

TACD

TRANS ATLANTIC CONSUMER DIALOGUE DIALOGUE TRANSATLANTIQUE
DES CONSOMMATEURS

TACD Submission to the 4th Meeting of the Transatlantic Economic Council

October 27, 2009

1. Introduction

TACD is a forum that includes the main independent consumer organisations from the EU and the US. All together we are 80. For us transatlantic cooperation is very important. We believe that good cooperation has the potential to create a more vibrant market, but also increase consumer and environmental protection, and raise regulatory standards.

We welcome the fact that both the new Commission President Barroso and President Obama continue to affirm their strong support for the Transatlantic Economic Council (TEC). It is now urgent that this support is given a more concrete form through a work programme and a list of actions in which we as stakeholders can actively engage. We hope that the next meeting in Washington will make progress in this direction.

In the past months much reflection has gone on within the EU and US administrations on future priorities for the TEC to ensure that it delivers on the high expectations that we all have. We are pleased to have taken part in this process. Addressing the economic crisis and the fight against climate change have now been identified as priorities by both administrations, as well as by all stakeholders.

We are also hopeful that going forward, the TEC will be different. We support it upgrading its level of ambition, and at the same time playing a strong central role in providing the context to the many ongoing bilateral dialogues and initiatives. It is key that there be more clarity as to what is being addressed in these dialogues and that stakeholders are actively engaged. The TEC needs to become an effective accountability mechanism for these dialogues and should intervene to ensure that progress is being made on key priorities. The TEC and the dialogues need to become more transparent, and should include all relevant stakeholders.

TACD supports the strengthening of transatlantic economic integration, with the “goal of improving competitiveness and the lives of our people”. Given the economic and financial crisis and the high levels of unemployment, it is particularly urgent to ensure TEC attention to the second half of that mandate. The human dimension linked to the financial and economic issues under discussion must be given careful consideration and are factored in early in cooperation.

Our concrete recommendations on the five areas that have been identified by the EU administration are outlined below. The US administration has not indicated its priorities at this time.

2. The financial crisis

TACD fully supports the importance of working together to overcome the financial crisis and to build a stronger, more transparent and stable architecture for financial markets. However, we remain concerned that the types of issues that have been on the TEC agenda in the past, and remain so now, do not address the core reasons of why financial regulation on both sides of the Atlantic was unable to avert the crisis that our economies and consumers are now grappling with.

The issues on the TEC agenda remain the same:

- Equivalence of U.S. and EU accounting rules
- Mutual recognition in securities regulation
- Equivalence of the regimes for credit rating agencies
- Equivalence of solvency regulation for insurance companies
- Mutual recognition of auditing oversight.

TACD wonders exactly how mutual recognition/equivalence in these areas will help avert a crisis in the future and where work in these areas will also have a beneficial impact on citizens. We note that many authorities believe that deficiencies in accounting rules, in securities regulation, and in regulation of insurance companies, as well as excessive extension of credit to consumers who could not afford it, have been primary causes of the current economic crisis.

TACD Recommendations:

Consumer protection in financial services is a critical topic that should be taken up by the TEC. It should certainly become a core focus of the Financial Markets Regulatory Dialogue.

The economic crisis is prompting governments across the world to re-evaluate their financial regulatory frameworks and to consider supervisory systems capable of avoiding future crises. TACD believes that as a first step, the US and the EU should consider organizing a joint conference focusing on the consumer aspects of financial regulation that would feed into and help set the cooperation agenda. It would be useful to have a discussion focusing on the different approaches being taken on both sides regarding the supervision of consumer retail financial markets, in order to identify and learn from best practice.

3. Climate change

Addressing climate change through policies designed to improve energy efficiency, promote sustainable business practices and consumer lifestyles, is an area where the TEC can ensure rapid coordinated action.

To talk about the relationship between climate change, sustainability and energy efficiency in a meaningful way, we need to look holistically at product lifecycles, including resource extraction, production, sales, use and disposal phases. Consumers should not be forced to choose between products that are sound in some aspects and not in others.

At the moment effective consumer action is limited by:

- sparse or misleading product and service information
- lack of access to and availability of sustainable products and services
- positioning of sustainable products as niche and expensive
- lack of effective and clear regulation
- lack of government support in and promulgation of leading sustainable lifestyles
- and lack of helpful choice.

TACD Recommendations:

TACD recommends that the TEC establish a forum where policy initiatives for addressing the above barriers to more sustainable consumption patterns could be discussed.

This forum should:

- address methodologies for measuring product lifecycle impacts (including indicators on carbon and water footprinting) and common product standards that take into account the whole life-cycle of products
- facilitate exchange of information and best practice regarding the most effective labelling schemes that would allow consumers to make product and lifestyle choices to manage their overall environmental footprint
- support “choice editing” policies and legislation for high impact consumer products and services. Such policies, which remove the least sustainable products from the shelves, like incandescent lightbulbs, have proved effective in promoting sustainable choices for example in home appliances and the EU and US should engage in further strategic thinking in this area
- address confusing or misleading product claims. Strong initiatives are urgently needed to remedy this, including a move towards more independent verification of claims. This should also be the subject of discussion within the EU-SU sustainable consumption forum.

4. Addressing barriers to trade and upstream regulatory cooperation

In addressing barriers to trade TACD urges the TEC not to apply a blanket approach of mutual recognition.

TACD would support avoiding divergent regulation through more upstream cooperation. Many areas we work in could benefit from such co-operation: financial services, nanotechnology, RFID, product and food safety, energy efficiency requirements and e-health.

