



April 23rd 2012

Submission to DG Trade's Public Consultation on the EU-U.S. High Level Working Group on Jobs and Growth:

TABD Recommendations to Renew and More Deeply Open the 21st Century Transatlantic Market

We are heartened by the strong momentum that has evolved since the 2011 EU-U.S. Summit, as companies across the Atlantic have offered views on how to shape the U.S.-EU relationship to advance an agenda for jobs and sustainable growth that opens transatlantic markets while simultaneously creating a dynamic environment to promote international cooperation to open global markets. There is consensus among TABD member companies for action on an ambitious comprehensive initiative, to avoid being trapped in 'form and process' issues, and to ensure a visionary, 21st century problem-solving focus to accompany breakthrough thinking on actions to restore economic growth, spur job creation and ensure the long-term competitiveness of American and European businesses. The High-Level Working Group has been tasked to identify policies and measures to increase U.S.-EU trade and investment. This submission outlines the TABD views on this task.

In Part 1 of our submission, we set out a broad vision, developed in collaboration with the Business Roundtable and the European Roundtable of Industrialists, to shape the work of the High-Level Working Group. We believe the shared vision should be to deepen the U.S.-EU economic relationship and to strengthen the international economic system and its rules and standards, thereby supporting innovation, economic growth, and job creation in the United States, the EU and around the world.

The vision we set forth proposes that the High-Level Working Group focuses on renewing and further opening the 21st century transatlantic market examining all options including an FTA. Transatlantic leadership is also needed to secure a global level playing field for business, and to strengthen the WTO and deepen the multilateral commitment to open markets.

In Part 2 of our submission we offer more detailed views, ideas and options concerning policies and measures to increase transatlantic trade and investment, drawing especially on the experiences and concerns of TABD member companies.

Observation:

It is important to note that the effort of the High-Level Working Group will take place against the backdrop of the fragile global economy. We remain concerned to support investment and growth to help tackle the fiscal situation and financial stability in the U.S. and the EU, and encourage you in your commitment to closer cooperation on key economic and trade policies, to strengthen transatlantic leadership on these issues in the G20. In particular, we are concerned about three macroeconomic policy areas that have a critical impact on our operating environment: debt, financial market reform and accounting standards. We urge the High-Level Working Group to remain mindful of the environment in which our companies operate. We believe that there is a wide business and economic consensus that we need growth to tackle debt.

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Part 1

Forging a Transatlantic Partnership for the 21st Century

Joint Statement by Business Roundtable, the TransAtlantic Business Dialogue and the European Round Table of Industrialists¹

Overview of a New Transatlantic Partnership Vision

We welcome the new U.S.-EU High Level Working Group on Jobs and Growth and the U.S. and EU government leaders' declared intent for it to consider the full range of trade and investment measures that could be taken to revitalize and intensify our strong economic relationship. We are concerned, however, that absent a clear and compelling vision of a more strategic, dynamic and forward-looking partnership, the effort will not fulfill its promise.

We believe the vision should be to develop a new Transatlantic Partnership (TAP) to deepen the U.S.-EU economic relationship and to strengthen the international economic system and its rules and standards, thereby supporting innovation, economic growth, and job creation in the United States and the EU and around the world. This is not a time for piecemeal efforts; it is a time for transformative action and leadership. To further this vision, the effort should focus on, and integrate effectively, three core objectives: (1) renewing and opening more deeply the 21st Century transatlantic market; (2) positioning our partnership so we can better both compete with and engage third countries on the fundamental rules underpinning 21st Century trade and investment; and (3) strengthening the WTO and deepening the multilateral commitment to open markets.

As CEOs and chairmen of businesses engaged across the global economy, we need nothing less. If we are to galvanize our companies and sectors to position our global ambitions around the opportunity represented by the new U.S.-EU High Level Working Group on Jobs and Growth, then it is self-evident that the strategic vision and structure will need to serve as a global template.

As business leaders on both sides of the Atlantic, we believe the renewal and further opening of the transatlantic market is important to reenergizing our economies and the global economy. We welcome all serious efforts to that end, and offer our support in realizing that goal. But in today's global economy we cannot afford to limit our ambition to a standard bilateral free trade agreement. On its own, such an exercise is insufficient to meet the broader economic challenges we face. This transatlantic partnership should advance an agenda for jobs and growth that opens transatlantic markets while simultaneously creating a dynamic environment to promote international cooperation to open global markets. Efforts to open transatlantic markets must be tied to joint efforts to strengthen the ground rules of the international economic system and to engage the emerging growth markets in a common effort to extend the benefits of open markets to their citizens and companies.

¹ Business Roundtable, the TransAtlantic Business Dialogue and the European Round Table of Industrialists would like to acknowledge the assistance of Daniel S. Hamilton, Ph.D. in helping prepare this paper. Mr. Hamilton is the Executive Director of the Johns Hopkins University Center for Transatlantic Relations at The Paul H. Nitze School of Advanced International Studies in Washington, DC.

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Why a Transatlantic Partnership and Why Now?

Even with the rise of other economic powers, including the emerging growth markets, the United States and the EU remain the fulcrum of the world economy, each other's most important and profitable market and source of on-shored jobs, each other's most important strategic partner, and the driving force in the multilateral economic system — when we work in concert.

The notion is mistaken that we can “go it alone” in trying to convince other countries to reject protectionist trade policies, forego discriminatory industrial and regulatory policies, and provide adequate and effective intellectual property protection. This can also lead to serious missed policy opportunities for the United States and the EU to raise the bar in terms of setting international norms and standards. Strengthening transatlantic bonds is important not only in terms of how Europeans and Americans relate to each other, but how we can harness the potential of the transatlantic partnership to open markets in other countries, especially the emerging growth markets, and strengthen the international economic system. In fact, the stronger the bonds among core market economies like the United States and the EU, the better our chances of being able to include rising economic powers as responsible stakeholders within an open international economic system.

Despite its strength and potential, the U.S.-EU relationship punches below its weight and fails to capitalize on significant opportunities for our citizens, companies, workers, consumers and the multilateral economic system we, together with many other partners, helped bring to life.

Core Elements of a New and More Dynamic Transatlantic Partnership

We believe the vision for a Transatlantic Partnership (TAP) must encompass three core, mutually-reinforcing objectives. There will be a natural inclination to do what we all know best—focus quickly on the granular elements of either a standard bilateral free trade agreement or targeted sectoral trade, investment and regulatory negotiations. Achieving the core objectives will require careful and thoughtful engagement by our governments and private sectors. The U.S.-EU High Level Working Group on Jobs and Growth has created a unique opportunity for the United States and the EU to revitalize and reshape their relationship on both a bilateral and global scale; and this opportunity should not be wasted.

First and foremost, we must renew and more deeply open the 21st Century Transatlantic Market with ambitious targets. The goal of a renewed and open transatlantic market should not be just another “free trade agreement;” it should be a more ambitious and relevant new-generation accord, rooted in the distinctive nature and potential of the transatlantic partnership. In addition to being grounded in essential principles of WTO-consistency, transparency, and non-discrimination among the parties, it should advance synergistic strategies across a range of areas, from removing tariff and non-tariff barriers to transatlantic trade in industrial and agricultural goods and services, removing restrictions on job-creating investments, further opening of the public procurement market, overcoming regulatory obstacles, boosting innovation, encouraging the flow of people and talent across the transatlantic space to addressing emerging 21st Century issues like facilitating cross-border data flows which have become essential to global manufacturing and services operations.

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- *The initiatives need to focus on achieving each of the core objectives outlined in this paper to the maximum extent and as quickly as possible,*
- *The initiatives should be ambitious in eliminating trade, investment and regulatory barriers and distortions in promoting regulatory coherence and should result in commercially relevant new-generation accords.*

The framework needs to recognize that the U.S. and EU economies are so integrated that some of the few remaining barriers and distortions are deeply embedded in our respective legal, policy and political structures and their resolution may not necessarily fit effectively into the negotiating structure of a new transatlantic agreement. Such hurdles must be recognized at an early stage and addressed in a positive way to ensure that the momentum of trade liberalization is maintained. The U.S.-EU High-Level Working Group on Jobs and Growth should also integrate into its recommendations how the United States and the EU might use other mechanisms like the Transatlantic Economic Council (TEC) and how EU and United States can engage more effectively other key stakeholders, including legislators, regulators and standards setters, to move forward on issues that will require more extensive work.

Second, we must reposition our partnership so we can better engage with third countries on the economic ground rules underpinning the multilateral system. Efforts to open transatlantic markets and lift and align transatlantic standards and regulatory regimes can – and must – drive broader international cooperation. The stronger our bilateral convergence, the more seriously third countries will respond and the greater the likelihood of making tangible progress in opening markets and ensuring a rules-based approach and norms. This is an opportune moment for such an agenda. The multilateral system administered by the WTO is under challenge, especially by emerging growth markets that have benefited substantially from the system. A number of rapidly emerging countries do not share the core principles or basic structures that underpin open rules-based commerce, and are now showing no real interest in new market opening initiatives. As a result, the global economy is drifting dangerously towards the use of national discriminatory trade, regulatory and investment practices.

The United States and the EU have used the TEC process to coordinate and align policy responses to certain actions taken by third countries that discriminate against transatlantic businesses. This joint effort has proven successful and should continue on a parallel track as the U.S.-EU High-Level Working Group on Jobs and Growth focuses on its work. In this regard, the United States and the EU must pioneer more dynamic and effective forms of transatlantic collaboration that provide new opportunities to reach out to the emerging growth markets to open their markets, to lift international standards, and to strengthen multilateral rules. Given the size and scope of the transatlantic economy, standards negotiated by the United States and the EU can quickly become the benchmark for inclusive regional and ultimately global models, reducing the likelihood that others will impose more stringent, protectionist requirements or discriminatory industrial and regulatory policies for either products or services.

The goal is not to build an Atlantic Fortress, but instead to pave the way for sustainable economic growth in the global marketplace. Europeans and Americans certainly share an interest in extending prosperity through open markets. Because of this, Europeans and Americans should forge ahead, identifying points of agreement on the elimination of



traditional trade and investment barriers on regulatory norms and standards where they can, and using such agreement to engage third countries. Our chief goal should in fact be to make broader institutions work much more effectively, by seeking general agreement on goals and purpose before engaging in larger fora, thus supplementing rather than supplanting such bodies.

- *The new U.S.-EU High-Level Working Group on Jobs and Growth needs to factor into its planning the important fact that the United States and the EU have concluded many bilateral free trade agreements and are moving forward with new agreements with a special emphasis on modernizing them to tackle pressing 21st Century issues such as trans-border data flows, discriminatory industrial policies and state-owned enterprises. The United States is pursuing the Trans Pacific Partnership (TPP), while the EU is concluding a Comprehensive Economic and Trade Agreement with Canada, has ongoing negotiations with India, Mercosur and others, and may start negotiating a deal with Japan.*
- *In this growing web of economic integration, there is a glaring hole the U.S.-EU High-Level Working Group on Jobs and Growth has to recognize and develop a strategy for filling. The free trade agreements negotiated by the United States and the EU overlap considerably. Under these circumstances, the U.S.-EU High-Level Working Group needs to develop a negotiating framework that will promote alignment of these agreements and an opportunity for new countries to join in the newer arrangement.*
- *Alignment, such as reconciling different rules of origin, would enhance the economic growth and job creation benefits of the agreements by reducing transaction costs and the burden of complying with different sets of rules that companies and their workers must navigate.*
- *The alignment process could also create a dynamic environment in which it might be possible to draw some of the emerging growth countries who do not have free trade agreements with either the EU or the United States into an agreement. This dynamic appears to be working in the TPP where Malaysia and Vietnam have already become parties to the negotiations, and Japan, Canada and Mexico have now all asked to join the negotiations. Given the unfortunate deadlock in the WTO Doha negotiations, creating such a new dynamic could be a major boost to creating a stronger and broader commitment to open markets.*

Third, we must strengthen and deepen the commitment in the WTO to open markets and extend the rules-based multilateral system to include new areas of commercial opportunity. Commercial barriers must come down not only across the Atlantic, but around the world too. We remain committed to the multilateral trade liberalization agenda under the auspices of the WTO. Yet we should also explore opportunities that give us more viable options than moving the global economy ahead in lockstep or not at all.

In addition, the United States and the EU should work together and with other like-minded partners to extend the rules-based multilateral system to new areas of endeavor. Most new cooperative economic arrangements today address issues beyond traditional “at the border” barriers to trade in goods and services as originally formulated by the GATT and GATS. New guidelines are needed to apply such fundamental WTO principles as transparency,

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non-discrimination between the parties, and national treatment to international economic transactions ranging far beyond the traditional trade agenda.

Those who worry that an ambitious Transatlantic Partnership could threaten the multilateral economic system should not be concerned by this new transatlantic initiative. They should consider that the opposite may be true. In fact, how the United States and Europe deal with the interrelated challenges and opportunities posed by bilateral issues, rising powers, and overlapping networks of FTAs could go far to shape the multilateral agenda for a new age and ultimately strengthen the multilateral system, especially the WTO.

In this sense, transatlantic markets have become the laboratory for the international trading system; many transatlantic issues cannot be addressed by multilateral efforts alone. That is why the “multilateral versus transatlantic” dichotomy is a false choice. The United States and the EU should advance on both fronts simultaneously: push multilateral liberalization and press transatlantic market-opening initiatives in areas not yet covered by multilateral agreements. The alternative to this WTO+ agenda is not drift; it is growing protectionism, U.S.-EU rivalry in third markets, and the triumph of lowest-common-denominator standards for the health and safety of our people. The absence of common rules and procedures weakens the leverage of our two regions to ensure that high standards prevail.

- *The U.S.-EU High-Level Working Group on Jobs and Growth should propose ideas on how existing and future U.S. and EU agreements could be used to strengthen and deepen the WTO’s commitment to open and non-discriminatory markets.*
- *For example, consideration should be given to using these agreements to develop non-binding “best practices,” like the EU-U.S. ICT Principles, which could be promoted within the WTO to guide countries on how to create a more effective trade, investment and regulatory environment for growth and job creation.*
- *In addition, the United States and the EU should explore how they could use the TAP and TPP to promote plurilateral negotiations under the auspices of the WTO whereby non-party WTO members could dock to either or both of these agreements or work together to merge these and/or other high standard bilateral and regional trade agreements.*
- *Ultimately, the goal would be to try to use these types of initiatives to reinvigorate the overall commitment in the WTO to negotiate new multilateral agreements that are more relevant to the global economy in the 21st Century.*

Conclusion

The U.S.-EU relationship remains the foundation of the global economy and the essential underpinning of a strong, rules-based international economic order. We literally cannot afford to neglect it. Instead, we need to put our partnership to work – to open our markets; to engage the emerging growth countries; and to strengthen global rules. A 21st Century Transatlantic Partnership is within our grasp, but it is not the relationship we have today. Given the challenges we face, such a partnership is urgent. We are committed to working with U.S. and EU government leaders and others in the business community to create a new and more effective transatlantic partnership that supports economic growth and job creation.

