

While the supply chain is similar for all meats, the sectors vary dramatically in size. The chicken sector is the largest segment of the U.S. livestock and meat industry (41 percent of production in 2012); the turkey sector is far smaller (6 percent).[111] Globally, the United States is the largest producer of poultry and the second-largest poultry exporter.[112] A handful of large firms accounts for most production of chicken and turkey meat, but many SMEs have processing and further processing plants.[113] The U.S. poultry processing industry employs about 225,000 people in 2012.[114] The lamb and mutton sector is the smallest segment of the U.S. meat industry, making up less than 1 percent of production in 2012; globally, the United States accounted for only about 1 percent of lamb and mutton exports during 2007–11.[115]

Trade Barriers Related to Meat[116]

According to poultry industry representatives, there is significant potential in the EU market for U.S. product, but restrictions effectively ban any U.S. poultry from being exported to the EU.[117] The representatives state that the EU sometimes imposes new restrictions on slaughter and processing techniques that have been approved by the U.S. Food Safety and Inspection Service (FSIS), and changes old restrictions as well.[118] The techniques targeted by the EU involve the use of certain pathogen reduction treatments (PRTs) in chicken processing, including chlorine water for the chilling of poultry carcasses.[119] EC regulation number 853/2004 prohibits importing poultry treated with a substance that is not water or that has not been approved by the EU.[120] As a result, U.S. poultry processed with chemical PRTs, which are meant to reduce the amount of

[110] Processing plants, especially at larger firms, may also incorporate further processing facilities.

[111] Based on 2012 data for federally inspected slaughter, in pounds. USDA, ERS, Livestock and Meat Domestic Data: Meat Statistics; All Meat Statistics (accessed November 6, 2013).

[112] U.S. poultry production accounted for about one-quarter of global poultry production during 2006–12. In 2012, U.S. exports accounted for about 34 percent of global broiler and turkey meat exports by volume. Brazil is the world's largest exporter of poultry. USDA, PSD database (accessed August 20, 2013). See also Weaver, *Poultry*, January 2014, 37, 39.

[113] Based on a survey of top broiler and turkey producers, the top five firms account for approximately 60 percent of production in 2012 for the chicken and turkey sectors, respectively. Thornton, "US Chicken Companies Enter 2013," March 2013, 13; Thornton, "Turkey Companies Plot Production Growth for 2013," March 2013, 44.

[114] AMI, *Meat and Poultry Facts 2012*, April 2012, 26.

[115] Based on 2012 data for federally inspected slaughter, in pounds. USDA, ERS, Livestock and Meat Domestic Data: Meat Statistics; All Meat Statistics (accessed November 7, 2013). Australia and New Zealand dominate exports of lamb and mutton, making up about 86 percent of exports during 2007–11. Data for 2012 are incomplete due to the lack of trade data from some countries.

[116] The discussion in this section is limited to poultry and lamb barriers since representatives of those industries communicated their views to the Commission.

[117] Henningsen Foods, written submission to the USITC, September 18 2013, 1.

[118] Ibid.

[119] Johnson, *U.S.-EU Poultry Dispute*, November 19, 2012.

[120] Johnson, *U.S.-EU Poultry Dispute*, November 19, 2012.

microbes on the bird, has been banned from entering the EU since 1997, a restriction that keeps out virtually all U.S. poultry.[121]

A representative of an SME producing lamb stated that U.S. lamb is currently on the EU non-allowable import list. The representatives noted that lamb is often administratively grouped with beef because the lamb industry is relatively small.[122] In order to separate lamb and make it subject to different regulations, U.S. lamb exporters would need to obtain food safety certifications through the U.S. Agricultural Marketing Service (AMS), which is very costly.[123]

The lamb industry therefore faces the same EU restrictions as the U.S. beef industry, even though the issues are different. For example, U.S. beef has faced problems with E. coli and the use of growth hormones, neither of which apply to the lamb industry.[124] In addition to the regulations and restrictions concerning beef, representatives noted that the FDA has approved a steroid for use on lamb, giving rise to a negative perception overseas of the U.S. lamb industry though the steroid is not used.[125]

Suggested Ways to Enhance SME Participation in Trade

SMEs suggested several ways to enhance agricultural trade between the United States and the EU, focusing mainly on the reduction or elimination of tariffs to ensure that competitors from other countries do not have an unfair advantage.[126] For example, the representative of an SME that exports prunes stated that the EU duty on U.S. prunes is about 9.6 percent, while Chile's free trade agreement with the EU allows its prunes to enter the EU duty free.[127] He further stated that acreage in prunes in California has declined over 40 percent since the Chile-EU agreement entered into force and that he believes prunes to be an excellent candidate product for which the United States and the EU could mutually eliminate duties. U.S. wheat producers stated that Canada and the EU are nearing completion of a free trade agreement that will eliminate EU duties on Canadian wheat, arguing that a similar U.S.-EU agreement is needed to prevent U.S. producers from facing a competitive disadvantage.[128] Similarly, an SME in a 2010 USITC study was quoted as saying that the large differential in EU duties between U.S. and Canadian shrimp was harming the U.S. West Coast shrimp industry.[129]

Additionally, industry representatives suggested that the U.S. government could provide more export support. This support could be in the form of either an ombudsman to hear

[121] "In 2002, the United States asked the EC to approve the use of four PRTs in the production. In June 2008, the EC Standing Committee on Food Chain and Animal Health rejected a proposal to allow the import of poultry treated with these four PRTs, and in December 2008, the EC Agricultural and Fisheries Council also rejected the proposal." Weaver, *Poultry*, January 2014, 42.

[122] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013. The meat industry met several years ago to discuss trade barriers and discuss new ideas, which is part of how lamb became grouped with beef. The lamb industry feels it is too small to influence the larger meat industry.

[123] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

[124] Ibid.

[125] Ibid.

[126] Ibid.

[127] Industry representatives, roundtable discussions, Lathrup Village, MI, September 9, 2013, and Philadelphia, PA, September 23, 2013.

[128] U.S. Wheat Associates and National Association of Wheat Growers, written submission to the USITC, September 25, 2013, 2.

[129] USITC, *Small and Medium-Sized Enterprises: U.S. and EU Export Activities*, 2010, 6-24.

complaints on current EU trade barriers or a government-funded source of export information and assistance.

Several SMEs shared positive experiences about exporting to the EU that other SMEs could perhaps emulate. For example, being an SME has allowed some producers to customize their product for a specific country or customer. Large companies that mostly export bulk products would likely have difficulty segregating products throughout the supply chain, but small companies can target niche markets.[130] The fruit industry was the main reporter of this advantage.

The fruit industry also stated that harmonization between the USDA National Organic Program and EU organic authorities has made trade in organic products more seamless. This harmonization recognizes products that have been deemed organic by either the United States or EU—if the EU exports a certified organic product to the United States, the United States accepts it as such, and vice versa.[131] Additionally, an SME stated that involvement with both government agencies and private industry organizations had helped to smooth trade and resolve disputes. On the government side, the Export-Import Bank was cited as helping producers to export their product and to obtain credit insurance.[132] On the private side, the California Almond Board, the U.S. Meat Export Federation, and the Western United States Agricultural Trade Association, which brings pre-qualified buyers to U.S. firms' operations, were identified by SMEs as providing valuable assistance.[133] Lastly, SMEs stated that different shipping or logistics options, such as shipping through alternate routes or setting up a satellite office in Europe, have allowed their companies to avoid some EU barriers.[134]

[130] Industry representatives, roundtable discussions, Lathrup Village, MI, September 9, 2013, and Philadelphia, PA, September 23, 2013.

[131] Industry representative, roundtable discussion, Fresno, CA, September 27, 2013.

[132] Industry representatives, roundtable discussions, Lathrup Village, MI, September 9, 2013; Atlanta, GA, September 18, 2013; and Sacramento, CA, September 25, 2013.

[133] Industry representatives, roundtable discussions, Sacramento, CA, September 25, 2013, and Fresno, CA, September 27, 2013.

[134] Industry representative, roundtable discussion, Sacramento, CA, September 25, 2013.

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CHAPTER 6
Services

Overview

Services cover a broad range of industries and account for roughly 80 percent of U.S. gross domestic product (GDP) and employment.[1] The United States is the world's largest services market and also the leading exporter and importer of services. However, U.S. exporters of services to most markets, including the European Union (EU), face an array of market access, investment, and national treatment barriers. These barriers affect both large firms and small and medium-sized enterprises (SMEs); some disproportionately affect SMEs. To address these barriers, the Business Coalition for Transatlantic Trade (BCTT) has identified a number of services sector objectives for the U.S.-EU Transatlantic Trade and Investment Partnership (TTIP) negotiations. These include cooperating on regulations, permitting cross-border data flows, prohibiting localization and performance requirements, and removing business operations restrictions, as well as addressing anticompetitive practices (e.g., state-supported or -owned enterprises), lack of transparency, and licensing issues.[2]

Fewer services firms than goods-producing firms participated in the USITC roundtables. A variety of factors could account for the disparity. One potential reason is described in the third USITC report on SMEs, which reported that services firms encountered fewer impediments to exporting than manufacturing firms.[3] Moreover, the impediments most often encountered by SME services firms were "foreign sales not sufficiently profitable," "difficulty locating sales prospects," and "transportation and shipping costs," which are not directly related to trade policy. Furthermore, according to one recent study, nontariff measures (NTMs) affecting transatlantic services trade may be less stringent than those on goods.[4]

Nevertheless, SMEs participating in USITC roundtables and responding to related USITC outreach efforts listed several major EU barriers that could have a disproportionate effect on U.S. SMEs' exports of services to the EU. Barriers were reported in certain professional services and in information services. These barriers relate to licensing, transparency of regulations, reciprocity of professional credentials, broadcasting and film quotas, language dubbing requirements, and government subsidies.

[1] In 2012 services represented 78 percent of U.S. GDP and 82 percent of U.S. employment, expressed in full-time equivalents (FTEs). USDOC, BEA, Full-Time Equivalent Employees by Industry (accessed November 12, 2013). Examples of services industries include distribution services, electronic services, financial services, and travel and passenger services. For a detailed description of U.S. services, see USITC, *Recent Trends in U.S. Services: 2013*, July 2013.

[2] U.S. Chamber of Commerce for the Business Coalition for Transatlantic Trade, Regulatory Working Group, written submission to the USITC, December 2, 2013; U.S. Chamber of Commerce for the Business Coalition for Transatlantic Trade, Services Working Group, written submission to the USITC, December 2, 2013.

[3] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 6-2.

[4] Based on an index of NTM severity created from a survey of businesses. Francois et al., *Reducing Transatlantic Barriers to Trade and Investment*, 2013, 17.

