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COMMUNICATION FROM THE COMMISSION

TO THE COUNCIL, THE EUROPEAN PARLIAMENT
AND THE ECONOMIC AND SOCIAL COMMITTEE

THE NEW TRANSATLANTIC MARKETPLACE

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THE NEW TRANSATLANTIC MARKETPLACE

A. RATIONALE

1. INTRODUCTION

The economic relationship between the EU and the US is of vital importance to both. In 1996 two way trade in goods and services amounted to more than 355 bn ECUs. The EU and the US account for around 19% of each other's total trade in goods. It is estimated that high technology products account for 20% of the two-way trade flow. In 1995 EU-US trade in services accounted for over 38% of total bilateral trade. The EU is by far the biggest investor in the US accounting for 59% of total foreign direct investment (FDI) by 1996. At the same time 44% of US FDI is in the EU. Further details are in the Annex.

Through progressive rounds of multilateral negotiations, and bilaterally since the adoption of the New Transatlantic Agenda (NTA) in 1995, we have achieved progress in lowering remaining barriers to trade and investment. But, as the Commission's annual reports on United States Barriers to Trade and Investment illustrate, significant obstacles remain.

The main reason is that the regulatory framework for EU-US trade and investment in goods and services has not kept pace with new market developments. While tariffs on industrial products have been substantially reduced, "peak" tariffs remain in some sensitive sectors. These are particularly numerous on the US side. But the main problem is non-tariff barriers. These gain increasing significance with the growing importance of EU-US trade in sophisticated manufactured goods and in services, as well as growing foreign direct investment. These areas of activity are subject to a range of domestic regulations and standards, reflecting among other things legitimate social concerns about protection of public health and safety or the environment.

The EU and US business communities have frequently identified these regulatory issues as their main concern. Since the rules often diverge widely they can act as hidden barriers. They increase costs for European and American consumers and business. They also lead to delays in exploiting new economic and technological opportunities, and can hinder the creation of competitive jobs. They therefore impede economic advance. In short, these are now among the most serious issues affecting Transatlantic trade and investment.

In addition, there has recently been an increase in the number of difficult trade disputes between the EU and the US. Many of the recent problems are different from

traditional trade disputes in that they have their roots in the sort of problems described above. Despite our great efforts we have not so far been able to establish an effective mechanism to prevent them. As a result, they require a substantial investment of time and effort, damage European and US economic interests and have a disproportionately large negative political impact.

The question we should address is whether we can do more, and more effectively, to facilitate EU/US trade in goods and services and at the same time to avoid or resolve these problems, while ensuring that our high level of protection of public health and the environment is maintained and can be further developed autonomously. Under the NTA we have made some progress through a modest 'step-by-step' approach to resolving individual problems and promoting liberalisation in particular sectors. But the protracted negotiation leading to the 1997 Mutual Recognition Agreement showed that this approach is slow and can produce only limited results.

For this reason the Commission has given careful thought to whether we should now pursue a new, more comprehensive and ambitious approach to making a reality of the New Transatlantic Marketplace (NTM), which has from the start been one of the key objectives of the NTA.

Any such proposal should meet all the following requirements:

i) it should address the real barriers to EU-US trade and investment;
ii) it should bring economic benefit to the EU and the US commensurate with the effort involved;
iii) it should not damage, and should indeed promote our objectives in the future multilateral negotiations within the WTO, to which we are committed;
iv) it should not lead to the creation of new trade obstacles to third countries or reduce their access to EU and US markets. Nor should it weaken their support for multilateral liberalisation;
v) it should be ambitious, capture political interest, but be technically achievable;
vi) it should be consistent with and should not jeopardise the agreed multilateral rules of the WTO and other international fora (e.g. OECD, WIPO etc.);
vii) it should serve to enhance the broader political relationship between the EU and the US;
viii) it should benefit consumers and should preserve our high level of protection for health, safety, consumers or the environment;
ix) it should not impede the further development of the Community acquis.

Any proposal in this area should serve to stimulate further multilateral liberalisation through deeper liberalisation and a firmer set of rules at the bilateral level, which could later be extended to other partners. Bilateral liberalisation should also focus on those impediments in EU and US trade where the multilateral route cannot offer early and effective solutions.