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Business Roundtable (BRT) is an association of chief executive officers of leading U.S. companies with over \$6 trillion in annual revenues and more than 14 million employees. BRT member companies comprise nearly a third of the total value of the U.S. stock market and invest more than \$150 billion annually in research and development – nearly half of all private U.S. R&D spending. Our companies pay \$163 billion in dividends to shareholders and generate an estimated \$420 billion in sales for small and medium-sized businesses annually. BRT companies give nearly \$9 billion a year in combined charitable contributions.

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The TransAtlantic Business Dialogue (TABD) is the official dialogue between transatlantic business and U.S. Cabinet Secretaries and EU Commissioners. Participating chief executives and chairmen from leading American and European companies discuss transatlantic business issues, share recommendations for action, and engage in a dialogue with the U.S. Government and EU Commission on the future of the transatlantic economic relationship and engagement with third countries. TABD is also the official business advisor to the Transatlantic Economic Council (TEC).

Please visit www.tabd.com for more information.



The European Round Table (ERT) of Industrialists brings together around 50 chief executives and chairmen of major multinational companies of European parentage. Companies of ERT Members cover a wide range of industry sectors. Their combined turnover exceeds €1,000 billion and they employ 6.6 million people in Europe.

Please visit www.ert.eu for more information.

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Part 2: Operational Elements of an Agreement

Context

Following the announcement of the working group there has been growing interest in the shape, structure and flexibility of any instrument(s) chosen as a basis for formal engagement. TABD members have views on these matters but for the purposes of this part of the submission (and notwithstanding general comments we make at part 1) we prefer to focus on substantive issues which we believe should and can be advanced. We follow the nomenclature of Part 1 namely by dividing our comments here into three sub sections

Summary: The Transatlantic Market

Opportunities for Enhancing the Compatibility of Regulations and Standards

- Provide new mandates and processes to empower regulators and standard setters, agree a set of principles for conformity assessment cooperation
- Adopt essential equivalence approach to two to three sector pilots, agree a specific regulatory efficiency approach for phytosanitary cooperation

Reduction, Elimination, or Prevention of Barriers to Trade in Goods, Services and Investment

- Eliminate goods tariffs
- Carry substance of trade facilitation and services best DDA offers into U.S.-EU text, and then also used as a basis for global/plurilateral template leadership
- People movement: Single Transatlantic Registered Traveller Framework and enhanced visa issuance
- Investment: Build roadmap for investment principles roll out; consider model BIT
- Complete digital economy
- Ensure national treatment for all levels of public procurement, increase access
- Consult for transatlantic approach to global audit leadership
- Fast track upstream regulatory cooperation using TEC e-mobility model
- Look for U.S.-EU IPR rule convergence, e.g. patent filing grace period

Enhanced Cooperation for the Development of Rules and Principles on Global Issues of Common Concern and also for the Achievement of Shared Economic Goals relating to Third Countries - Reduction, Elimination, or Prevention of unnecessary "Behind the Border" Non-Tariff Barriers to Trade in all Categories

- Adopt innovation principles focused on third country outreach issues
- Focus IPR erosion, indigenous innovation, ICT principles roll out, data flow protectionism, internet governance, raw materials, currency manipulation,

Relationship between the High-Level Working Group and the Transatlantic Economic Council

- Strengthen and consolidate TEC

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Multilateral System

- Consider together future role for WTO on the trade dimensions of climate change, security concerns, foreign direct investment, competition policy
- Codify and align existing U.S. and EU Free Trade Agreements to boost the multilateral system
- Welcome the joint OECD/WTO initiative to improve measurement and knowledge of actual trade flows in the so called trade added value approach

Part 2 - Section 1: The Transatlantic Market

1. Opportunities for Enhancing the Compatibility of Regulations and Standards

European and American firms employ more people in each other's markets than anywhere else in the world. The 'transatlantic' work force represents some 15 million employees. There is no serious doubt that the largest single driver of potential economic value add and by extension job creation can come from the elimination of non-tariff barriers. This has been confirmed in a series of authoritative studies including those performed by the OECD² and Ecorys³.

TABD's experience with transatlantic economic cooperation is now approaching two decades. Actual progress towards regulatory convergence and a single market place that could deliver this value add has been disappointing. We have largely failed to meet a common ambition shared by consumers, business and government alike to agree on single sets of high quality norms in both regions and to withdraw conflicting national standards, across all categories of products, services and phytosanitary arrangements. On more than one occasion principles for regulatory cooperation have been agreed and then not used to assist the development of key regulatory initiatives such as REACH. The evidence suggests⁴ that even with different systems of managing risk employing typically more ex ante precaution by way of regulation in the EU and more ex post facto litigation risk in the U.S., our societies essentially price risk at the same level. Indeed it would be more surprising, if consumers on one side of the Atlantic were to be more tolerant of unsafe products than on the other. So why have we failed to date?

Arguably the single biggest contributor to failure has been our inability to 'dock' our respective regulatory and standards setting systems to common effect. On the other hand, the hundreds of contacts, contacts which take place on a daily basis between our regulators, standard setters and experts, have delivered an atmosphere of confidence and trust, a common attachment to empirical processes, and an ad hoc informality which is not to be

² See "The benefits of liberalising product markets and reducing barriers to international trade and investment: The case of the United States and the European Union", OECD Economics Department Working Paper No. 432, May 2005.

³ See "Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis", ECORYS, Berden, K.G., Francois, J., Tamminen, S., Thelle, M., Wymenga, P., December 2009

⁴ The Reality of Precaution: Comparing Risk Regulation in the United States and Europe edited by Jonathan B. Wiener, Michael D. Rogers, James K. Hammitt and Peter H. Sand RFF Press (December 2010) (quoted in Determining Compatible Regulatory Regimes between the U.S. and the EU by John F. Morrall III, 2011)



underestimated as a source for common purpose and action. Recent examples of progress include aviation sector safety regulation and organic food agreements.

However, success or failure with new initiative in this area of the HLWG's focus will define more than any other area whether we can make a decisive break with the past, and provide a more solid organisational and methodological approach on which to base our regulatory relationship.

We need genuine ambition in the planned EU-U.S. market dialogue, across tariff issues and on non-tariff barriers. This should encompass early moves to harmonise proportionate rules and regulations and standards across all sectors and activities but with a practical upstream bias for example in emerging new technology areas, such as cloud computing, nanotechnology, electric vehicles, ICT and internet services, green energy solutions, smart grids, data privacy and cyber-security. We need to do much more to give each other early notice of regulations with potential effects across the transatlantic economy, and to build in additional transparency into both of our processes, so that for example early warning obligations extend to the workings of U.S. congressional committee work programmes and to areas covered by comitology in the EU. But we also need to address legacy regulatory divergence. At a practical level, the High Level Working Group could make a significant contribution toward regulatory convergence by agreeing new common processes, approaches and mandates for regulatory agencies, sub-federal entities and member states, and standards setters.

We believe that progress here using these new tools is the 'acid test' of political ambition with this initiative. We note the creation of a United States–Canada Regulatory Cooperation Council, and applaud the content and ambition of the Joint Action Plan issued in December 2011. We see no reason why a similar level of enhanced ambition and follow through activity cannot be agreed between the U.S. and the EU as a platform for ambition, indeed with Canada on a trilateral basis where appropriate.

The objective of a far-reaching partnership agreement is to impact the governance mechanisms applicable for all the actors in regulatory process and to agree in a legal form, based where necessary on signed and separate consents to those of the primary executive branch signatories, to detailed collaboration. The likely scrutiny for this type of agreement presents an unparalleled opportunity for both the U.S. and the EU to make the case for cooperative regulatory efficiency freeing up core and scarce resources to deliver higher standards for consumers and business alike.

We agree with the views of U.S. President and the Prime Minister of Canada as being appropriate across the transatlantic economy also when they said that they took their bilateral initiative because they believe that their citizens deserve smarter, more effective approaches to regulation that enhance economic competitiveness and well-being. Moreover, an ambitious transatlantic agreement has the potential to position U.S.-EU and other like-minded regulators and standardisation bodies as a workshop for the world. We would like to see the Transatlantic Economic Council strengthened to administer the use of any new agreed U.S.-EU capability.



We make a number of specific suggestions here:

One, do more to bring regulatory actors to the table with mandates, do more to facilitate standards setter cooperation, and do more to deliver conformity assessment process market transparency and equivalence. Two, implement an essential equivalence regime for convergence and apply on a pilot base for two or three key sectors and also use it in the difficult area of phytosanitary market access.

Do more to bring regulatory actors to the table with mandates, do more to facilitate standards setter cooperation, and do more to deliver conformity assessment process market transparency and equivalence.

The universe of actors participating in regulatory and standard setting processes as authorities is well known and stretches from federal, sub-federal, regional and national competencies, and public and private sector configurations of experts and standards setters. We have confidence that each of these actors delivers a high quality service to satisfy their respective mandates (and expressly we note our confidence in private sector standard setting capacity), but we also know that these mandates are limited and do not permit the kind of international cooperation sufficient to deliver the progress we need. Additional mandates need to be secured and new authorities conferred, to turn ad hoc cooperation into common, project based configurations, all the while maintaining the sovereignty of each of the participants and their participations by combinations of agreed review, reauthorisation, and safeguard processes and determinations.

Differential conformity assessment processes are often a key obstacle to business with national treatment and opacity of private sector regulator dynamics contributing to create barriers which are core drivers of duplicative testing and cost. Yet we apply conformity assessment processes for exactly the same reason. We call for a set of principles to be developed amongst conformity assessment process participants, without formalistic pre-condition for participation, to cover, inter alia, the expected basis for trust and confidence (e.g. common statement of purpose with conformity assessment), equivalence, market information and transparency.

Implement an essential equivalence regime for convergence and apply on a pilot base for two or three key sectors and also use it in the difficult area of phytosanitary market access.

Enhanced machinery is already available to provide a structure for deeper regulatory collaboration, for example by using sophisticated equivalence determination mechanisms that provide both for default recognition of norms based on intrinsic ex ante confidence in each other's processes, but also for the use of strong evidential methodologies, strong political and effective review mechanisms, all offering great opportunities to save on respective bureaucracy costs. The aim should be functional equivalence rather than harmonisation per se, with a burden of proof in favour of equivalence (i.e. for those resisting to disprove).

We believe that some key economic sectors are open minded to the use of the essential equivalence mechanism as a way of driving sectoral regulatory harmonisation, and two or three pilot schemes should be adopted for action. Sectoral participation in pilots should be secured in the autumn of 2012, with a process also agreed to deliver roadmaps and milestones for 2013. In parallel, joint analysis should be made of other key value sectors as

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to the regulatory landscape needing to be the subject for equivalence, and informal outreach conducted to seek sectoral commitment to projects, which should only be launched based on transatlantic demand. The forum to be used should, we believe, be an enhanced TEC plus HLRCF mechanism which combines bottom up technical analysis, feasibility and accountability, with top down political leadership to drive accountability and momentum.

We strongly hold that product quality and safety is of high importance. Therefore we support measures to strengthen cooperation on market surveillance, such as coordinated methods for risk assessment; information exchange about methods to control product safety; multinational cooperation and information exchange about unsafe products, such as establishment of appropriate electronic systems; agreement on requirements on traceability of products; work to encourage efficiency of sanctions against unsafe products. Additionally, and given that past failures with regulatory cooperation have implicated not just product and services markets but agricultural trade, one important area where this approach could be taken would be in the SPS area: TEC should be convening the signatory and other actors to the 1999 Veterinary Equivalence Agreement to deliver:

A programme for structured exchanges of information on global supply chain 'phyto assurance' issues with a target to save information gathering costs in the respective bureaucracies; a programme of synchronised and/or joint common third country phyto assurance outreach and dialogues with third countries, again with an explicit cost saving driver. (See the "win-win" EU/U.S./China toy safety outreach and dialogue process); agree top line shared outcome objectives for what respective systems are trying to deliver (e.g. safety (rather than precaution or risk assessment per se) and agree that there is a requisite but reviewable level of trust in each other's regulatory process, scrutiny and actors as a means to deliver the objectives; because of this trust agree an immediate and broad as opposed to specific system equivalence recognition with phased and transitional access concessions - as quotas - delivering a political and equal number of new access opportunities (in effect the scale of ambition). Assert an objective of 100% liberalisation and a ticking clock of ratcheted up new quota opportunities.

Tie this all to separate and collective annual reviews of effectiveness of phyto cooperation, including agreed ex post facto review science and evidence methodology (e.g. manifest not potential risks identified, drawing the line at agreed but observed (as opposed to theoretical) precursor signals e.g. for toxicity/carcinogenicity etc.) for access concession quota fillers, but also focusing on effectiveness gains in terms of costs saved through cooperation.

Generally, "over"-regulation has to be prevented. Governments should agree on essential regulatory requirements. Technical details and standards have to be developed by all stakeholders. Contradictory legislation and regulation has to be avoided: therefore, governments should strive for a harmonized legislative framework referring to international standards from – for example - IEC, ISO, ITU. Third-party certification should be limited by international acceptance of the supplier's declaration (SDoC). New regulatory measures particularly in these difficult times - whether of financial services, data protection or the like - must pass tests of real consumer need and real enhancement of jobs and growth, within a pro-competitiveness framework. Regulation must also be seen holistically (for cumulative impact) and not through narrowly based impact assessments.

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2. Reduction, Elimination, or Prevention of Barriers to Trade in Goods, Services and Investment

TABD member companies support the elimination of tariffs on all products between the United States and Europe. Numerous recent economic studies⁵ have quantified the significant economic gains to be had from tariff elimination. In the current economic climate, these tariffs, though relatively low, and not significant in impeding transatlantic trade and can represent a significant tax on the competitiveness of transatlantic firms. The U.S. and EU should agree to eliminate all tariffs between us and pave the way for more countries to join this effort, opening the possibility of even greater benefits to our firms.

Trade in Goods:

Building on the success of the recent Mutual Recognition Agreement between the secure trade processes, AEO and C-TPAT, we urge the U.S. and EU to aggressively implement this agreement and minimize inefficiencies in our security regimes. The U.S. and EU should modernize the processes used by our respective customs services, in particular in the area of common electronic data filing systems for customs purposes. Further, we suggest that there may be elements of the draft Trade Facilitation Agreement that was not concluded as part of the Doha Round that may be applicable to the transatlantic market. Indeed, U.S.-EU bilateral agreement in this relatively non-controversial area might encourage other countries to adopt similar policies and have a stimulative effect on improving trade facilitation measures around the world.

We continue to be concerned about the introduction of the requirement under U.S. law that 100% of the cargo in foreign ports destined for the U.S. must be scanned. We believe that there are currently insufficient resources, both in terms of technological equipment and manpower, to scan all cargo entering the United States. We welcome efforts by the Secretary of Homeland Security to obtain a delay in the implementation of this law, but we would prefer repeal of the legislation and replacement with a “win-win” solution based on technology options and parallel use of a risk-based system for cargo screening.