The TEC has facilitated discussions on issues such as standards, impact and risk assessment, primarily through the High Level Regulatory Cooperation Forum. Working groups of EU and US officials have been set up to discuss exposure assessment as well as safety assessment, terminology and methodologies used to characterize uncertainty. TACD would ask to be involved in these discussions to be able to present our views and analysis.

TACD recommendations relating to further areas of bilateral cooperation:

Nanotechnologies: More transparency is urgently needed concerning what products that contain nanoparticles are available on the market. Voluntary reporting has not been effective on either side of the Atlantic and mandatory solutions are now required. The EU and US should consider this issue as part of the broader regulatory dialogue in the area of nanotechnologies.

Product safety: We very much welcome the attention that the TEC has given to the improvement of EU and US exchange of confidential information relating to unsafe products. TACD encourages further cooperation especially on safety issues also in the area of pharmacovigilance.

In this context, TACD understands that discussions are underway regarding the introduction of similar co-operation across the Atlantic, as occurs between EU member states based on the Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws. The ability of competent authorities to cooperate freely on a reciprocal basis in exchanging information, detecting and investigating infringements and taking action to bring about their cessation or prohibition is essential to guaranteeing the protection of consumers on both sides of the Atlantic.

It would be helpful if further clarification could be provided regarding which specific areas will be covered in the context of this co-operation.

Digital rights: Given that the new President of the Commission has already mentioned that the next Commission is expected to develop a Digital Agenda, we would be very interested that discussions in this area also be added to the agenda, as again both administrations will be considering regulating such issues as access to content-online, and privacy issues in the context of data protection legislation.

We call on the EU and the US government in cooperation with industry to step up measures to protect users' privacy, and to ensure that existing policies and regulation on data collection and unfair commercial practices are improved with specific regard to online marketing to children.

Health and nutrition: TACD would also encourage discussions in the TEC on nutritional labeling and advertising of food to children. In the US mandatory nutrition labelling using GDAs (or DRVs), has been in place since the 90's. However, it has not decreased levels of obesity. As the EU is contemplating introducing a similar system, it would be helpful if the US and EU would exchange experience and learn from best practice in this area.

On advertising to children, EU and US food companies are making voluntary commitments in relation to the marketing of foods high in salt, sugar and fat. But they have different approaches as to: the age of the child the commitment will apply to (aged 6, 12, 16 etc), what is covered/not covered by the commitment, the nutrition profiles of the foods which can/cannot be advertised etc. This results in a number of gaps and uncertainties. Again, it would be useful to have a forum where such issues and new initiatives could be discussed.

Innovation and intellectual property: In discussions about fostering innovation in the EU and US, we urge the governments to consider a range of mechanisms and approaches to stimulate innovation. Strong patent rights should only be promoted in areas where the benefits outweigh the costs, and superior alternatives are not available. Where strong patent rights hinder innovation, alternatives should be considered such as innovation inducement prizes or publicly funded research. The negotiating text for the Anti-Counterfeiting Trade Agreement (ACTA) should be made public.

Better Regulation and regulatory review: Impact analysis can be a useful tool for analyzing and integrating consumer interests into policies. When the appropriate questions are asked and the right methodology is applied, impact assessment could be used to make a positive contribution to balance business and consumer interests. It is important that impact assessments don't depend only on economic data, but also measure what is very difficult to measure, for example non-economic impacts such as long-term impacts on health, or safety, environment or quality of life. To ensure this happens it is essential that careful consultation takes place and non-economic data are also valued into the final assessment made. This process needs to be transparent for the stakeholders.

We have no confidence in self-regulation/ voluntary business codes of conduct. In the view of many TACD members, only schemes with good coverage of the relevant market, mandatory compliance with agreed rules, the involvement of stakeholders in drawing up and monitoring the terms of schemes and effective enforcement mechanisms have the potential to protect consumers.

6. Focus of the TEC, working procedures and relationships

TACD believes that the TEC should retain its focus on overcoming barriers to transatlantic trade and investment and on delivering concrete benefits for the transatlantic economy. We do not consider however that a barrier free transatlantic market by 2015 is a realistic goal.

We reiterate our request that the TEC should not be used as a body for settling trade disputes. Neither do we believe that the WTO will lead to the fruitful resolution of disputes over issues such as GMOs, hormones in beef or antimicrobial treatment for poultry. We are encouraged by the recent efforts of the EU and US to resolve the beef hormone issue through normal diplomatic channels outside the WTO and TEC context and would urge this cooperation to continue.

We appreciate the efforts being made for more transparent processes. However we must reiterate our call for timely distribution of schedules of TEC meetings, agendas, roadmaps and progress reports. These should be available for stakeholders and then made public. Such measures are crucial to developing a clear and transparent process for setting the agenda of the TEC, getting stakeholder input, and public buy in to outcomes, as well as extending the TEC to new sectors, and establishing a long-term roadmap of activities.

We also call for more transparency concerning the work of the other sectoral dialogues, whether they are formal or informal, and about how they involve stakeholders. Sectoral dialogues that do not now involve all stakeholders must do so.

We understand that the EU and US are considering the involvement of labour in the TEC. We would welcome very much the establishment of a labour dialogue and the cross fertilization of ideas and concerns that their input would bring.

We would also support greater collaboration between legislators in the US House of Representatives and the European Parliament on issues of common concern and legislation that affects each side of the Atlantic.

Finally, we would ask that the participation of stakeholders in the TEC process be broadened. We would welcome more meaningful participation than just a short presentation at the TEC meetings themselves. It would be more constructive if consumer experts could be invited to the bilateral discussions and provide input at an earlier stage of the process.