Annex 1:

TABD's Ten Innovation Policy Principles

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Accelerating the Transatlantic Innovation Economy

Ten Innovation Policy Principles
&
Recommendations to Strengthen Collaboration for Innovation across the Atlantic

November 2011 - Revision

Accelerating the Transatlantic Innovation Economy

Ten Innovation Policy Principles & Recommendations

In response to the growing recognition in the United States and the European Union that innovation strengthens economic growth, expands employment and enhances the competitiveness of transatlantic firms, the TransAtlantic Business Dialogue (TABD) is pleased to present *Ten Innovation Policy Principles & Recommendations* to strengthen collaboration for innovation across the Atlantic.

TABD is a formal, CEO-level business partner of the U.S. Government and the European Commission and is the official business advisor to the Transatlantic Economic Council (TEC). We believe in the freest possible exchange of capital, goods, services, people and ideas across the Atlantic and that a barrier-free transatlantic market will serve as a catalyst for global trade liberalization and investment and help stimulate innovation, job creation and sustainable economic growth.

The *Ten Innovation Policy Principles* (Principles) are based on areas of government "best practice", which from our experience as global business leaders have the greatest impact on accelerating innovation. They also are based on observations about the process of innovation in the transatlantic market (see Appendix for details). In conjunction with the Principles, we put forward corresponding Recommendations for action to be taken by the appropriate American and European authorities to address disconnects and inefficiencies in existing policies and eliminate barriers in order to further integrate the transatlantic economy, and thus enable its continued leadership in the global economy.

Much of the world's scientific and technical innovation takes place within and between the U.S. and EU. Working together, we have the opportunity to revitalize languishing industries, accelerate the development of advanced technologies, develop new products and services, create good paying jobs and enhance the ability of the transatlantic market to compete with the rest of the world. Moreover, transatlantic leadership to foster innovation would set the example for other countries struggling to develop and implement appropriate policies that support and accelerate innovation.

The U.S.-EU Summit, the TEC and its Innovation Action Partnership provide the institutional framework to connect transatlantic innovation policies with initiatives and bring this to fruition, helping restore economic growth and creating jobs on both sides of the Atlantic – accelerating the transatlantic innovation economy.

We urge the U.S. and EU to adopt and implement these *Ten Innovation Policy Principles & Recommendations* without delay.

Ten Innovation Policy Principles

TABD calls upon the U.S. Government and the European Commission to adopt the following *Ten Innovation Policy Principles* as a declaration of their intent to work together to strengthen innovation and collaboration across the Atlantic. These Principles should guide both governments as they put into place legislation, regulations and policies that affect the ability of companies to invest, collaborate and commercialize new technologies. By adopting these *Principles*, the U.S. and EU would set an example for other countries regarding policies to support and accelerate innovation and enhance the ability of transatlantic firms to compete in the global marketplace. Recommendations for actions to best address these Principles follow.

1. **Reaffirm open investment policies and eliminate restrictions on foreign direct investment.**

2. **Drive collaboration between and among American and European universities, research institutions, and the private sector.**

3. **Facilitate R&D investment through public/private partnerships and long term incentives.**

4. **Fund pre-competitive scientific research and make it more readily available for commercialization.**

5. **Prevent the erosion of Intellectual Property Rights (IPR) and ensure their consistent and effective enforcement.**

6. **Ensure that competition laws enhance efficiency and consumer welfare without restricting the commercial exploitation of IPR.**

7. **Promote the use of international standards and, where necessary, performance-based technology regulations.**

8. **Secure reliable and undistorted access to raw materials and encourage their efficient use.**

9. **Promote national deployment and maintenance of robust IT infrastructure and allow access to innovative technologies.**

10. **Assess the implications of government policies on the process of innovation and share lessons learned with third countries.**

Recommendations to Strengthen Collaboration for Innovation across the Atlantic

1. Reaffirm open investment policies and eliminate restrictions on foreign direct investment.

Cross-border investments have become pivotal for growth and prosperity in the transatlantic market and globally. International investment spurs the development and introduction of new technologies and business methods, and provides for healthy competition that fosters innovation. This investment brings to an economy good paying jobs, expertise, increased productivity, and a wider range of goods and services at competitive prices.

The United States and Europe enjoy a very broad and deep investment relationship, yet certain bilateral barriers remain. Under the Lisbon treaty, the European Commission now has increased its reach and competence to work bilaterally and globally to ensure open investment policies. Inasmuch as open investment is a pillar of the strong economic relationship we share, the U.S. Government and European Commission should focus on resolving all remaining investment barriers through the Transatlantic Investment Dialogue established by the TEC. The objective should be to eliminate all investment barriers and agree on a joint transatlantic protocol for a narrow national security exemption. Steps taken now to address restrictions and converge our bilateral investment policies will provide assurance to investors and send a signal to transatlantic business that creeping government investment restrictions are being resisted. Moreover, the example American and European policymakers set in the transatlantic marketplace will add credibility as we press for open investment policies in international settings (e.g., G20) and work together to convince third countries of the benefits of open investment.

TABD Recommendation: The U.S. Government and European Commission should:

- Jointly affirm transatlantic commitment at the highest political level to promote open investment policies at home and abroad and acknowledge that these policies are fundamental to our shared prosperity. The joint statement should underscore our transatlantic commitment to maintain non-discriminatory investment policies, avoid new restrictions and strive to eliminate existing barriers, providing needed assurance to investors.
- The Summit Leaders should issue an Open Investment Statement as a key outcome of the November 2010 U.S.-EU Summit.

2. Drive collaboration between and among American and European universities, research institutions, and the private sector.

