



BUSINESSEUROPE



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Room 3513
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RE: FR Doc. 2011–10713 - Request for Public Comments Concerning Regulatory Cooperation Between the United States and the European Union That Would Help Eliminate or Reduce Unnecessary Divergences in Regulation and in Standards Used in Regulation That Impede U.S. Exports

To: Messers. Sunstein, Zourek and Camuñez:

The U.S. Chamber of Commerce — representing the interests of more than three million businesses and organizations of every size, sector, and region — and its transatlantic strategic partner BUSINESSEUROPE — which is comprised of 40 member federations, representing 20 million companies across 34 countries — are pleased to jointly submit comments in response to this federal register notice and

ahead of the June meeting of the US-EU High Level Regulatory Cooperation Forum (HLRCF).

We congratulate the HLRCF for the steady progress it has made in its nine initial meetings. We are also pleased with the established practice of video conference calls that now routinely occur between meetings to ensure that agreed work programs are advancing. The Chamber and BUSINESSEUROPE have long been strong supporters of the HLRCF as we remain convinced that better regulation is the key to overcoming regulatory divergence, which is by far the largest hindrance to trade and investment between the United States and Europe.

We offer the following thoughts and suggestions on both current and potential future programs of work:

Cooperation on Regulatory Process and Methodology

Joint Regulatory Principles

One of the action items coming out of the last HLRCF in December was that the US and the EU would agree to a joint list of good regulatory principles by February 2011. The self-imposed deadline has passed, and we understand that the joint principles remain unfinished as a result of differences in views. The Chamber and BUSINESSEUROPE believe in the importance that the joint principles be completed, but it is even more critical to share publicly those differences that remain obstacles to completion. At the upcoming stakeholder session of the HLRCF in June, we ask the HLRCF to discuss the state of play as it relates to completing the joint principles as well as the differences that remain.

Assessing mutual regulatory regimes

Early on in its program of work, the HLRCF examined the manner in which US and EU regulators each take into account the impact regulation might have on trade and investment. As a result, in early 2009, the EU updated its impact assessment guidelines to include considerations for the impact proposed regulatory measures might have on trade and investment. This was an important and significant development. Similarly, the Office of Information Affairs (OIRA) last month issued a memo which reminded U.S. agencies of the various requirements they must meet when promulgating regulations and highlighting the international dimension of those requirements in support of trade and export.

However, efforts to institutionalize and make such guidance operational are still needed. For the Commission, BUSINESSEUROPE made this point in a March 3, 2009 letter welcoming the revised EU guidelines, but questioning how the trade and investment elements would be implemented in practice. Beyond OIRA's recent memo, the U.S. has also put in place a "flag system" which prompts regulators to signal whether or not pending regulations have the potential for significant international impacts. This newly deployed system is an excellent addition, but its use and full potential have yet to be realized.

Building on the updated joint US-EU regulatory principles that will hopefully be completed shortly, as well as the early work done on the HLRCF to consider how regulators take into account the impact on trade and investment, it is time to move the HLRCF program of work in this area to more ambitious, but attainable logical next steps. The Chamber commissioned a white paper prepared by John Morrall, senior scholar at the Mercatus Center at George Mason University and former career OIRA staffer that explores the concept of instating for certain significant regulations a Transatlantic Regulatory Impact Assessment with the aim of serving as a bridge to mutual recognition of compatible regulatory regimes. A copy of the white paper is attached to these comments and we look forward to discussing with you in greater depth the concept found in the paper.

Ex-post assessment of regulation

The Chamber and BUSINESSEUROPE consider it important to analyze how existing regulations that in particular have an international dimension are working in the market and assess whether the ex-ante assessment done on the regulation was indeed accurate. We believe that it would be useful for the HLRCF to identify regulatory case studies in order to conduct an ex-post assessment on how these regulations have been in force in the market. The aim of such an exercise is not to review the regulation with the intention of changing it, but rather to generate new learning and understanding as to how to use impact assessment in the future to better capture the regulatory impact of future regulations. Two or three regulations could be chosen in a pilot phase for an ex-post assessment from industries or sectors of the economy where there is a fair amount on transatlantic trade.

Timing of bringing new regulation into force

At the public session of the last HLRCF in December 2010, the issue of determining the date for when a new regulation comes into force was raised. Business take compliance seriously; however, given business methods, processes and procedures, as

well as increasingly sophisticated and complex supply chains, it can be difficult for a company to come into compliance with a new regulation on very short and sometimes arbitrary timetables. This situation can be more problematic in Europe when the enforcement date of a directive is often set several years into the future, but regulatory details needed by business in order to bring itself into compliance may not be determined until a few weeks ahead of a long established enforcement deadline. When regulators do not afford an appropriate, necessary, and reasonable timetable for businesses to comply, it can unnecessarily raise the cost associated with coming into compliance or worse yet leave businesses in the difficult position of temporarily being in non-compliance. Therefore, we suggest the HLRCF examine this issue, discuss how regulators consult with those required to comply with new regulation on the timing of implementation, identify the various types of time horizon challenges that businesses face, as well as identify those regulatory areas which likely have the greatest timing sensitivities.

Specific Regulatory Cooperation Recommendations

Energy Star

The Chamber and BUSINESSEUROPE would like to underscore the importance of following through before the end of the year on the commitment reached at the last HLRCF which read:

“In light of third party certification requirements in the US, both sides agree to develop an approach to allow continued mutual recognition between the U.S. and EC, with safeguards, until the new Agreement is in place.”

The EU’s adoption of the US energy star program is a success story in regulatory cooperation. While it is important to update the program so that it remains meaningful, the Chamber and BUSINESSEUROPE believe the U.S. should not undermine previous “model” level of cooperation and find a way to put a new mutual recognition agreement in place with the EU.

Mutual recognition of CTPAT & AEO

The Transatlantic Economic Council (TEC) long ago agreed to achieve full mutual recognition of the United States’ Customs and Trade Partnership Against Terrorism (C-TPAT) and the European Union’s Authorized Economic Operator (AEO) programs. Timetables for completion of an agreement have repeatedly slipped. While this is clearly an agenda item TEC, it is important given the significance the business community has placed on mutual recognition of these two secure shipper

programs that the HLRCF assist where possible to bring mutual recognition between the US' C-TPAT and the EU's AEO. The leadership of the HLRCF and its broader experience with mutual recognition agreements could be helpful in finalizing an agreement in 2011.

Risk measurement, management & air cargo security

It is important that the HLRCF establish programs of work that involve a diverse group of regulators. The HLRCF has discussed the issue of risk measurement and management in the past and was also a chief architect in launching the International Global Risk Dialogue which had its second meeting earlier this year. Building on this work, it would be important for the HLRCF to convene those regulators who are working most closely on implementing security changes to the air cargo environment. Movement of goods is critical to trade the HLRCF should seek to develop a common risk based approach for securing air cargo. Without such a common risk based approach, the US and the EU are likely to develop divergent approaches which will lead to divergent regulation, costly compliance, and become an unnecessary trade hindrance.

The Chamber and BUSINESSEUROPE appreciates the opportunity to provide these comments and looks forward to working with and being a steadfast supporter of the HLRCF.

Sincerely,

U.S. Chamber of Commerce

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