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Mr Karel De Gucht
European Commissioner for Trade
B - 1049 Brussels

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Ref: UNIFE Position Paper on the Transatlantic Trade and Investment Partnership (TTIP)

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Dear Commissioner,

On behalf of UNIFE I would like to thank you for the importance given by the EU to its trade relation with the United States of America in the recently launched negotiations on a Transatlantic Trade and Investment Partnership (TTIP).

Although a number of European railway companies have managed to establish themselves on the US market, they still face a number of barriers, especially with respect to public procurement. Furthermore, both EU and US businesses would benefit from processes and mechanisms to reduce costs and burdens stemming from regulatory differences. UNIFE therefore supports a reinforced transatlantic partnership and calls for a comprehensive and ambitious agreement addressing procurement, tariffs, protection of intellectual property and regulatory cooperation.

I would like to stress that the European rail industry is fully committed to collaborate closely with the European Commission on these issues in the framework of the TTIP. UNIFE is already taking an active part in cooperating with the European Commission and the European Railway Agency (ERA), and in increasing exchanges with its US counterparts. On 5 November, UNIFE signed a Memorandum of Understanding with the American Public Transportation Association (APTA) to reinforce ties between the European and American rail sectors and provide a common framework for cooperation.

You will find attached our position paper on the Transatlantic Trade and Investment Partnership. I am also sending a copy of this letter to Commissioners Barnier and Kallas.

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Abstract

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What is at stake for the European rail industry?

UNIFE, the European Rail Industry, welcomes the launch of negotiations for a Transatlantic Trade and Investment Partnership (TTIP). According to the European Commission, the agreement would increase EU GDP by 0.5% and EU exports by 28%. This is an unprecedented opportunity to boost EU competitiveness and to generate much needed jobs and growth.

The European rail industry could benefit from an improved business environment by diminishing tariff barriers. Trade relations between the two blocs, however, are hampered by **obstacles in the fields of public procurement and regulatory cooperation**. UNIFE is therefore convinced that an ambitious and comprehensive agreement addressing these issues should be reached to guarantee the maximum impact on the real economy.

The question of access to the US railway equipment market will be addressed by the **following key components of the agreement**:

- (a) Market access, in particular through the chapter on public procurement. The agreement shall aim at additional transparency and access to US public procurement markets at all levels;
- (b) Regulatory issues and Non-Tariff Barriers (NTBs), in particular the chapter on technical regulations, standards and conformity assessment procedures. In this respect, a broad mandate covering technical standards is of utmost importance.

Achieving a level playing field in public procurement

Little progress in the revised Agreement on Government Procurement (GPA)

The WTO Agreement on Government Procurement, which entered into force in 1996, is a plurilateral trade agreement: only its signatories are bound by it, not all WTO members. Furthermore, GPA signatories did not commit all public procurement under the agreement, either by not including all of their contracting authorities or by carving out sectors from the agreement.

Furthermore, UNIFE is concerned by a recent tendency of US states to **superimpose on those restrictions an additional layer of domestic requirements**. Federal 'Buy America' regulations allow states to impose contracting preference provisions based on more stringent domestic content requirements than those stated in the federal law, on condition that those preference provisions are explicitly set out under state law. In 2012, the State of California enforced such preference law (AB 1097), thereby authorizing State and transit agencies receiving federal funds to give a preference to bidders who could produce rolling stock with domestic content that exceeds the current 60% requirement set by the Federal Transit Administration. Depending on the local content share, the proposed price can be adjusted down to 10% (0.25% bonus for all local content per 1% increase in the local content).

Other initiatives tend to confirm this trend. In the framework of the the 'Make it in America' Act to revitalize manufacturing in the US, a bill introduced in February 2011 (HR 613) aimed at strengthening Buy America requirements applicable to airports, highways, high-speed rail, trains, and transit. Similarly, a bill was introduced in July 2012 (HR 6216) to eliminate certain grounds for waiving Buy American requirements. Although the bills were not enacted, they point at a severe risk of proliferation of additional domestic requirements. TTIP negotiations should ensure that a stand-still on additional domestic requirements is put in place.

UNIFE recommendations

Domestic content laws, in various forms, have been in place for 80 years in the US. They have impacted transit procurement especially since the 1980s, and European rail suppliers have striven to adapt themselves in order to respond to the provisions. However, recent developments such as raising requirements to unreasonable levels (e.g. 100% US content for projects benefiting from ARRA funds) or adding even more stringent requirements at state level (e.g. AB 1097 law), put European goods and services at a serious disadvantage, and could also prevent new European businesses from establishing themselves on American soil.

In the course of TTIP negotiations, UNIFE therefore recommends the following actions:

- 1. Public procurement related barriers should be tackled with the view of achieving a true level playing field between the EU and the US.** Both the EU and the US should guarantee transparent and open procedural requirements, which should lie at the core of the chapter on public procurement.

Enabling convergence of EU and US regulatory and standardisation approaches

Main hurdles in regulatory and standardisation cooperation

The use of international standards is widespread in areas such as electronics. However, in a number of sectors, **divergences resulting from different regulatory and standardisation systems can hamper trade flows and, ultimately, access to market segments.** For example, European rail suppliers encounter difficulties in accessing the light rail sector in the US because of diverging standards. European and international norms, as defined by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC) and their European counterparts CEN and CENELEC, differ from American standards produced by the American National Standards Institute and are not recognised by American authorities and customers. Divergences in technical regulations, in standards and conformity assessment procedures may therefore require businesses to manufacture different families of products, with considerable additional costs. This is particularly counterproductive for American customers in the rail sector where few or no US system integrators are available in many rail fields. The requirement for US standards therefore brings only additional costs to the US rail procurement process for EU manufacturers.

Regarding the **placing of products on the market**, the EU is a single entity in so far as compliance with harmonized technical requirements at EU level gives full access to the whole EU market. On the US side however, states are allowed to enforce autonomous technical regulations that apply on their own territory (e.g. CPUC in California). This creates difficulties for EU exporters to understand the rules they have to abide by in order to access the US market, in particular when several and potentially conflicting regulatory layers exist.

In that respect, UNIFE strongly supports the final report of the High Level Working Group on Jobs and Growth² calling for 'an ambitious 'TBT-plus' chapter [aiming] convergence in regulatory approaches and requirements and related standards development processes, as well as, *inter alia*, to reduce redundant and burdensome testing and certification requirements, promote confidence in our respective conformity assessment bodies, and enhance cooperation on conformity assessment and standardization issues globally'.

² http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf

3. **Increased convergence of future regulations, and harmonization where appropriate, should be encouraged.** Indeed, tackling potential differences at the source is more effective than removing barriers that lie at the core of the regulatory system. In particular, the agreement should put in place a consultation process between both sides enabling them to consult with each other when starting regulatory activities.
4. **Reinforced cooperation between the EU and the US within international standards bodies** should be fostered. Indeed, the convergence of standards on the basis of the use of international standards is one of the most efficient tools to facilitate trade at a global scale. Possible cooperation actions would include exchange of technical data and commitments to transposing outcomes.
5. **Recent cooperation initiatives in the rail sector should be pursued and supported by a regular technical dialogue between the EU and the US**, each party sharing experience of its main successes and achievements. A positive step forward is the Memorandum of Understanding signed in July 2012 between the European Railway Agency (ERA) and the Federal Railroad Administration (FRA), which features cooperation in technical rail regulations. This could mark the beginning of a regular rail technical dialogue between the EU and the US, for instance on high-speed rail developments.