An open knowledge economy is key to the long-term competitiveness of the transatlantic market. Because innovation is increasingly cross-border and collaborative, investing in education and research with an international dimension is more important than ever. For the transatlantic innovation economy, this means strengthening the existing collaboration between and among American and European universities and research institutions and the private sector.

In order to translate ever increasing knowledge into additional innovation – and commercialize it – academia and industry must find new ways to facilitate effective partnerships and allow the needed entrepreneurship to flourish in our information economy. Our ageing demographics and growing skills gap demand nothing less.

In addition, the world-class universities and research institutions in the United States and Europe provide important support for pre-competitive research and development that is critical to innovation. Indeed, many companies have chosen to locate corporate research facilities near clusters of university and research centers to leverage these relationships, a fact which further underscores the value of private sector-university/research institution partnerships.

The business community welcomes the ongoing financial support to universities and research institutions provided by the U.S. Government and the European Commission, in particular for pre-competitive research. Given the complexity of leading-edge scientific research and discovery and the costs involved, this governmental support is crucial and further binds together the public-private partnerships that characterize the transatlantic innovation economy.   We urge both governments to place renewed emphasis on public support for pre-competitive research. However, the structure of government support for research and development done by universities and research institutions needs to adapt to the changing ways companies are innovating. It is important that private sector- university/research institution collaboration not be hindered by the legal structure of private sector partnership, e.g., consortia. All parties to the innovation process need to work together to develop new models and constructs for the commercialization and deployment of these new innovative advances.

TABD Recommendation: In recognition of the important relationships between and among American and European universities, research institutions, and the private sector that serve to expand the process of innovation, the U.S. Government, European Commission and, as appropriate, Member States should:

- Permanently fund and extend the Atlantis Program, the primary transatlantic cooperative arrangement in higher education, and give greater prominence to training in the areas of innovation and entrepreneurship. Such efforts will ensure that American and European universities continue training globally minded students and faculty and are able to lead the way in innovation and entrepreneurship that can be applied in a global economy.
- Use the Atlantis Program and its activities to strengthen cross-fertilization between universities and industries. Greater industry involvement in American-European university partnerships and projects would give additional context and value to an international education and maintain transatlantic leadership in innovation.
- Build a transatlantic network with leading American academic institutions and the European Institute of Technology to give greater emphasis to collaborative work across the Atlantic and expand integrated knowledge and innovation communities.
- Ensure the use of government funding of research and development by universities and research institutions is not restricted based on the collaborative model chosen by private-sector partners.

3. Facilitate R&D investment through public/private partnerships and long term incentives.

Innovation is increasingly collaborative and cross-border in nature. The most innovative companies often have R&D teams in various locations in the world working around the clock on a product design or technology. A government incentive program that limits the employee participants of a qualifying domestic entity to residents of its country is also limiting the quality and type of innovation the entity may be able to generate. Accordingly, governments should harmonize R&D incentive programs so both large and small firms benefitting from a nation's particular R&D incentive can engage their employees located in other countries on R&D projects without facing qualification or export control issues. Moreover, the incentives (e.g., R&D credits, direct grants for SMEs, etc.) should remain in place for a sufficient period in order to create a stable investment climate. Incentives should be based on the location of the research, that is, anywhere within the transatlantic market, not on the ownership of the entity performing the R&D or the citizenship and location of its employees. What is needed is a new transatlantic R&D investment vehicle that would bring together the many and varying forms of R&D funding, public/private partnerships, and long-term incentives and leverage the richness of these efforts to maximize the innovation process.

TABD Recommendation: The U.S. Government and EU Commission should

- Establish a non-profit cross-Atlantic R&D facility, "Transatlantic Research and Development Institute" (TRDI), with common expectations as to cost-sharing, rights to intellectual property, and other terms to serve as a foundation for transatlantic harmonization of R&D policies on a broader scale. This new approach of transatlantic cooperative research and development would renew and restore global innovation leadership within the transatlantic community.

TRDI would be equally funded by both governmental partners to help bring together American and European companies and their supply chain partners, in partnership with universities and research institutions, and provide resources for innovative applied research, the results of which would be equally shared by participating transatlantic firms, SMEs, and research institutions. TRDI would:

- Distribute funds and manage the applied research through a joint MOU between TRDI and the existing U.S. and EU government funding agencies.
- Eliminate bottlenecks and barriers in funding program rules and procedures that prevent or hinder U.S.-EU based projects, e.g., EU Funding Program 7.
- Facilitate grant making and enable some portion of current government-funded R&D to be conducted in collaboration with transatlantic partners.
- Encourage harmonization of standards for new products developed from the research performed by TRDI, setting a model for effective innovation commercialization.
- Establish a framework within which the rights to intellectual property would be shared appropriately.
- Address the need for the free flow of human talent.
- Expand the cross-border flow of information.

4. Fund pre-competitive scientific research and make it more readily available for commercialization.

The U.S. Government and European Commission have a long history of funding basic scientific research and have agreements in place to ensure collaboration and sharing of the results. Our bilateral cooperation now needs to be expanded to adapt to the changing ways companies, universities and research institutions collaborate so to improve the efficiency of the funding process and more broadly share the results of the research and innovations. The great majority of government funding of basic scientific research goes to universities and research institutions.

A jointly managed transatlantic database that tracks government-funded research on both sides of the Atlantic would be a useful tool in improving the efficiency of government funding and identifying greater opportunities for early commercialization.

Universities and research institutions receiving government funding often work closely with the private sector to define the scope and nature of research but then own the resulting intellectual property. This can cause a bottleneck in the commercialization process, both in terms of time-to-market and scope of the invention covered by IP. Further, most government R&D contracts require reporting of inventions but very little seems to be done with this information. Sharing of this data among government authorities on both sides of the Atlantic and the private sector would help ensure that the results of the research are made available for commercialization.