Professional Services

Professional, scientific, and technical services (henceforth called simply "professional services") encompass a variety of activities.[5] Providers of professional services are among the most highly skilled, trained, and educated workers in the global economy. The value added by most professional services is based primarily on expertise and knowledge. Consequently, most professional services providers are subject to stringent registration, certification, and licensing requirements to ensure that only qualified personnel offer such services. These requirements, however, may also inhibit trade by foreign providers.

Professional services contributed $2.2 trillion to the U.S. GDP in 2011, and jobs in professional services accounted for one-quarter of total U.S. private-sector employment, or 27 million employees, in 2012.[6] Professional services are primarily provided by SMEs, which made up over 99 percent of all professional services firms in 2010 (latest available data).[7] SMEs also accounted for half of professional services export revenue in 2007 (latest available data).[8] SMEs that export professional services realized 21 percent of their revenues from exports in 2007, a higher percentage than the export revenues realized by large firms that year.[9]

Participants in USITC roundtables included representatives of SMEs in healthcare services, engineering services, and testing services. The following section describes the barriers and related issues that they reported as disproportionately affecting their exports to the EU.

Trade Barriers Related to Healthcare Services

A significant barrier affecting U.S. healthcare SMEs is the lack of recognition of U.S. medical credentials in the EU, which could impose a disproportionate effect on SMEs.[10] An industry representative stated that it is difficult for U.S. doctors to practice medicine in the EU on a temporary basis because U.S. medical licenses are not recognized in

[5] For a complete listing and description of professional services, see Census, "North American Industry Classification System, (NAICS)" n.d. (accessed November 4, 2013). For example, legal, accounting, architectural, engineering, computing, consulting, and testing services are defined in NAICS code 541, and healthcare services is defined in NAICS code 62.

[6] Latest available data; employment expressed in FTEs. USDOC, BEA, Full-Time Equivalent Employees by Industry, August 7, 2013; USDOC, BEA, "Real Value Added by Industry," November 13, 2012.

[7] Census, "Number of Firms, Number of Establishments," October 2012.

[8] For cross-border trade, USITC, *Small and Medium-Sized Enterprises: Characteristics*, 2010, 3-12. The data are tabulated according to firm size categories, but refer to the establishments of firms.

[9] USITC, *Small and Medium-Sized Enterprises: Characteristics*, 2010, D-10.

[10] Any individual from outside the EU, whether a solo practitioner or an employee of a major clinic with an EU branch, must obtain the medical credentials to practice in the EU. The costs associated with obtaining foreign medical credentials, such as the time and effort required for passing the various tests, are a fixed cost that must be borne in order to practice in the EU. As previously stated, large firms that have more export revenue are better able to bear these costs than SMEs, and these barriers thus impose a disproportionate burden on SMEs. Also, a previous USITC study reported that large firms are much more likely than SMEs to serve foreign customers by setting up foreign affiliates, which may enable large firms to more easily navigate local regulatory environments. An estimated 85 percent of foreign sales by large firms were conducted through foreign affiliates of U.S. firms as opposed to direct exports. USITC, *Small and Medium-Sized Enterprises: Characteristics*, 2010, 4-1 to 4-12.

Europe; likewise, European doctors cannot practice in the United States unless they hold U.S. credentials.[11] In the EU, national and local authorities regulate medical licenses. Medical practitioners from outside the EU who want to practice in the EU are subject to additional requirements that may originate at either level. Licensing requirements for foreign practitioners were reported to vary substantially by EU country and often by local government authority as well. Requirements may include tests of theoretical and/or clinical knowledge, evidence of licenses and credentials from one's home country, language competency, and evidence of work visa/permit.[12]

Moreover, when non-EU medical practitioners become licensed in a particular EU country, their credentials are not necessarily recognized by other EU countries; reportedly, they are subject to the credentialing requirements of each EU country. In contrast, EU nationals benefit from regulations providing for mutual recognition of medical credentials among EU nationals.[13] A roundtable participant stated that standardization of medical licensing could facilitate trade in healthcare services, but that the separate licensing and credentialing regimes among national and subnational entities in the United States and the EU will be difficult to harmonize in a trade agreement.[14]

Trade Barriers Related to Engineering Services

As reported in roundtable discussions, issues affecting U.S.-EU engineering trade include unequal licensing requirements and enforcement safeguards between the EU and the United States. One roundtable participant, whose firm primarily provides transportation engineering services (involving bridges and other large infrastructure projects), reported that a high proportion of the work on many U.S. transportation projects is carried out by non-U.S.-licensed engineers. The participant said that consequently, much of the design work on these projects is now performed in the EU or other countries.[15] According to this person, the EU has more stringent licensing enforcement safeguards than the United States.[16] Another industry representative made the same observation about the non-reciprocity of engineering licenses and commented that U.S. engineers face greater scrutiny of their credentials in the EU than EU engineers working in the United States.[17] Similarly, a study by the Organisation for Economic Co-operation and Development (OECD) reported that the United States ranks near the OECD average on restricting trade in engineering services, while restrictions in EU countries vary substantially.[18]

[11] Industry representative, roundtable discussion, Philadelphia, PA, September 23, 2013.
[12] WHO Europe, "Regulation and Licensing of Physicians," 2005, 18.
[13] Europa, Summaries of EU Legislation, Directive 2005/36/EC, "Medicine: Mutual Recognition of Qualifications," October 2007, http://europa.eu/legislation_summaries/other/l23021_en.htm; academic researcher, interview by USITC staff, November 14, 2013.
[14] Industry representative, roundtable discussion, Philadelphia, PA, September 23, 2013, 15–16. The participant suggested that harmonizing standards and definitions would be especially difficult given that the United States has 50 different licensing regimes.
[15] Industry representative, telephone interview by USITC staff, December 2, 2013.
[16] Industry representative, roundtable discussion, New York, NY, September 24, 2013.
[17] Industry representative, telephone interview by USITC staff, November 26, 2013.
[18] OECD, "Services Trade Restrictiveness Index (STRI)," May 14, 2012, 26.

Trade Barriers Related to Testing Services

At the roundtables, SMEs described several barriers affecting certain testing services, including opaque EU regulations and different testing standards in the United States and the EU. These barriers were reported to raise the costs substantially for U.S. SMEs that provide such services and to affect U.S. SME exports of these services disproportionately. A U.S. testing firm accredited by the International Standards Organization reported having difficulty gaining accreditation in the EU to provide tire-rolling resistance data for fuel efficiency ratings.[19] The firm reported a lack of transparency as well as difficulty interpreting recent EU rules, particularly regarding new standards contained in regulation ECR 117.[20]

Another industry participant reported that it is difficult to correlate test results with EU counterparts and that the process was inordinately expensive, in part, because U.S. firms were not included in setting up the new standard. The industry representative stated that in the United States, the process for setting standards used by the National Highway Traffic Safety Administration is transparent and allows low-cost lab correlation estimated at $5,000; correlating with EU standards, by contrast, costs the firm $95,000, which is prohibitively expensive for an SME. The firm's representative also stated that information about the regulations is extremely difficult to find and that it is not apparent which EU agency is the competent authority to respond to their queries. The firm reported that SMEs do not have the staff or financial resources to research and navigate opaque regulations and standards, so that these barriers have a disproportionate impact on SMEs.[21]

In a submission to the Commission, the National Association of Manufacturers (NAM) described several barriers to U.S. testing services. A major impediment is that the EU does not recognize or accredit U.S. conformity assessment bodies, such as U.S. laboratories that provide tire testing services; thus, U.S. manufacturers are required to perform additional testing procedures that are costly and redundant.[22] Moreover, NAM stated that the lack of national treatment for U.S. testing firms and varying accreditation standards in different EU countries are burdensome and an "unnecessary barrier" to trade and economic growth.

Information Services

Information services encompass a wide range of firms engaged in (1) producing and distributing information; (2) providing the means to transmit or distribute this information, including data or communications; and (3) processing data.[23] The majority

[19] Industry representative, roundtable discussion, Cleveland, OH, September 10, 2013.

[20] Official Journal of the EU, European Commission Regulation 117, "Uniform Provisions concerning the Approval of Tyres with Regard to Rolling Sound Emissions and to Adhesion on Wet Surfaces and/or to Rolling Resistance," November 23, 2011, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:307:0003:0063:EN:PDF.

[21] Industry representative, roundtable discussion, Cleveland, OH. September 10, 2013.

[22] NAM, written submission to the USITC, October 23, 2013.

[23] NAICS code 51 encompasses all information services firms. Specific services include publishing, both traditional (e.g., newspapers, periodicals, books, directories) and via the Internet (NAICS 511 and 519, respectively); motion picture and sound recording (512); telecommunications (517); and data processing, hosting, and related services (518), among others.

of information services providers are engaged in producing and distributing content protected by copyright laws. Only those holding the rights to these works are authorized to reproduce, alter, improve, and distribute them.[24] In the motion picture and sound recording subsector, for example, service providers can collect royalties, rental fees, license fees, and sales revenue in return for granting rights to display, broadcast, reproduce, or distribute audiovisual works. Moreover, government policies often play a significant role in the production and distribution of information services. Important policy issues include the promotion of cultural values, restrictions on illicit content, protection of intellectual property rights, the regulation of advertising practices, and the provision of investment and tax incentives.[25]

Information services providers[26] contributed $672.8 billion to U.S. GDP in 2011,[27] and employment in the information services sector accounted for about 2.4 percent of total U.S. private-sector jobs in 2012, or 2.5 million employees.[28] Information services are primarily provided by SMEs, which comprised close to 99 percent of all information services firms in 2010 (latest data available).[29] Among information services SMEs, the share of revenue accounted for by exporting establishments reached about 27 percent in 2007 (latest available data).[30] By comparison, for large information services firms (500 employees or more), the share of revenue accounted for by exporting establishments amounted to about 18 percent in 2007.[31] Overall, the percentage of SMEs with exporting establishments was much higher for information services (11.2 percent) than for all other services sectors (which averaged 3.7 percent) in 2007.[32]

The following discussion focuses on barriers and issues that affect trade in motion picture and video production and distribution services (henceforth "audiovisual services")[33] reported by industry and U.S. government representatives.

[24] For a complete listing and description of information services, see Census, "North American Industry Classification System," n.d. (accessed November 4, 2013).

[25] Industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013; WTO, "Audiovisual Services: Background Note," January 12, 2010, 1. The following section reports trade barriers to exporting motion picture and video production and distribution services, the only segment of information services that responded to the Commission's request for information.

[26] The Bureau of Economic Analysis defines "Information" as publishing industries (including software); motion picture and sound recording industries; broadcasting and telecommunications; and information and data processing services.

[27] Latest available data; real value added by industry calculated using 2005 chained dollars. USDOC, BEA, "Real Value Added by Industry," April 25, 2013.

[28] Latest available data; employment expressed in FTEs. USDOC, BEA, "Table 6.5D: Full-Time Equivalent Employees by Industry," August 7, 2013.