Having considered all these factors, the Commission proposes that a negotiation should be launched for a New Transatlantic Marketplace Agreement (NTMA) to achieve the following objectives:

i) a widespread removal of technical barriers to trade in goods through an extensive process of mutual recognition and/or harmonisation, promoting both consumer and business interests;

ii) a political commitment to eliminate by 2010 all industrial tariffs on a MFN basis, through multilateral negotiations, provided that a critical mass of other trading partners do the same;

iii) a free trade area in services, bearing in mind the criteria and requirements established by the Council;

iv) liberalisation beyond multilateral or plurilateral agreements in the areas of government procurement, intellectual property and investment.

The individual elements of this proposal are considered in detail in section D.

We should also pursue strengthened bilateral co-operation in areas such as: trade facilitation, customs procedure simplification, SME partnerships, sustainable development and the environment (taking into account ongoing bilateral and multilateral initiatives). In certain of these areas (e.g. customs, competition and science and technology) existing agreements already provide a framework for such a cooperation. The NTM Agreement will be pursued within the broader framework of the New Transatlantic Agenda. The NTA Action Plan will continue to be pursued.

A number of general methodological conditions should be clearly established. Before a negotiation begins, there should be a clear understanding with the United States on which areas are covered and which are excluded. In conducting the negotiation, the EU would give due consideration to factors affecting competition, including state aids. It should be clear from the start that an Agreement should be binding on the federal states. Nor should it weaken existing EU agreements with other third countries.

The initiative should take the form of a single comprehensive agreement. This might seem to be harder to achieve than the present step-by-step approach in terms of negotiation and ratification. On the other hand, it would have the considerable advantage of giving greater certainty of the implementation of the agreed commitments, including where necessary, through domestic legislative changes. Perhaps more important, the dynamic which multi-issue, multi-sector negotiations engender should make it possible to address some entrenched and long-standing barriers which at present appear intractable in isolation.

This is not a proposal to create an internal market with the US, but it would allow the EU to take advantage of the unique experience we have gained from the completion of the Internal Market and to adapt some of the principles underlying it to the different EU-US context.

2. THE POLITICAL DIMENSION

The proposal is more than a trade policy initiative. It is also an important initiative for the EU's broader policy towards the United States, and should be considered in that

light. Since the end of the Cold War we have taken a number of steps to restructure and refocus the EU's links with the US, which remains our most important and complex external relationship, and to reinforce US support for European stability. Another key objective is to deter the American tendency towards unilateralism, which has included the adoption of unacceptable extraterritorial legislation such as the Helms-Burton and d'Amato Acts. We should continue firmly to oppose action of this sort. An early comprehensive settlement of our differences arising from the Helms-Burton and D'Amato Acts, based on the April 1997 Understanding, remains necessary.

The New Transatlantic Agenda of 1995 established a habit and pattern of co-operation and joint action between our administrations at all levels and on many issues. It has been invaluable in this regard, and has enabled us to achieve a number of tangible results including the Mutual Recognition Agreement of 1997 and other agreements. However, the NTA as it now stands has not been able to engage the highest level of political attention on both sides of the Atlantic, and is not sufficiently dynamic to deliver major political and economic results, although it has delivered useful ones. The time is ripe to consider whether a more ambitious, comprehensive approach is required.

The proposal to create a New Transatlantic Marketplace reducing barriers to trade and investment was an integral part of the NTA, but has not yet been developed in a coherent manner. This initiative takes up that challenge, building on the steady development of the EU's relationship with the US and on the dramatic growth of our economic relations, notably in services and investment. It is designed to use an economic instrument to give a much broader impetus to the overall political relationship; to produce important economic benefits; and to provide a new mechanism and stronger incentives to prevent and resolve disputes between us.

The timing for such an initiative is good. The European Union has established a leading role in international trade policy. Our economy is set to grow strongly. We stand on the threshold of the Single Currency, and we have behind us the experience gained from building the Internal Market. The broader international context is also favourable: Europe at present is a strong and stable partner for the United States.