Trade facilitation and trade in services:

TABD supports expanded trade in services and aligns itself with the effort undertaken by the trade facilitation sectors and the coalition of service industries and its affiliates to define and carry forward an ambitious strengthening of the GATS and we defer generally to their detailed perspectives. We would like to see the substance of trade facilitation and services best DDA offers carried into U.S.-EU text, and then also used as a basis for global/plurilateral template leadership.

The service sectors account for around 70 per cent of economic activity in most developed economies, and an ever increasing share of activity in low and middle income countries.

⁵ See e.g. “A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods”, ECIPE, Fredrik Erixon and Matthias Bauer, April 2010

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U.S. and EU economies are underpinned by a highly competitive services sector (with global comparative advantage in high-skilled services like engineering, law, finance and others). Increased liberalisation of bilateral and global service markets offers significant economic opportunities.

Consumers will gain better choice, value and quality from the effect of greater competition and businesses will become more efficient in response to competitive pressures, which boost overall productivity, exports and prosperity.

Across all modes of service delivery, cross border supply, consumption abroad, commercial presence, and presence of natural persons we need services to amplify positive trade and economic effects achieved in agriculture, industrial products. Services are more and more the substantial value-add for manufacturing. Technologies such as the internet and electronic delivery, both of which utilise cross-border data flows have been key to service sector growth to date. In order to sustain this growth, which in the current economic climate is more important than ever, electronic delivery and cross-border data flows must be further facilitated. We urge that across all modes of service delivery, steps to develop a transatlantic single services market are defined and developed as a further source of global services competitiveness.

Movement of People:

Restoring American and European economic growth depends not only on the secure movement of goods, but also on making possible the fastest and freest movement of people, with due respect to national security. TABD believes that existing technologies should be harnessed to expand and improve the flow of travellers. We continue to support the establishment of a U.S.-EU business-government task force to investigate the merits of a Single Transatlantic Registered Traveller Framework. Another key element affecting companies' abilities to operate efficiently, remain competitive and become ever more innovative rests on their ability to recruit the best and brightest minds, transfer employees regardless of nationality, and develop business and investment partners, suppliers and customers across national borders. Consequently, a 21st century transatlantic jobs and growth initiative must address current U.S. visa policies and on-going uncertainty with the visa issuance process.

Investment:

We support the broad consensus of transatlantic business associations for action to liberalize investment and capital flows between the U.S. and the EU and aligning investment principles and rules. The adoption of a model bilateral investment treaty (BIT) should be given serious consideration and priority. We should address remaining bilateral barriers to investment, such as in the aviation and telecom sectors. We need to reduce obstacles to incoming Foreign Direct Investment in our economies, and work jointly to reach ambitious BITs with third countries.

As to third country relations on investment, we welcome the recent Statement of the European Union and the United States on Shared Principles for International Investment which will allow both sides to work toward a joint approach on investment policies vis-à-vis third countries and engage multilaterally and bilaterally to facilitate market access and remove trade barriers in foreign countries.

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At the G20 level, the U.S. and EU should provide leadership to promote on open investment policies at the international level. The OECD principles and guidelines on freedom of investments provide a solid basis on which to build. In pursuing these interests, the U.S. and the EU should make efficient use of the U.S.-EU Investment Dialogue.

For additional information, please see the TABD Report to the 2011 U.S.-EU Summit Leaders, “Transatlantic Economic Leadership for Growth and Innovation” (Annex 1).

We welcome the Statement of the European Union and the United States on Shared Principles for International Investment published in April 2012, and in particular the commitment to the principle of the level playing field, its applicability to state owned enterprises, and to cooperation in the area of ‘competitive neutrality’ including in relation to work undertaken at the Organisation for Economic Cooperation and Development. The substance for this cooperation should be the elaboration of a set of expectations and disciplines and the development of a forum (within or beyond the role of an existing multilateral or global political institution or organisation with standing to encourage level playing field behaviour.

Digital Economy:

We need forensic focus on completing the digital EU Single Market and the digital market within the USA. This covers continued disparities on EU wholesale network access or U.S. special access terms as well as facilitating e-commerce services and ensuring a fair deal across the EU and the USA for public procurement.

Public Procurement:

The agreement should ensure a significantly more open public procurement transatlantic market, allowing fair competition, going beyond GPA commitments in terms of coverage and below existing thresholds. National treatment at all procurement levels (federal, state and municipality) has to be ensured preventing any discrimination caused by Buy-National provisions. Public procurement opening should apply in all product and services markets, subject to limited national security consideration and review.

Audit:

TABD welcomes the debate on the future role of audit launched in the October 2010 European Commission Green Paper. Audit quality and independence are secured by strong corporate governance frameworks that include independent audit committees, a system of independent regulation of the audit profession and international ethical standards. Several of the approaches in the European Commission’s Green Paper, such as mandatory firm rotation and joint audits, would not address the root causes of concentration and are likely to impair audit quality and increase the cost to companies, especially if implemented in isolation.

Transatlantic coherence and agreement over audit quality and auditor independence are important. These are vital to the public interest and to the efficient functioning of transatlantic capital markets. We support transatlantic consultation to ensure consistency of approaches in order to enhance transparency, independence, audit quality, strong corporate governance and competition.

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We support a flexible audit system and oppose a monopoly position of any audit firm. The objective of the HLWG should be to foster transparency, especially concerning content, audit process, involved audit firms. Measures should be taken to align the different systems. The objective should be the mutual recognition of the product marks (elaborated according to the U.S./EU system), without the need to conduct additional audits according to the other system. An interim solution is the mutual recognition of test reports of independent audit firms. Fully implement international systems of accreditation (IAF, ILAC) and of certification (IECEE, IECEX, IECQ).

Upstream sectors and interests:

TABD seeks genuine ambition in the work of the High Level Working Group to encompass early steps to harmonise reasonable rules and regulations, standards and interoperability in emerging new technology areas, such as cloud computing, nanotechnology, electric vehicles, ICT and internet services, green energy solutions, smart grids, healthcare IT, and data privacy and security. Such efforts should be linked to consistent progress on combating the erosion of Intellectual Property Rights. Cooperation in the area of green energy solutions or electric vehicles are examples where stakeholders from both regions were involved, and merit future full support.

The High Level Working Group may wish to note that the effort over the past year to develop a transatlantic standard for electric vehicles is an example of procedural best practice that involved all relevant stakeholders and achieved cooperation between industry, government standards setters and regulators. The initiated joint U.S. / CEN/CENELEC/ETSI efforts in the field of IT-security and Cyber Security merit full support and can be considered as another promising example of mutual future activities. The increasing importance of software innovation to transatlantic competitiveness requires greater attention and alignment towards less restrictive examination practice at patent offices and greater understanding by courts of the need to consistently protect and enforce IP rights for these important technologies.

Intellectual Property Rights (IPR):

The breakthroughs of last year in U.S. patent law provided an unparalleled opportunity for further international coordination of laws that accommodate the realities of research communities and innovative industries across the globe. Adopting a 12-month period of non-prejudicial disclosures (often referred to as a “grace period”) is an important step in achieving a standardized global patent system that spurs job creation and market growth through innovative products and services. An aligned transatlantic stance would provide a solid basis for broader rollout of a global safety-net against the inadvertent loss of patent protection stemming from accepted research and development activities. It would simplify the patent system for all applicants and inventors. Too often the absence of parallel international protection for an inventor who has disclosed his invention has caused that inventor to unnecessarily and inadvertently forfeit their patent rights in foreign jurisdictions.

This decades-old dilemma has long been understood, as has the solution: an internationally accepted system for recognizing an inventor’s disclosure as a non-prejudicial disclosure if made within a 12 month window. In fact, every harmonization text over the last several decades has included non-prejudicial disclosure as a basic tenet. The time is now for transatlantic agreement and initial adoption that can be turned into widespread international

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commitment to making the global patent system simpler, more certain and user-friendly for all innovators.

IPRs are at the heart of the EU-U.S. innovation model. A few IP-specific topics in particular deserve consideration by the High-Level Working Group:

There is a need for transatlantic alignment of legislation, civil and criminal remedies available for cyber theft of trade secrets -- the only major form of IP not governed primarily at the federal (U.S.) or community (EU) level. Trade secret protection now falls to an unsatisfactory patchwork of state and national laws; a new transatlantic agreement must address convergence of remedies and prosecution powers while encouraging national trade secret legislation consistent with global IP protection regimes. As transatlantic enterprises deploy systems aimed at protecting trade secrets stored in digital format, legislation and policy aimed at preventing the circumvention of these systems should be considered.

In addition to improving domestic legislation, the U.S. and EU must also look to align trade secrets diplomacy toward other countries since cyber theft does originate outside the U.S. and EU. Transatlantic diplomacy should take the form of a broad collaborative effort on the part of the U.S. and EU to encourage WTO members to protect against trade secret misappropriation, with reference to TRIPS Article 39.2 and Section III.

Part 2 - Section 2:

Enhanced Cooperation for the Development of Rules and Principles on Global Issues of Common Concern and also for the Achievement of Shared Economic Goals relating to Third Countries - Reduction, Elimination, or Prevention of unnecessary “Behind the Border” Non-Tariff Barriers to Trade in all Categories

Much of the world’s innovation still takes place within and between the U.S. and the EU. We have an abundance of existing innovation assets, often in different and complimentary areas such as ICT, energy efficient technologies, aviation and automotive manufacturing. However, to remain competitive, the transatlantic economy must work together to develop and implement appropriate policies that support and accelerate innovation, setting an example for other countries to follow. Where we have agreement on joint positions at the level of principles in key business and policy areas - as was done in the ICT sector in 2011 - for joint EU.-U.S. advocacy with third nations (e.g. BRICS and Japan) in trade or other global governance fora. These need not be treaty or MRA-based, but rather could be joint agreements to implement and espouse common principles. With and for this we need to strengthen enforcement and implementation resource (and if possible, powers), be it EU27 Single Market, or transatlantic, or at WTO level. Those committing to do things must be called to account. And those implementing must not hide behind very different judicial systems, appellate approaches and/or regulatory proceedings to delay or to obfuscate.

We commend to you TABD’s 10 Innovation Policy Principles (contained in Annex 2), which lay a foundation for American and European commercial interests to collaborate and create a transatlantic innovation economy. The principles seek to describe ‘boundary conditions’ necessary for innovation to flourish and are a prelude to globally-focused cooperation on investment, IPR, indigenous innovation policy, state-owned enterprise behaviour, ICT, raw

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materials and the adoption by key emerging economies of policies that are supportive of balanced and sustainable global economic growth.

We are concerned about seven issues arising from global application of the boundary conditions for innovation: IPR erosion; indigenous innovation; the roll out of agreed U.S.-EU ICT principles; data flow protectionism; internet governance; access to raw materials; and currency manipulation. We believe agreement on joint positions at the level of principles in key business and policy areas - as was done in the ICT sector in 2011 - for joint U.S.-EU advocacy with third countries (e.g. BRICS and Japan) in trade or other global governance fora. These need not be treaty based or even MRAs but could be joint agreements to implement common principles on topics such as raw material availability and competitive neutrality.

1. IPR Erosion

The existing framework of intellectual property protection is under serious threat. Well-funded NGOs and major emerging economies continue to advocate policies that would weaken IPR, citing climate change, development, or equity concerns – with little or no evidence or economic data to support their proposals. Such policies would destroy the value of the IP assets that U.S. and European enterprises have built and continue to build as we commercialize our R&D, creating significant harm to our competitive positions in fast-growing markets around the world. They would further slow the much-needed globalization of R&D into developing markets and the integration of these fast growing economies into global supply chains.

Separate from the above patent-related developments, some governments effectively require U.S. and European innovators to disclose or license trade secrets as a condition of market access. Relevant measures include government-backed testing or certification regimes that require companies to disclose confidential information without appropriate protection mechanisms for the information, and government-led compulsory licensing to force disclosure to domestic competitors. The entire economic value of a trade secret stems from the competitive advantage conferred by the confidential nature of the information. Thus, any forced or otherwise compelled disclosure irreparably destroys a trade secret's entire value – in addition to being inconsistent with global IPR rules.

Finally government policies that reduce manufacturers' ability to distinguish their products from those of their competitors through branding and packaging can be mentioned in this context as well. Even in areas where valid health or environmental concerns exist, they create a dangerous precedent with far-reaching implications for the use of trademarks and other forms of IPR around the world. Such actions open a Pandora's Box of unintended consequences which the business community finds most troubling. A related danger, which we believe should not be underestimated, is that the precedent would then be emulated by other governments, for other products, thereby undermining the framework of IP protection that underpins investment and innovation. Narrowly tailored policy alternatives should be considered instead and an evidence-based approach pursued.

2. Indigenous Innovation

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More than three dozen countries have implemented national innovation strategies to increase their competitiveness and generate more economic growth. However, the nature of those strategies differs widely among governments and the differences between innovation policy and industrial policy can be murky at best. The trend in the emerging countries is to incentivize strategic industries and technologies, and in some cases even favour domestic firms and products with targeted market preferences.

The U.S. and Europe need to continue to closely coordinate their approaches to influencing third country indigenous innovation policies. This coordinated transatlantic approach should be intensified and broadened to apply to all BRICs – especially India, where there is strong evidence that it, too, is adopting prolific indigenous innovation.

3. ICT Principles and their possible use as a wider exemplar

We welcome the U.S.-EU agreement on a set of trade-related principles for ICT services. The challenge now is to jointly promote the adoption of these principles by other countries, and we offer three ideas for consideration: First, implementation in the context of the WTO and with priority countries; second by seeking similar sets of principles in other related areas (such as trans-border data flows, data privacy and data security, cloud computing and perhaps also cyber-security norms); and third by ensuring that the U.S. and EU fully respect the ICT principles themselves as evidence of exemplary best practice.

4. Data Flow Protectionism

Gaps in global rules and inadequate enforcement of existing commitments are contributing to a growing threat of digital protectionism around the world. The U.S. and the EU should drive the development and adoption of transparent and high quality international rules, norms and best practices on cross border flows of digital data and technologies while also holding countries to existing international obligations.

We must ensure common cause as far as feasible by the U.S. and EU on data privacy and data protection and data security and transborder data flow law and regulation. Current work in Brussels and Washington seems to be heading in non-convergent directions with prescription by the EU and a more overtly pro-innovation agenda in the USA. A sensible way forward must rapidly be reached to help drive the new high-tech internet and cloud and ICT services underpinning all sectors and to help activity in third markets. Over detailed regulation would be an error. In the EU case, we will be keen to see inter alia: (a) simplification where sensible against overall public policy goals, not least around the practicalities of the 'right to be forgotten', the idea of 'free' data subject access requests which is a recipe for abuse and undue cost, and the disproportionate proposed level of fines at anti-trust levels; (b) a degree of consistency with global norms e.g. approaches developing in USA and India, as data processing and transborder data flows are quintessentially global and of importance re internet and related freedoms; and (c) a balanced approach taking into account the need to encourage innovation e.g. in cloud services. At present there looks to be an imbalance between legitimate privacy concerns and the need to drive jobs and growth and competitiveness.