[29] Census, "Number of Firms, Number of Establishments," October 2012.

[30] Cross-border trade only. USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 3-12.

[31] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, D-8. The data are tabulated according to firm size categories, but refer to the establishments of firms.

[32] USITC, *Small and Medium-Sized Enterprises: Characteristics*, November 2010, 3-12 and D-8.

[33] For the purpose of this discussion, "audiovisual services" refers to the production and distribution of motion pictures, comprising primarily feature films, television programs, and documentaries. These services are distributed to consumers through projection in theaters, commercial flights, and other public venues; rental or sale of prerecorded works; broadcast, cable, and satellite television, using such means as DVDs, Blu-ray discs, video on demand, and the Internet (including the streaming of content through mobile devices).

Trade Barriers Related to Audiovisual Services

Industry representatives reported that a variety of barriers are problems for them in the EU and serve to protect the European market for audiovisual services. Examples include broadcasting and film quotas (explained below), language dubbing requirements, government subsidies that support local content producers and distributors, and film piracy.[34]

U.S. audiovisual services SMEs often face screen content quotas and local-language requirements when trying to enter most EU markets.[35] For example, in France, cinemas have to set aside five weeks per quarter to show European feature films; thus about 30–40 percent of the films shown in French cinemas must be European.[36] This requirement, as the Motion Picture Association of America (MPAA) notes, has not significantly affected its member companies (which are the six largest movie studios in Hollywood);[37] on the other hand, these limits pose greater difficulties for smaller independent movie producers, which are almost entirely SMEs, looking to gain a theatrical foothold in larger EU markets.[38] Further, requirements for dubbing in local language, such as those in Spain, effectively reduce trade opportunities and disproportionately increase expenses for potential SME exporters.[39] To illustrate, in 2010–11, the Catalan government in the northeast region of Spain adopted new language restrictions on films released in Catalonia and established a network of movie theaters exhibiting only films dubbed in Catalan. Even the European Commission has found parts of the new legislation to be discriminatory towards other European countries and has requested that Spain amend the provision.[40]

Additionally, securing funding for film productions is of particular importance to SMEs because most function as independent entities without the safety net of a larger conglomerate.[41] These filmmakers operate under strict budgets with exacting contractual

[34] Industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013. The barriers described in this section were identified in an interview with an industry association whose members are mainly SMEs. In order to provide background information or clarify the points mentioned by the industry association, this section also uses information from sources not directly related to SMEs.

[35] These were initially adopted in 1989, under what is referred to as the Television Without Frontiers (TVWF) Directive, which established European content quotas for broadcast television programming. All EU countries have implemented this directive, which applies to all foreign program suppliers. Some EU member states such as France, Italy, and Spain have taken measures which are far more restrictive than required by the basic provisions of the TVWF Directive. These measures include the imposition of primetime programming requirements, feature film quotas, and domestic language quotas. MPAA, *Trade Barriers to Exports*, October 2012, 42–43.

[36] MPAA, *Trade Barriers to Exports*, October 2012, 50–51; industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013.

[37] These companies are Warner Brothers (subsidiary of Time Warner Inc.), Paramount Pictures (Viacom Inc.), 20th Century Fox (News Corp. Ltd.), Walt Disney Pictures (Walt Disney Co./Buena Vista), Sony Pictures (Sony Corp.), and Universal Pictures (Comcast Corp.). Amobi, "Movies and Entertainment," June 2013, 20.

[38] The global motion picture industry remains dominated by a handful of large U.S.-based movie studios, which consistently account for over 80 percent of annual U.S. box office receipts and over 60 percent of annual global box office receipts. EAO, *Focus 2013: World Film Market Trends*, May 2013, 12–14; MPAA, *Trade Barriers to Exports*, October 2012, 50–51; industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013.

[39] Industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013.

[40] MPAA, *Trade Barriers to Exports*, October 2012, 64.

[41] *StudioSystemNews.com*, "Beyond the Big 6: Mini Majors," March 20, 2013.

requirements from financiers, who are often third-party distributors.[42] Hence, because most EU national governments provide some level of financial support to local film producers,[43] through either direct grants, tax breaks, and/or co-production treaties with other EU countries, U.S. SMEs are placed at a competitive disadvantage.[44] In mid-November 2013, the European Commission announced new directives allowing EU countries to provide even more support to their domestic audiovisual services industries. Under the new rules, governments will be allowed to cover 50 percent of the costs of a film, from production and scriptwriting to distribution and promotional costs. EU national governments will also be able to require that 50–80 percent of subsidized films' budgets must be spent within the country.[45]

Lastly, overarching issues related to growing intellectual property piracy have particularly hampered smaller industry players in terms of both international trade and domestic development. Although EU intellectual property directives provide a satisfactory level of protection for rights holders in general, increasing rates of broadband penetration in certain countries make the illicit sharing of large quantities of motion pictures on peer-to-peer networks and streaming websites a growing concern.[46] Industry representatives note that in countries such as Greece, Italy, and Spain, piracy is particularly detrimental to U.S. exporters of independent films. Film piracy not only limits overall revenue for all legitimate stakeholders, but also destabilizes the financing structure of independent filmmaking itself, because, as mentioned previously, most of these third-party distributors also provide funding for the production of independent movies.[47] Moreover, with the recent economic crisis in the eurozone affecting all EU markets to some extent, smaller distributors in the hardest-hit countries, such as Greece and Spain, have become less reliable partners.[48]

[42] Production companies can be classified into three major categories: the majors, the mini-majors, and the independents or "indies." The majors include large conglomerates such as Disney, Sony, and Viacom. In such companies, a single corporate structure often controls both the production and distribution of films. Slightly smaller companies, often called mini-majors (e.g., Lionsgate, Weinstein Company), may have weaker distribution power and may specialize in a specific segment of the film market, such as art films or action films. Small independent filmmakers (e.g., Alcon Entertainment, Legendary Pictures) often have no distribution capability at all and must depend entirely on outside distribution companies. *HighBeamBusiness.com*, "Industry Report: Movie Picture and Video Tape Production," n.d. (accessed November 4, 2013); *StudioSystemNews.com*, "Beyond the Big 6: Mini Majors," March 20, 2013; industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013.

[43] Wisch, "Media: Europe," June 2013, 11–12; MPAA, *Trade Barriers to Exports*, October 2012, 50.

[44] Government in the United States does not give similar financial help to U.S. filmmakers at the federal level. Industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013.

[45] *EUobserver.com*, "EU Pleases France, Widens Film Subsidy Rules," November 15, 2013.

[46] Industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013; MPAA, *Trade Barriers to Exports*, October 2012, 43–47.

[47] Industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013.

[48] Also, many EU countries' video-on-demand distribution outlets (Netflix and Amazon.com-type businesses) are still in their infancy. As a result, independent films, which rely heavily on this revenue/distribution stream in the United States, have yet to realize gains from new media platforms in the EU. Ideally, SME content producers would like to export in a way that allows distributors to sell films on more platforms, since traditional outlets (e.g., DVDs) are becoming saturated with pirated material. Industry representative, interview by USITC staff, Los Angeles, CA, September 24, 2013; U.S. government official, telephone interview by USITC staff, November 20, 2013.

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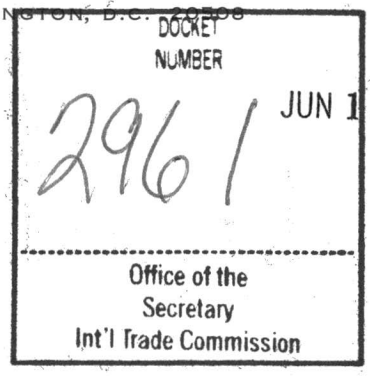
APPENDIX A
Request Letter

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508



The Honorable Irving A. Williamson
Chairman
U.S. International Trade Commission
500 E Street, S.W.
Washington, DC 20436

Dear Chairman ~~Williamson~~ Irving:

In the past three years since the Office of the U.S. Trade Representative (USTR) launched its Small Business initiative, we have intensified efforts to ensure the specific export challenges and priorities of small- and medium-sized enterprises (SMEs) and their workers are addressed in our trade policy and enforcement activities, and have enhanced cooperation with trading partners on small business trade initiatives. As previous studies by the U.S. International Trade Commission (USITC) have shown, small businesses benefit from trade agreements that expand their export opportunities. As indicated in those reports, trade agreements can particularly help SMEs boost exports by tackling tariff barriers, burdensome customs procedures, discriminatory or arbitrary standards, and a lack of transparency relating to relevant regulations in foreign markets. These agreements also enhance trade facilitation work, help strengthen and enforce intellectual property rights, and target services barriers that present difficult challenges for SMEs, such as requirements to staff a foreign office.

In the Transatlantic Trade and Investment Partnership (TTIP) negotiations, we will seek to strengthen U.S.-European Union (EU) cooperation to enhance the participation of SMEs in transatlantic trade, and to address trade barriers that may disproportionately impact small businesses. We are seeking broad input on these matters through our domestic consultation process. Building on previous USITC reports that investigated the role of U.S. SMEs in trade and generally identified trade barriers that may disproportionately impact U.S. SME export performance, I believe that the USITC can also be helpful to us in identifying such barriers in the EU.

Therefore, pursuant to authority delegated by the President to the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), I request that the Commission conduct an investigation and prepare a report that catalogues trade-related barriers that SMEs perceive as disproportionately affecting U.S. SMEs exporting to the EU, compared to larger U.S. exporters to the EU.

In identifying these barriers to exporting, the Commission may consider information and definitions contained in the three Commission reports on SMEs released in 2010 (including the definitions of "SME," "disproportionate," and "barrier"), any relevant literature, and information gathered from SMEs and others throughout the investigation. The report should cover barriers faced by U.S. SMEs exporting both goods and services, focusing primarily on barriers identified by U.S. SMEs that have experience in exporting to the EU. To the degree practicable, the investigation should identify barriers by economic sector or by special issue and should focus on sectors with high concentrations of SMEs.

The report should be based on available information including information furnished by SMEs and interested parties following the Commission's notice of investigation. Where information is available, the investigation should also address specific trade barriers in individual EU member states. To the extent applicable, the Commission should provide qualitative distinctions among the identified trade-related barriers. Additionally, the report may also include suggestions gathered from SMEs or the relevant literature to strengthen U.S.-EU cooperation to enhance the participation of SMEs in transatlantic trade.

I request that the report be delivered by January 31, 2014. As we intend to make the Commission's report available to the public, the report should not include confidential business or national security classified information.

I appreciate the Commission's assistance and cooperation in this matter.

Sincerely,

Ambassador Miriam E. Sapiro
Acting United States Trade Representative

APPENDIX B
Federal Register Notices

(DHS), Science and Technology Directorate, 1120 Vermont Avenue NW., (Room 5–212), Washington DC.