TABD Recommendations: The U.S. Government and EU Commission should:

- Increase funding for pre-competitive research.
- Evaluate the merits of a combined transatlantic database that would track government-funded research underway on both sides of the Atlantic.
- Restructure IP policies to enable effective licensing for early commercial prototyping activities.
- Share reporting of inventions made based on government R&D funding to create more opportunities for commercialization, particularly for SMEs.

5. Prevent the erosion of Intellectual Property Rights (IPR) and ensure their consistent and effective enforcement.

As global innovation leaders, the U.S. and Europe are also global leaders in the design, implementation and enforcement of intellectual property rules. The U.S. and EU can help preserve respect for intellectual property rights worldwide and ensure their consistent enforcement by building on the strong level of transatlantic cooperation on IPR. The U.S. and EU should continue to use the platform of the formal U.S.-EU Joint IPR Action Strategy and Working Group and the on-going advice of stakeholders as a basis for coordination of robust IPR policies, advocacy and joint positions ahead of key meetings of multilateral organizations where IPR has come under attack, including UNFCCC, WHO, and WIPO.

Transatlantic companies are encountering a disturbing movement in certain emerging markets where governments are attempting to force the transfer of key technologies through compulsory licensing, regulatory approval schemes, or other means. This trend currently is manifested in the pharmaceutical, environmental technology and cyber security areas, but may eventually expand to other areas where IP protection is critical to innovation. Officials in these emerging markets need to better understand the long term economic developmental benefits from strong IPR and their consistent enforcement.

TABD Recommendation: The U.S. Government and EU Commission should:

- Issue a joint Statement on Respect for IPR as a key outcome of the 2010 U.S.-EU Summit.
- Underscore the commitment of both governments to ensure the highest degree of IPR enforcement.
- Identify and support patent office best practices and metrics that speed up the review of patent applications and issuance of patents while ensuring high quality patents.

- To the extent possible, clarify the very limited circumstances under which it is appropriate for a government to issue a compulsory license for IP and reinforce the restrictions on such licensing found in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.
- Work together to educate policymakers in third countries and advocate the implementation of appropriate laws and policies on intellectual property in our era of global innovation.

6. Ensure that competition laws enhance economic efficiency and consumer welfare without chilling innovation.

Sound competition law protects and enhances the competitive process in a non-discriminatory manner and complements intellectual property law that rewards innovation. Both sets of laws are intended to stimulate and protect innovation and competition. American and European authorities have learned and shared many critical lessons over the years on when government intervention to address potentially anti-competitive conduct makes economic sense. However, there is still a lack of convergence across the Atlantic, and certainly globally, with some antitrust agencies exempting state-owned enterprises (SOEs) from relevant competition law restraints and other willing to handicap bigger private firms to enable smaller players based solely on a presumption that such interventions can increase welfare efficiencies.

Inappropriate exemptions for SOEs create an unlevel playing field. On the other hand, excessive government intervention caused by an over eagerness to second-guess the competitive and innovation process sends the wrong signals to regulators and the market at large, resulting in ripple effects far beyond the transaction at hand. This is particularly problematic in cases where competition agencies have shown inclinations to intervene in an effort to “rebalance” certain markets by undermining the exercise of legitimate IPR. Such actions have a chilling effect on investment and innovation.

The solution to these problems lies in the consistent use of robust economic analysis and due process (procedural fairness), which serve the interests of both the regulator and the regulated parties by ensuring competition law achieves its objectives and enhances the competitive process. TABD’s suggested joint work (noted below) product could provide very useful technical assistance to the many competition authorities in developing countries that have immature competition laws, which may negatively impact companies that market their products and services globally.

TABD Recommendation: Taking into account the decentralized globalization of competition policy and our mutual objectives to protect the global competitive process, foster innovation and reduce inefficiencies, the U.S. and the EU should direct their competition authorities to:

- Jointly develop best practices on due process (procedural fairness) for all competition cases and push for their global implementation through organizations such as the OECD and International Competition Network.
- Ensure robust economic analysis is used in analyzing the impact of transatlantic transactions of concern, and that the best tools on how and when to perform such analyses are shared with newer competition agencies.
- Help newer competition agencies more fully understand the intersection of intellectual property law and competition policy and the dangers associated with using intrusive remedies that could negatively affect innovation.

7. Promote the use of international standards and, where necessary, performance-based technology regulation.

As a matter of policy, the U.S. and EU share the commitment to promote international standards. As a practical matter, however, the policy breaks down as various governmental and non-governmental entities seek to develop national standards that favor local technologies in the hope that this will spur greater innovation. This approach is counterproductive because it not only stifles innovation by limiting collaboration with global partners but also creates market access barriers. (This is especially true in standards for ICT products because the global digital infrastructure relies heavily on interoperability to minimize costs and maximize technology benefits for users.) It is paramount for the U.S. and EU to maintain their global leadership that they actively and globally promote the use of all standards that meet the criteria for the development of international standards enunciated by the WTO Committee on Technical Barriers to Trade (TBT) in November 2000.

In the limited circumstances where technical regulations are justified and used instead of voluntary standards, the U.S. and EU must work together to ensure that such regulations are performance based rather than prescriptive. Technical regulations that specify particular technologies or processes have a significant negative impact on innovation because, by their nature, they have a restrictive effect on the types of products invented and manufactured. Performance based regulations allow for more innovation and development of new processes and methods because they provide greater flexibility on how to achieve regulatory objectives.

