BUSINESSEUROPE

POSITION PAPER

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BUSINESSEUROPE Comments on Joint EC-OMB Paper: "*Review of the application of regulatory impact assessment guidelines on analyses of impacts on international trade and investment*"

BUSINESSEUROPE applauds the "*Review of the application of EU and U.S. regulatory impact assessment guidelines on the analysis of impacts on international trade and investment*" issued by the US Office of Management and Budget (OMB) and the European Commission (EC) as a first step towards the creation of common regulatory methodologies on both sides of the Atlantic.

In the medium term, this goal should be achieved by a set of common regulatory principles, which would help avoid divergent regulation in future, contributing to the enhancement of economic growth while protecting the consumer and the environment. BUSINESSEUROPE is working closely with the US Chamber of Commerce to support this objective and the wider *Framework for Advancing Transatlantic Economic Integration* of 2007.

Both sides need to improve enforcement of their existing commitments to assess trade and investment impacts. Furthermore, in specific areas such as economic scope – goods and services - and coverage – actions by legislatures are excluded – more fundamental improvements are necessary. In addition the following proposals are suggested:

- 1(a) A joint website listing future proposals with transatlantic impacts;
- 1(b) Preliminary assessment of potential trade and investment impacts at the earliest stage in policy-making;
- 2(a) Adherence to established stakeholder consultation guidelines, in particular, the EC's *General Principles and Minimum Standards for Consultation;*
- 2(b) Impact Assessments (IA) and cost-benefit analyses (CBA) should be made available to stakeholders before regulatory proposals are published;
- 3 Publication of all IA/CBA and their methodologies; and
- 4 Improved methodologies for trade and investment IA including benchmarking of international best practice.

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Introduction

The achievement of greater transatlantic economic integration is a key international objective for European companies. BUSINESSEUROPE strongly supports the 2007 Framework for Advancing Transatlantic Economic Integration and the Transatlantic Economic Council it creates. To this end BUSINESSEUROPE has joined with its counterpart organization, the United States Chamber of Commerce, to reinforce the implementation of the framework. Together, our member companies are responsible for the strength of the U.S. and European economies that today make up greater than 50 percent of the world's gross domestic product. EU and U.S. companies would greatly benefit from increased economic integration and the elimination of market-distorting, divergent and incompatible regulation.

For this reason, the regulatory cooperation pillar of the Framework is the major priority of our partnership. Though we fully support the objective of addressing divergent existing regulation we strongly emphasize the importance of bringing regulatory methodologies closer together: If this can be achieved now, we can much more easily avoid regulatory barriers in the future.

BUSINESSEUROPE and the U.S. Chamber accordingly appreciate the opportunity to comment on the '*Review of the application of EU and U.S. regulatory impact assessment guidelines on the analysis of impacts on international trade and investment*' issued by the Office of Management and Budget (OMB) and the European Commission (EC). We applaud both OMB and the EC for issuing the joint report and requesting stakeholder input.

These comments represent BUSINESSEUROPE's input into the process. The U.S. Chamber will file separate but similar comments. BUSINESSEUROPE will also be shortly commenting in detail on the Commission's 2008 review of the Better Regulation strategy.

General Remarks on Regulatory Cooperation

The review's focus on methods to assess trade and investment impacts in both systems is an important first step. However, as a true transatlantic market is the goal of the Framework, the EU and the U.S. must bring their regulatory methods and analyses much closer into alignment. A common approach to the regulatory process, based on the core principles of transparency; involvement of interested parties; equivalent methodologies for IA/CBA; sound science and data quality must be the goal of this process. Acts of legislative bodies – the Council of the European Union, the European Parliament, the U.S. Congress and U.S. state legislatures – must also be subjected to rigorous scrutiny in future. BUSINESSEUROPE's objective, shared with the US Chamber, is to enshrine these principles in a legally binding international agreement on regulatory cooperation that would be formally adopted by both sides.

Trade and Investment Impacts

Impacts on trade and investment between the European Union and the United States will only be properly addressed by a paradigm shift in the approaches of regulators to these issues. In the interdependent context of this relationship it is no longer sufficient for regulators to think solely in domestic terms. It is encouraging to see that there are already existing commitments on both sides to deal with international impacts. As the report notes, the European Commission's Impact Assessment Guidelines and the US Office of Management and Budget's Circular A-4, Regulatory Analysis contain relatively clear instructions on the matter. The report also covers a number of examples of where international impacts were taken into account in IA and CBA.