All visitors must pre-register and present a government-issued ID in order to gain entry to the building. To register, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, below. Please provide your name, citizenship, organization (if any), title (if any), email address (if any), and telephone number.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT,** below.

Materials that are provided to committee members will also be provided to the public, either at the meeting or on the public Web site mentioned below, or both. Check this Web site on the meeting dates: *http://www.dhs.gov/st-hsstac.* To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** below. Comments may be submitted orally, in writing, or both. If submitting in writing, please include the docket number (DHS–2013–0071) and submit via one of the following methods before December 2, 2013:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: mary.hanson@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–254–6176.
- *Mail:* Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the HSSTAC, go to *http://www.regulations.gov* and type ''HSSTAC'' into the search function of the Web site.

A period is allotted for oral public comment on December 4 and 5, 2013, before any recommendations are formulated. Speakers are asked to pre-register and limit their comments to three minutes or less. Please note that the public comment period may end before the time indicated, following the last call for comments. To register as a speaker, contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528, 202–254–5866 (O), 202–254–5823 (F), *mary.hanson@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (Pub. L. 92–463). The HSSTAC was established and operates in accordance with the provisions of the FACA. The committee addresses areas of interest and importance to the Under Secretary for Science and Technology, such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

Agenda: Members will meet with the Acting Under Secretary and other executives of the DHS Science and Technology Directorate (DHS S&T) to hear updates, discuss areas of concern, and receive taskings. Agenda items on December 4 include an update on the status of the DHS Science and Technology Directorate (DHS S&T), a brief about the DHS S&T Resilient Systems Division, a discussion about industry engagement with DHS S&T, and a status report from the HSSTAC Task Force on Third Party Pre-Screening, followed by a public comment period, committee deliberations, and DHS taskings to the committee. The agenda on December 5 focuses solely on the interaction between DHS S&T and Customs and Border Protection (CBP). An official from CBP will first give a CBP overview, followed by a discussion among officials from CBP and DHS S&T about CBP's technology needs, how DHS S&T supports those needs, and how that support can be improved. A public comment period will follow the discussion. The committee will then deliberate, receive its tasking from DHS, and begin to develop written recommendations regarding how DHS S&T can better support CBP.

Dated: October 29, 2013.

Mary Hanson,

Executive Director, Homeland Security Science and Technology Advisory Committee.

[FR Doc. 2013–26605 Filed 11–6–13; 8:45 am]

BILLING CODE 9110–9F–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–541]

Trade Barriers That U.S. Small and Medium-Sized Enterprises Perceive as Affecting Exports to the European Union; Rescheduling of Washington, DC Public Hearing and Change in Dates for Filing Requests To Appear, Pre- and Post-Hearing Briefs, All Other Written Submissions, and for Transmittal of Final Report

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of Washington public hearing and change in dates for filing requests to appear, pre- and post-hearing briefs, all other written submissions, and transmittal of the final report.

SUMMARY: Due to the lapse in appropriations and resulting furlough, the Commission has rescheduled the Washington, DC, public hearing in this investigation to 9:30 a.m. on November 20, 2013. The Commission has also changed the dates for filing requests to appear, pre-hearing briefs and post-hearing briefs relating to the Washington hearing; for filing all other written submissions, and for transmitting the final report to USTR. The Washington, DC, hearing was previously scheduled for October 8, 2013, with post-hearing briefs and all written submission due by October 15, 2013, and a transmittal date of January 31, 2014.

Revised Dates:

November 12, 2013: Deadline for filing requests to appear at Washington hearing.
November 13, 2013: Deadline for filing pre-hearing briefs and statements.
November 20, 2013: Public hearing.
December 2, 2013: Deadline for filing post-hearing briefs.
December 2, 2013: Deadline for filing all other written submissions.
February 28, 2014: Transmittal of Commission report to the USTR.

ADDRESSES: All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader William Deese (202–205–2626 or *william.deese@usitc.gov*) or Deputy Project Leader Tamar Khachaturian (202–205–3299 or

tamar.khachaturian@usitc.gov) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The hearing relates to a report that the Commission is preparing at the request of the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The USTR requested that the Commission prepare a report that catalogs trade barriers that U.S. small and medium-sized enterprises (SMEs) perceive as disproportionately affecting their exports to the EU, compared to those of larger U.S. exporters to the EU. In the request letter, the USTR stated that the United States, in the Transatlantic Trade and Investment Partnership (TTIP) negotiations with the European Union (EU), is seeking to strengthen the participation of SMEs in transatlantic trade and to address trade barriers that may disproportionately impact small businesses. The notice announcing the institution of this investigation and a hearing on October 8, 2013 was published in the **Federal Register** of July 30, 2013 (78 FR 45969); the notice is also posted on the Commission's Web site at *www.usitc.gov.* Due to the lapse in appropriations and resulting furlough, the hearing scheduled for October 8, 2013, did not take place.

Public Hearing: The rescheduled hearing will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on November 20, 2013. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., November 12, 2013, in accordance with the requirements in the ''Request to Appear'' section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., November 13, 2013; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., December 2, 2013. In the event that, as of the close of business on November 12, 2013, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after November 12, 2013, for information concerning whether the hearing will be held. All hourly times in this notice are eastern time.

Requests to Appear: Requests to appear at the hearing may be in the form of a letter, which should be on company or other appropriate stationery. Requests should identify the name, title, and company or other organizational affiliation (if any), address, telephone number, email address, and industry or main line of business of the company, if any, of the person signing the request letter and of the persons who plan to appear at the hearing. Requests to appear must be made by mail or delivered in person to the Commission's Office of the Secretary (see **ADDRESSES**), or in the alternative may be filed by email sent to *SMEHearing@usitc.gov.* The Commission does not accept requests filed by fax.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. Such submissions should be received no later than 5:15 p.m., December 2, 2013. All written submissions must conform to the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform to the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In the request letter, the USTR stated that the Office of the USTR intends to make the Commission's report available to the public in its entirety, and asked that the Commission not include any confidential business information or national security classified information in the report that the Commission sends to the USTR. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: November 1, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–26619 Filed 11–6–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–845]

Certain Products Containing Interactive Program Guide and Parental Control Technology; Notice of the Commission's Final Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its

confidential business information, will be made available for inspection by interested parties.

In its request letter, the Committee stated that it intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the reports that the Commission sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.
Issued: August 15, 2013

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–20387 Filed 8–20–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–541]

Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union; Scheduling of an Additional Public Hearing With Simplified Filing Procedures

AGENCY: United States International Trade Commission.

ACTION: Scheduling of additional public hearing in Moffett Field, CA.

SUMMARY: The Commission has scheduled an additional public hearing in Inv. No. 332–541, *Trade Barriers that U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union,* to be held beginning at 9:30 a.m., September 26, 2013, at the NASA Ames Research Center at Moffett Field, CA. This hearing is in addition to a previously announced public hearing in this investigation to be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on October 8, 2013. Procedures for filing requests to appear have been changed for both hearings to encourage the appearance of small businesses.

This field hearing is being scheduled in conjunction with a field hearing to be held on September 25, 2013, also at the NASA Center in Moffett Field, CA in a second Commission investigation, No. 332–540, *Digital Trade in the U.S. and Global Economies, Part 2,* requested by the Senate Committee on Finance. Interested persons who wish to present consolidated statements and testimony relevant to both investigations are invited to do so on Wednesday September 25, 2013.

DATES: September 12, 2013: Deadline for filing requests to appear at the Moffett Field, CA hearing.

September 18, 2013: Deadline for filing pre-hearing briefs and statements.

September 26, 2013: Public hearing in Moffett Field, CA.

October 3, 2013: Deadline for filing post-hearing briefs.

October 15, 2013: Deadline for filing all other written submissions.

January 31, 2014: Transmittal of Commission report to the USTR.

ADDRESSES: All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader William Deese (202–205–2626 or *william.deese@usitc.gov*) or Deputy Project Leader Tamar Khachaturian (202–205–3299 or *tamar.khachaturian@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The hearing relates to a report that the Commission is preparing at the request of the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The USTR requested that the Commission prepare a report that catalogs trade barriers that U.S. small and medium-sized enterprises (SMEs) perceive as disproportionately affecting their exports to the EU, compared to those of larger U.S. exporters to the EU. In the request letter, the USTR stated that the United States, in the Transatlantic Trade and Investment Partnership (TTIP) negotiations with the European Union (EU), is seeking to strengthen the participation of SMEs in transatlantic trade and to address trade barriers that may disproportionately impact small businesses. The notice announcing the institution of this investigation and the Washington, DC, hearing on October 8, 2013, was published in the **Federal Register** of July 30, 2013 (78 FR 45969); the notice is also posted on the Commission's Web site at *www.usitc.gov.*

The Commission is particularly interested in receiving information and views from SMEs and related organizations about trade-related barriers faced by U.S. SMEs in exporting goods or services to the EU and about EU trade barriers by economic sector or by special issue. (For purposes of this report, an SME is defined as a firm with fewer than 500 U.S.-based employees.) The Commission is also interested in receiving information and views about specific trade barriers in individual EU countries; the relative effect on exports of different EU trade barriers; and ways in which SME participation in transatlantic trade might be strengthened.

Public Hearing: The additional hearing will be held at the NASA Ames Conference Center/NASA Research Park, Building 152, Room 171, 200 Dailey Road, Moffett Field, CA, beginning at 9:30 a.m. on September 26, 2013. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m. (eastern daylight time), September 18, 2013, in accordance with the requirements in the ''Requests to Appear'' section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m. (eastern daylight time), September 18, 2013; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., October 3, 2013. In the event that, as of the close of business on September 12, 2013, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after September 12, 2013, for information concerning whether the hearing will be held.

Requests To Appear: Requests to appear at the Moffett Field, CA, and Washington, DC, hearings may be in the form of a letter, which should be on company or other appropriate

stationery. Requests should identify the name, title, and company or other organizational affiliation (if any), address, telephone number, email address, and industry or main line of business of the company, if any, of the person signing the request letter and of the persons who plan to appear at one or both hearings. Requests to appear may be made by mail or delivered in person to the Commission's Office of the Secretary (see **ADDRESSES**), or may be filed by email sent to *SMEHearing@usitc.gov.* The Commission does not accept requests filed by fax.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. Such submissions should be addressed to the secretary, and should be received no later than 5:15 p.m., October 15, 2013. All written submissions must conform to the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform to the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In the request letter, the USTR stated that the Office of the USTR intends to make the Commission's report available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the report that the Commission sends to the USTR. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: August 16, 2013

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–20388 Filed 8–20–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; NORAMCO, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on June 27, 2013, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501)	II
Thebaine (9333)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import Thebaine (9333) analytical standards for distribution to its customers. The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers. The company plans to import the Phenylacetone (8501) in bulk for the manufacture of a controlled substance.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

In reference to the non-narcotic raw material, any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 20, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: August 14, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–20285 Filed 8–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) Docket No. 1629]

Meeting of the Department of Justice's (DOJ's) National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of DOJ's National Motor Vehicle Title Information System (NMVTIS) Federal Advisory Committee to discuss various issues relating to the operation and implementation of NMVTIS.