In spite of the wide recognition that performance regulations are a better approach, we have observed a growing desire on the part of some governments to become more prescriptive in regulating certain areas of concern, such as environmental products and cyber security. Moreover, even when technology regulations are performance based, they typically have significant cross-border impacts and their development should be closely coordinated with other affected governments wherever feasible. While the WTO Agreement on Technical Barriers to Trade requires some level of coordination for cross-border technical regulations, the U.S. and EU should further strengthen their bilateral cooperation in this area.

TABD Recommendation: As part of their efforts to jointly promote greater use of international standards at home and in third countries, and ensure the use of performance-based regulations where necessary, the U.S. and EU should:

- In partnership with the private sector, redouble efforts to gain acceptance of standards on an international level through their work in international standardization bodies, including but not limited to the ISO, IEC and ITU. This would facilitate interoperability, enable broad dissemination of inventions, and reduce the costs of additive innovation. Both American and European firms would benefit from the economies of scale made possible by internationally-accepted standards.
- Bring sharper focus to the ongoing application of the WTO TBT Agreement and ensure that WTO members inclined to pursue national technology standards adhere to all applicable TBT requirements.
- Establish robust bilateral cooperation to ensure that emerging technology regulations with cross-border impact are performance based, allowing maximum flexibility to design innovative technologies and products in a cost effective manner. This model can serve as a template for other governments to follow.

8. Secure reliable and undistorted access to raw materials and encourage their efficient use.

Access to and affordability of non-energy raw materials are crucial for the transatlantic market and our prospects for advancing the process of innovation. Major sectors of the transatlantic economy depend on access to raw materials, including construction, chemicals, automotive, aerospace, machinery and equipment, as well as high technology/ICT and consumer goods. A secure supply of key raw materials is a prerequisite for maintaining the industrial value chain and innovating new materials and products. Transatlantic companies need fair access to raw materials, whether such materials are located within or outside the transatlantic market. In addition, the U.S. and EU need to jointly address market distortions affecting important raw materials available on the international market. Finally, resource use efficiency should be recognized as a key dimension of raw materials security. TABD has developed a roadmap for transatlantic cooperation covering trade, recycling, R&D and substitution, and waste shipment.

TABD Recommendation: The U.S. Government and European Commission should work closely together to more effectively address their dependencies on raw materials and endorse the TABD roadmap, including:

- Jointly collaborate on the use of trade policy and relevant WTO rules to prevent distortions in global materials markets.
- Support on-going work in the OECD to expand economic analysis and develop a broad-based consensus on policy approaches to deal with raw materials security.
- Strengthen recycling markets for key materials and facilitate innovative materials use throughout the economic value chains by developing common standards on resource and energy efficiency.
- Set the right framework on conditions and incentives for investments in the transatlantic market to foster sustainable supply.
- Boost transatlantic cooperation on materials research.

9. Promote national deployment and maintenance of a robust IT infrastructure and encourage investment in innovative technologies.

A robust and expanding IT infrastructure is fundamental to the 21st century transatlantic economy. Given the ever-evolving innovations in information technology and communications technologies, American and European public policy must encourage dynamic investment and advancements in IT infrastructure to stimulate new investment in additional bandwidth, increase demand for communication services through efficient access to new technologies that lead to falling prices, and promote greater efficiency and innovation in the provision of infrastructure and services. Four elements are central to this public policy: (i) promote transparent, technology-neutral and non-distortive incentives to deploy next-generation broadband communications networks; (ii) foster a competitive, private, facilities-based broadband communications marketplace throughout all levels of the IT ecosystem that seeks to enhance current infrastructure capabilities and extend them to under-served communities; (iii) establish an independent communications regulator with enumerated powers to adjudicate abuses; and (iv) eliminate regulations that act as barriers to entry and support market-based broadband communications policies, including spectrum policies that enable efficient, technology-neutral spectrum allocation to effectively access high-bandwidth broadband networks.

TABD Recommendation: The U.S. Government and European Commission should:

- Exercise global leadership and benefit their own economies by advocating the elimination of investment restrictions, and in turn, promoting private investment in competitive networks and services.
- Regularly exchange information identifying the nature and value of the elements that make up an innovative, robust IT infrastructure, and jointly promote those elements worldwide as other markets seek to build their information economies.

10. Assess the implications of government policies on the process of innovation and share lessons learned with third countries.

Government regulations and policies may unintentionally undermine incentives to innovate, purposefully shield local industries from competition or prevent the adoption of the best technologies. There are numerous ways governments can limit competition, either directly or indirectly, including the use of regulations that undermine IPR, favor local technologies, products or services, or restrict the flow of ideas, people, goods and services or capital across borders. As products and technologies evolve ever more rapidly, however, well intentioned government regulations and policies can quickly become outdated and thus fail to accomplish their objectives. Governments need to more systematically and explicitly assess the effect that their policies and regulations have on the climate for innovation and adjust them accordingly.

TABD Recommendation: TABD companies, in partnership with the U.S. Government and European Commission, should:

- Issue an annual report on strengthening collaboration for innovation across the Atlantic.
- Seek to identify and publicize ways in which specific regulatory and economic policies work to impede innovation.
- Ensure continual refinement of "innovation best practices" as the transatlantic economy evolves, and also provide guidance for other governments that increasingly use policy to drive innovation.

Conclusion

TABD offers these *Ten Innovation Policy Principles & Recommendations* as a way for the U.S. and EU to leverage the inherent strengths of the Transatlantic Innovation Economy. Through the specific recommended actions, we seek to address disconnects and inefficiencies, eliminate barriers, and strengthen innovation and collaboration across the Atlantic. Taken together, we believe that the above Principles and Recommendations will accelerate the development of advanced technologies, reinforce economic recovery and job creation, and enhance the ability of the transatlantic market to compete with the rest of the world. Moreover, transatlantic leadership would set the example for other countries as they develop their own policies to support and accelerate innovation and help ensure that their emerging policies do not disadvantage American and European companies.