5. Internet Governance



It appears that the UN body, the International Telecommunications Union (ITU), may over the next year or two seek through treaty-based regulations or changes to deliver substantive policy or regulatory oversight of the internet including potentially technical, security, content and functional aspects. TABD members believe that the current private sector approach stewarded by ICANN with multi-stakeholder engagement and influence through the Internet Governance Forum (IGF) has helped the hugely important transatlantic and global development of the internet for business growth and social welfare. TABD urges the U.S. and EU to work with other nations, as a matter of priority, to ensure that the current arrangements are maintained and - where necessary - enhanced.

6. Raw Materials

We urge the High-Level Working Group to address the issue of raw material security as a key area for transatlantic cooperation, agreement and joint advocacy. We welcome the positive outcome of EU-U.S. cooperation in recent raw material access cases and pledge for continuous deep and comprehensive cooperation across the Atlantic. We encourage an EU-U.S. trade agreement beyond WTO standards that will establish a positive precedent through a 'raw materials chapter' within a possible FTA. We further urge comprehensive assessment of the opportunities for growth and job creation, beginning in the short /medium term focused on the urban mines available in the U.S. and EU. Additional actions to be considered in 2012 include, in the field of electronics scrap under the EU WEEE and the U.S. National Strategy for Electronics Stewardship. The goal should be to first define "market based instruments" and "standards for recycling" in order to foster a climate of investment and job creation. This could then form the basis for further implementation on broader application (other waste) and larger geographical scale (Japan, China, etc.).

7. Currency Manipulation

A key area of enhanced cooperation we urge the High-Level Working Group to address is the systemic trade distorting measure of currency manipulation practiced by our trade partners to gain an unfair competitive advantage. Currency is the medium in which trade occurs and exchange rates can be as important a determinant of trade outcomes as the qualities of the goods and services themselves. Currency manipulation is a policy used by governments and central banks of some of the largest trading partners of the United States and the European Union (i.e., Japan and Korea) to artificially set the value of their currency to gain an unfair competitive advantage for their exports and to simultaneously discourage imports. This action comes at the expense of taking jobs and siphoning economic growth away from our respective markets. The United States and the European Union have an opportunity to drive and demand strengthened disciplines against currency manipulation both within a multilateral (WTO) and a bilateral context, vis-à-vis third country trade or FTA partners. The U.S. and the EU should enhance cooperation on development of rules and principles to address the systemic trade distorting measures of currency manipulation practiced by some of our trade partners to gain an unfair trade advantage. Currency manipulation siphons away job creation and economic growth from our respective markets and impacts negatively our competitiveness in third markets. It should be our shared economic goal to create a level playing field also as it relates to third countries.

Relationship between the High-Level Working Group and the Transatlantic Economic Council

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Finally, we would like to underscore the importance of continuing the momentum of the TEC process in parallel with the work of the High-Level Working Group. One is not a substitute for the other and, indeed, each can reinforce the efforts of the other. We urge the U.S. and EU to use the opportunity afforded by this renewed attention on the transatlantic market to strengthen the TEC process, in particular with outreach to regulatory agencies and key legislators. One element for consideration is to fashion a dialogue where regulators, agencies and legislators can act together to liberalize and strengthen transatlantic economic relations, create jobs and expand growth.

In particular, we urge for a renewed joint determination to address three critical policy areas that have an impact on our business environment: regulatory convergence (especially in financial markets); international standards (including accounting standards) and investment in innovation and infrastructure

Part 2 - Section 3: Multilateral System

Commercial barriers must come down not only across the Atlantic. We remain committed to the multilateral trade liberalization agenda under the auspices of the WTO. We have proposed transatlantic market-opening initiatives in trade, green technologies and services that could be extended to WTO members who are willing to take up the same responsibilities and obligations covered by such agreements. In addition, the U.S. and the EU should work together and with other like-minded partners to extend the rules-based multilateral system to new areas of endeavour.

Most new cooperative economic arrangements today address issues beyond traditional 'at the border' barriers to trade in goods and services as originally formulated by the GATT. New guidelines are needed to apply such fundamental WTO principles as transparency, non-discrimination and national treatment to international economic transactions ranging far beyond the traditional trade agenda. Current WTO negotiations, for instance, do not fully address the trade dimensions of such issues as climate change, security concerns, foreign direct investment, or competition policy.

In addition, the U.S. and the EU have each concluded scores of bilateral free trade agreements, but have done little to use them to tackle pressing 21st century issues such as intellectual property, services, discriminatory industrial policies or state-owned enterprises, or to strengthen the normative underpinnings of the multilateral system.

With this in mind, the U.S. and EU should codify and align existing U.S. and EU Free Trade Agreements to boost the multilateral system; facilitate closer economic integration among regional initiatives; establish a Green Code of Multilateral Trade Disciplines; lead on global competition policy.

The globalisation of industrial production chains and the measurement of trade in value-added terms show how interconnectedness boosts trade. TABD welcomes the joint OECD/WTO initiative to improve measurement and knowledge of actual trade flows that will help understand the interdependencies of today's globalised economies. Even products manufactured in China have significant value-add in the EU and/or U.S. The notion of the country of origin in an interconnected world is shifting. The need for transparency, rules

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administration and enforcement can only increase and in the value chain world, the need is to strengthen the multilateral rules based system. The U.S. and the EU should base bilateral cooperation on an overall aim to deliver an open global trading system, within which the bilateral market offers the strongest template for openness.

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**Transatlantic Economic Leadership
for Growth and Innovation**

**TABD Recommendations to the EU-U.S. Summit
2011-2012**

November 2011



TABD Recommendations to the EU-U.S. Summit 2011-2012

November 2011

Summary Recommendations

Debt, Investment Policy and Financial Markets

- Transatlantic debt crisis – Develop an integrated transatlantic medium and long-term strategy to bring debt and deficits back to sustainable levels, to meet the budgetary challenges of demographic change and ensure sufficient room for fiscal manoeuvre in the future.
- Financial market reform – Ensure that capital and liquidity standards are applied uniformly across the G20 and enforced consistently; oppose the introduction of a financial transaction tax; deliver on commitments to avoid arbitrage for example in derivatives markets by fast tracking transatlantic equivalence discussions, work for a single set of high-quality global accounting standards.
- Investment – Adopt industry coalition proposal for 2012 statement on open investment and principles and build a work plan to turn the statement to tangible effect; address remaining bilateral barriers by choosing one or more sectoral examples for additional high level political oversight and monitoring.

Trade and Global Engagement

- Trade – Agree to launch a fast track reflection for an ambitious Transatlantic Economic and Trade Pact; institute a regular process for political review, without preconditions, of the utility and status of live or latent bilateral disputes.
- Global engagement – Agree on a strategic and allied approach to engaging with other emerging economic powers to ensure that global regulatory frameworks, standards, the IP regime, and legal enforcement mechanisms are in place.

Transatlantic Innovation Economy and Marketplace

- Barrier Free Marketplace – Make commitment to jobs and growth creation the centrepiece of transatlantic economic partnership with emphasis on barrier elimination, upstream regulatory cooperation; adopt TABD's 10 Innovation Policy Principles as a core reference tool against which progress can be measured; endorse the industry coalition work plan for e-vehicles, create a task force to recommend a new transatlantic standards setting business model; initiate a regulatory equivalence pilot based on the 'essential equivalence' mechanism developed by the U.S. Chamber of Commerce; establish a U.S.-EU business-government task force to investigate the merits of a Single Transatlantic Registered Traveller Framework.
- Raw materials – Adopt a TABD developed roadmap for transatlantic raw materials collaboration including cooperation on trade policy and disputes, action on R&D and on information sharing, recycling and waste shipment.
- Green growth – Use the trade system in non-discriminatory ways to promote clean technology.
- Nanotechnology – Build a roadmap towards the 2014 EU nanotechnology definition review so as to integrate different perspectives in the U.S. and the EU.

Exporting Innovation

- IPR erosion – Agree to deliver a set of principles setting out U.S.- EU core beliefs on the crucial role of IPR and commit to pursuing them globally; ensure that TRIPS Article 64.2 moratorium lapses at the December 2012 WTO Ministerial.
- Indigenous innovation – Intensify collaboration on critical market access issues to apply to all emerging economies.
- ICT – Jointly develop a roadmap setting out how the agreed ICT principles will be implemented and drive the development and adoption of transparent and high-quality international rules, norms and best practices on cross-border flows of digital data and technologies.



TABD Recommendations to the EU-U.S. Summit

2011-2012

November 2011

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Introduction

As Chief Executives of some of the leading American and European companies, we are convinced that if we play to our considerable strengths rather than succumb to defensive pessimism, getting back on track will be easier than it might appear. Markets work and we need 'more market' not less. Our transatlantic innovation economy has legacy and potential assets to secure our position as an enduring workshop for the world. While not losing sight of the need to dismantle bilateral barriers, outward looking cooperation, for example, on investment policy, can help deliver truly open global markets. But this in itself is not sufficient; rather it is a step towards a transatlantic single market that can deliver between 1 and 3% GDP gains to each of our respective economies. The financial crisis and its fallout have had a serious impact on the capacity of governments in the U.S. and the EU to shape policies for the future. Public funding challenges of the future, including education, healthcare, pensions, infrastructures and others, will be by far harder to meet in the coming years. While the fiscal room for public investments has been thus limited, our economies also face the challenge of preventing stagnation and of reigniting economic dynamism.

We propose a series of priority actions around innovation cooperation, investment policy and financial markets with a view to stimulating private sector activity, reducing administrative burdens, and resolving obstacles to trade and investment with third countries, especially the emerging economies. Before getting into the specifics, however, we offer these observations:

Observation about the Financial Crisis

We remain concerned about the fiscal situation and financial stability in the U.S. and the EU, and encourage you in your commitment to closer cooperation on key economic policies, and to strengthen the transatlantic leadership on these issues in the G20. In particular, we are concerned about three macroeconomic policy areas that have a critical impact on our operating environment: debt, financial market reform and accounting standards.

The public debt situation in the U.S. and in certain member states of the EU is a central concern of ours, and we urge you to continue your efforts at reducing debt levels and public deficits. Beyond the recent emergency actions, the U.S. and the EU urgently need a medium and long-term strategy to bring debt and deficits back to sustainable levels, to meet the budgetary challenges of demographic change and ensure sufficient room for fiscal manoeuvre in the future. Strategies towards fiscal sustainability should be closely coordinated at transatlantic, but also at G20 level, in order to minimise the cumulative inflationary impact and to promote maximum effectiveness of the measures taken.

International financial market reform has made laudable progress on both sides of the Atlantic. Going forward, we suggest proceeding with caution keeping in mind potential competitive distortions and the cumulative burden of current prudential requirements which pose the risk of complicating the fragile condition in our real economies. In particular, we are concerned that capital and liquidity standards be applied uniformly and globally and enforced consistently. In addition, we highlight our concern over the growth of certain non-bank financial activities in the aftermath of the financial crisis, i.e. the so-called shadow banking system. Finally, for

accounting standards we believe that IFRS, as promulgated by the International Accounting Standards Board (IASB), should be adopted by all G20 countries, and others.

The Need to Reflect on Future Trade and Economic Leadership

As business leaders, we know that the United States and Europe remain the heart of the world economy, each other's most important market for goods, services, capital and ideas, and each other's most important strategic partner. We also know that substantial gains would result to both of our economies – and to the global economy – from a transatlantic initiative to boost the flow of goods, services, capital and knowledge between the U.S. and Europe. We call on you, at the U.S.-EU Summit meeting on November 28, 2011 to open a reflection on how to stimulate the transatlantic partnership to meet 21st century challenges for growth and innovation. We have called this a Transatlantic Economic and Trade Pact.

Key elements of the Transatlantic Economic and Trade Pact should include regulatory cooperation, tariff elimination, high caliber investment provisions, further liberalization of services trade, government procurement opportunities, and expanded intellectual property protection. It can also seek to address new generation opportunities for example of using the tariff system to encourage sustainable agriculture and green growth.

In the transatlantic context U.S.-EU cooperation on trade matters often suffers when tools of trade enforcement are hijacked by parochial interests, especially when such tools are used aggressively as weapons in commercial competition. A regular review, without preconditions, of the utility and status of live or latent disputes, and equally of attempts to settle trade differences that arise between the U.S. and the EU, should be encouraged by executive leadership rather than leaving trade disputes to be litigated in isolation from higher level considerations.

Global Engagement

Collaborative leadership from the U.S. and the EU is needed to sustain and leverage our industrial and service economy base to meet the needs of consumers in emerging markets. It is not sufficient for our successful transatlantic innovation policy to encourage deployment in our own market. We need to carry our innovation capacity to the emerging economic giants. This means we need market access and we must ensure that global regulatory frameworks, standards, the IP regime, and legal enforcement mechanisms are designed so that all markets are open for business and not distorted towards national protection. In the short term, we advocate cementing transatlantic economic ties and reaching agreement on a strategic and allied approach to engaging with other emerging economic powers.

Below we set out our recommendations for 2011-2012. We look forward to working with you to implement these recommendations to boost trade and investment across the Atlantic and around the world.

1. The Path Back to Sustainable Growth

A Barrier Free Transatlantic Market

We are convinced that a vibrant environment that supports innovation across the Atlantic is a key source of strength for our companies and our economies as we look to compete in the global economy. Indeed, much of the world's innovation still takes place within and between the U.S. and the EU. We have an abundance of existing innovation assets, often in different and complimentary areas such as ICT, energy efficient technologies and automotive manufacturing. However, to remain competitive, the transatlantic economy must work together to develop and implement appropriate policies that support and accelerate innovation, setting an example for other countries to follow.

Our current innovation asset base will not sustain us beyond the medium term. For the next decades we need a significant upgrade. Only through joint transatlantic leadership can we effectively integrate developing and emerging market countries, which are increasingly contributing to innovation policy and global economic growth.

TABD Innovation Policy Principles

We commend to you TABD's 10 Innovation Policy Principles (Annex 1), which lay a new foundation for American and European commercial interests to collaborate and create a transatlantic innovation economy. The principles seek to describe 'boundary conditions' necessary for innovation to flourish, from a business community starting place, but also in a pragmatic and practical way. We believe government endorsement of these principles will help to accelerate the path towards a transatlantic innovation economy by strengthening business collaboration for innovation across the Atlantic, reinforcing economic recovery, creating jobs improving the competitive prospects of American and European firms. This in turn secures the foundations for competing in the global economy. The Principles are a prelude to globally focused cooperation on investment, IPR, indigenous innovation policy, state owned enterprise behaviour, ICT, raw materials and the adoption by key emerging economies of policies that are supportive of balanced and sustainable global economic growth.

Tackling the Standards System Bottleneck

TABD leads a business coalition focused on achieving transatlantic standards for e-vehicles and smart grids. The range of activity encompasses standardization activities for vehicle charging and communication, streamlined transportation rules for LI batteries, performance of energy storage systems, IT security and data protection, and battery recycling practices and technologies. The smart grid work is focused on three core elements: standards co-operation, smart projects and funding (for example a twin city project), and policy/R&D cooperation. We are grateful for the broad based support and engagement of technical and policy officials in the U.S. Government and European Commission on this important work.