DATES: The meeting will take place on Tuesday October 8, 2013, from 10:00 a.m. to 4:00 p.m. ET.

ADDRESSES: The meeting will take place at the Office of Justice Programs (OJP), 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Todd Brighton, Designated Federal Employee (DFE), Bureau of Justice

Commission's rules; the deadline for filing is October 29, 2013. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 14, 2013. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before November 14, 2013. On November 27, 2013, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 2, 2013, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: July 25, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18230 Filed 7–29–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–541]

Trade Barriers That U.S. Small and Medium-Sized Enterprises Perceive as Affecting Exports to the European Union; Institution of Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a letter from the United States Trade Representative (USTR) dated June 13, 2013 (received on June 18, 2013), under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–541, Trade Barriers that U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union.

DATES:

September 13, 2013: Deadline for filing requests to appear at the public hearing.
September 20, 2013: Deadline for filing pre-hearing briefs and statements.
October 8, 2013: Public hearing.
October 15, 2013: Deadline for filing post-hearing briefs.
October 15, 2013: Deadline for filing all other written statements.
January 31, 2014: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader William Deese (202–205–2626 or *william.deese@usitc.gov*) or Deputy Project Leader Tamar Khachaturian (202–205–3299 or *tamar.khachaturian@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As requested by the USTR, the Commission will conduct an investigation and prepare a report that catalogues trade-related barriers that U.S. small and medium-sized enterprises (SMEs) perceive as disproportionately affecting their exports to the EU, compared to those of larger U.S. exporters to the EU. In identifying these barriers to exporting, the Commission will use, to the extent appropriate, information and definitions contained in the three Commission reports on SMEs released in 2010, including definitions of ''SME,'' ''disproportionate,'' and ''barrier,'' any relevant literature, and information gathered from SMEs and others. As requested by the USTR, the Commission's report will cover barriers faced by U.S. SMEs exporting both goods and services, and will focus primarily on barriers identified by U.S. SMEs that have experience in exporting to the EU. Also as requested, the report, to the degree practicable, will identify barriers by economic sector or by special issue and will focus on sectors with high concentrations of SMEs.

The letter indicated that the United States, in the Transatlantic Trade and Investment Partnership (TTIP) negotiations, will seek to strengthen U.S.-European Union (EU) cooperation to enhance the participation of SMEs in transatlantic trade, and to address trade barriers that may disproportionately impact small businesses.

As requested by the USTR, the Commission (1) will base its report on available information, including information furnished by SMEs and interested parties following the Commission's notice of investigation; (2) will address, where information is available, specific trade barriers in individual EU member states; (3) will provide, to the extent applicable,

qualitative distinctions among the identified trade-related barriers; and (4) will include suggestions gathered from SMEs or the relevant literature to strengthen U.S.-EU cooperation to enhance the participation of SMEs in transatlantic trade. As requested by the USTR, the Commission expects to transmit its report to the USTR by January 31, 2014.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on October 8, 2013. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., September 13, 2013, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., September 20, 2013; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., October 15, 2013. In the event that, as of the close of business on September 13, 2013, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after September 13, 2013, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received no later than 5:15 p.m., October 15, 2013. All written submissions must conform to the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform to the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In the request letter, the USTR stated that the Office of the USTR intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the report that the Commission sends to the USTR. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: July 25, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18272 Filed 7–29–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

On July 19, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Alabama in the lawsuit entitled *United States of America, Alabama Department of Conservation and Natural Resources, and the Geological Survey of Alabama* v. *BASF Corporation,* Civil Action No. 13–00372–KD–M.

The plaintiffs alleged that BASF Corporation, as successor in interest to BASF Performance Products LLC (f/k/a Ciba Corporation, f/k/a Ciba Specialty Chemicals Corporation), is liable under CERCLA and the Clean Water Act for damages for injury to, loss of, or destruction of natural resources under the trusteeship of the National Oceanic and Atmospheric Administration (NOAA), the U.S. Department of the Interior (DOI), Alabama Department of Conservation and Natural Resources, and the Geological Survey of Alabama. The claims arise from releases and threatened releases of hazardous substances, including the pesticide DDT and its degradation products, from a chemical production facility at the Ciba-Geigy Corporation (McIntosh Plant) Superfund Site near McIntosh, Washington County, Alabama. The consent decree requires BASF Corporation to pay $3.2 million into the Mobile Bay Watershed/Ciba-Geigy Site (AL) Restoration Account; $500,000 to the Alabama Department of Conservation and Natural Resources, Game and Fish Fund; and $1.3 million to DOI and NOAA as reimbursement for damage assessment costs. Under the consent decree, the plaintiffs covenant not to sue or take civil judicial or administrative action against BASF Corporation under CERCLA or the Clean Water Act to recover natural resource damages related to the Site.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America, Alabama Department of Conservation and Natural Resources, and the Geological Survey of Alabama* v. *BASF Corporation,* D.J. Ref. No. 90–11–2–781/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.25 (25 cents per page

APPENDIX C
Calendar of Public Hearing

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject:	Trade Barriers that U.S. Small and Medium-Sized Enterprises Perceive as Affecting Exports to the European Union
Inv. No.:	332-541
Date and Time:	November 20, 2013 - 9:30 am

Sessions were held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

ORGANIZATION AND WITNESS:

U.S. Chamber of Commerce
Washington, D.C.

Marjorie Chorlins, Senior Director, Europe

Government Relations, LLC
Burke, VA

David Ellison, PhD, Vice President

ASTM International
Washington, D.C.

Jeff Grove, Vice President, Global Policy & Industry Affairs

Society of Chemical Manufacturers & Affiliates ("SOCMA")
Washington, D.C.

William E. Allmond, IV, Vice President of Government and Public Relations

Jochum Shore & Trossevin, PC
Washington, D.C.
on behalf of

Owners Rights Initiative ("ORI")
Association of Services and Computer Dealers International and
North American Association of Telecommunications Dealers ("AsciNatd")
Radwell International, Inc. ("Radwell")

Joseph Marion, President, AsciNatd

Anthony Chwastyk, General Counsel, Radwell

Marguerite Trossevin) – OF COUNSEL

-END-

APPENDIX D
Positions of Interested Parties

Introduction

The following summaries of the positions of interested parties are based on information provided at a public hearing held on November 20, 2013, in Washington, DC, and material submitted to the Commission in conjunction with this investigation. The summaries express the views of the submitting parties and not those of the Commission, which did not attempt to confirm the accuracy of or make corrections to the information provided. The full text of the hearing transcript and written submissions associated with this investigation can be found by searching the Commission's Electronic Docket Information System.[1]

American National Standards Institute (ANSI)

ANSI stated that it serves as the coordinator of the United States' private sector-led and public sector-supported system for setting standards based on voluntary consensus and for assessing conformity with them. ANSI said it is the official U.S. representative to the International Organization for Standardization (ISO) and, via the U.S. National Committee, to the International Electrotechnical Commission (IEC), and is a U.S. representative to the International Accreditation Forum (IAF).

ANSI stated that while standards are a key component of U.S.-EU trade relations, the United States and EU have significantly different views on the use of international standards for regulatory purposes, and this can complicate opportunities for greater convergence. ANSI indicated that the U.S. standards strategy promotes a flexible, multiple-path approach. According to ANSI, U.S. law and policy call for federal agencies to base technical regulations on voluntary consensus standards developed by the private sector and, in particular, relevant international standards wherever possible. ANSI stated that U.S. regulators are given the flexibility to select the standards that suit their regulatory objectives. ANSI asserted that in each case the United States uses the national or international standard developed according to the principles of the World Trade Organization's (WTO) agreement on Technical Barriers to Trade (TBT)—which include transparency, openness, due process, and balance—that best meets marketplace needs.

On the other hand, according to ANSI, the EU's New Approach Directives define the "essential requirements" for products accepted in the EU market and extend the presumption of compliance with these requirements to select standards developed or adopted by the three European standards organizations the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). ANSI stated that the EU does not recognize U.S.-domiciled standards bodies in the same way that the United States recognizes such European bodies, asserting that the EC's New Approach could cause a trade barrier by directing that only European Norms (ENs) be incorporated by reference into EC regulations.

ANSI stated that any regulatory convergence mechanisms developed by the United States and EU must ensure that regulators, companies, and consumers on both sides of the

[1] Available online at http://edis.usitc.gov.

Atlantic can choose international standards from multiple sources. ANSI recommended that the EU empower its regulators to grant the presumption of compliance to international standards as defined in the WTO TBT principles. According to ANSI, giving EU regulators this flexibility would both enable them to select the standards that best meet their objectives and provide an important mechanism for greater regulatory alignment between the United States and EU.

ANSI indicated that it also supports provisions that enable stakeholders to provide comments in the development of technical regulations, in adherence to the WTO TBT principles. ANSI said it believes that there must also be accountability to ensure European regulators consider such comments when finalizing a measure. Further, ANSI stated that allowing conformity assessment providers to provide services on a national-treatment basis will be an important tool to facilitate trade for manufacturers and will increase competitiveness and economic growth in the United States and the EU.

ANSI maintained that while the United States and EU should seek to minimize differences wherever possible, the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) should not hold the United States and the EU to regulatory coherence objectives that are not viable. ANSI stated that where U.S. and EU regulators choose to cooperate, the impact assessment should consider the full cost to society and not just the immediate cost. According to ANSI, TTIP should also embrace the WTO TBT assertion that public safety is paramount, and both the U.S. and EU regulators should keep their authority to take measures to ensure the quality of exports, the protection of life, the health of the environment, and the prevention of deceptive practices.

ANSI stated that it supports the TTIP as a means to overcome barriers to trade in goods and services. According to ANSI, TTIP provides an opportunity to build on one of the world's strongest trade alliances and further strengthen the U.S.-EU trading relationship. ANSI indicated that standards and compliance requirements that follow the principles in WTO agreements can further the goals of the TTIP.

ASTM International (ASTM)

ASTM indicated that it is a leading member of the global standards community and that more than half of the experts participating in ASTM standards development are from SMEs. SMEs, according to ASTM, make important contributions to the development of these standards and benefit from engaging in the standards development process.

ASTM stated that it supports the objectives of the TTIP, but that changes to the EU standards policy would facilitate standards convergence and EU market access for U.S. SMEs. ASTM indicated that one of the primary reasons that U.S. SMEs encounter nontariff barriers when seeking access to the EU market is structural differences in the two markets' standards and regulatory systems. According to ASTM, the EU system does not connect well with the U.S. system.

