

# TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE  
CONSUMER DIALOGUE DES CONSOMMATEURS

## **Transatlantic Consumer Dialogue Recommendations to the Transatlantic Economic Council - October 2007**

### **Introduction**

The Transatlantic Consumers Dialogue (TACD) has been the most continually active of the dialogue projects since its foundation in 1998. It represents the demand side of the two biggest economic blocks in the world - the 735 million U.S. and EU consumers. Its network of 65 EU and U.S. consumer organisations has a direct paid-up membership of some 20 million consumers. On both sides of the Atlantic, these groups have long track records of achievement in the consumer protection and safety fields. Many have successful publishing, research and product testing operations as well as advocacy and policy activities and are self-financed; others, according to their cultural traditions, are financed from public or foundation funds. All are independent.

TACD welcomes the opportunity to participate in the advisory group of the Transatlantic Economic Council (TEC) and is strongly committed to ensuring that consumer interests are adequately reflected in the TEC outcomes. It is hoped that TACD's formal inclusion in this process signals a renewed commitment to ensuring the parity with other dialogues enshrined in the "Principles for government relations with the Transatlantic Dialogue established under the aegis of Chapter IV of the New Transatlantic Agenda" (Washington 17th December 1999). In particular, the TEC process should ensure that contacts with senior decision-makers on both sides of the Atlantic continue to be improved and strengthened and that the principle of transparency is rigorously applied to all dialogues.

TACD's recommendations to the TEC are structured as follows:

- A. Proposals for issues to be included on the TEC agenda
- B. Discussion of topics at the high-level regulatory forum
- C. Comments on "early deliverables" and "procedural decisions" to be discussed at the TEC November meeting
- D. Discussion of the status of TEC lighthouse projects not included as deliverables or procedural decisions

**A) TACD Proposals for issues to be included on the TEC agenda. We propose working groups on:**

**1) Agreement on consumer rights in the digital environment**

TACD asks the EU and U.S. governments to develop an agreement that addresses and defines the following consumer rights:

- *The right to private copy* - this refers to the right of the consumer to make a copy of a digital product such as a book, CD or video for personal use e.g. in order to be able to copy a CD on to a music player such as an ipod
- *The right to fair commercial practices* - such as transparent contract terms which do not undermine copyright exemptions or other consumer protections
- *The right to interoperability of content and devices* - that means that software and hardware should have the ability to communicate and transfer data between different systems
- *The right not to be criminalized for making non-commercial use of dissemination technologies* - examples are file-sharing and circumvention of technical protection measures
- *The right to be informed and refunded for faulty products*
- *The right to privacy and data protection*
- *The right to free speech*

In a world which has changed from a product-based to a service-based economy, consumer protection laws (and related areas) are no longer adequate to protect consumers in their everyday dealings with businesses. While business models have already changed or are changing to take advantage from technical developments, consumer policy has not kept pace. Work is needed to define consumer rights, not just the rights of developers of digital material.

It is in the public and consumer interest to ensure a fair return for creative endeavor in the digital environment. The key word, however, is “fair”. Digital Rights Management Systems (DRMs) can expect public support, e.g. in the protection of anti-piracy technologies, only to the extent that DRMs respect the wider interests of public policy, public access, consumer rights, the promotion of competition and technological development. In all of these areas certain types of DRMs can have negative effects. In particular, the potential anti-competitive effects of DRMs should be reviewed.

**2) Open standards and Interoperability as potential tools for fostering innovation**

TACD encourages the EU and U.S. governments to reach agreement to promote open standards through procurement and regulatory policy.

Software interoperability - the ability to communicate or transfer data effectively between different programs – is of vital importance for consumers. The topic has received a lot of attention in the context of DRM technologies (online music distribution) and the September 2007 Microsoft decision of the European Court, but it has high relevance in all technology developments, including online

payment systems, ID management systems, all office software applications and content shared via mobile devices. A lack of interoperability can have very serious consequences for consumers in terms of competition, switching costs, contract terms or being 'locked-in' into one system. Open standards are an integral part of this discussion, as proven by the latest discussion on Office Open XML.

The TEC is considering interoperability for health records. We urge a more extensive agreement on using government procurement policy to promote open standards and to facilitate interoperability.

### **3) Internet Security, ID theft and Phishing**

TACD is concerned about the growing number of identity theft and phishing attacks via the Internet and SPAM. These attacks pose a significant threat to consumers on both sides of the Atlantic and worldwide. Consumer confidence in e-commerce is at stake, as trust in doing business online is eroded due to the increasing risk of such attacks.

