

Improving the transatlantic market for new technologies

Material for the Dupont Summit Plenary Session: **Technological Imperatives of the Transatlantic Market**

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I regret that my schedule does not permit me to attend the Dupont Summit. I was hoping to present my ideas, and the views and recommendations of the U.S. Chamber of Commerce, on the transatlantic market as the economic focal point for new technologies, and the ways in which it can be enhanced. There has been since 2007 a Transatlantic Economic Council (TEC), consisting of officials of the U.S. and the EU, to work on strengthening the transatlantic market. This market still constitutes a majority share of the entire world market, making the TEC's work very important, particularly at this time of economic difficulties. The work has however run into delays and obstacles. It is time to take steps to strengthen the dialogue, speed the pace of progress, and deliver concrete and meaningful results. Perhaps the new Administration will give this the attention it deserves.

In my absence from the Summit, I would like to submit a set of recommendations for the work of the Transatlantic Economic Council, prepared jointly by U.S. Chamber of Commerce and BusinessEurope. It will give you an idea of our thinking on the matter. The structural and substantive recommendations are as follows:

BUSINESSEUROPE and U.S. Chamber of Commerce
Joint recommendations for the October TEC Meeting:

A. Structural Issues

- 1) The TEC needs to agree on criteria for adopting issues onto the TEC agenda at the October meeting. The existing TEC agenda then be reviewed under the newly defined criteria and any issues that do not measure up should be dropped.
- 2) The TEC should explain the overall importance of any new issue, and its value to the transatlantic market. A "narrow" TEC issue may have a broader significance illustrating important differences in the underlying regulatory approach or the lack of adherence to fundamental, sound principles to regulation. But without clearer explanation, the larger

importance of a specific issue may be lost and the transatlantic stakeholder community will quickly and irremediably lose interest in the TEC.

3) Expand the agenda and include emerging issues, which are not yet regulated. While existing barriers should still be addressed by the TEC to move toward a barrier-free transatlantic market, the TEC should also address regulatory matters still in development. There is real economic value to limiting the number of solutions companies need to engineer to address transatlantic differences, as many have already made sunk cost investments to accommodate existing regulatory differences.

4) The TEC needs to position itself as a manager of the transatlantic commercial relationship, not as a trade negotiator. It should provide political leadership to require regulators to interact, negotiate, and resolve issues. The various U.S.-EU dialogues that have been created over the last decade, including the recently conceived U.S.-EU Public-Private Energy Technology Forum would be better off being placed under the umbrella of the TEC. For each dialogue senior career officials should be publicly named to staff these dialogues to help ensure continuity. The TEC should require each dialogue to report back to TEC meetings on their agenda, provide status reports on progress, and where necessary step in to resolve and advance stalled discussions. This would create greater responsibilities and accountability across U.S. regulatory agencies and their counterparts at the Commission as well as provide central coordination for U.S. and EU cooperation and increased transparency for stakeholders.

5) Significantly enhance the role of the Congress and Parliament. Including legislators as advisors alongside the business community and consumers is probably not an appropriate role for legislators who will frequently need to be called on to make changes to legislation in order to accomplish the agenda of the TEC. The TEC needs to find a larger, more prominent role for the Transatlantic Legislative Dialogue.

The TLD could develop its own program of work in support of transatlantic cooperation in support of the TEC. The TLD should perhaps tackle politically sensitive issues, like for instance the 1000 cargo scanning issue. This issue was acknowledged by the TEC at the last meeting and also in the letter from the U.S. Congressional delegation of the TLD to the TEC.

6) Expand the use of the advisory groups. The framework agreement that launched the TEC said that it should “convene a group comprised of individuals experienced in transatlantic issues drawing in particular from the heads of existing transatlantic dialogues. To date the TEC has formally relied on the TABD, TLD, and TCD; other qualified groups, such as our own organizations, should be formally recognized.

7) The TEC should begin to formally task assignments to specially created public-private sector task forces. This would help generate constituencies of support for issues on the agenda, help identify new issues, as well as potential solution paths. For example, the TEC has been asked to consider concerns with the movement of people. A working group of interested stakeholders could be appointed, tasked with identifying those issues that need to be resolved, and then required to present their findings at future TEC meetings. The TEC should test such an approach by launching one or two working groups this fall.