However, while these are positive cases, BUSINESSEUROPE believes that such cases do not indicate that there is a systematic approach to assessing trade and investment impacts and that greater enforcement of such commitments is necessary. In the European system, the Impact Assessment Board (IAB) should ensure that the guidelines are being followed properly. BUSINESSEUROPE supports the work of the IAB but is conscious that this safeguard is likely to be insufficient as the opinions of the Board are not binding on the Commission services. Therefore, the IAB should have the power to stop a proposal going to the Commission for approval if there are shortcomings regarding the assessment of trade and investment. In the US system, the OMB needs to use its authority to block proposed rules to underscore with U.S. agencies the importance of Circular A-4, in particular its provision on non-tariff barriers. U.S. agencies should explicitly indicate any international trade and investment impacts as part of its CBA as well as identify any international regulatory best practices considered.

BUSINESSEUROPE would highlight two issues for improvement in terms of commitments. In the US system the OMB circular should also be expanded beyond imported goods to include services, which represent an enormous proportion of the transatlantic trade and investment relationship. Second, legislative bodies on both sides need to address trade and investment impacts of their actions. US legislation often has a detrimental impact on the transatlantic economic relationship and is not subject to rigorous impact or cost/benefit analysis. Similarly, promised systems to allow for assessment of trade and investment (or any other) impacts of Council and European Parliament amendments to Commission proposals are far from ideal.

BUSINESSEUROPE would also like to address the specific conclusions of the joint paper:

<u>1. Timely announcement of initiatives; early warning of impact assessments; indicators of potential international impacts.</u>

(a) To improve awareness of upcoming initiatives, the US and EU could establish a joint website including all upcoming proposals with potential transatlantic impacts. The electronic version of the US' Unified Agenda and the roadmaps for proposals included in the Commission's annual Work Programme represent a starting point for such a project. The US Department of Transport's electronic database that identifies and categorizes regulatory impacts to key trading partners, including the EU, should also serve as a model.

(b) Such a system implies that a preliminary assessment of trade and investment impacts happen at an early stage in the IA/CBA process. Basic criteria should include the level of foreign direct investment/international trade in affected economic sectors or the existence of relevant policy approaches in major trading partners or at international level.

2. Publication of IA/CBA methodologies; quality control; consultation of stakeholders.

(a) Both the U.S. and the EU have systems in place to ensure stakeholders are allowed to comment as part of the regulatory process. The EC's '*General principles and minimum standards for consultation*' remain non-binding however and the six week recommended consultation period is not always respected. In the EU the omission of the comitology processes from the scope of IA is a further weakness. In the US there is a practice in some agencies of using the number of comments received as an indicator of the weight of the stakeholders commenting. This should be changed as it is not an accurate approach to making such assessments.

(b) A key improvement in the consultation process would be to mandate that IA/CBA be published in advance of the release of the legislative proposal/rule. This allows stakeholders the opportunity to identify a substandard assessment of trade and investment impacts before the IA/CBA is finalised and the proposal/rule adopted.

3. Publication of policies, impact assessments and technical data

All policies and assessments must be publicly available. Likewise, all peer reviewed scientific information and technical analyses that form the basis of the assessments should be required to meet the same levels of transparency.

4. Methodologies for assessing international impacts: need for a regulation that would impede trade and investment; affected groups; recommendation that international approaches should be analysed as an explicit alternative

The methodologies suggested by the report appear valid means to improve trade and investment impact analysis and should be used in combination, potentially with other methodologies as appropriate. The recommendation that international standards or regulatory approaches should be considered is particularly useful. This should be extended to require regulators explicitly to consider policy options already chosen by major trading partners as alternatives in the IA/CBA, as well as international approaches.

Both sides should also commit to the highest quality science and data when assessing trade and investment impacts. In the EU in particular there should be better quantification and monetization of trade and investment impacts.

Conclusion

BUSINESSEUROPE hopes these comments will contribute to the efforts of the US and EU to improve their respective analysis of trade and investment impacts. This report should be the beginning of a series of joint EC/OMB projects on different aspects of the regulatory process which altogether can bring a greater commonality in the approaches to regulation of both sides. Such work will lay the foundations for the shared goal of a genuine transatlantic market.