EU and U.S. Governments should develop an agreement to:

- Enact laws to explicitly prohibit using malware or spyware as well as remote manipulation of external computers or services for the purpose of ID theft;
- Require the providers of electronic products and services to safeguard their security and make them legally accountable for losses and damage caused by not taking the appropriate security measures;
- Establish effective enforcement measures to prevent large-scale economic damages as a result of security breaches
- Take specific measures to prohibit SPAM

### **4) Improving the dietary and health status of children**

We urge the TEC to improve the dietary and health status of children in line with the WHO's Global Strategy on Diet, Physical Activity and Health. The EU and U.S. have both identified obesity as a key issue given its impact on public health, but also its economic consequences, including increases in healthcare costs. However, EU and U.S. action in this area has generally been weak and reliant on voluntary industry initiatives – for example, the EU's White Paper on nutrition, overweight and obesity related health issues.

EU and US governments should agree to work together to:

- Strengthen regulations restricting the marketing of foods of low nutritional value to children. Such regulations should address all forms of marketing
- Take measures to stop the marketing of beverages of low or no nutritional value on school premises
- Develop rules on packaging and nutritional labelling that foster sound dietary habits for children

## **B) Discussion of topics at the High Level Regulatory Forum**

### **1) Joint EC-OMB report on a review of the respective regulatory impact assessment guidelines on trade and investment and their application**

TACD strongly believes that any review of regulatory impacts should not be a barrier to the preservation and improvement of consumer and environmental protections.

We continue to object to the Transatlantic Economic Council's goal of attempting to harmonize impact assessment methodologies, in particular the objective of "ensur[ing] the comparability of impact assessments" (Annex 1 of 2007 Framework for Advancing Transatlantic Economic Integration Between the United States of America and the European Union). As we explained in our February 2007 Position Paper and Resolution on Horizontal Regulatory Initiatives in EU-U.S. Regulatory Cooperation, U.S. impact assessment methodologies do not sufficiently permit consideration of the Precautionary Principle, and cost-benefit methodologies tend routinely to overstate costs and underestimate benefits, to the detriment of consumers.

We also reiterate our demands for transparency and stakeholder consultation with consumers on methodological issues. Impact assessment methodology has a significant effect on the assessments themselves, which in turn have a significant effect on policies to protect consumers. Consumers therefore have a keen interest in any dialogue about impact assessment methodologies. As the OMB-EC dialogue develops any reports or analyses as deliverables, in particular the comparison of impact assessment methodologies proposed as an early deliverable, we request that reports be circulated in draft form to consumers for an opportunity to comment.

### **2) Controlling hazardous toys, food and consumer product imports**

TACD urges the TEC to establish a working party to examine how the EU and U.S. can improve their ability to respond to hazardous toys, foods and consumer product imports. Hazardous imports are a problem because of manufacturers and governments failures to protect consumers.

In the EU and U.S. we have had a growing problem with hazardous imports as developing countries that lack well developed food and product safety systems are increasing their exports to the EU and U.S. Literally millions of toys have been recalled in the last several months due to problems with lead paint. Earlier in the year we had problems with imports of tainted seafood and pet food in the United States.

The EU and U.S. should improve sharing of information, examine how independent third-party certification systems can be used to certify compliance with standards, whether the EU and U.S. have the best border protection systems, whether the governments have adequate recall authority, and whether governments of exporting countries like China and India are getting needed targeted assistance so that they can enforce safety standards.

## **C) Comments on “early deliverables” and “procedural decisions” to be discussed at the TEC November meeting**

### **1) Suppliers declaration of conformity for electrical products**

TACD opposes recognition of the supplier’s declaration of conformity in the U.S. TACD is concerned about any reductions in government supervision of third party certification such as OSHA supervision of electrical safety certifications.

### **2) Reductions in Barriers to Trade in Chemicals — REACH**

TACD believes that open, transparent and inclusive regulatory and trade-related processes are essential precursors to the development of sound public policy, and are necessary to avoid costly, potentially embarrassing and unsuccessful trade disputes. Any reduction in barriers should not reduce consumer protection. We ask the TEC to consider the 2004 TACD Resolution on REACH in which we recommended the following:

“The U.S. should immediately cease its campaign against REACH and the U.S. and the EU must avoid a trade dispute over REACH. The U.S. government should cease its campaign against REACH and reassess its position on the matter by consulting a wide variety of interested parties. TACD once again calls upon U.S. agencies to solicit public comment on REACH and other public interest policies perceived to be trade irritants by posting notice in the Federal Register, holding public meetings and soliciting opinions from a balanced group of stakeholders. The EU could also improve performance in public consultation by soliciting testimony on the public health benefits of REACH and the costs of non-implementation”

”TACD once again calls upon the governments to incorporate the Precautionary Principle in regulatory decisions involved in consumer health and safety and the environment, particularly in cases of scientific uncertainty and complexity. We urge the U.S. to develop legislation to strengthen TSCA using REACH as a model and we urge the U.S. EPA to form a special committee to explore the overhaul of TSCA to provide for the registration and authorization of chemicals on the market that predate the U.S. law utilizing REACH as a model. We call upon the committee to solicit testimony from U.S. and EU experts on the benefits of a REACH approach as well as the costs, and to examine the costs of nonaction on U.S. public health, environment and taxpayers”