ASTM indicated that these differences involve issues such as participation models, the use of international standards, and the indirect referencing of European standards. Participation in the European standards development process, according to ASTM, is limited primarily to European experts working through their national standards bodies,

while in the United States most standards are developed through an open, transparent, and balanced process that allows direct participation by individual experts in order to reach a global consensus. ANSI explained that individuals from EU-based SMEs participate in or lead standards development activities in standards bodies like ASTM, but that it is difficult for U.S.-based SMEs to participate in the development of the European standards.

ASTM also stated that the United States promotes the view that there are multiple paths to the development of international standards, and that U.S. regulators reference standards from ASTM and many other global standards bodies. However, the EU officially designates the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU) as international standards bodies. According to ASTM, this difference in approaches complicates opportunities for EU-U.S. cooperation on standards.

ASTM also indicated that efforts to achieve regulatory convergence are complicated by indirect referencing under the EU's New Approach. There are 4,000 European standards that are referenced as part of 30 New Approach directives covering products and materials used in construction, packaging, toys, medical devices, equipment, and machinery. The indirect referencing of these European standards means that—while their use is voluntary—a product that meets these standards also meets the essential technical requirements of a directive, and its manufacturer gains certainty in the form of a presumption of conformity with those requirements. Further, the standards that are indirectly referenced are limited to European standards and those European standards harmonized through ISO and IEC. No legal mechanism exists to permit global standards from U.S.-domiciled standards organizations to receive the same benefit or to be treated on an equal footing.

ASTM stated that two changes to EU standards policy would facilitate greater standards convergence and help U.S. SMEs access the European market. First, according to ASTM, the New Approach directives need to allow the indirect referencing of certain global standards developed by U.S.-domiciled standards organizations that can demonstrate technical equivalence and global relevance; second, there needs to be greater inclusion of international standards.

California Citrus Mutual (CCM)[2]

CCM stated that it is a nonprofit citrus grower trade association that represents 2,200 grower members in California, approximately 75 percent of the California citrus industry. CCM said that it monitors all state and federal regulatory issues concerning the California citrus industry. The organization contended that U.S. government export financing assistance is directed at field crops and not specialty crops such as fruit and vegetables. CCM asserted that although the U.S. Department of Agriculture (USDA) intended to institute a specialty crop variation of the Supplier Credit Guarantee Program (SCG or SCGP), the program was discovered to be subject to fraud and was dismantled before any fruit and vegetable assistance was given. CCM added that other current U.S. programs, such as those run by the Export-Import Bank, do not work for perishable

[2] California Citrus Mutual, written submission to the USITC, September 20, 2013.

products such as fruit and vegetables. The effects of this lack of assistance, according to CCM, are made worse by the EU's decoupled payments of €9.5 billion or $12.4 billion for fruits, vegetables, and tree nuts in marketing year (MY) 2006–7 through the EU's Common Agricultural Policy (CAP). CCM claimed that this assistance imbalance is counteracting the weakened U.S. dollar, which makes U.S. products more desirable for export. CCM asserted that eradicating tariffs alone will not ameliorate the trade imbalance, but enacting U.S. government specialty crop assistance while negotiating on EU tariffs will make for a more level playing field.

California Fashion Association[3]

In a written submission to the Commission, Ms. Ilse Metchek, president of the California Fashion Association, wrote that the increase in EU tariffs on women's premium denim jeans from 12 percent to 38 percent would likely limit EU market share for California producers.

Ms. Metchek added

> A spokesman for the EU trade commissioner Karel De Gucht, noted that the penalties were designed to "redress the injury to European companies brought about by the infamous Byrd Amendment in the United States which has been found to break international trade rules. Given this legal context, the EU has no choice but to defend European companies against this illegal U.S. trade action."

Ms. Metchek noted in the submission (consisting of copies of letters from the association to Senator Feinstein, dated May 3, 2013, and Ambassador Froman, June 28, 2013) that Southern California supplies 75 percent of the premium denim market; the tariff increase will not only reduce exports but also employment in California as EU companies change their sourcing patterns.

Government Relations, LLC[4]

In a written submission and in hearing testimony, Dr. David Ellison, co-founder of LiveAssay and vice president of Government Relations, LLC, stated that Global Relations provides consulting services on importing and exporting, regulatory compliance, enterprise risk management, and corporate governance. LiveAssay, according to Dr. Ellison, produces ready-made cell biology tests used in scientific experiments.

Dr. Ellison stated that SMEs support the conclusions of the final report of the U.S.-EU Summit held on November 28, 2011, that encouraged TTIP negotiations, which were announced on February 13, 2013. He stated that SMEs specifically support market liberalization efforts to (1) eliminate barriers to trade and investment; (2) enhance

[3] Ilse Metchek, president, California Fashion Association, written submission to the USITC. September 11, 2013.

[4] USITC hearing transcript, November 20, 2013, 53–58; Ellison, written submission to the USITC, October 8, 2013.

regulatory coherence and cooperation; and (3) develop new rules in areas such as intellectual property, labor, environment, regulating data flow, and facilitating supply chains. He said that it is difficult to overestimate the importance of increasing EU-U.S. trade, since bilateral U.S.-EU trade represents 30 percent of global trade and shared investments total nearly $3.7 trillion.

Dr. Ellison contended that market liberalization is a shared value in the U.S.-EU relationship, and he recommended that the TTIP be changed into a "living" agreement so that other trading partners with similar values can join easily. Dr. Ellison also stated that some SMEs are concerned about the White House's shift in global policy toward Asia and away from Europe. He asserted that this shift was articulated in the President's speech before the Australian Parliament in 2011, the National Security Advisor's speech before the Asia Society in March 2013, and the President's fiscal year (FY) 2014 budget. Dr. Ellison stated that this policy shift places tremendous pressure on TTIP negotiations to be aggressive and far reaching. If the TTIP falls short of this, by only eliminating already low tariffs and by not aggressively pressing for harmonization of regulations, Dr. Ellison contended that it will be seen as a failure and a sign that the Administration does not place enough political capital behind its European agenda.

Dr. Ellison said that many U.S. businesses are not pleased with the EU's restrictions on medical devices and with its Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) regulation of 2006 on chemicals related to nanomaterials and other advanced materials. According to Dr. Ellison, these place major constraints on U.S. SMEs' exports to the EU. He stated that SMEs seek an ambitious plan to harmonize regulations with the EU since excessive regulation presents a key unfair disadvantage to U.S. SME trade. Dr. Ellison cited regulations for medical devices as an example where he would like to see four objectives met: (1) mutual recognition of ISO 13484, which is the standard for quality management in the design and manufacture of medical devices; (2) a single audit process; (3) a harmonized format for product registration and submission; and (4) a common way to trace products through a single unique device identification process with interoperable databases.

The Hardwood Federation[5] (HF)

The HF stated that it represents companies in the hardwood industry—predominantly small family-owned businesses that collectively produce $200 billion in products annually and employ 900,000 workers. The HF said that in 2012, U.S. hardwood lumber exports, including those to the EU, totaled $1.6 billion. In its written submission, the HF stated that there are two areas of concern that it wanted to bring to the Commission's attention: European regulations relating to imports of North American ash (*Fraxinus Spp.)* and the EU's acceptance of the National Hardwood Lumber Association's Kiln Drying Certification.

The HF explained that EU regulations regarding the importation of North American ash lumber require that all bark, wane, and the one-half inch of wood below the cambium layer be removed to eliminate the risk of transmitting the emerald ash borer. The HF asserted, however, that this requirement is unnecessary in preventing the spread of the pest and results in losses in yield, which in turn raise the cost of the product. Instead, the

[5] Hardwood Federation, written submission to the USITC, October 7, 2013.

HF stated that kiln drying for a minimum of 30 minutes at temperatures above 56 degrees C destroys the borer, larvae, and eggs without loss of material. The HF expressed the view that verification of kiln drying is a more reasonable import regulation for North American Ash than the current EU regulation.

The HF also said that the National Hardwood Lumber Association's (NHLA) kiln drying (KD) certification is designed to monitor kiln facilities and verifies that requirements regarding moisture content and treatment, temperature, and duration are met before export. According to the HF, the program achieves the same goals as an Animal and Plant Health Inspection Service (APHIS) Phytosanitary Certificate but at less cost to both APHIS and the U.S. hardwood industry. The HF stated that the EU is considering, but does not currently accept, the NHLA KD Certificate for oak, maple, sycamore, poplar, ash, or chestnut. The HF recommended that the EU accept the NHLA KD Certificate as an efficient and cost-effective method of meeting requirements for exports to the EU.

Henningson Foods[6]

In its submission, Henningson Foods stated that it manufactures dehydrated poultry meats that are inspected by the USDA's Food Safety and Inspection Service (FSIS) and used as ingredients in many other consumer products. Henningson reported on what it described as essentially a ban by the EU on U.S. poultry products. Henningson stated that the EU requires different slaughter and processing procedures than FSIS, including a ban on the use of chlorine water for chilling poultry carcasses and additional residue testing. Henningson asserted that almost all U.S. poultry companies, with the exception of a single turkey plant, avoid selling to the EU market because of these trade barriers. According to Henningson, the removal of these barriers would result in their gross poultry sales increasing by at least 30 percent.

Highland Metals (HMI)

In a written submission to the Commission, Ms. Eveline Carr, quality manager of HMI, discussed the general barriers to market access that her company faces when exporting orthodontic wires to the greater EU region, explaining that these wires are classified as class IIa medical devices in the EU. Ms. Carr stated that the company has been exporting to the EU for years, but has only recently encountered these barriers, which include "country specific registration and customs requirements." She said that under this arrangement, selected EU countries impose additional registration requirements—including customs-specific import certifications—in addition to the standard CE marking certification that is required when exporting to the EU. Ms. Carr listed Turkey, Italy, and England as countries with more onerous customs-related issues. In particular, according to Ms. Carr, Turkey's customs charges can be significant, often exceeding the invoice value of the good; in Italy, the importer of the HMI device must apply for a "sanitary permit" with customs for each HMI shipment that arrives in Italy, which often results in significant delays; and a recent HMI shipment to England was intercepted and repackaged after the product had been stripped of about $15,000 worth of material.

[6] Henningson Foods, written submission to the USITC, September 18, 2013.

Nation Ford Chemical

In a written submission to the Commission, Mr. Jay Dickson, president of Nation Ford Chemical (NFC), wrote that the EU is a very important trading partner for the company and that a U.S.-EU free trade agreement would not only benefit the company but also its customers in the United States and the EU. Mr. Dickson stated that NFC was proactive in its response to REACH by educating themselves about the legislation; making REACH a priority focus for the company; and also by hiring a consultant. He said that NFC has only one product registered under REACH at this time but will register another one for the next REACH deadline in 2018. Mr. Dickson stated that REACH "is and has been very expensive and time consuming for NFC and all chemical companies doing business in the EU," adding that compliance costs for the company for one non-hazardous product has been about $200,000 (said to be a one-time expense) and $35,000 per year to the company's Only Representative. Mr. Dickson stated that the effect is disproportionate for SMEs versus their larger counterparts not only because of the magnitude of the costs but also because of the SME's "inability to spread [them] over a diverse product line." Mr. Dickson states that NFC's payment of the costs associated with REACH "was at the expense of cash reserves that would normally be used for reinvestment in our plant."