Pressure needs to be kept up in 2012, and we recommend to the Summit Leaders that the TEC take the following actions:

- On electric vehicles: Endorse the industry coalition work plan, commit to maintaining political pressure on government, regulatory agencies and standard setting communities. Support a TABD-convened workshop for e-vehicles to examine new standards setting business models.
- On Batteries: Consideration should be given to improving bilateral battery transportation authorization processes, based on a consensus industry position and agency safety assessments.
- On Smart Grids: Encourage standards bodies (including CEN, CENELEC, ETSI, and NIST) to formalize their joint working arrangements and action plans.

Our experience of transatlantic economic cooperation is now approaching two decades. If actual progress towards regulatory convergence and a single market place has been disappointing overall, arguably the single most contributory obstacle has been our inability to 'dock' our respective standards setting systems to effective purpose, or to meet a common ambition we believe is shared by consumers, business and government alike, to agree on single sets of high quality norms. The evidence suggests that even with different systems of managing risk employing typically more ex ante precaution by way of regulation in the EU and more ex post facto litigation risk in the U.S., our societies essentially price risk at the same level. Indeed it would be much more surprising, given broadly comparable stages of development, if consumers on one side of the Atlantic were to be more tolerant of unsafe products than on the other.

At a practical level our inability to move forward on standard setting creates significant market distortions for businesses. An illustration of the burden of non-harmonized standards from the aviation sector is the requirement for re-certification of aircraft to U.S. standards even though the product has already met or exceeded similar requirements in the EU (or vice versa). The re-certification process leads to additional costs that have to be passed along to customers or absorbed by the manufacturer. Either scenario leads to a competitive disadvantage for foreign companies when competing against domestic firms for the same contract.

At the technical level in standard setting and agency to agency regulatory cooperation there are cultural prejudices, procedural obstacles and business model incentives (in both EU and U.S. standard setting) much more than there are significant technical divergences. Worse, over time, these differences have been allowed to sustain a series of intractable positions and stalemates in international forums and in discussions about mutual recognition. In the context of serious threat to competitiveness posed by rapidly changing global market conditions the impasse here strains credulity.

Our experience with a series of so called 'upstream' projects developed as platforms for the TEC, specifically electric vehicles and smart grids, is that on one hand there is intensive effort to deliver ad hoc cross participation in respective standard setting processes (e.g. CEN, CENELEC, ETSI in SGIP, NIST in CEN, CENELEC, ETSI Working Groups both in relation to smart grid deployment). On the other hand a series of 'business model' or procedural constraints either deliver, both in the EU and in the U.S., counter intuitive incentives in favour of

national proliferations of standard setting activity, or add unnecessary delays. Business also shares responsibility as our experts sit in the processes about which we are complaining. We supply our best experts with specific missions to deliver high quality business technical input. While for obvious reasons the high quality mandate is non-negotiable, we need to incentivise speed to market in ways synchronised to global market conditions and opportunities, not a national market bottom up roll out model.

Transatlantic informality is a competitive strength. The weight of transatlantic economic activity is driven by firms and entrepreneurs not regulators. Of course regulatory cooperation has potential to add further value, and hard convergence, e.g. essential equivalence determinations as a basis for tested once sold everywhere, deployed as a device. But in the end the superiority of the transatlantic model is demonstrated as much by a soft convergence based on thousands of daily contacts delivering common opportunities and empiricism between like-minded experts in regulatory, standards and technical communities, and millions of business opportunities. This depends upon people.

People and Goods Movement

Looked at another, way U.S.-EU economic growth depends not only on secure movement of goods, but also on the fastest and freest movement of people possible, with due respect to the security arrangements that we need to keep us safe. As intertwined as our economies are now, we cannot achieve a barrier free transatlantic market without expanding and improving the flow of business people and travelers. TABD believes that existing technologies should be harnessed to deliver a speedy and hassle-free journey through airports for all passengers. However, in the medium term, priority must be given to those passengers who travel the most frequently: those passengers have the greatest impact on economic activity between the two areas and are most vulnerable to being discouraged by constraints.

All TABD member companies operate internationally. The ability to do business, stay competitive, and remain innovative hinges on the ability to recruit the best and brightest minds, transfer employees regardless of nationality, and develop business and investment partners, suppliers and customers across national borders. International people movement increases innovation capacity.

We remain concerned in the lack of reform of current U.S. visa policies and ongoing uncertainty with the visa issuance process. These remain very significant barriers to global businesses. The labor market is currently stressed by growing unemployment which makes rational long term planning difficult, but we urge that reform looks beyond the short term to the way in which the labor market should run in normal times. We urge the U.S. to increase the number of H1-B and B-1 visas that are issued each year and to review procedures thoroughly seeking to reduce and eliminate the red tape which has further unnecessarily complicated matters.

Other best practice models already in operation should be considered for scale up on a transatlantic basis. Two examples of best practice are Australia and the United States Global Entry Program.

- Australia has a special E-3 visa category. The E-3 visa is similar to the H-1B visa. One important difference is the fact that it allows the spouse of an E-3 visa holder to work in the United States without any restrictions. The visa is also renewable indefinitely and the application process is much quicker than that for the regular H-1B visa. The visa is not included in the H-1B visa quota of 65,000. There is a separate quota for Australians of 10,500. It would make sense to establish a similar system for the business people from EU countries coming to the United States.
- U.S. Customs and border protection has established a program called Global Entry. It allows expedited clearance for preapproved, low-risk travelers upon arrival in the United States. Participants enter the U.S. by using automated kiosks located at select airports. U.S. citizens that are part of Global Entry can also sign up for the Dutch Privium program which has similar benefits for the traveler as Global Entry. These two systems should be expanded and business travelers from Europe with a valid U.S. non-immigrant visa should also be included. Consideration should be given to a single framework, covering U.S. and EU citizens that would permit those who are cleared to be able to pass through all elements of U.S. and EU airports in a speedy and efficient manner. This should include immigration, customs and security. We continue to support the establishment of a U.S.-EU business-government task force to investigate the merits of a Single Transatlantic Registered Traveler Framework.

Goods also must move as freely as possible. We continue to look forward to the completion and implementation of the roadmap for mutual recognition of AEO and C-TPAT this autumn. In relation to cargo movement, we continue to regret the introduction of the requirement under U.S. law that 100% of the cargo in foreign ports destined for the U.S. must be scanned. We believe that there are currently insufficient resources, both in terms of technological equipment and in terms of manpower, to scan all cargo which enters the U.S. We welcome efforts by the Secretary for Homeland Security to obtain a delay in the implementation of this law, but we would prefer repeal of the legislation and replacement with a “win win” solution based on technology options and parallel use of a risk-based system for cargo screening.

Intellectual Property Rights (IPR)

Intellectual Property Rights (IPR) are at the heart of the EU-U.S. innovation model, and we are not going to get, any time soon, a tool that better structures the return and reward balance to justify upfront financial investment. Intellectual property rights are a key driver of private sector investment, growth, and job creation. By creating value and allowing businesses like ours to commercialize the fruits of our innovative efforts, they also play a key role in promoting future U.S. and European economic growth and revenue.

For an individual inventor and for small and medium-sized business, the protection of their intellectual property in the U.S. and in Europe is frequently too cumbersome, time-consuming and expensive resulting in innovations not getting the needed protection or not being taken to market thus slowing the transfer to commercialization considerably.

We welcome the passage of the America Invents Act (H.R. 1249). The Act marks the first major overhaul of the American patent system and will help the U.S. Patent and Trademark Office with the huge backlog of patents and spur innovation by start-ups. It also marks a major step in harmonizing the patent system between the U.S. and the rest of the world. The most significant of these changes is moving the U.S. from a first to invent system for awarding patents to the first to file system used in Europe and many other nations around the world. Progress is also being made towards a single European patent, and again we welcome that.

We have a high expectation that in 2012 respective U.S. and EU patent authorities will, as a consequence of these two sets of developments, be able to deliver a step change in the velocity and depth of their collaboration.

Raw Materials

Access to raw materials continues to be a priority issue for TABD companies. We have developed a roadmap for transatlantic cooperation on raw materials and ask you the Summit Leaders to endorse the roadmap for action in the TEC [Annex 2]. We are encouraged by the cooperation between U.S. and EU officials, as evidenced by their regular bilateral discussion, aligned positions in the WTO and OECD among other international organizations and in ongoing discussions with third countries. We also note that the close collaboration is not only among trade policy officials but the scientific, national security and natural resource experts who are involved in this complex issue. Business benefits from this high level of engagement.

In order to help bridge the gap in information on primary and secondary materials, we believe that a structured exchange of information and data is one of the main actions which would be of mutual benefit.

With regard to research and development on raw material technologies, we are pleased with the excellent dialogue achieved to date, as demonstrated during the event on "Trans-Atlantic Workshop on Rare Earth Elements and Other Critical Materials for a Clean Energy Future" strategic raw materials held in Boston in December 2010 and at the event on "R&D and Critical Materials R&D" on October 4, 2011 in Washington DC. We welcome the continuation of this dialogue and suggest establishment of a regular and structured exchange of information on raw materials research projects covering, for instance, supply and demand data, recycling, substitution of rare metals etc.

We would also welcome an enhanced exchange of views on respective approaches to materials management of electronic goods (from product design to producer responsibility schemes to waste management). This dialogue could then form the basis for joint future initiatives and proposals within the OECD Working Party on Resource Productivity and Waste.

An additional topic in this complex set of issues is the environmentally dangerous and frequently inappropriate handling of illegally shipped waste at its destination. Negative ramifications on the health of individuals involved in handling the waste at destination are significant. The polluting effects on air, water sources and ground are substantial. The loss of valuable materials through limited recycling processes is prevalent and unnecessary. The problem of illegal shipments is

increasing in importance for our societies. It is clear that although different countries have different legislation in this regard, we notice that much trade is illegal due to a lack of a coordinated mechanism to deal with such waste. We believe that multilateral discussions within the Basel Convention represent an appropriate way forward in helping to address this problem. The agreement reached in Colombia at the October 2011 meeting of the parties to that Convention is a specific step forward as it will require fewer countries to ratify the prohibition of all exports of hazardous wastes from developed to developing countries.

Green Growth

The transatlantic innovation economy must be designed to deliver against accepted climate change goals. Working with IPCC assessments of the need to reduce greenhouse gas emissions, we support using the tariff system in a non-discriminatory manner for encouraging clean technologies and for encouraging climate friendly initiatives in other sectors.

Transatlantic energy cooperation should encompass energy efficiency, regulatory cooperation and R&D. Specifically, we recommend enhanced cooperation to ensure compatible regulation of “carbon constraint” systems such as cap and trade, including:

- Exchanging information on carbon trading systems.
- Aligning policy, before divergent regulations are put in place.
- Establishing a basis for equivalence for carbon pricing to avoid future distortion.
- Co-operating at the global level.

We recommend that the U.S. and the EU implement the Cannes G20 leaders’ commitment to “encourage effective policies that (...) spur innovation and deployment of clean and efficient energy technologies” on an aligned, transatlantic basis. We ask the U.S. and the EU to provide leadership for renewed efforts to fully eliminate tariffs and other barriers to trade in environmental goods and services, including both inputs and end-products, in a non-discriminatory way, ideally on a multilateral basis.

Nanotechnology

The European Commission recently (October 18, 2011) released a recommendation for a regulatory definition of nanomaterials. The Commission adopted a very broad nanomaterial definition which could result in many everyday substances and products being classified as ‘nano’ even where unnecessary or unintended according to the stated purpose of the definition and initiative. Moreover, since the definition is to be the basis for the creation of a regulatory framework, it is of paramount importance that the definitions of nanomaterials on both sides of the Atlantic are not fundamentally different, and indeed should be aligned. Without a common methodical approach for nanomaterials there is a strong risk that the transatlantic political agenda will have to cope with new trade disputes down the line.

The EU Commission has announced that it will review the definition by December 2014. In the meantime industry and policy makers both in Europe and the United States will have gained more experience and a better insight as we see the implementation of the definition in regulation

proceed. The European and U.S. chemical industry together have already outlined requirements for a workable definition under the umbrella of the global International Chemicals Industry Association (ICCA). The 2014 review should be used to integrate the different perspectives in the U.S. and the EU as well as the experience made in the meantime with the EU definition, in order to develop a globally harmonised definition for nanomaterials as a basis for consistent nanomaterials regulation across the transatlantic market.

Above all the U.S. and EU should continue to coordinate the scientific advice and work together to define the standardised measurement techniques which will be essential for establishing legal certainty for those particular substances that are agreed as falling within the definition for “nanomaterials”.

2. Exporting Innovation

In this chapter we focus on four issues arising from global application of the boundary conditions for innovation: IPR including anti-counterfeiting; indigenous threats to innovation; the roll out of agreed U.S.-EU ICT principles; and data flow protectionism.

IPR Erosion

The existing framework of protection, including domestic IP legislation and regulations in key emerging markets, and global IP rules at the WTO and elsewhere, is under serious threat. Well-funded NGOs and major emerging economies continue to advocate policies that would weaken IPR, citing climate change, development, or equity concerns – with little or no evidence or economic data to support their proposals. Such policies would destroy the value of the IP assets that U.S. and European enterprises have built and continue to build as we commercialize our R&D, creating significant harm to our competitive positions in fast-growing markets around the world. They would further slow the much needed globalization of R&D into developing markets and the integration of these fast growing economies into global supply chains.

Separate from the above patent-related developments, some governments effectively require U.S. and European innovators to disclose or license trade secrets as a condition of market access. Relevant measures include government-backed testing or certification regimes that require companies to disclose confidential information without appropriate protection mechanisms for the information, and government-led compulsory licensing to force disclosure to domestic competitors. The entire economic value of a trade secret stems from the competitive advantage conferred by the confidential nature of the information. Thus, any forced or otherwise compelled disclosure irreparably destroys a trade secret’s entire value – in addition to being inconsistent with global IPR rules.

Finally government policies that reduce manufacturers’ ability to distinguish their products from those of their competitors through branding and packaging can be mentioned in this context as well. Even in areas where valid health or environmental concerns exist, they create a dangerous precedent with far-reaching implications for the use of trademarks and other forms of

IPR around the world. A proposal recently passed by the Australian Parliament in relation to tobacco products violates what we believe to be a shared transatlantic approach to intellectual property protection and also, we maintain, abrogates international trade law. The proposed plain packaging legislation for tobacco products would leave companies unable to distinguish their brands and trademarks through packaging, thus nullifying their intellectual property protection. This opens a Pandora's Box of unintended consequences which the business community finds most troubling.

A related danger, which we believe should not be underestimated, is that the precedent would then be emulated by other governments, for other products, thereby undermining the framework of IP protection that underpins investment and innovation. Narrowly tailored policy alternatives should be considered instead and an evidence-based approach pursued. In this regard also, we believe that the TRIPS Article 64.2 moratorium – which has now been extended for more than 10 years beyond its initial period of application – should be allowed to lapse at the upcoming WTO Ministerial.