8) There is a need for greater transparency and communication in the TEC process. At the first two meetings, the TEC announced progress in several areas in the form of roadmaps that were agreed to between regulators. However, those roadmaps are rarely released. For example, a roadmap for a mutual recognition agreement of respective secure shipper programs was announced by the TEC in November and then again by the agencies themselves this spring. Neither occasion resulted in the roadmap being released. Without greater disclosure accountability is near impossible and the ability for stakeholders to assist in advancing progress is substantially limited.

B. Substantive Issues

BUSINESSEUROPE and the U.S. Chamber of Commerce suggest the following additions and modifications to the TEC agenda.

1) 100% Scanning requirement of the 9/11 Recommendations Act - BUSINESSEUROPE and the U.S. Chamber recognize that a comprehensive solution to the disproportionate approach taken in the Act can only be achieved through legislative change and have urged the Transatlantic Legislators Dialogue to carry out further work on this question. However, the considerable discretion provided to the Secretary of Homeland Security under the act means that the TEC has ample scope to discuss interim measures that would seriously reduce the trade and investment impacts of the legislation while continuing to guarantee proper security levels. Early decisions on the extension of deadlines should be taken in order to guarantee legal certainty. This will avoid unnecessary costs to ports and their users and reassure companies seeking to make investments in the U.S. that require an efficient trading system. Greater clarity must be provided on the definition of ‘high risk corridors’ before business can assess whether such an approach is necessary or desirable.

2) Secure Shipper Programs Mutual recognition progress report - The agencies responsible for mutual recognition of the two secure shipper programs should be required to update the TEC and stakeholders on their progress. In addition, the 2009 deadline by which mutual recognition will be achieved should be formally set at the October meeting. Without accountability at this upcoming TEC meeting, we fear that those responsible for completing mutual recognition will let their self-imposed deadlines slip.

3) Raise the profile of the U.S. - EU High Level Regulatory Cooperation Forum - The TEC statement coming out of the October meeting should tout the work of the RCF. The body of work by the RCF to date has gone underreported and deserves more visibility given its accomplishments and its importance to delivering real transatlantic economic integration. The RCF has examined ways to assess the impact of the regulatory process on trade and investment and we understand that this work will result in meaningful changes, in particular in the U.S. regulatory system. In addition, the plans for a conference on risk assessment and risk management in Brussels this November are further signs of forward progress.

4) Barriers to the transatlantic insurance market - The TEC recognized at its last meeting the importance of having a seamless and barrier free transatlantic insurance market. It requested solutions be developed and presented to the TEC that would address EU industry concerns on

U.S. collateral requirements and U.S. industry concerns with the pending Solvency II directive. Since the May meeting little has been done to fulfill this request.

BUSINESSEUROPE and the U.S. Chamber are planning to lead an effort to identify potential solutions to these concerns that would include all interested parties and stakeholders. We are making plans to host a symposium early next year that would involve senior leaders from the U.S. government, the Commission, Congress and the European Parliament, the U.S. and EU insurance industry EU Member States and the U.S. state insurance commissioners. We would like the TEC to formally recognize at the October meeting the planned symposium, commit to participate and require the symposium to present its findings to a future TEC meeting in 2009. This would be an opportunity for the TEC to designate a public-private task force to work on this issue as we suggested earlier in this letter. An ideal outcome would be a TEC statement to the following effect:

Further to our efforts to encourage our regulators to make strides to identify steps toward the creation of a level playing field for our insurance industries, the Transatlantic Economic Council recognizes BUSINESSEUROPE-U.S. Chamber efforts to organize a symposium to discuss and develop solutions to outstanding issues of importance to our industries, and agreed to work with relevant authorities to encourage appropriate regulatory support for the symposium and the development of a road map that would chart the course toward equalizing competitive conditions for our industries.