At the same time, this initiative has benefits going beyond the bilateral political and economic relationship with the United States. For reasons discussed below (section 4), it will promote achievement of our objectives in future multilateral trade negotiations.

It also gives the EU an opportunity to pursue proactively our own clear policy objectives in promoting the interests of European citizens and advancing important values of European society. It should be pursued in a manner which preserves and further enhances our high standards of consumer protection, health and safety. It should not affect internal EU policy making on the provision of services of general economic interest, as recognised in the relevant EC Directives and the Amsterdam Treaty. The macroeconomic growth predicted (see section 3) would bring potential for significant job creation in the EU. In ways such as these, the NTMA will enable

us to respond to some of the uncertainties arising from global economic liberalisation. It would also lay the basis for better and more effective EU-US dialogue and co-operation on issues like sustainable development and environmental protection, including at the multilateral level.

3. THE ECONOMIC BENEFITS

Macroeconomic studies, including studies carried out at the request of the Commission, suggest that the removal of existing tariff and non-tariff barriers to Transatlantic trade in industrial goods and in services would have positive macro-economic effects for both partners. For the EU, it could add some 125 billion ECU (over 1%) to annual national income, broadly commensurate with the effects of the Uruguay Round. Another 25 billion ECU annually would be added if the initiative achieved a wide multilateral elimination of industrial tariffs. At the micro-economic level, it would mean greater economies of scale, reduced costs for producers and consumers and less uncertainty for EU and US firms.

A bilateral elimination, on a preferential basis, of all industrial tariffs between the EU and the US is not part of this proposal. The average level of tariffs prevailing in both economies is already low, though major gains remain to be made in sectors where 'peak' or significant tariffs remain. These gains will be well worth having, but much greater gains will accrue from the elimination of industrial tariff barriers on an MFN basis involving a broad range of other countries, on the model of the ITA agreement. This would have the added advantage of addressing the recent difficulties which European firms have experienced in key mid-income country markets.

Still larger benefits accrue once non-tariff barriers are addressed, as a result of many factors, including increased efficiency, larger scale economies (for instance when, through the mutual recognition or harmonisation of technical requirements, production lines can be unified), more transparent procedures, lower costs of complying with different standards, better intellectual property protection, less intellectual property litigation, greater trade, investment and procurement opportunities (the last estimated at 35-40 bn USD). In some sectors, benefits to be gained by Small and Medium-sized Enterprises (SMEs) are likely to outweigh those expected by large companies, with significant employment benefits. Overall, the realisation of a freer Transatlantic Marketplace will improve the conditions and opportunities for business on both sides of the Atlantic with a beneficial economic impact on industry, consumers and the EU and US economies as a whole. The economic aspects of the proposal will be the subject of further examination in accordance with the requirements established by the Council. The Commission will now proceed to produce the requisite more detailed impact studies as a further contribution to discussion in the Council of these proposals, and indeed their further elaboration.

B. TRADE POLICY CONSIDERATIONS

4. RELATIONSHIP WITH THE MULTILATERAL SYSTEM

Further liberalisation in the form of comprehensive multilateral negotiations conducted within the framework of the WTO remains the central trade policy objective of the EU. The proposed NTMA is carefully designed to promote this objective, whilst in itself delivering major economic and political benefits for the two partners. The underlying principle is that each part of the NTMA should encourage and facilitate broader international liberalisation.

The proposed tariff initiative is explicitly and exclusively multilateral; the EU and the US will make a joint commitment that, in future multilateral negotiations, they will eliminate all industrial tariffs by 2010 if a critical mass of trading partners (understood in terms of volume of trade and/or numbers of countries) do the same. A bilateral preferential deal is thus ruled out.

In the area of technical barriers to trade, the multilateral rules recognise the possibility of bilateral recognition of equivalence of the parties' certification systems. This is an area of trade where full mutual trust in a partner's capacity to fully protect high levels of product safety is of paramount importance, to maintain common protection unaffected by trade rules. For this reason, the prospects for multilateral progress in the foreseeable future are limited. Nevertheless, more rapid progress can be made between two major economies with similar degrees of economic and technological development as well as similar public policy objectives. Rather than becoming obstacles to other partners, common standards will provide easier market access to the two largest trading entities in the world.