Our membership is not opposed to considering how best to address the situation of LDCs. It is critical, however, that implementation of TRIPS by all other Members be subject to the normal dispute resolution procedures set forth in the GATT and DSU, which apply to all other WTO rules.

There is not, and in our view never was, any compelling reason for treating trade-related IP obligations differently. We hope this anomaly will be remedied in December (Annex 3).

Anti-Counterfeiting

We are agreed that we must jointly develop and operate the most effective measures that we can in order to deter counterfeiting and piracy. We are concerned that the U.S. and EU are currently diverging in the levels of intervention at their respective borders. Whereas the U.S. continues to detain and seize transhipped and in-transit counterfeit goods, the EU seems to be moving, through judicial decision, away from effective and comprehensive intervention and detention of goods that do not have a final destination within the EU. This is the wrong test for the situation and sends the wrong messages to the emerging and less developed markets. It hands them a political tool with which to criticise the EU for “exporting” a problem to them and strengthens their calls to reduce the U.S.-EU focus on valuing, protecting and enforcing IP.

A second key driver concerning counterfeit and pirated goods is to move the issue beyond that of being the responsibility solely of governments and rights owners to encompass those who, knowingly or unknowingly, facilitate the production and movement of counterfeit and pirated goods around the world. These are intermediaries such as landlords, shippers, internet platforms and payment service companies/banks/credit card companies amongst others. While there have been some notable public/private initiatives, e.g. the EU facilitated MOU on preventing the sale of counterfeit goods over the internet and industry initiatives such as the forthcoming IACC payment processor initiative, we need to raise the profile of the issue with intermediaries on both sides of the Atlantic and incentivize them to do their part in deterring trade in counterfeit and pirated goods.

Indigenous Innovation

At least three dozen countries have implemented national innovation strategies to increase their competitiveness and generate more economic growth. However, the nature of those strategies differs widely among governments.

For the emerging countries especially, the differences between innovation policy and industrial policy can be murky at best. As they should, the governments in those countries are creating enabling environments (e.g. funding digital infrastructure projects and critical skill development) that allow innovation to flourish. The trend in the emerging countries, however, is to also incentivize strategic industries and technologies, and in some cases even favor domestic firms and products with targeted market preferences.

Domestic market preferences for local manufacturing and/or intellectual property eventually backfire because they shield domestic firms and products from competition. Yet, as the emerging countries try to rise up the innovation curve faster, their reliance on such market preferences appears to be increasing and the resulting threat to American and European businesses is growing.

Innovation is increasingly collaborative and cross-border in nature. Innovation can thus be encouraged and stimulated, but not effectively managed and certainly not contained. Moreover, as a report for the European Commission on key enabling technologies (KETs) indicates, “the most innovative products incorporate . . . several KETs simultaneously” and thus require “a global approach” to enable their development. Indeed, “The dynamics of innovation – as manifested in the digitalisation of the economy, the internationalisation of research and development networks, industrial design, and the development of open innovation – call for focused policy consideration.”

The U.S. and Europe need to continue to closely coordinate their approaches to influencing China’s indigenous innovation policies. This coordinated transatlantic approach should be intensified and broadened to apply to all BRICs – especially India, where there is strong evidence that it, too, is adopting prolific indigenous innovation.

These are some of the behaviours we would like to see ended:

- Requirement for mandatory security testing in national labs leading to delays in importing equipment and/or loss of intellectual property.
- Inspection of hardware, software, design, development, and manufacturing facilities as well as supply chains, which again raises serious IP and competitive concerns.
- Employment of only resident trained nationals as executives responsible for certain security cases.
- Government Procurement Preferences for Local Manufacturing.
- Incentives for Certain Producers of Domestic Manufactured Telecom Products.
- Preferential customs clearance granted only for goods destined for use in domestically manufactured equipment using a certain percentage of local manufacture.

ICT Principles

We welcome the TEC agreement on a set of trade-related principles for ICT services. The ICT agreement envisages that the United States and the European Union will jointly promote the adoption of these principles by other countries. We now need to jointly develop a roadmap setting out how the principles will be implemented. We offer three recommendations.

- First, implementation in the context of the WTO and with priority countries. This must include a coalition-of-the-willing beyond U.S. and EU (e.g. OECD nations) with BRICs and other emerging markets such as Vietnam, Colombia, Mexico, Turkey. We should seek commitments from them to adopt these principles or, at a minimum, properly implement existing WTO offers, e.g. China. Some form of 'scorecard' on progress made could add to our understanding.
- Second, by seeking similar sets of principles in other related areas to then be offered up to other nations under an 'open plurilateral' approach short of treaties or MRAs. Areas could include transborder data flows, data privacy and data security, cloud computing and perhaps also cyber-security norms.
- Thirdly, it is also very important to ensure that the U.S. and EU fully respect the ICT principles themselves as evidence of exemplary best practice.

Data Flow Protectionism

Gaps in global rules and inadequate enforcement of existing commitments are contributing to a growing threat of digital protectionism around the world. A number of countries have already enacted or are pursuing restrictive policies governing the provision of digital commercial and financial services, technology products, or the treatment of information to favor domestic interests over international competition. Even where policies are designed to support legitimate public interests such as national security or law enforcement, businesses can suffer when those rules are unclear, arbitrary, unevenly applied or more trade-restrictive than necessary to achieve the underlying objective. What is more, multiple governments may assert jurisdiction over the same information, which may leave businesses subject to inconsistent or conflicting rules.

In response, the U.S. and the EU should drive the development and adoption of transparent and high-quality international rules, norms and best practices on cross-border flows of digital data and technologies while also holding countries to existing international obligations. We need this cooperation to deliver international commitments on several key objectives, including:

- Prohibiting measures that restrict legitimate cross-border data flows or link Commercial benefit to local investment.
- Addressing emerging legal and policy issues involving the digital economy.
- Promoting industry driven international standards, dialogues and best practices; and expanding trade in digital goods, services and infrastructure.

Common efforts should ensure that trade agreements cover digital technologies that may be developed in the future, and deliver common outreach to governments around the world to pursue other policies that support cross-border data flows, including those endorsed in the

Communiqué on Principles for Internet Policymaking related to intellectual property protection and limiting intermediary liability developed by the OECD in June 2011.

3. Investment Policy

We call on the U.S. and the EU to promote free market access at the global level, provide adequate regulatory conditions for incoming investments, remove bilateral barriers to investments, and provide strong U.S.-EU leadership on open investment policies.

TABD suggests that U.S. and EU investment policies should be governed by key principles, including the commitment to open markets, eradicating asymmetries in investment policies, minimal political intervention, and free competition. We support the recently developed key elements proposed by the transatlantic business community (Annex 4) which represents a broad consensus for action on investment and we call for their endorsement by the Summit leaders and the TEC.

U.S.-EU cooperation on investment should lead to a substantive dialogue on further liberalising investment and capital flows between the U.S. and the EU and aligning investment rules. The adoption of a model bilateral investment treaty should be given serious consideration. We should address remaining bilateral barriers to investment, such as in the aviation sector and telecoms. For foreign direct investments we need to reduce obstacles to incoming FDI in our economies, and work jointly between the U.S. and the EU to reach ambitious bilateral investment treaties (BITs) with third countries.

As to third country relations on investment more generally, both sides should work towards a joint approach on investment policies vis-à-vis third countries and engage multilaterally and bilaterally to facilitate market access and remove trade barriers in foreign countries.

At the G20 level, transatlantic leadership should provide leadership to promote on open investment policies at the international level. The OECD principles and guidelines on freedom of investments provide a solid basis on which to build. In pursuing these interests, the U.S. and the EU should make efficient use of the U.S.-EU Investment Dialogue.

Inward Investment

The U.S. and EU are both the world's largest hosts and the largest sources of foreign direct investment, with the vast majority of the FDI in each coming from the other. This situation is changing, as key emerging economies have begun expanding their investments in our markets. We need to maintain a level playing field for sovereign wealth fund deployment except for national security reasons.

We recognize, however, that influxes of investment from non-traditional sources can lead to adverse public reactions and raise legitimate national security and transparency concerns. Any regime for evaluating inward investment for national security should contain safeguards to ensure that review is limited to legitimate national security concerns. Congressional and public apprehension regarding foreign investment can also be mitigated by a set of principles and rules that offer greater transparency around those investments made by sovereign wealth funds and

state-owned enterprises and by observance of the types of market disciplines for behaviour well tested in anti trust and state aids policy making. The Investment Dialogue should address these concerns and ensure the U.S. and EU do not adopt measures that impede investment and adversely impact our bilateral relationship.

Bilateral Investment Barriers

We also need to address outstanding bilateral barriers, particularly the fields of aviation and telecoms:

Aviation

Despite the open sky agreement of 2007, there are still severe market access barriers for European airline operators in the U.S. in form of higher ownership restrictions, the Fly America policy and the prevention for European airlines to operate domestic flights in the U.S. The EU-U.S. aviation market represents about 60% of the global market and it is estimated that the lifting of all remaining barriers could lead to €12 billion in growth and 80,000 new jobs. Instead of reflecting a low common denominator of ambition, U.S. EU aviation collaboration should offer global leadership based on bilateral best practice application. Today, most countries have strict limits on foreign investment in their airlines. These national ownership restrictions limit the development of profitable global airline brands, and will lead in the near term to competitive weakness for U.S and EU players firms.

In recent aviation negotiations with the United States, the European Union offered to remove all restrictions on 'ownership and control' between the two blocs. Regrettably, the agreement reached last year does not satisfy the level of liberalisation necessary to develop true cross-border mergers and work remains to be done. The momentum to liberalise should be encouraged further and, given the status of our aviation markets as the most mature, they should be adapted to serve as templates for rapid liberalization towards an open global marketplace for aviation.

Broadband

In the U.S. investment in competitive fixed and wireless broadband services to the benefit of all businesses is stifled through the lack of appropriate pro-competitive regulation, in particular for so called Special Access to broad band networks. Such rules regarding access exist in the EU in form of wholesale access regulation, although certain member states lag in implementation. This has allowed, in general, for a competitive and innovative broadband market in the EU. The overall economic gains are significant. A recent studyⁱ comes to the mid-range assumptions, that a 50% reduction in special access prices would result in a \$20-\$22 billion increase in U.S. output, a \$4.4-\$4.8 billion increase in employee earnings, an increase of between 94,000 and 101,000 jobs, and an increase in value added to the U.S. economy of between \$11.8 - \$12.4 billion.

4. Financial Markets

Strengthening the stability of the global financial system is the most important regulatory objective. TABD therefore welcomes the results of the G20 process. With their agreements on restoring global growth, safeguarding an open global economy, and on reforming the financial system, the G20 leaders have provided a comprehensive approach for overcoming the global economic crisis and a solid basis for progress in the transatlantic sphere. In particular, TABD welcomes the G20's measures on refraining from raising new barriers to investment or to trade in goods and services; building a stronger, more globally consistent, supervisory and regulatory framework; greater consistency and systematic cooperation on financial market regulation between countries; efforts to achieve a single set of high-quality, global accounting standards; and addressing macro-prudential issues.

TABD considers the G20 process as a vital driver for a sustainable global recovery, and calls on the G20 to continue their high-level policy coordination. Most importantly, the G20 governments should reinforce their work on building a more consistent and better coordinated regulatory and supervisory framework for financial markets worldwide that is commensurate with the challenges of today's global capital markets.

TABD encourages the G20 Leaders to adopt as an objective in their work the maintenance of:

- Open and free markets.
- Stable, efficient, and innovative financial markets.
- Consistent regulation and standards including capital and financial reporting requirements in both banking and securities regulation.
- Effective supervision based on close coordination between supervisors and policy makers.

Bank Capital Requirements and the Reform of the Basel Framework

Basel III will increase the quality and quantity of capital in the system, with core tier 1 capital as the new yardstick and a ratio of 10% and beyond as the new market benchmark for all globally active financial institutions. Apart from strengthening the resilience of the banking system, the reforms present banks with serious strategic challenges. These importantly include considerable time pressure as the preparation time banks have will be much shorter than initially proposed by the Basel Committee. Rather than having time until 2019, banks are faced with the fact that investors, rating agencies, counterparties and even some national regulators want them to fulfil the new requirements by 2013 already. Funding costs in the industry will be higher due to the combined effect of Basel III liquidity rules, Solvency II, the reform of deposit guarantee schemes, and new regimes for bank restructuring. These costs will have an impact on the wider economy, as the ability of the banking system to provide funds for economic growth will be restricted. This in turn will reduce growth opportunities for banks.

In addition, the uneven application of new capital and liquidity rules may have severe implications of global competition. While the G20 have made welcome declarations on

harmonized rule-making and consistent implementation of the G20 regulatory agenda that commitment in reality is slipping. The issues include deviations in regulatory detail and national initiatives outside of the G20 consensus, especially between the U.S. and the EU. More fundamentally, emerging market countries see no reason for tighter regulation and will be reluctant to impose G20 agreements on financial regulation which would stifle their growth prospects.

As a result of transatlantic regulatory divergences, the U.S. and the EU face serious challenges to economic growth potential, in general, and that of their financial systems, in particular. In addition, competitive distortions are likely to distort the global banking market gravely. Both sides should therefore do their utmost to prevent divergence and actually strive for much more harmonised capital and liquidity rules and apply them consistently.

Market Integration

Transatlantic financial market integration has remained incomplete. The – vital and welcome – regulatory responses to the financial crisis may further aggravate the regulatory discrepancies between the U.S. and the EU. Differences in financial regulation weaken their effectiveness, undermine financial stability, increase the risk of regulatory arbitrage, and lead to additional costs for transatlantic firms and their clients.

In order to prevent further regulatory fragmentation and actually promote greater market integration, the U.S. and EU financial markets need a two-pronged approach:

- Alignment of current and future policy measures with a view to regulatory convergence and the creation of equivalent regimes.
- Continuation of the long-term project of integrating the two financial markets on the basis of convergence and mutual recognition of existing regulatory regimes.

For the post crisis agenda measures currently under discussion in the U.S. and the EU differ significantly in their scope, rules, and regulatory approaches as well as timing. Bringing these measures into line across the Atlantic should remain a key policy priority in 2012, including capital and liquidity requirements, convergence and compatibility of policy measures on OTC derivatives, alternative investments, resolution regimes, and the treatment of systemically important financial institutions.

Given the exceptional conditions in global financial markets, integration of the U.S. and EU financial markets has naturally given way to more urgent issues on the political agenda. Nevertheless, TABD underlines the importance of the integration project and welcomes the commitment by the U.S. and the EU to creating a more efficient transatlantic financial market. An optimal approach to market integration would in our view be based on the consistent pursuit of mutual recognition, regulatory convergence, and the consistent application and enforcement of rules.

Derivatives Regulation

The financial crisis has highlighted the necessity of improving the regulatory framework for Over the Counter (OTC) derivative markets. However, any reform must take into consideration the importance of those products for the functioning of the economy.

