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POSITION PAPER ON A TRANSATLANTIC FRAMEWORK AGREEMENT

SUMMARY

The transatlantic trade and investment relationship is of enormous economic significance. Business has welcomed all initiatives to promote a barrier free transatlantic market but feels that a step change in the approach is needed to guarantee success. BUSINESSEUROPE welcomes the EU initiative on a new transatlantic economic partnership announced by Chancellor Merkel and welcomed by President Bush. European companies call for the launch of negotiations at the April EU-US summit for a binding framework agreement for transatlantic economic relations that would be ratified by legislatures in the EU and the US. Such an approach is the only way to ensure that economic cooperation will deliver real results. The agreement should cover regulatory cooperation in goods and services; investment; tariffs, through the WTO; public procurement; intellectual property; energy/environment; financial markets; trade and security; and innovation.

INTRODUCTION

The enormous size and importance of the transatlantic economic relationship is well known to policymakers and business people on both sides of the Atlantic. The latest figures released suggest that the two economies continue to become ever more enmeshed: In the first half of 2006 alone European investment into the United States totalled €47 billion – more than three times the amount for the same period a year previously. US firms invested €39 billion in Europe.¹ The EU exported €251 billion in goods to the US in 2005 and €117.bn in services.²

However, despite these figures, it is difficult to point to concrete achievements from efforts by governments on both sides to strengthen the relationship. Since the establishment of the New Transatlantic Agenda in 1995, a series of initiatives have sought to remove barriers – the Positive Economic Agenda, Transatlantic Economic Partnership and most recently the 2005 Transatlantic Economic Initiative. While companies do appreciate these genuine efforts they are disappointed that so little in terms of substantive progress has been made.

The removal of barriers and the development of harmonised standards would deliver real benefits to the transatlantic and global economies. The most comprehensive study to date is a 2005 OECD study on the impacts of the removal of barriers to transatlantic trade. This estimated increases of up to 3.5% of GDP in the EU and 3% in the US³

¹ Hamilton, Daniel S & Joseph P. Quinlan, *The Transatlantic Economy 2006*, Center for Transatlantic Relations, Washington DC, 2007.

² DG Trade statistics http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113465.pdf

³ “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. The study looks at both regulatory and tariff barriers.



which would be an extremely significant economic boost. Furthermore, as globalisation continues to intensify, the development of global regulatory standards is becoming inevitable. By creating transatlantic standards and regulations now, the EU and US would be taking a major step forward towards this goal. There should be no doubt however, that if the EU and US do not move in this area it will be today's emerging economies that establish the global standards of the twenty-first century.

BUSINESSEUROPE therefore fully supports the EU proposals for a new transatlantic economic partnership announced by the German Presidency and supported by President Bush. European companies' consistent position has been that the goal for transatlantic economic cooperation must be the negotiation of a comprehensive and legally binding agreement. BUSINESSEUROPE's ideal agreement would cover regulatory cooperation, in goods but also in services; investment; tariffs – through the WTO; public procurement; intellectual property; energy/environment; financial markets; trade and security; and innovation.

WHY A FRAMEWORK AGREEMENT?

Why is a framework agreement, approved by both sides and ratified through both legislatures, the best approach? The high profile of a large scale effort to remove barriers can be an effective aid to negotiations on difficult barriers to trade and investment. The political commitment behind the European single market program allowed EU Member States to see potential losses in the context of a wider project that was and is to their advantage. The WTO's Single Undertaking has also permitted its members to balance losses in one area against gains in another and so help generate a consensus for convergence.

Furthermore, business and governments must recognise that despite the considerable time and effort invested in the current approach, which combines voluntary, informal, technical dialogue with political-level endorsement from transatlantic summits, few concrete results can be identified. BUSINESSEUROPE is very pleased with the achievements we have seen. These include the 2006 establishment of the Regulatory Cooperation Forum and the progress that has been made in financial markets and competition policy. However, if one looks at the broad spectrum of barriers in place – in the areas of automobiles or chemicals for goods and the great majority of service sectors for example – we must regretfully conclude that the current process has yielded rather little since 1995.

After ten years, it is time to take a new path. If the issues to be addressed are complex and thorny broader political weight must be placed behind solving them. The most logical approach to achieving this - a deep and advanced free trade agreement - is unfortunately not politically feasible at present. BUSINESSEUROPE therefore sees a ratified and binding framework agreement as the next best approach.