5) Diesel Conformity and Test Procedures BUSINESSEUROPE and the U.S. Chamber suggest that the TEC consider putting a political emphasis on resolving outstanding differences largely between the Environmental Protection Agency and DG Environment on the testing requirements concerning the next generation standard for diesel engines. This is a top international regulatory priority for major engine manufacturers and there is a consensus at the CEO level in the U.S., the EU, and Japan that it is costly and inefficient to have multiple testing requirements for future diesel engines. Further, we believe that, with transatlantic leadership, countries around the world most likely would adopt a common testing procedure which, in the longer term, could lead to common regulatory compliance if there was transatlantic leadership. Work is underway within the Working Party on Pollution and Energy (GRPE) of the United Nations Economic Commission for Europe (UNECE) of a worldwide test procedure (WHDC), but the speed of progress is of concern to industry. While there are many aspects of the negotiations that have been agreed a few issues remain. Working with our member companies that manufacture heavy duty diesel engines, we believe that the differences over the remaining issues could be bridged with the political leadership of the TEC in partnership with the Japanese. We are happy to provide you with more information or provide you with a detailed briefing.

6) Blood and Blood Derivates under REACH - AdvaMed and the European Diagnostics Manufacturers Associations have been working for almost two years to get clarification from the EC on whether blood and blood derivatives are covered under REACH, the EU chemicals regulation, especially since the date for pre-registration is December 1, 2008. To date the EU authorities have yet to provide written clarification. The transatlantic business community needs regulatory certainty wherever possible. We ask that the October TEC meeting provide a clear answer to this inquiry and we are also requesting that the High Level Regulatory Cooperation Forum make room on its upcoming agenda to discuss appropriate guidelines for responding to stakeholder inquiries.

7) Limits to Audit Liability - By law, all companies whose securities are available to the general public through U.S. exchanges are required to have their financial statements audited by an independent registered public accounting firm. The goal has been to provide confidence to investors and provide standardization and discipline to corporate accounting, thereby increasing liquidity to capital markets.

The auditing profession is at a cross roads. It is generally recognized that many audit firms are one catastrophic lawsuit away from being put out of business. A potential contraction of audit firms through litigation could cause severe dislocations in capital markets. In the United States, the Treasury Department's Advisory Committee on the Auditing Profession is preparing a report on the future of auditing, with liability as one of the key issues being addressed. Recently, the European Union has sought to implement limited liability caps on auditing judgments. Because of the implications of Auditing liability on both sides of the Atlantic, the interconnected nature of financial markets, and the limited number of global auditing firms this is an issue that deserves serious discussion and deliberation. We would ask that the liability discussions currently underway on both sides of the Atlantic, in partnership with the delegations from the transatlantic legislative dialogue, be discussed at the TEC October meeting.

8) IRS Revenue Ruling 2008-15 on Reinsurance Transactions - The IRS provided an interpretation of sections 4371 et seq. of the US Internal Revenue Code of 1986 ruling that there is a "cascading" tax that applies to all reinsurance transactions involving two or more foreign insurance undertakings, where the underlying risk is in the U.S. As the ruling is a legal interpretation, it came into force immediately. Such a determination has been deemed by many to be poor tax policy and counter to international taxation principles, such as the negative and positive territoriality principles. We urge the TEC to work with the Department of Treasury and the IRS to withdraw the Revenue Ruling 2008-15 as well as the voluntary compliance program (Announcement 2008-18) due to an insufficient legal and jurisdictional basis for enforcement of the IRS position.

9) Prevention of Illegal Logging Practices - Implementation of Section 8204 of the U.S. Farm Bill - Section 8204 amends the U.S. Lacey Act to address the problem of global illegal logging practices and associated trade. The statute requires U.S. importers to complete a declaration requirement for plant and plant products specifying the plant species; the country of origin from where the plant was taken; and value and volume of the import. This declaration requirement was set to go into effect by the end of 2008 but will likely be delayed until April 1 2009. Though the underlying legislation may be well-intentioned for combating a serious global economic and environmental problem, the declaration raises concerns for exporters and importers to the U.S. These are due to the wide range of plant-based products that could be potentially subject to the amended law, the administrative burden it would place on importers and exporters of those products and the asymmetric treatment it implies between raw materials sourced inside the U.S. and those that are imported. The act provides the U.S. authorities with discretion as to the product scope and nature of the documentation to be provided. The TEC should ensure that the implementing measures use this discretion fully to limit the negative consequences on transatlantic trade partners. Documentation requirements should be implemented in such a way as to minimize any new burdens on exporters to the U.S.