Regulatory efforts should be placed on setting up effective mechanisms to reduce credit risk in OTC derivatives. The channelling of OTC transactions through Central Clearing Parties (CCPs) is one way for achieving this objective, but must not be considered as the only line of work in which progress needs to be made. Given the diversity of products, it will not be possible to channel all OTC transactions through CCPs. In this context, the capital charge should not be punitive if collateralization is adequate; it should be established according to the real risk of each OTC derivative transaction and not be dependent on the channel used (CCPs or bilateral).

Other mechanisms, such as close-out netting and the collateralization of derivative contracts, should be taken into consideration as mechanisms contributing to the reduction of credit risk, and a clear legal framework to provide recognition and effectiveness to these instruments should be established. Moreover, an equal footing on capital charges should apply for OTC derivatives cleared either through CCPs or based on well collateralized bilateral agreements.

International cooperation is of paramount importance in the field of OTC derivatives, in order to avoid regulatory arbitrage. The setting up of international registers based on the trade repository model for all derivatives transactions should be fostered.

Financial Reporting

G20 leaders have recognized that the work of the accounting and auditing profession and international standard-setters is critical to the success of global regulatory reform and economic recovery efforts. Regulators and investors alike need accurate financial information that provides complete and timely pictures of companies' activities across geographies. A single set of high-quality global accounting standards is essential to achieving this objective.

EU and U.S. leaders jointly endorsed adoption of International Financial Reporting Standards (IFRS) as the first concrete achievement of the Transatlantic Economic Council (TEC) in 2008, and G20 summits have repeatedly endorsed the need for a single set of high-quality accounting standards. We believe that IFRS, as promulgated by the International Accounting Standards Board (IASB), should be adopted globally. Adoption of IFRS will assist regulators in fulfilling their responsibilities, will help investors in their decision-making, and will reduce costs and risks for reporting companies. The U.S. should be encouraged to move forward and incorporate IFRS into the U.S. financial reporting system, since a single set of high quality global accounting standards is crucial to the further integration of global markets.

The U.S. and EU should continue to support the joint work programme of the IASB and FASB to work towards a single set of high quality accounting standards. We encourage the continuing timely endorsement of IFRS in the EU, so that European companies can fully retain access to and comply with global accounting standards without any legal impediment, "carve-outs" or undue delay.

Audit

We welcome the debate on the future role of audit launched in the October 2010 European Commission Green Paper. Audit quality and independence are secured by strong corporate governance frameworks that include independent audit committees, a system of independent regulation of the audit profession and international ethical standards. Several of the approaches in the European Commission's Green Paper, such as mandatory firm rotation and joint audits, would not address the root causes of concentration and are likely to impair audit quality and increase the cost to companies, especially if implemented in isolation. There should be transatlantic consultation on any measures to ensure consistency.

The U.S. and EU should promote the establishment of appropriate collaborative arrangements between national auditor oversight bodies. Global adoption of International Standards on Audit (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB) is important to continuously improving the quality of audits. The EU and U.S should work with the IAASB and national standard setters to promote principles-based International Standards on Auditing. This will have the benefit of consistency, further improve the reliability of the quality of the audit and further reduce regulatory barriers. We welcome the EU's stated intention to adopt clarified ISAs and urge speedy implementation.

We support strong and independent Audit Committees composed of highly qualified and competent non-executive Directors with clear delineation of responsibilities that include the review of the performance, independence and objectivity of the external auditor to use as a basis for recommending the re-appointment of the incumbent auditor or the appointment of a new auditor to the Annual General Meeting. The role of the audit committee should include a policy for the approval of non-audit work to be provided by the auditor.

We also support independent oversight of audit firms and audits by the national audit regulator, which include regular inspections that examines appropriate application of professional judgment and maintenance of auditor independence; adherence to strong professional standards by audit firms and individual auditors as set out in the International Ethics Standards Board for Accountants (IESBA) Code of Ethics, which provides for the application of safeguards to potential threats to independence raised by providing non-audit services to audit clients (as well as avoidance of providing the service if safeguards are inadequate for mitigating the independence threat); periodic rotation of the audit partner (a minimum of seven years), and restrictions on personal and business relationships with audit clients.

ⁱ Stephen E. Siwek , "Economic Benefits of Special Access Price Reductions", Economists Incorporated, Washington, D.C., March 2011



Accelerating the Transatlantic Innovation Economy

**Ten Innovation Policy Principles
&
Recommendations to Strengthen
Collaboration for Innovation across the Atlantic**

November 2011 - Revision



Accelerating the Transatlantic Innovation Economy

Ten Innovation Policy Principles & Recommendations

In response to the growing recognition in the United States and the European Union that innovation strengthens economic growth, expands employment and enhances the competitiveness of transatlantic firms, the TransAtlantic Business Dialogue (TABD) is pleased to present *Ten Innovation Policy Principles & Recommendations* to strengthen collaboration for innovation across the Atlantic.

TABD is a formal, CEO-level business partner of the U.S. Government and the European Commission and is the official business advisor to the Transatlantic Economic Council (TEC). We believe in the freest possible exchange of capital, goods, services, people and ideas across the Atlantic and that a barrier-free transatlantic market will serve as a catalyst for global trade liberalization and investment and help stimulate innovation, job creation and sustainable economic growth.

The *Ten Innovation Policy Principles* (Principles) are based on areas of government “best practice”, which from our experience as global business leaders have the greatest impact on accelerating innovation. They also are based on observations about the process of innovation in the transatlantic market (see Appendix for details). In conjunction with the Principles, we put forward corresponding Recommendations for action to be taken by the appropriate American and European authorities to address disconnects and inefficiencies in existing policies and eliminate barriers in order to further integrate the transatlantic economy, and thus enable its continued leadership in the global economy.

Much of the world’s scientific and technical innovation takes place within and between the U.S. and EU. Working together, we have the opportunity to revitalize languishing industries, accelerate the development of advanced technologies, develop new products and services, create good paying jobs and enhance the ability of the transatlantic market to compete with the rest of the world. Moreover, transatlantic leadership to foster innovation would set the example for other countries struggling to develop and implement appropriate policies that support and accelerate innovation.

The U.S.-EU Summit, the TEC and its Innovation Action Partnership provide the institutional framework to connect transatlantic innovation policies with initiatives and bring this to fruition, helping restore economic growth and creating jobs on both sides of the Atlantic – accelerating the transatlantic innovation economy.

We urge the U.S. and EU to adopt and implement these *Ten Innovation Policy Principles & Recommendations* without delay.

Ten Innovation Policy Principles

TABD calls upon the U.S. Government and the European Commission to adopt the following *Ten Innovation Policy Principles* as a declaration of their intent to work together to strengthen innovation and collaboration across the Atlantic. These Principles should guide both governments as they put into place legislation, regulations and policies that affect the ability of companies to invest, collaborate and commercialize new technologies. By adopting these *Principles*, the U.S. and EU would set an example for other countries regarding policies to support and accelerate innovation and enhance the ability of transatlantic firms to compete in the global marketplace. Recommendations for actions to best address these Principles follow.

- 1. Reaffirm open investment policies and eliminate restrictions on foreign direct investment.**
- 2. Drive collaboration between and among American and European universities, research institutions, and the private sector.**
- 3. Facilitate R&D investment through public/private partnerships and long term incentives.**
- 4. Fund pre-competitive scientific research and make it more readily available for commercialization.**
- 5. Prevent the erosion of Intellectual Property Rights (IPR) and ensure their consistent and effective enforcement.**
- 6. Ensure that competition laws enhance efficiency and consumer welfare without restricting the commercial exploitation of IPR.**
- 7. Promote the use of international standards and, where necessary, performance-based technology regulations.**
- 8. Secure reliable and undistorted access to raw materials and encourage their efficient use.**
- 9. Promote national deployment and maintenance of robust IT infrastructure and allow access to innovative technologies.**
- 10. Assess the implications of government policies on the process of innovation and share lessons learned with third countries.**

Recommendations to Strengthen Collaboration for Innovation across the Atlantic

1. Reaffirm open investment policies and eliminate restrictions on foreign direct investment.

Cross-border investments have become pivotal for growth and prosperity in the transatlantic market and globally. International investment spurs the development and introduction of new technologies and business methods, and provides for healthy competition that fosters innovation. This investment brings to an economy good paying jobs, expertise, increased productivity, and a wider range of goods and services at competitive prices.

The United States and Europe enjoy a very broad and deep investment relationship, yet certain bilateral barriers remain. Under the Lisbon treaty, the European Commission now has increased its reach and competence to work bilaterally and globally to ensure open investment policies. Inasmuch as open investment is a pillar of the strong economic relationship we share, the U.S. Government and European Commission should focus on resolving all remaining investment barriers through the Transatlantic Investment Dialogue established by the TEC. The objective should be to eliminate all investment barriers and agree on a joint transatlantic protocol for a narrow national security exemption. Steps taken now to address restrictions and converge our bilateral investment policies will provide assurance to investors and send a signal to transatlantic business that creeping government investment restrictions are being resisted. Moreover, the example American and European policymakers set in the transatlantic marketplace will add credibility as we press for open investment policies in international settings (e.g., G20) and work together to convince third countries of the benefits of open investment.

TABD Recommendation: The U.S. Government and European Commission should:

- Jointly affirm transatlantic commitment at the highest political level to promote open investment policies at home and abroad and acknowledge that these policies are fundamental to our shared prosperity. The joint statement should underscore our transatlantic commitment to maintain non-discriminatory investment policies, avoid new restrictions and strive to eliminate existing barriers, providing needed assurance to investors.
- The Summit Leaders should issue an Open Investment Statement as a key outcome of the November 2010 U.S.-EU Summit.

2. Drive collaboration between and among American and European universities, research institutions, and the private sector.

An open knowledge economy is key to the long-term competitiveness of the transatlantic market. Because innovation is increasingly cross-border and collaborative, investing in education and research with an international dimension is more important than ever. For the transatlantic innovation economy, this means strengthening the existing collaboration between and among American and European universities and research institutions and the private sector.

In order to translate ever increasing knowledge into additional innovation – and commercialize it – academia and industry must find new ways to facilitate effective partnerships and allow the needed entrepreneurship to flourish in our information economy. Our ageing demographics and growing skills gap demand nothing less.

In addition, the world-class universities and research institutions in the United States and Europe provide important support for pre-competitive research and development that is critical to innovation. Indeed, many companies have chosen to locate corporate research facilities near clusters of university and research centers to leverage these relationships, a fact which further underscores the value of private sector-university/research institution partnerships.

The business community welcomes the ongoing financial support to universities and research institutions provided by the U.S. Government and the European Commission, in particular for pre-competitive research. Given the complexity of leading-edge scientific research and discovery and the costs involved, this governmental support is crucial and further binds together the public-private partnerships that characterize the transatlantic innovation economy. We urge both governments to place renewed emphasis on public support for pre-competitive research. However, the structure of government support for research and development done by universities and research institutions needs to adapt to the changing ways companies are innovating. It is important that private sector- university/research institution collaboration not be hindered by the legal structure of private sector partnership, e.g., consortia. All parties to the innovation process need to work together to develop new models and constructs for the commercialization and deployment of these new innovative advances.

TABD Recommendation: In recognition of the important relationships between and among American and European universities, research institutions, and the private sector that serve to expand the process of innovation, the U.S. Government, European Commission and, as appropriate, Member States should:

- Permanently fund and extend the Atlantis Program, the primary transatlantic cooperative arrangement in higher education, and give greater prominence to training in the areas of innovation and entrepreneurship. Such efforts will ensure that American and European universities continue training globally minded students and faculty and are able to lead the way in innovation and entrepreneurship that can be applied in a global economy.
- Use the Atlantis Program and its activities to strengthen cross-fertilization between universities and industries. Greater industry involvement in American-European university partnerships and projects would give additional context and value to an international education and maintain transatlantic leadership in innovation.
- Build a transatlantic network with leading American academic institutions and the European Institute of Technology to give greater emphasis to collaborative work across the Atlantic and expand integrated knowledge and innovation communities.
- Ensure the use of government funding of research and development by universities and research institutions is not restricted based on the collaborative model chosen by private-sector partners.

3. Facilitate R&D investment through public/private partnerships and long term incentives.

Innovation is increasingly collaborative and cross-border in nature. The most innovative companies often have R&D teams in various locations in the world working around the clock on

a product design or technology. A government incentive program that limits the employee participants of a qualifying domestic entity to residents of its country is also limiting the quality and type of innovation the entity may be able to generate. Accordingly, governments should harmonize R&D incentive programs so both large and small firms benefitting from a nation's particular R&D incentive can engage their employees located in other countries on R&D projects without facing qualification or export control issues. Moreover, the incentives (e.g., R&D credits, direct grants for SMEs, etc.) should remain in place for a sufficient period in order to create a stable investment climate. Incentives should be based on the location of the research, that is, anywhere within the transatlantic market, not on the ownership of the entity performing the R&D or the citizenship and location of its employees. What is needed is a new transatlantic R&D investment vehicle that would bring together the many and varying forms of R&D funding, public/private partnerships, and long-term incentives and leverage the richness of these efforts to maximize the innovation process.

TABD Recommendation: The U.S. Government and EU Commission should

- Establish a non-profit cross-Atlantic R&D facility, "Transatlantic Research and Development Institute" (TRDI), with common expectations as to cost-sharing, rights to intellectual property, and other terms to serve as a foundation for transatlantic harmonization of R&D policies on a broader scale. This new approach of transatlantic cooperative research and development would renew and restore global innovation leadership within the transatlantic community.

TRDI would be equally funded by both governmental partners to help bring together American and European companies and their supply chain partners, in partnership with universities and research institutions, and provide resources for innovative applied research, the results of which would be equally shared by participating transatlantic firms, SMEs, and research institutions. TRDI would:

- Distribute funds and manage the applied research through a joint MOU between TRDI and the existing U.S. and EU government funding agencies.
- Eliminate bottlenecks and barriers in funding program rules and procedures that prevent or hinder U.S.-EU based projects, e.g., EU Funding Program 7.
- Facilitate grant making and enable some portion of current government-funded R&D to be conducted in collaboration with transatlantic partners.
- Encourage harmonization of standards for new products developed from the research performed by TRDI, setting a model for effective innovation commercialization.
- Establish a framework within which the rights to intellectual property would be shared appropriately.
- Address the need for the free flow of human talent.
- Expand the cross-border flow of information.

4. Fund pre-competitive scientific research and make it more readily available for commercialization.

The U.S. Government and European Commission have a long history of funding basic scientific research and have agreements in place to ensure collaboration and sharing of the results. Our bilateral cooperation now needs to be expanded to adapt to the changing ways companies, universities and research institutions collaborate so to improve the efficiency of the funding process and more broadly share the results of the research and innovations. The great majority of government funding of basic scientific research goes to universities and research institutions.

A jointly managed transatlantic database that tracks government-funded research on both sides of the Atlantic would be a useful tool in improving the efficiency of government funding and identifying greater opportunities for early commercialization.