The goal of this agreement should be a political and legal mandate for regulators and legislators to "think transatlantically" when drafting new regulations or legislation. This means that transatlantic dimension must be included in legislative and regulatory impact assessments so that these concerns are addressed at the very beginning of the process. The agreement would also give new impetus to broader political cooperation in non-regulatory fields.



The major new element in the framework would be its support by legislatures. All of the agreements since the New Transatlantic Agenda have been agreements between executive branches, but many aspects of the regulatory process also involve the legislature. In both the EU and in the US, the resources of regulatory agencies are determined by the legislators, for example. Hence the US Congress, the EU Council of Ministers and the European Parliament need to be committed to and involved in the process on the basis of a political act they have approved beforehand. For maximum effect they would further be given the opportunity to formally approve an agreement. Such a step may seem ambitious but it responds to the strong interest of businesses on both sides of the Atlantic who need a large uniform transatlantic market to be strong enough to face the challenge of global competition.

Concerns about the relationship between such an EU-US agreement and the WTO are unfounded. The document would not cover WTO-type issues of preferential tariff reduction and market access for services. BUSINESSEUROPE advocates a joint EU-US approach to tariff reduction within the WTO context which would rather serve to strengthen the body (see below). The WTO has nothing to lose and much to gain from an ever closer transatlantic partnership. Greater cooperation in multilateral negotiations would help address the chronic blockages that have affected the organization during the Doha Round.

THE CONTENT OF AN AGREEMENT

Regulatory Cooperation for Goods and Services

A comprehensive and serious approach to regulatory cooperation must both look at regulation in place and instil cooperative practices between regulators to avoid future divergences. The first step in the process is for the US and EU to carry out a detailed study of the types of barriers that exist in a broad range of product markets. The study must also clarify the costs of this divergent regulation to the businesses directly concerned and to the wider economy. The results of this exercise will provide a clear indication on where efforts should be directed. The importance of services in the transatlantic economy must be stressed here. Regulatory cooperation has not yet been construed to include services and this gap should be properly addressed in any new steps taken.

On the basis of the study, the agreement should set out a list of regulatory dialogues that need to take place with the goal of resolving the most important problems. The process must involve a strict timetable of implementation and should be overseen by a strong supervisory body – a reinforced version of the current Regulatory Cooperation Forum. In order to ensure implementation of the agreed programme, the agreement must build transatlantic cooperation directly into the mandates of regulatory agencies. This could be achieved through modification of their rules of procedure or legal remit. The necessary impetus might also be provided through taking the current cooperation between the European Commission and the Office of Management and Budget in the area of better regulation to a higher level. The EU impact assessment process does not oblige Commission officials to take the consequences for the transatlantic market into account when assessing new proposals. This could certainly be modified. The US Administrative Procedures Act, which covers the impact assessment process in the US, could also be amended to make reference to the transatlantic context



A reinforced regulatory cooperation process must also look at ways to insist that EU and US regulators work together on new issues and product areas. Ideally, to guarantee this process a form of dispute settlement should be envisaged for sectors that have been harmonized. Negotiators may further wish to look at the possibility of applying dispute settlement to the entire list of sectors to be harmonized once the deadline is passed for the removal of the barrier – an idea similar to the “direct effect” principle in EU law.

Investment

The significance of transatlantic investment is second to none globally, with EU and US companies by far the largest investors in each other’s markets. To date, legislation concerning investment does not recognize this fact and this may give rise to problems for transatlantic investors in the future. Security and strategic concerns regarding investment have been raised in recent years on both sides. EU companies were very concerned about last year’s proposed changes to the CFIUS system for controlling investment in US critical infrastructure and other sensitive areas that might have prevented European investors from operating on a level playing field with their US counterparts. With the regrettable increase in protectionist sentiment, there is a risk of new discriminatory measures against foreign investment in the future. BUSINESSEUROPE therefore calls for the conclusion of an investment standstill agreement between the US and EU as part of the framework. Under its terms both sides would agree to carve each other out of any future legislative restrictions of foreign investment. It would not require a change to current legislation at EU, Member State, US Federal or State level but would mean that any future restrictions would not affect either party. This would provide greater legal certainty for companies operating in the transatlantic market.