National Association of Manufacturers (NAM)

In a written submission to the Commission, Linda Dempsey, NAM's vice president for international economic affairs, stated that NAM is the largest American manufacturing association and that its membership includes both small and large manufacturers across the country.[7] She described issues in intellectual property (IP) protection, tariffs, customs procedures, and regulatory requirements that, she said, represented export barriers for SMEs. She also provided policy recommendations for the TTIP negotiations that seek to eliminate the perceived barriers.

Ms. Dempsey stated that SMEs rely on trade secrets rather than patents to protect their IP and that trade-secret misappropriation threatens these businesses. She recommended that TTIP incorporate robust trade-secrets protection and enforcement; fewer requirements to disclose trade secrets; and cooperation with third countries to combat trade-secret theft.

Ms. Dempsey asserted that eliminating all EU tariffs would help U.S. SMEs. She recommended complementing this with elimination of border charges and other import-related fees. She also stated that long customs clearance times, excessive paperwork requirements, and other customs practices increase costs and particularly affect SMEs that export small volumes. She also stated that improving trade facilitation would help manufacturers of all sizes, and to achieve this, she recommended harmonizing customs regulations, allowing preclearance of goods, and implementing several other policies. She also stated that raising the *de minimis* threshold to $800 would reduce export costs for SMEs.

[7] Dempsey, Linda. "Re: Concerning Trade Barriers that U.S. Small- and Medium-Sized Enterprises Perceive as Affecting Exports to the European Union (Investigation Number 332-541)." Letter to Lisa Barton, October 23, 2013.

Ms. Dempsey alleged that the EU's use of the precautionary principle has created regulations that impose nontariff barriers on U.S. exports. She recommended greater regulatory cooperation on labeling, product safety requirements, and recognizing function equivalence where appropriate. She also asserted that EU conformity assessment procedures have created higher costs for U.S. businesses because they create delays in placing products on the market and exclude U.S.-based laboratories from performing certification tests.

Ms. Dempsey stated that SME manufacturers need confidence in their ability to move data across borders. She noted that manufacturers have expressed concerns that the EU General Data Privacy Regulation creates burdensome compliance requirements for cross-border data flows.

National Corn Growers Association (NCGA)[8]

NCGA stated that it has a membership of over 40,000 corn growers and represents the interests of more than 300,000 corn farmers. NCGA works with state-affiliated corn agencies to protect the interests of U.S. corn growers regarding foreign trade policies. The main concerns for U.S. corn growers, as reported by NCGA, are the EU's reliance on non-science-based measures in biotechnology and its stringent labeling requirements. The EU approval process for biotechnology traits is cumbersome and restricts U.S. agricultural products from entering the EU, while not adhering to internationally recognized norms for sanitary and phytosanitary (SPS) measures. NCGA, according to its written submission, would encourage USTR to remain dedicated to fulfilling its prior commitments to ensure that the EU honors its WTO obligations regarding biotechnology.

Owner's Right Initiative (ORI), Association of Service and Computer Dealers International, North American Association of Telecommunications Dealers (AsciNatd), and Radwell International[9]

In hearing testimony, Mr. Joseph Marion, president of AsciNatd, stated that ORI is an informal organization of 20 companies and trade associations dedicated to preserving the right to sell, lend, and rent goods in the secondary market. ORI, according to Mr. Marion, represents resellers and OEMs operating in the secondary markets for new and used hardware related to information technology and telecommunications, software, maintenance services, leasing services, business solutions, technical support, and other value-added services. Mr. Marion stated that secondary markets are an important and growing segment of the U.S. and world economy, where sales for new and used computer and telecommunications equipment alone are estimated at $300 billion.

Mr. Marion indicated that barriers to participation in the secondary markets can and do have a substantial negative effect on U.S. exports. He stated that the U.S. Supreme Court recently affirmed a 200-year-old first-sale doctrine under which rightsholders' exclusive

[8] National Corn Growers Association, written submission to the USITC, August 23, 2013.
[9] USITC hearing transcript, November 20, 2013, 75–80.

right to sell branded product is exhausted once the rightsholder has made or authorized a first sale of the product. According to Mr. Marion, the rightsholder is protected against pirating, counterfeiting, and the introduction of materially different goods under the same brand mark. He also stated that goods placed in the market by the rightsholder may be freely traded, promoting competition and consumer choice. However, according to Mr. Marion, in the EU the right to control the resale of branded products is exhausted if and only if the branded product is first sold in the EU. He indicated that the principle of exhaustion is applied within the EU to avoid the acknowledged anticompetitive effect of granting rightsholders a perpetual monopoly on the resale of their products within the EU.

Mr. Marion stated that the EU ensures that branded goods can be freely traded within the EU while insulating the EU market from outside competition, given that rightsholders retain a perpetual monopoly over the trade of all their products first sold in the EU. He also noted that EU manufacturers can subsequently use their monopoly power to block independent U.S. resellers from exporting genuine products into the EU. Mr. Marion asserted that the anticompetitive effect of the EU's policy is explicitly illustrated by a case recently decided by the UK Supreme Court (Oracle v. M-Tech), where Oracle sued M-Tech for exporting 64 Oracle disk drives from the United States to the EU.[10]

Mr. Marion stated that his organization estimates that members' exports to the EU have declined by $7.8 billion since the Oracle decision, with individual companies reporting declines of 50 to 90 percent. He also indicated that EU manufactures were refusing to verify if the products were first marketed in the EU, thereby further stifling legitimate U.S. competition. Mr. Marion estimated that U.S. computer and telecommunications exports would increase by as much as 30 to 50 percent if the EU opened its secondary market to competition from the United States. Mr. Marion stated that the EU's recognition of the principle of exhaustion is essential to promoting competition and free trade. He suggested that failure to apply this principle equally to trade with the United States is unquestionably at odds with the goal of increasing trade and mutual economic growth.

In hearing testimony, Mr. Anthony Chwastyk, General Counsel for Radwell International, stated that his company purchases, repairs, and sells industrial electrical equipment including timers, counters, circuit breakers, pushbuttons, programmable-logic controllers, motors, photoelectric sensors, and other devices used to make machinery run.[11] Mr. Chwastyk stated that to facilitate his company's expansion into the EU market, it established a repair and distribution center in England. Mr. Chwastyk indicated that Radwell's UK sales doubled to nearly $4 million, while its exports to the EU declined dramatically. Mr. Chwastyk contends that the decline can be attributed both to Radwell's local UK presence and to the uncertainty caused by the EU's restrictive trademark and copyright laws.

In a post-hearing brief, Ms. Marguerite Trossevin, counsel for ORI stated her concerns about barriers to U.S. exports erected through the operation of the EU's trademark

[10] According to Mr. Marion, a lower court ruled in favor of Oracle, but a UK appeals court reversed the decision. He stated that the Appeals Court found that Oracle's practices had more to do with restricting imports and preventing price competition than with the proper exercise of intellectual property rights. Mr. Marion stated that the UK Supreme Court reversed this decision, finding that Oracle had the absolute right to block the importation of their products.

[11] USITC hearing transcript, November 20, 2013, 80–84.

regime.[12] Ms. Trossevin stated that the EU's trademark regime operates to block a substantial volume of potential U.S. exports of new and used trademarked (or "branded") electronic equipment from U.S. independent resellers, a restriction that disproportionately affects SMEs because resellers tend to be small. Ms. Trossevin stated that independent U.S. resellers do not sell a large portion of the new and used electronic equipment through the gray market, yet the EU continues to block U.S. resellers from exporting these products to the EU, as well as other genuine branded products. Mr. Trossevin suggested that the United States use the TTIP negotiations as an opportunity to open the EU market to exports of new and used branded products by U.S. independent resellers.

Polyguard Products, Inc.[13]

In a written submission to the Commission, Mr. Nathan Muncaster, director of global business development for Polyguard Products, Inc., wrote that his company is a 100 percent employee-owned SME. The company, he wrote, manufactures pipeline coatings, construction waterproofing, and anticorrosion products. Mr. Muncaster said that in 2012 the company sold its products in 29 countries but had difficulty selling in the EU because of the EU regulatory system and its standards-setting process. He said that the existing process doesn't always work smoothly (particularly for innovative products), is costly, and does not allow reciprocal access between EU member states. He added that whereas large companies can afford to pay the high costs of conducting multiple tests and meeting the requirements of individual member countries, SMEs without such resources will not be able to access the EU market. He cited problems that his company had certifying two innovative products, attributing the problems to "defined tests linked to European standards" and classification issues under the Harmonized Tariff System. In conclusion, he stated that his company's inability to obtain the CE mark for innovative products limits its EU market access. He recommended the establishment of an EU ombudsman to help SMEs address such challenges.

Sartori[14]

According to its written submission, Sartori is a Plymouth, Wisconsin-based producer of artisan cheese. Sartori reported that the main EU barrier affecting its exports of cheese are the Protected Designations of Origins (PDOs), which protect EU-produced cheese originally named for a particular geographic locale even when the United States considers their names to be common. Sartori alleges that these PDOs effectively block U.S. cheese companies from exporting to the EU.

[12] Owners Rights Initiative, written submission to the USITC, December 2, 2013.

[13] Nathan Muncaster, director of Global Business Development, Polyguard Products, Inc., written submission to the USITC, September 6, 2013.

[14] Sartori, written submission to the USITC, September 3, 2013.

Society of Chemical Manufacturers and Affiliates (SOCMA)[15]

In his written testimony to the Commission on behalf of SOCMA, Mr. Jim DeLisi, CEO of Fanwood Chemical, Inc., wrote that SOCMA represents the specialty chemical industry and that over 80 percent of the association's active members are small businesses. Mr. DeLisi stated that SOCMA welcomes a free trade agreement between the two trading partners but understands the challenges involved, particularly "given the different regulatory schemes." Mr. DeLisi said that REACH, the EU's chemical regulatory system, was "founded on the precautionary principle rather than the U.S. risk-based approach to regulation." He said it is a significant trade barrier, noting that its "no data, no market approach" has caused U.S. SMEs to either incur large costs for compliance or exit the EU market. He added that Bloomberg Government has estimated that REACH increases tariffs on chemicals by as much as 22.2 percent.