Universities and research institutions receiving government funding often work closely with the private sector to define the scope and nature of research but then own the resulting intellectual property. This can cause a bottleneck in the commercialization process, both in terms of time-to-market and scope of the invention covered by IP. Further, most government R&D contracts require reporting of inventions but very little seems to be done with this information. Sharing of this data among government authorities on both sides of the Atlantic and the private sector would help ensure that the results of the research are made available for commercialization.

TABD Recommendations: The U.S. Government and EU Commission should:

- Increase funding for pre-competitive research.
- Evaluate the merits of a combined transatlantic database that would track government-funded research underway on both sides of the Atlantic.
- Restructure IP policies to enable effective licensing for early commercial prototyping activities.
- Share reporting of inventions made based on government R&D funding to create more opportunities for commercialization, particularly for SMEs.

5. Prevent the erosion of Intellectual Property Rights (IPR) and ensure their consistent and effective enforcement.

As global innovation leaders, the U.S. and Europe are also global leaders in the design, implementation and enforcement of intellectual property rules. The U.S. and EU can help preserve respect for intellectual property rights worldwide and ensure their consistent enforcement by building on the strong level of transatlantic cooperation on IPR. The U.S. and EU should continue to use the platform of the formal U.S.-EU Joint IPR Action Strategy and Working Group and the on-going advice of stakeholders as a basis for coordination of robust IPR policies, advocacy and joint positions ahead of key meetings of multilateral organizations where IPR has come under attack, including UNFCCC, WHO, and WIPO.

Transatlantic companies are encountering a disturbing movement in certain emerging markets where governments are attempting to force the transfer of key technologies through compulsory licensing, regulatory approval schemes, or other means. This trend currently is manifested in the pharmaceutical, environmental technology and cyber security areas, but may eventually expand to other areas where IP protection is critical to innovation. Officials in these emerging markets need to better understand the long term economic developmental benefits from strong IPR and their consistent enforcement.

TABD Recommendation: The U.S. Government and EU Commission should:

- Issue a joint Statement on Respect for IPR as a key outcome of the 2010 U.S.-EU Summit.
- Underscore the commitment of both governments to ensure the highest degree of IPR enforcement.
- Identify and support patent office best practices and metrics that speed up the review of patent applications and issuance of patents while ensuring high quality patents.

- To the extent possible, clarify the very limited circumstances under which it is appropriate for a government to issue a compulsory license for IP and reinforce the restrictions on such licensing found in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.
- Work together to educate policymakers in third countries and advocate the implementation of appropriate laws and policies on intellectual property in our era of global innovation.

6. Ensure that competition laws enhance economic efficiency and consumer welfare without chilling innovation.

Sound competition law protects and enhances the competitive process in a non-discriminatory manner and complements intellectual property law that rewards innovation. Both sets of laws are intended to stimulate and protect innovation and competition. American and European authorities have learned and shared many critical lessons over the years on when government intervention to address potentially anti-competitive conduct makes economic sense. However, there is still a lack of convergence across the Atlantic, and certainly globally, with some antitrust agencies exempting state-owned enterprises (SOEs) from relevant competition law restraints and other willing to handicap bigger private firms to enable smaller players based solely on a presumption that such interventions can increase welfare efficiencies.

Inappropriate exemptions for SOEs create an unlevel playing field. On the other hand, excessive government intervention caused by an over eagerness to second-guess the competitive and innovation process sends the wrong signals to regulators and the market at large, resulting in ripple effects far beyond the transaction at hand. This is particularly problematic in cases where competition agencies have shown inclinations to intervene in an effort to “rebalance” certain markets by undermining the exercise of legitimate IPR. Such actions have a chilling effect on investment and innovation.

The solution to these problems lies in the consistent use of robust economic analysis and due process (procedural fairness), which serve the interests of both the regulator and the regulated parties by ensuring competition law achieves its objectives and enhances the competitive process. TABD’s suggested joint work (noted below) product could provide very useful technical assistance to the many competition authorities in developing countries that have immature competition laws, which may negatively impact companies that market their products and services globally.

TABD Recommendation: Taking into account the decentralized globalization of competition policy and our mutual objectives to protect the global competitive process, foster innovation and reduce inefficiencies, the U.S. and the EU should direct their competition authorities to:

- Jointly develop best practices on due process (procedural fairness) for all competition cases and push for their global implementation through organizations such as the OECD and International Competition Network.
- Ensure robust economic analysis is used in analyzing the impact of transatlantic transactions of concern, and that the best tools on how and when to perform such analyses are shared with newer competition agencies.
- Help newer competition agencies more fully understand the intersection of intellectual property law and competition policy and the dangers associated with using intrusive remedies that could negatively affect innovation.

7. Promote the use of international standards and, where necessary, performance-based technology regulation.

As a matter of policy, the U.S. and EU share the commitment to promote international standards. As a practical matter, however, the policy breaks down as various governmental and non-governmental entities seek to develop national standards that favor local technologies in the hope that this will spur greater innovation. This approach is counterproductive because it not only stifles innovation by limiting collaboration with global partners but also creates market access barriers. (This is especially true in standards for ICT products because the global digital infrastructure relies heavily on interoperability to minimize costs and maximize technology benefits for users.) It is paramount for the U.S. and EU to maintain their global leadership that they actively and globally promote the use of all standards that meet the criteria for the development of international standards enunciated by the WTO Committee on Technical Barriers to Trade (TBT) in November 2000.

In the limited circumstances where technical regulations are justified and used instead of voluntary standards, the U.S. and EU must work together to ensure that such regulations are performance based rather than prescriptive. Technical regulations that specify particular technologies or processes have a significant negative impact on innovation because, by their nature, they have a restrictive effect on the types of products invented and manufactured. Performance based regulations allow for more innovation and development of new processes and methods because they provide greater flexibility on how to achieve regulatory objectives.

In spite of the wide recognition that performance regulations are a better approach, we have observed a growing desire on the part of some governments to become more prescriptive in regulating certain areas of concern, such as environmental products and cyber security. Moreover, even when technology regulations are performance based, they typically have significant cross-border impacts and their development should be closely coordinated with other affected governments wherever feasible. While the WTO Agreement on Technical Barriers to Trade requires some level of coordination for cross-border technical regulations, the U.S. and EU should further strengthen their bilateral cooperation in this area.

TABD Recommendation: As part of their efforts to jointly promote greater use of international standards at home and in third countries, and ensure the use of performance-based regulations where necessary, the U.S. and EU should:

- In partnership with the private sector, redouble efforts to gain acceptance of standards on an international level through their work in international standardization bodies, including but not limited to the ISO, IEC and ITU. This would facilitate interoperability, enable broad dissemination of inventions, and reduce the costs of additive innovation. Both American and European firms would benefit from the economies of scale made possible by internationally-accepted standards.
- Bring sharper focus to the ongoing application of the WTO TBT Agreement and ensure that WTO members inclined to pursue national technology standards adhere to all applicable TBT requirements.
- Establish robust bilateral cooperation to ensure that emerging technology regulations with cross-border impact are performance based, allowing maximum flexibility to design innovative technologies and products in a cost effective manner. This model can serve as a template for other governments to follow.

8. Secure reliable and undistorted access to raw materials and encourage their efficient use.

Access to and affordability of non-energy raw materials are crucial for the transatlantic market and our prospects for advancing the process of innovation. Major sectors of the transatlantic economy depend on access to raw materials, including construction, chemicals, automotive, aerospace, machinery and equipment, as well as high technology/ICT and consumer goods. A secure supply of key raw materials is a prerequisite for maintaining the industrial value chain and innovating new materials and products. Transatlantic companies need fair access to raw materials, whether such materials are located within or outside the transatlantic market. In addition, the U.S. and EU need to jointly address market distortions affecting important raw materials available on the international market. Finally, resource use efficiency should be recognized as a key dimension of raw materials security. TABD has developed a roadmap for transatlantic cooperation covering trade, recycling, R&D and substitution, and waste shipment.

TABD Recommendation: The U.S. Government and European Commission should work closely together to more effectively address their dependencies on raw materials and endorse the TABD roadmap, including:

- Jointly collaborate on the use of trade policy and relevant WTO rules to prevent distortions in global materials markets.
- Support on-going work in the OECD to expand economic analysis and develop a broad-based consensus on policy approaches to deal with raw materials security.
- Strengthen recycling markets for key materials and facilitate innovative materials use throughout the economic value chains by developing common standards on resource and energy efficiency.
- Set the right framework on conditions and incentives for investments in the transatlantic market to foster sustainable supply.
- Boost transatlantic cooperation on materials research.

9. Promote national deployment and maintenance of a robust IT infrastructure and encourage investment in innovative technologies.

A robust and expanding IT infrastructure is fundamental to the 21st century transatlantic economy. Given the ever-evolving innovations in information technology and communications technologies, American and European public policy must encourage dynamic investment and advancements in IT infrastructure to stimulate new investment in additional bandwidth, increase demand for communication services through efficient access to new technologies that lead to falling prices, and promote greater efficiency and innovation in the provision of infrastructure and services. Four elements are central to this public policy: (i) promote transparent, technology-neutral and non-distortive incentives to deploy next-generation broadband communications networks; (ii) foster a competitive, private, facilities-based broadband communications marketplace throughout all levels of the IT ecosystem that seeks to enhance current infrastructure capabilities and extend them to under-served communities; (iii) establish an independent communications regulator with enumerated powers to adjudicate abuses; and (iv) eliminate regulations that act as barriers to entry and support market-based broadband communications policies, including spectrum policies that enable efficient, technology-neutral spectrum allocation to effectively access high-bandwidth broadband networks.

TABD Recommendation: The U.S. Government and European Commission should:

- Exercise global leadership and benefit their own economies by advocating the elimination of investment restrictions, and in turn, promoting private investment in competitive networks and services.
- Regularly exchange information identifying the nature and value of the elements that make up an innovative, robust IT infrastructure, and jointly promote those elements worldwide as other markets seek to build their information economies.

10. **Assess the implications of government policies on the process of innovation and share lessons learned with third countries.**

Government regulations and policies may unintentionally undermine incentives to innovate, purposefully shield local industries from competition or prevent the adoption of the best technologies. There are numerous ways governments can limit competition, either directly or indirectly, including the use of regulations that undermine IPR, favor local technologies, products or services, or restrict the flow of ideas, people, goods and services or capital across borders. As products and technologies evolve ever more rapidly, however, well intentioned government regulations and policies can quickly become outdated and thus fail to accomplish their objectives. Governments need to more systematically and explicitly assess the effect that their policies and regulations have on the climate for innovation and adjust them accordingly.

TABD Recommendation: TABD companies, in partnership with the U.S. Government and European Commission, should:

- Issue an annual report on strengthening collaboration for innovation across the Atlantic.
- Seek to identify and publicize ways in which specific regulatory and economic policies work to impede innovation.
- Ensure continual refinement of “innovation best practices” as the transatlantic economy evolves, and also provide guidance for other governments that increasingly use policy to drive innovation.

Conclusion

TABD offers these *Ten Innovation Policy Principles & Recommendations* as a way for the U.S. and EU to leverage the inherent strengths of the Transatlantic Innovation Economy. Through the specific recommended actions, we seek to address disconnects and inefficiencies, eliminate barriers, and strengthen innovation and collaboration across the Atlantic. Taken together, we believe that the above Principles and Recommendations will accelerate the development of advanced technologies, reinforce economic recovery and job creation, and enhance the ability of the transatlantic market to compete with the rest of the world. Moreover, transatlantic leadership would set the example for other countries as they develop their own policies to support and accelerate innovation and help ensure that their emerging policies do not disadvantage American and European companies.

Observations:
The Process of Innovation in the Transatlantic Market

TABD member companies in the manufacturing, services and IT sectors alike are heavily invested on both sides of the Atlantic. Over the past decade, many TABD member companies have expanded their R&D functions from their home country to their major markets. While much is made of the R&D now taking place in China and other emerging economies, the fact of the matter is that the highly competitive, global companies of the TABD perform the majority of the world's scientific, technical, product and process innovation and do so in the transatlantic market – both in the United States and across the 27 member States of the European Union.

In addition, companies have changed the ways in which they innovate – now commonly a cross-border, often round-the-clock process with design houses in different time zones working on the same product – and increasingly moving from an in-house, intra-company model to a global, collaborative model based on partnerships with other companies, universities and research institutions. Without a doubt, innovation is increasingly a global endeavor, supported by the digitalization of the economy, the internationalization of research and development networks, and the development of open innovation. Companies have found this new, collaborative approach to innovation to be the fastest, most productive way to accelerate the development of new products and services across markets.

While TABD companies are adapting their innovation processes to the reality of today's globalized world, we need to ensure that government policies also adapt to these changing realities and do not create unnecessary barriers, costs or delay. Much has been written about the proper role of government in establishing framework conditions and creating an environment that fosters creativity, ingenuity, innovation and the commercialization of the new technologies. Attempts by governments to “manage” innovation and contain or stimulate it locally at the expense of foreign technologies may in some cases produce short-term benefits, but such regulatory and economic policies also produce incidental consequences that work to impede innovation or undermine the incentives for innovation. This point is underscored by recent economic analysis of the Information Technology & Innovation Foundation in its report, *The Good, the Bad, and the Ugly, (and the Self-Destructive) of Innovation Policy: A Policymakers Guide to Crafting Effective Innovation Policy*.

The real benefit to society comes from the application of innovative technologies across all industry sectors, both in manufacturing and services. This creates far greater economic growth than the initial development of the technology in a particular company or industry. Government policies should thus promote the rapid adoption and diffusion of innovative technologies throughout the economy, regardless of the origin.

TABD's thinking on the policy implications of the transatlantic innovation economy was greatly influenced by the seminal work undertaken by the Organisation for Economic Cooperation and Development (OECD). Earlier this year the OECD released its report, *The OECD Innovation Strategy*, which is the culmination of a three-year, multi-disciplinary and multi-stakeholder effort. It provides analysis and policy guidance on a broad range of issues from education and training to business environment, infrastructure and actions to foster the creation and diffusion of

knowledge. It also points to a number of issues that deserve consideration and the principles that lie behind them, including:

- Empowering people to innovate (e.g., ability to upgrade skills)
- Unleashing innovations (e.g., making capital available to SMEs)
- Creating and applying knowledge (e.g., improving governance of R&D institutions and coordination among them)
- Apply innovation to social and global challenges (e.g., improve affordable access to technologies)
- Improve governance and measurement of innovation policies (e.g., foster evidence-based decision making/policy accountability).

We commend the United States Government and the European Commission for adopting general policy approaches that have enabled the transatlantic innovation economy to grow to this point. The U.S. and EU now have the opportunity to address disconnects and inefficiencies in existing policies that no longer match the reality of today's marketplace. By adopting a framework for transatlantic innovation, based on the TABD's *Ten Innovation Policy Principles & Recommendations* described above, the U.S. Government and European Commission can reinforce their shared commitment to eliminate barriers, advance joint collaboration and innovation, and reap the resulting benefits of economic recovery, job creation and prosperity across the transatlantic market.