Observations:
The Process of Innovation in the Transatlantic Market

TABD member companies in the manufacturing, services and IT sectors alike are heavily invested on both sides of the Atlantic. Over the past decade, many TABD member companies have expanded their R&D functions from their home country to their major markets. While much is made of the R&D now taking place in China and other emerging economies, the fact of the matter is that the highly competitive, global companies of the TABD perform the majority of the world's scientific, technical, product and process innovation and do so in the transatlantic market – both in the United States and across the 27 member States of the European Union.

In addition, companies have changed the ways in which they innovate – now commonly a cross-border, often round–the-clock process with design houses in different time zones working on the same product – and increasingly moving from an in-house, intra-company model to a global, collaborative model based on partnerships with other companies, universities and research institutions. Without a doubt, innovation is increasingly a global endeavor, supported by the digitalization of the economy, the internationalization of research and development networks, and the development of open innovation. Companies have found this new, collaborative approach to innovation to be the fastest, most productive way to accelerate the development of new products and services across markets.

While TABD companies are adapting their innovation processes to the reality of today's globalized world, we need to ensure that government policies also adapt to these changing realities and do not create unnecessary barriers, costs or delay. Much has been written about the proper role of government in establishing framework conditions and creating an environment that fosters creativity, ingenuity, innovation and the commercialization of the new technologies. Attempts by governments to "manage" innovation and contain or stimulate it locally at the expense of foreign technologies may in some cases produce short-term benefits, but such regulatory and economic policies also produce incidental consequences that work to impede innovation or undermine the incentives for innovation. This point is underscored by recent economic analysis of the Information Technology & Innovation Foundation in its report, *The Good, the Bad, and the Ugly, (and the Self-Destructive) of Innovation Policy: A Policymakers Guide to Crafting Effective Innovation Policy.*

The real benefit to society comes from the application of innovative technologies across all industry sectors, both in manufacturing and services. This creates far greater economic growth than the initial development of the technology in a particular company or industry. Government policies should thus promote the rapid adoption and diffusion of innovative technologies throughout the economy, regardless of the origin.

TABD's thinking on the policy implications of the transatlantic innovation economy was greatly influenced by the seminal work undertaken by the Organisation for Economic Cooperation and Development (OECD). Earlier this year the OECD released its report, *The OECD Innovation Strategy*, which is the culmination of a three-year, multi-disciplinary and multi-stakeholder effort. It provides analysis and policy guidance on a broad range of issues from education and training to business environment, infrastructure and actions to foster the creation and diffusion of knowledge. It also points to a number of issues that deserve consideration and the principles that lie behind them, including:

- Empowering people to innovate (e.g., ability to upgrade skills)
- Unleashing innovations (e.g., making capital available to SMEs)
- Creating and applying knowledge (e.g., improving governance of R&D institutions and coordination among them)
- Apply innovation to social and global challenges (e.g., improve affordable access to technologies)
- Improve governance and measurement of innovation policies (e.g., foster evidence-based decision making/policy accountability).

We commend the United States Government and the European Commission for adopting general policy approaches that have enabled the transatlantic innovation economy to grow to this point. The U.S. and EU now have the opportunity to address disconnects and inefficiencies in existing policies that no longer match the reality of today's marketplace. By adopting a framework for transatlantic innovation, based on the TABD's *Ten Innovation Policy Principles & Recommendations* described above, the U.S. Government and European Commission can reinforce their shared commitment to eliminate barriers, advance joint collaboration and innovation, and reap the resulting benefits of economic recovery, job creation and prosperity across the transatlantic market.

Annex 2:

TABD Letter on Raw Materials

TRANSATLANTIC BUSINESS DIALOGUE

May 10, 2011

Mr. Heinz Zourek
European Commission
Directorate General for Industry and
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BELGIUM

The Honorable Miriam Sapiro
Deputy U.S. Trade Representative
Office of the U.S. trade Representative
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RE: TABD U.S. EU Project suggestions on Access to Raw Materials/Rare Earths

Dear Heinz and Miriam,

For more than two years, TABD has been working to raise raw material security as a subject for transatlantic cooperation, and we are pleased that it will be a focus of high-level US-EU discussion under the Transatlantic Innovation Action Partnership. We believe it is imperative that transatlantic companies encountering immediate disruptions in their supply chains due to restricted access to raw materials have a seat at the table. Many of our companies are engaged directly or indirectly with various departments and agencies in the U.S. Government and in the European Commission to address sector-specific concerns.

We urge you to cooperate to develop and jointly advocate a short to long-term strategy to ensure unrestricted and secure access to materials and commodities based on, but not limited to, the following elements:

- cooperation on short term focused trade efforts, aligned WTO initiatives, and other aligned potential counter measures to ensure unrestricted access to critical materials and commodities concentrated in a country/region;
- development of medium to long term alternative supply security from primary and secondary sources e.g. rare earths;
- cooperation on research and innovation efforts to access primary sources subject to more complex conditions e.g. deep earth and sea mining;
- cooperation on research and innovation for reduction, re-use through recycling, and substitution of critical materials while ensuring critical functionalities;

- information exchange about global resource availability, existing and potential disruptions in global material commodity markets; and
- aligned raw materials diplomacy towards resource rich countries to foster the appropriate environment for long term investments.