Mr. DeLisi stated that "SOCMA members understand [REACH] is a regulatory reality and this legislation will not be repealed. However, there are ways to make this legislation more workable." He added that "even the European Commission's REACH review concluded that the impact on SMEs was disproportionate." Mr. DeLisi then described in more detail the main issues that SOCMA members face with REACH: high costs; limited communications channels with the European Chemicals Agency (ECHA); transparency concerns; and updates and maintenance related to the registration process. He concluded by describing several recommendations from SOCMA that would be helpful for SMEs, including the establishment of an EU small business ombudsman, increased availability of ECHA staff, and increased transparency. Mr. DeLisi also summarized several European Commission recommendations regarding REACH and SMEs.

Trade Moves[16]

Trade Moves is an advisory firm that provides U.S. companies with trade tools and resources to support their exports, and works with several processed food manufacturers. Trade Moves reports that high and complex EU tariffs act as a barrier to trade, specifically the combination of ad valorem tariffs and the specific agricultural tariffs. The latter is calculated based on food content (i.e., flour, sugar, or milk fat content) in a system known as the Meursing code system. Due to this complicated system, tariffs are not decided upon until specific ingredient make-ups are reported, according to Trade Moves, which leads to a lack of transparency. If a processed food product changes ingredients even slightly, their import tariff may be altered. Trade Moves calls for the removal of the industrial tariffs as well as the complicated and difficult to understand Meursing tariff component.

[15] Mr. Jim DeLisi, CEO of Fanwood Chemical, on behalf of SOCMA, written testimony to the USITC, September 20, 2013.

[16] Trade Moves, written submission to the USITC, December 2, 2013.

Troy Corporation[17]

In a written submission to the Commission, Mr. Adrian Krygsman, Director of Product Registration for Troy Corporation, wrote that his company is an SME that produces commodity and industrial biocides, as well as additives used globally in products such as adhesives, cosmetics, paints and coatings, plastics, and metalworking fluid industries. He noted that the company's products are regulated under EU regulations and also under REACH and, as such, his company expends "considerable monetary and personnel resources" in compliance. To optimize its use of internal resources, he said the company focuses on a "registered once, registered everywhere" methodology.

Mr. Krygsman stated that differing regulatory approaches between the United States and the EU (i.e., the EU's emphasis on hazard versus the U.S. focus on risk and the resulting differences in interpretation between the two systems) present a trade barrier to his company marketing its products in the EU. He also cites as barriers various EU regulations (e.g., the Biocidal Products Regulation (BPR)); overlapping requirements of regulations and directives; and individual member state regulatory requirements. After mentioning the resources needed to meet North American regulatory requirements (noting that the similarity between the North American countries' approaches not only allows companies to more readily plan for compliance but also allows for "efficient and economical use of company resources"), he says:

> The data used for North American approval are typically insufficient to obtain EU approval since reliance on hazard alone provides an impractical safety hazard. Secondly if data for a particular endpoint are unavailable regulators will use the precautionary principle and, as the name implies additional caution for various endpoints are incorporated usually resulting in restriction or non-approval of a product. Non-approval means no market access and ability to recover costs.

Mr. Krygsman provides examples of the additional costs and tests needed to comply with REACH. He also mentions the additional criteria used by the BPR that can result in exclusion and/or substitution of a product. Mr. Krygsman highlights the differing registration requirements of EU member states, mentioning that they lead to additional costs on a per product basis and require companies to expend "extensive" staff resources to understand and comply with the various programs. Mr. Krygsman also says that other countries are increasingly adopting the EU chemical regulation system. In conclusion, Mr. Krygsman recommends harmonization of the U.S. and EU regulatory approaches.

[17] Adrian Krygsman, director, Product Registration, Troy Corp., written submission to the USITC, September 30, 2013.

U.S. Chamber of Commerce[18]

In a written submission and in hearing testimony, Marjorie Chorlins, Senior Director for Europe for the U.S. Chamber of Commerce, stated that the Chamber is the world's largest business federation, representing interests of more than 3 million businesses; 96 percent of which employ fewer than 100 employees. Ms. Chorlins indicated that the Small Business Administration found that SMEs are the principal driver of U.S. job growth and generate about two-thirds of net new jobs. She noted that the U.S. and the EU account for nearly half of world's GDP at $16 trillion and that U.S.-EU trade in goods, services, and foreign affiliates' sales exceeded $6.5 billion in 2012.

Ms. Chorlins stated that her organization supports a comprehensive and ambitious Transatlantic Trade and Investment Partnership (TTIP), which will eliminate tariffs, open up services, investment, and procurement; generate good jobs; fortify the global rules-based trading system; and promote regulatory cooperation to ensure high level of health, safety, and environment protection, while cutting unnecessary costs. She noted that several studies have shown that TTIP could bring significant benefits to the United States. She cited a recent study by the London-based Centre for Economic Policy Research (ECIPE) that estimated that the TTIP would boost U.S. exports to the EU by $300 billion annually, add $125 billion to U.S. GDP each year, and increase the purchasing power of the typical American family by nearly $900. She cited a September 2013 study commissioned by the Atlantic Council, Bertlesmann Foundation, and the British Embassy of Washington, DC that concluded that the TTIP would create more than 740,000 U.S. jobs.[19] She also stated that ECIPE suggested that transatlantic trade would increase by $120 billion within 5 years of tariff elimination and that the combined GDP of the United States and the EU would expand by $180 billion.[20] Ms. Chorlins explained that because SMEs are more affected by tariffs they will enjoy a large proportion of the gains from a transatlantic accord that eliminates or reduces tariffs.

Ms. Chorlins indicated that TTIP should enhance the U.S.-EU SME bilateral trading relationship, produce robust partner identification initiatives, and improved export promotion programs. She stated that one priority of TTIP should be to create a business environment conducive to the success of entrepreneurs and small businesses. She also stated that eliminating foreign barriers to U.S. exports should be the principal focus of the U.S. government's efforts to harness trade for the creation of jobs. Ms. Chorlins also indicated that eliminating tariffs alone would have an immense economic impact since SMEs, by their very nature, are more affected by tariffs. She indicated that one key goal of negotiations should be to tackle the so called "behind the border" barriers to trade. Ms. Chorlins noted that companies trying to sell their products on both sides of the Atlantic incur high costs to comply with often divergent U.S. and European regulations, even when they achieve comparable outcomes.

Ms. Chorlins stated TTIP can benefit SMEs by establishing clear intellectual property rules to protect innovation and creative content; opening government procurement

[18] USITC hearing transcript, November 20, 2013, 6–53; Chorlins, written submission to the USITC, October 8, 2013.

[19] *TTIP and the Fifty States: Jobs and Growth from Coast to Coast*, Bertelsmann Foundation, Atlantic Council, and the British Embassy in Washington, DC, September 2013.

[20] ECIPE, "A Transatlantic Zero Agreement: Eliminating the Gains from Transatlantic Free Trade in Goods," Fredrik Erixon and Matthias Bauer, Occasional Papers 4/2010, October 2010.

markets to ensure transparency in bidding, particularly for contract for roads, schools, and clinics; and by establishing clear, consistent, and predictable rules for digital trade between the United States and the EU. She noted that existing government and private sector programs can continue to assist U.S. SMEs to export. Large companies like FedEX, UPS, and DHL, according to Ms. Chorlins, have assisted in shipping and educating SMEs about the complexity of doing business abroad. She also noted that SME's have also used websites like Amazon and eBay to export.

To boost exports, according to Ms. Chorlins, USTR, the Department of Commerce, the Small Business Administration, in coordination with the European Commission's Trade and Enterprise Directorate launched the U.S.-EU Small and Medium-sized Enterprises Workshop series in December 2010. Ms. Chorlins stated that the workshops were designed to bring together U.S. and EU government officials, small businesses, and stakeholders to discuss current barriers and potential solutions. At the December 2012 workshop, according to Ms. Chorlins, the USTR and the EU Director General of Enterprise signed a Memorandum of Understanding (MOU) to encourage the growth in exports between the United States and the EU through trade promotion activities, events, networking, trade shows, and joint efforts to expand business opportunities and partnerships. Ms. Chorlins noted that within this framework, the Chamber recommends sharing of SME exporter contacts, which will enable small companies on each side of the Atlantic to find reliable trading partners and overseas distributors.

U.S. Wheat Associates and National Association of Wheat Growers[21]

U.S. Wheat Associates (USW) and National Association of Wheat Growers (NAWG) both represent the U.S. wheat industry domestically and abroad, with years of experience and offices all over the world. Due to the fact that the U.S. exports over half its wheat production, USW and NAWG have a vested interest in the Transatlantic Trade and Investment Partnership (TTIP). In addition to several wheat-focused concerns, USW and NAWG expressed their desire for the TTIP to be a 21st century, comprehensive agreement between two of the largest global economies. Specifically regarding wheat, USW and NAWG called for the elimination of duties on low and medium quality (under 14 percent protein) wheat. While in-quota tariffs are relatively on par with other countries, and were even zero until June 2013, out of quota tariffs are much higher, at 95 Euros per metric ton (MT), than U.S. tariffs. In addition to low and medium quality wheat, the EU operates a Margin of Preference (MOP) for high quality wheat. While tariffs under this MOP are variable, the high wheat prices in recent years have resulted in no import duties on high quality wheat. USW and NAWG call for the removal of all wheat tariffs completely, especially because of the recent completion of the free trade agreement between the EU and Canada, the largest competitor to U.S. wheat. USW and NAWG also reported that the EU is too cautious in its approach to SPS measures, especially regarding Karnal Bunt (KB) disease and mycotoxin testing. Increased testing, even when original testing has been verified by the U.S. government, results in amplified costs and port delays for U.S. companies. In addition to KB and mycotoxin, the EU has a policy on biotechnology that not does allow any traces of non-approved traits in

[21] U.S. Wheat Associates and National Association of Wheat Growers, written submission to the USITC, May 10, 2013.

shipments, and USW and NAWG suggest a low level presence (LLP) policy that would be workable for countries exporting to the EU.

Westar Trade Resources[22]

In written submissions to the Commission, Ms. Cindy Thyfault**,** Founder and CEO, Westar Trade Resources, discussed export challenges and opportunities for liquid biofuels, pellets, and biobased chemicals. Ms. Thyfault addressed various topics, including changes to HTS classifications; recent antidumping and countervailing measures in the EU on bioethanol and biodiesel; the imposition in the EU of non-tariff barriers "such as sustainability criteria and caps on first-generation biofuels in an attempt to limit indirect land use change, . . .;" and the EU inclusion of aviation in January 2012 to its Emissions Trading System in an effort to reduce greenhouse gas emissions related to aviation. She said that the likely outcomes of these measures would be higher tariffs on EU imports of these products from the United States and potential reductions in U.S. exports of such products to the EU. She also mentions possible U.S. and EU policy recommendations to support industry growth and U.S. exports.

[22] Cindy Thyfault, founder and ceo, Westar Trade Resources, written submissions to the USITC, September 11, 2013, and December 1, 2013.