Tariffs in the WTO

The clear position of BUSINESSEUROPE is that an EU-US free trade agreement would be the most efficient way of dealing with tariff barriers between our economies. It notes, however, that at the present time a fully fledged FTA does not have sufficient political support to be practicable. This does not mean, however, that an EU-US agreement should ignore the problems raised by tariffs altogether. It is true that average tariffs in both economies are low, but for industries trading across the Atlantic in large volumes the absolute amounts paid to customs authorities is significant. BUSINESSEUROPE therefore calls on EU and US negotiators to agree to a commitment – written in to the text of the framework agreement – to step up efforts to progressively eliminate tariffs for OECD and eventually emerging countries through WTO negotiations. The first step in this process must be the prompt and ambitious conclusion of the Doha Round.

Intellectual Property

Ensuring strong and effective enforcement of intellectual property rights is a key priority for BUSINESSEUROPE. The US and the EU have a clear common interest in strengthening enforcement of the intellectual property framework worldwide through cooperation in relations with third countries. The joint “EU-US Action Strategy” is an urgently needed sign of political determination to combat counterfeiting and piracy which threatens the future of thousands of companies and millions of their employees. These efforts are fully supported by transatlantic business.



Going forward, the EU and the US should also aim for convergence in other areas of IPR law, notably in the field of patents. For example, the US should move from a “first-to-invent” to a “first-to-file” system. BUSINESSEUROPE would also welcome greater cooperation in international bodies on IPR issues (the WTO, WIPO, Bio-safety Convention). The EU and the US have similar interests to defend and promote through these organisations and should therefore cooperate more closely. Considering that developing countries are blocking the WIPO harmonisation process, new bilateral or multilateral initiatives, including launching agreement on an international treaty on patent law harmonisation, should be considered

Procurement

The OECD has estimated that the size of the potentially tradable component of US and EU markets, a figure which excludes compensation of employees and defence spending, at 6.18 and 8.03% of GDP respectively. Based on rough calculations, this implies a market of over \$1.9 trillion at today’s GDP. Some of this is potential is already being tapped by companies but more remains to be done. Any agreement should therefore remove barriers faced by EU companies in the US public procurement market. The US should extend its commitments under the WTO Government Procurement Agreement to include sub-national governments and other procurement agencies. In addition, the US should eliminate “buy American” clauses in its procurement legislation as disguised protectionism for procurement markets.

Energy and Environment

Both the EU and the US face formidable challenges in the field of energy. Securing future supplies and addressing climate-related questions are areas ripe for future cooperation. International discussions on how to organise cooperation to combat climate change post-2012 have come to a crucial phase. Any new arrangements concluded without the involvement of the US would have little value and place European business at a disadvantage. Outside of this framework BUSINESSEUROPE is also interested in looking further at proposals for cooperation in the field of energy efficiency.

Financial Markets

Cooperation in the financial markets and corporate governance field has been relatively successful to date but further progress can certainly be made. BUSINESSEUROPE is particularly concerned that the ongoing issues of delisting from US stock markets, the compliance burdens of the Sarbanes-Oxley Act and the convergence of IFRS and US-GAAP and seeks their rapid resolution.

Trade and security

BUSINESSEUROPE believes that in today’s unstable geopolitical environment it is more than ever crucial to maintain a satisfactory balance between increased security controls and facilitation of legitimate trade. As both the EU and US move to update security procedures on trade this balance should be sought in cooperation. The cost to business of differing standards and requirements is detrimental to trade flows and adds additional costs to businesses having to adapt to another standard. BUSINESSEUROPE is extremely concerned about the security measures contained in the ‘H.R. 1 Implementing the 9/11 Commission Recommendations Act of 2007’ which would requiring 100% screening of all air cargo entering the US, causing enormous costs and delays in the international transport chain. Companies are also concerned



that EU and US systems are becoming more divergent than ever. Any new transatlantic agreement must seek to resolve these problems.

Innovation

In the increasingly competitive global environment companies operate in today rates of innovation are becoming ever greater determinants of future economic growth. BUSINESSEUROPE accordingly fully supports the continued prioritisation of this issue by the EU and US governments. BUSINESSEUROPE supports the proposed Transatlantic Business Dialogue (TABD) recommendations on innovation. Intellectual property rights protection, technology clusters between business and universities and access to capital to finance risk-taking are key. It is also important to stress the importance of pro-innovation environment more generally: better regulation, a completed internal market in the EU, a barrier free transatlantic economy and open access to global markets must also all be achieved.

CONCLUSION

A barrier free transatlantic market has been the long stated goal of business and government in the EU and US. The benefits this would create are beyond dispute. The steps to reach it are not insurmountable. BUSINESSEUROPE therefore calls on all involved in this process to use the next few months wisely and productively to begin a new era of progress in transatlantic economic relations.