The TABD Board met in Davos in late January and in Brussels in March and we are now able to offer recommendations for actions that the U.S. and EU can take to expand transatlantic cooperation and promote resource efficiency, substitution, and recycling. It is our belief that together we can develop and agree upon a roadmap for action that addresses immediate, short-term, and longer-term concerns of transatlantic businesses regarding access to resources that are essential for our operations. Our members have identified four specific areas for focus:

1. <u>Coordinate trade policy and raw material strategies to improve market access</u>

The U.S. and EU should strongly support on-going work in the OECD to expand economic analysis and develop a broad-based consensus on policy approaches to deal with raw materials security. Our governments should work jointly to minimize market distortions and should collaborate on the use of trade policy and relevant WTO rules to prevent distortions in global materials markets. The ongoing analysis to determine whether current raw material trade practices merit the filing of a WTO case against unfair raw material trade practices could be a good opportunity for close coordination and information sharing by our governments. On both sides of the Atlantic companies and authorities are collecting information and data for that case. Enhanced cooperation between our governments can prevent duplication and lead to streamlined message delivery.

The U.S. and EU should align their messages to other trading partners that access to raw materials take place according to market principles without distortions and so that the principle of unrestricted access to raw materials should be part of WTO accession negotiations and bilateral and regional trade agreements.

2. <u>Put in place structures to intensify transatlantic collaboration on material innovation to address short and medium term concerns</u>

We believe that creation of a "Transatlantic Research and Development Institute" (TRDI) would enable the U.S. and EU to expand coordination and cooperation in the complex area of access to raw materials, particularly in the areas of promoting resource efficiency, recycling and substitution.

In October 2010, we put forward to the U.S. Government and European Commission a report, "Accelerating the Transatlantic Innovation Economy: 10 Innovation Policy Principles and Recommendations to Strengthen Collaboration across the Atlantic." We called for the establishment of a nonprofit, cross-Atlantic R&D facility to serve as a foundation for transatlantic harmonization of R&D policies on a broader scale.

Given the immediate and longer-term challenge of addressing the security of supply of critical raw materials, this subject should be the galvanizing issue that brings together businesses, universities, research institutions and governments to intensify their collaboration on primary resource availability; so called 'urban mines' and other secondary resource availability; and flows, and materials reduction, recycling and substitution research.

3. Collaborate to encourage the development and deployment of recycling technologies by means of practical market based measures

Similarly, the U.S. and EU should collaborate on ways to strengthen recycling markets for key materials and facilitate innovative materials use throughout economic value chains. Experience shows that encouraging collection at local level helps jump start the value adding processes that feed into investments in new technologies and plant and equipment. These are in their own right economically regenerative but are also a strong basis for efficient use and re-use of rare and other materials. Special emphasis could be given to electronic scrap (WEEE), cell phones, magnets and magnet applications, and batteries.

As a first step one or more practical collection test cases should be developed for e-scrap containing rechargeable batteries (e.g. mobile phones, laptops, cordless tools, and digital communication and imaging equipment) or any other specific waste of economic value, in a large American and European city with creative incentives provided to stimulate uptake.

4. Collaborate to improve effectiveness and enforcement on waste shipment regulations and customs practices

Large amounts of valuable recyclable materials are “lost” due to the export of end-of-life goods (“waste”) which are fraudulently declared as used or second-hand goods. The amount of illegal shipments in Europe only is enormous (up to 40% according to an IMPEL study). The disposal is mainly carried out locally, sometimes after some dismantling, followed by some local “backyard refining”.

These valuable, recyclable materials often represent the richest local source of such critical materials. Their treatment in EU and US would not only reduce the dependence on imported primary materials, it would also offer an energy and resource efficient business model requiring new investment and offering jobs.

We urge you to cooperate in this regard by exchanging and making joint efforts to improve customs practices with regard to waste shipments. Common standards for pre-processors, smelters/refiners and recyclers of waste and secondary raw materials containing valuable materials should be defined. This could possibly be accompanied by an agreed mandatory certification process: minimum standards for recycling, accompanied by a certification of the actual refining/recycling operations at the end of the recycling chain, should help original equipment manufacturers, such as electronic producers, ensure that the recycling of their end-of-life products is done in an appropriate way.

We look forward to working with you, your departments and your colleagues across government to deliver strong transatlantic cooperation on raw materials.

Yours sincerely,

Kathryn Hauser
U.S. Executive Director
TABD

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EU Executive Director
TABD

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Cc: Under Secretary of State Robert Hormats
Under Secretary of Commerce Francisco Sanchez
Director General of Trade Directorate Jean-Luc Demarty

Annex 3:

Joint Associations Letter on IPR Erosion

November 7th 2011

The Honorable Karel De Gucht
EU Commissioner for Trade
European Commission
Rue de la Loi/Wetstraat 170
1040 Brussels
Belgium

The Honorable Michael Froman
Deputy Assistant to the President and
Deputy National Security Adviser for International
Economic Affairs
The White House
Washington, DC 20504

Re: IPR on the Agenda of the November Transatlantic Economic Council Meeting

Dear Commissioner De Gucht and Mr. Froman:

The transatlantic partnership remains a pillar of the global economy and the largest single economic partnership in the world. The U.S. and the E.U. share many of the same economic and strategic interests, and they generally share a common business, economic, and policy outlook on key issues affecting global trade and innovation.

Intellectual property rights (IPR) are among these key issues. IPR protection is a critical tool to promote innovation and create U.S. and European manufacturing jobs, which, in turn, will enable a resurgence of European and U.S. economic growth, public finances, and employment. Furthermore, IPR protection – because it fosters innovation in the economy – enables the development and uptake of solutions to a range of global challenges with respect to the inter-related issues of the economy, development, environment and health. The global framework for IPR protection, which is essential to the continued success of our businesses in meeting the needs of the market and related challenges, is currently under serious threat in several multilateral forums and emerging markets we depend on to grow our product and service businesses. Transatlantic leadership is urgently needed. We urge you to place IPR protection front and center on the agenda of the upcoming Transatlantic Economic Council (TEC) meeting this November.