### **3) A single set of Rules to Protect Intellectual Property**

The Framework refers to “improving efficiency and effectiveness of the patent system at the global level to promote innovation, employment and competitiveness and seek progress in the harmonization of the different patent regimes”. Focuses are on:

- Enforcement
- Customs cooperation
- Extending IPR networks to China, Russia, Asia, Latin America and Middle East

- Expand joint technical assistance in these countries
- Improve public-private coordination on anti-counterfeiting + anti-piracy education, public awareness and business practices

TACD recommends some additional focuses:

- Development of a more balanced IP system that reflects the needs of consumers for access to knowledge and medicines and not simply the interests of producers in developed economies. Technical assistance in IPR in developing countries should be focused on the specific needs of the recipient countries rather than on the strengthening and expansion of IPR regimes per se. Capacity building should empower countries to construct IP systems that facilitate and not hinder access to medicines and knowledge.
- Conduct an evidence-based evaluation of the role of IP in promoting innovation and hindering innovation
- Develop a joint agreement a set of consumer digital rights to ensure that measures taken to protect intellectual property do not infringe on the rights of consumers
- Support work in WIPO for a treaty on Access to Knowledge
- Improve cooperation on counterfeiting of safety-related symbols such as the Underwriters Laboratory (UL) logo

#### **4) Bilateral trade in agricultural products (Chicken pathogens and cloning)**

a) The EU and U.S. should undertake a joint research program on how to reduce campylobacter and salmonella contamination rates in chicken. Latest Consumer Reports testing found that in the US there is an 80% contamination rate of campylobacter in chicken purchased in supermarkets.

The TEC is addressing the issue of pathogen reduction treatment for poultry carcasses. The EU has banned the import of U.S. poultry on sanitary and phytosanitary grounds because of the use of washes of low concentration chlorine as an antimicrobial treatment to reduce the level of pathogens in poultry meat production. In fact both the EU and U.S. have significant problems of bacterial contamination in poultry.

We oppose lowering of standards. Regulations should not assume that poor hygiene standards in production can be offset by pathogen treatment at the end of the production process. We urge the EU and U.S. to jointly upgrade both their safety efforts.

b) As regards cloning, the EU and U.S. should agree to clear labelling that allows consumers to chose whether or not to purchase such products.

#### **5) Consumer access to information about legal pharmaceuticals**

TACD believes that health care information for consumers should come from independent sources not from pharmaceutical companies who by their nature have an inherent conflict of interest in this respect. Pharmaceutical companies' role in providing information to patients should be clearly separated from the roles of other actors and limited to clear labeling.

TACD strongly believes that this issue should not be on the TEC agenda considering that its status in the EU remains highly controversial. We object to the lax regulatory environment in the U.S. with regard to pharmaceutical advertising. Direct to consumer advertising of pharmaceuticals does not lead to better health choices for consumers. It is confusing and responsible for encouraging consumers to prioritise “drug fixes” neglecting “natural fixes” such as exercise and better nutrition.

#### **D) Discussion of the status of TEC lighthouse projects not included as deliverables or procedural decisions**

##### **1) Nanotechnology—assuring safety in consumer products**

The EU and U.S. should develop a joint, appropriately precautionary approach to the use of nanomaterials in consumer products.

TACD has submitted a proposal to the EU for a project to conduct a comparative analysis of EU and U.S. approaches to ensuring safety and appropriate labeling of products produced using nanomaterials

TACD also urges the EU and U.S. to develop an agreement to require pre-market safety assessment of nanomaterials used in cosmetics. Such materials are already present in sunscreens.

##### **2) RFID—assuring privacy and maximizing consumer benefits**

TACD urges the EU and U.S. to adopt safeguards to ensure privacy in the use of RFID. We urge the governments to require: transparency in the use of RFID; that personal data only be used for the purpose it was collected; that tags be automatically de-activated after the consumer has purchased the product and to give the consumer the option to re-activate.

The EU and U.S. should also explore how RFID technology could be used in the retail domain to provide consumers with more information. In this context, TACD would welcome a lighthouse project that analyses how RFID could be used to provide consumers at the point of sale with better information on essentials such as ingredients, allergens, nutrition, chemical content, social and environmental production conditions, energy consumption and efficiency, third-party testing results and food origins. The focus of the lighthouse project should be on the questions: What kind of information do consumers want? What kind of information is necessary for consumers to make informed choices that best reflect their preferences and foster sustainable consumption? How does the information need to be presented? How should RFID information systems be designed, managed and updated to facilitate the provision of information? How should such systems be designed so that they do not infringe on consumer privacy? What would be the environmental impact of these systems?