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**Transatlantic Economic Leadership  
for Growth and Innovation**

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

**November 2011**



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### **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**

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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 21<sup>st</sup> 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 study<sup>i</sup> 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.

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