The Global Threat of IPR Erosion

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.

At the technical level, U.S. and European negotiators and policymakers have worked hard over the years to ensure effective protection, focusing particularly on enforcement of IPR. They have engaged in active transatlantic cooperation vis-à-vis China and other BRICS countries, including in response to indigenous innovation policies and customs enforcement issues. Such positive efforts supported by IP offices and the deployment of IP Attachés to key locations, have been well received by business, and we urge that you continue and intensify them. At the same time, however, we are concerned that global IPR policy relating to basic legislation has not consistently enjoyed the high-level *political* leadership and coordination that it requires to succeed.

The 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, domestic development, health, or equity concerns – with little or no evidence or economic data to support their proposals. Such policies would seriously weaken and in some cases 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 also slow the much needed globalization of R&D into developing markets and the integration of these fast growing economies into global supply chains. More broadly, IPR erosion will not advance solutions to the many societal challenges we collectively face, but it will undermine our capacity to meet these challenges.

Efforts to renegotiate critical rules for all types of IPR protection are unfolding in a range of forums. In the UNFCCC talks, India has recently proposed that IPR, as well as climate change-related trade issues and "equitable" access to technology, become official agenda items for the upcoming Ministerial level meeting in Durban, South Africa. This proposal strikes at the heart of the global IPR infrastructure that allows investors in and manufacturers of climate change-related technologies to capture the value of innovation.

In addition, at the WTO, proposals have been made to weaken IPR in the context of the environmental goods and services negotiations. In the broader UN context, discussions at the World Health Organization (WHO) led to a recent political statement on non-communicable diseases that calls for weakening IPR with respect to medicines, diagnostic kits, and other technologies (vaccines) and more generally. Furthermore, bilateral FTA negotiations, for instance those between the E.U. and India, feature proposals that would harm the international IPR system.

Moreover, some governments are proposing or already 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. Separately, U.S. and European innovators are routinely the targets of trade secret cyber theft by entities located beyond their borders. This problem is exacerbated both by the unwillingness of some governments to enforce trade secret protections, as well as suspected government complicity based on the increasing sophistication of network breaches documented in several recent cases. The economic value of a trade secret stems from the competitive advantage conferred by the confidential nature of the information. Thus, any forced, misappropriated 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 or eliminate the ability of manufacturers to distinguish products from those of competitors through "plain" packaging need to be scrutinized as well. Even in areas where health or environmental concerns exist, the mandated elimination or diminishment of trademarks creates a dangerous precedent with far-reaching implications. More narrowly tailored policy alternatives should be considered instead and an evidence-based approach pursued.

The Need for Transatlantic IPR Leadership

IPR are a critical part of our global trade and investment regime. IPR protection encourages and enhances technology dissemination and deployment, rather than impeding it, as alleged by critics. As transatlantic businesses, we invest heavily in the development and deployment of new technologies and innovation. Innovation, together with the IPR that protect it, is core to our competitive advantage, to our ability to create value, and to our ability to support economic growth, revenue, and job creation in Europe and the United States. We also believe it is a core component of the ability of industry to address today's societal challenges on many fronts. Ensuring a stable innovation system, through proper protection of IPR in global IPR frameworks and rules, represents a core mutual interest for the United States and Europe.

In light of this, and given the range of efforts to weaken the global innovation infrastructure, we call on you, as co-chairmen of the Transatlantic Economic Council, to take up the issue of harm to our IPR and innovation infrastructure in its broadest sense, and to use the TEC as a forum for transatlantic leadership on these challenges in particular. Effective transatlantic leadership across multiple levels of government and policy areas will be critical to reject attempts to undermine global protection of IPR.

We would welcome the opportunity to discuss any of these issues with you in further detail and are available to answer any questions that you may have. In keeping with past years we will be communicating with you on a broader range of TEC related priorities in the near future.

Sincerely,

American Chamber of Commerce to the European Union

BUSINESSEUROPE

National Association of Manufacturers

National Foreign Trade Council

TransAtlantic Business Dialogue

U.S. Chamber of Commerce

Annex 4:

Joint Associations Letter on Investment

November 16, 2011

Mr. Karel De Gucht
Commissioner for Trade
European Commission
B-1049 Brussels

Mr. Michael Froman
Deputy Assistant to the President
The White House
Washington DC

Dear Commissioner De Gucht and Mr. Froman:

We welcome the reinvigoration of the US-EU Investment Dialogue. The October meeting of U.S. and EU investment policy officials, the first since 2008, clearly re-established that the European Union and the United States share a common agenda on investment issues, as outlined in our July 14 letter as well as the May 2008 Joint Statement. We look forward to further active and substantive efforts by you as TEC Co-chairs and your administrations in this area.

One of the results of that meeting was agreement to develop a Statement of Principles by the European Union and the United States on the Treatment of Foreign Direct Investment, as early as the November 29 Transatlantic Economic Council.

Our associations, representing millions of businesses in all sectors and regions of our two economies, support having such a Statement, which would send an important signal to third countries about the need and value of adopting strong protections for, and providing greater openness to, foreign investment. Our governments should have a coordinated approach toward third countries based on these agreed principles, including with respect to improving market access and addressing competitive distortions that may arise with state-owned enterprises.

We urge the United States and the European Union, as the largest sources of and hosts to foreign investment, to adopt a Statement of Principles that embodies the highest possible standards of treatment for such investment. As stated in our July 14th letter, we believe such a Statement should reaffirm the cornerstone principles of non-discriminatory national and most-favored-nation treatment; fair and equitable treatment and full protection and security; prompt, adequate and effective compensation in the event of an expropriation; free transfers of invested capital and returns; respect for contracts between foreign investors and host governments; and an effective investor-state dispute settlement mechanism -- all principles reflected in our respective bilateral investment agreements. A Statement should also address the importance of eliminating competitive distortions between foreign investors and state-owned and state-favored enterprises. You will find attached, as a contribution by the transatlantic business community to this important exercise, some key elements that we believe such a statement should include.

Again, we appreciate your active support for and encouragement of the EU-US Investment Dialogue, and hope that the attached proposed principles can be adopted by the November 29 meeting of the Transatlantic Economic Council.

Yours Sincerely,

American Chamber of Commerce to the European Union
BUSINESSEUROPE
Emergency Committee for American Trade
EUROCHAMBRES
European-American Business Council
National Association of Manufacturers
Organization for International Investment
TransAtlantic Business Dialogue
U.S. Chamber of Commerce
U.S. Council for International Business

Key elements proposed by the Transatlantic business community for a Joint Statement of the United States of America and the European Union Concerning Principles on the Treatment of Foreign Investment

The European Union and the United States, as the largest sources of, and hosts to, foreign direct investment, reaffirm our unequivocal conviction that foreign investment, like domestic investment, should be welcomed as a source of capital, growth, jobs, technology, innovation and productivity. These benefits are demonstrated repeatedly by the $2.34 trillion of foreign direct investment in the United States and €2.7 ($3.6) trillion in the European Union; indeed, the unique nature of our bilateral economic relationship stems in part from the fact that two-thirds of this investment is represented by the $1.93 trillion that U.S. firms have invested in the EU and the $1.48 trillion European firms have put into the United States.

Our openness to foreign investment is based on the fundamental principle that investors and their investments should be treated equally under the law regardless of nationality. Countries that adopt and adhere to this principle, as well as those that we propose herewith, will significantly assuage investors' natural concerns about putting capital into a country with which they are not familiar, thereby increasing the capital that country has available to generate growth.

Complementing the principle of non-discrimination are the measures needed to establish a favorable climate for domestic as well as foreign investment: the rule of law, transparency and predictability in government administration, regulatory fairness, the sanctity of contracts and private property, respect for intellectual property rights, and sound macro-economic policies. Governments should, therefore, ensure a minimum standard of treatment consistent with international law for all investments, including fair and equitable treatment, avoiding any semblance of arbitrary and capricious action by government officials. They should also ensure that public services such as law enforcement and fire prevention are available to provide constant protection and security for investments. Laws, regulations, judicial decisions and administrative rulings of general application should be made publicly available in a timely fashion, and domestic law should provide an effective means of enforcement of rights.

This general approach should apply to the widest possible definition of investments, including all forms of assets and tangible and intangible property; property rights such as leases, mortgages, liens and pledges; intellectual property rights; rights conferred by law or contract, such as licenses and permits; business enterprises and equity and other forms of participation in them; claims to money and to performance; and returns.

Host governments should welcome foreign investors and their investments by guaranteeing they will provide treatment no less favorable than that which they provide to their own investors and investments, and those of any third state. These basic principles of non-discriminatory national and most favored nation (MFN) treatment should apply both to the making of investments and to the subsequent management, maintenance, use, enjoyment and disposal of those investments. Key personnel employed by investors and investments should be permitted to enter and remain temporarily in the host country to engage in activities related to the management, maintenance and other requirements of the investment. Investments should have non-discriminatory access to public procurement on all levels, and a host government should not require investments, on establishment or subsequently, to purchase, sell, transfer or provide preferences to goods, services, intellectual property, other proprietary knowledge or technology in its territory.

Where governments have delegated (formally or informally) regulatory, administrative or other authority to a state enterprise or other body, those agents should be explicitly required to uphold the host government's commitment to provide non-discriminatory treatment and other core protections to foreign investors. Governments should also seek to ensure that they take steps to eliminate competitive distortions that may be created when state-owned enterprises engage in commercial activity. In particular, in their purchase and sale of goods and services, state-owned enterprises should provide national and most-favored nation treatment to investments.

Any exceptions to these principles of non-discrimination based on the nationality of the investor should be as limited as possible, for clear public purposes, and spelled out explicitly and publicly in law and regulation.

Host governments should guarantee investors the freedom to transfer funds related to an investment into and out of their country, including capital, returns, payments, earnings, remuneration and other financial flows related to the investment, including the proceeds from its sale or liquidation.

Governments should guarantee that investments will not be expropriated, nationalized or subjected to measures having equivalent effect except when done for a public purpose, under due process of law, in a transparent and non-discriminatory manner, and with prompt, adequate and effective compensation. Compensation should reflect the fair market value of the investment before the expropriatory action became publicly known. Where an investment suffers harm from war, civil disturbance, natural disaster, state of emergency or a similar event, the host government should provide compensation or other similar benefits to the investment in a manner similar to that granted to domestic and other third country investments.

To ensure that investors are confident in their ability to enforce these rights, host governments should provide investors with the right to enter into investor-state arbitration, whether through the International Convention on the Settlement of Investment Disputes (ICSID), or any other similar neutral arbitration forum. Investor-state dispute settlement should apply as well as to enforce contacts and other agreements between foreign investors and host country governments. Host governments should also become parties to the Convention on the Recognition and Enforcement of International Arbitral Awards (the "New York Convention") to assure investors that arbitral awards can be enforced.

Countries willing to commit to these principles will significantly lower the political and legal risk investors perceive when considering bringing capital to a foreign country, and will thus benefit from additional growth, jobs, innovation and technology flows. Countries that are the sources of foreign investment also benefit greatly from the jobs and productivity enhancements overseas investments can bring.

Believing deeply in these simple but essential core values, the European Union and the United States governments should agree to work, individually and in concert, to ensure their adoption and respect by other governments.