In services, the intention of the NTMA is to promote both a successful and WTO-compatible bilateral arrangement but also to enable the EU to prepare the ground for successful multilateral negotiations in services, due to start in the year 2000.

There are several ways in which a NTMA in services could support the multilateral approach:

- The demonstration effect that differing regulatory approaches can indeed be bridged between major trading partners, and therefore are politically and technically capable of being bridged more widely.
- The incentive effect whereby EU and US enjoyment of a liberalised preferential area for services will attract strong interest from other trading partners for participation in the process (thereby offering a stepping stone towards wider liberalisation of various regulatory barriers among trading partners). Our ultimate objective would be that the liberalisation achieved in the NTM would be matched multilaterally.
- The creation of models for future WTO rule-making, for example by moving from hybrid to negative listing, i.e. everything is liberalised unless subject to a specific exemption in a schedule.

- The exploration of ways in which partly or completely excluded areas in the current GATS could be tackled bilaterally and therefore opened up on a multilateral basis.

These effects outweigh any possible concern that a bilateral initiative could weaken support for further liberalisation in GATS. On the contrary, the NTMA should enable us to go further and faster than we would otherwise have been able to in achieving EU objectives in these negotiations.

More generally, and in the areas of government procurement, intellectual property and investment in particular, the NTMA approach should be both to pursue full compatibility with multilateral rules and - at the same time - to *seek "better" rules* and/or *"deeper" liberalisation* with respect to the existing WTO framework as well as in new areas not yet fully covered by it, so as to serve as a model for future WTO rule-making. Such a policy stance would emphasise the leading role of the Transatlantic partners in underpinning and further developing the multilateral trading system. In each area the "best practice" in terms of liberalisation should be sought, so as to achieve not only the largest economic benefits bilaterally but also a demonstration effect vis-à-vis other trading partners.

5. WTO COMPATIBILITY

The NTMA described in this Communication would be fully WTO-compatible. In the *tariff* area the initiative is fully compatible since it is foreseen on a MFN basis. The MFN principle applies in general also in the area of *technical requirements*. WTO Members are not entitled to maintain differing technical specifications for products originating from different countries, nor to require different procedures of conformity assessment. This latter requirement implies that where a country does not regulate safety of a product at all, or where it is satisfied with a suppliers' declaration of conformity , it has to extend this treatment to all WTO Member countries. However, two areas for bilateral (non-MFN based) co-operation exist and the NTMA will make full use of them.

First, *mutual recognition*. Where WTO Members require an independent verification of a product, or mandate a government agency to verify compliance, Members may bilaterally recognise the competence of their respective certification bodies. The WTO/TBT agreement explicitly recognises this right, while requiring "positive consideration" to recognise other Members that could demonstrate equivalent competence. Second, *harmonisation*. All Members are free to determine the specifications that products must meet, within certain general rules. Nothing prevents two countries from harmonising such specifications, provided that these are applied to other Members in a non-discriminatory manner.

In the area of *services* the NTMA will comply with the GATS requirements, which are similar to those established under Article XXIV of GATT. Article V (Economic Integration) of GATS sets forth several conditions which would need to be met, in particular: substantial sectoral coverage (in terms of a number of sectors, volume of

trade affected and modes of supply); no increase in the overall level of barriers to trade in services originating in other GATS Members within the respective sector; and the elimination of substantially all discrimination (through the elimination of all existing discriminatory measures and/or the prohibition of new or more discriminatory measures). The "substantial coverage" condition requires that, in principle, all service sectors are adequately covered (although there is some scope for interpretation as to whether this includes sectors not presently covered in the GATS, such as air transport and maritime transport, or where appropriate MFN exemptions have been listed). The 'substantial coverage' condition also requires that provisions on investment (commercial presence mode of supply) and also on the supply of services implying the temporary movement of certain categories of physical persons (including key personnel) be included as well.

As for *mutual recognition in the services area*, article VII of the GATS specifically provides for the conclusion of agreements for the mutual recognition of education, qualifications or ability to provide services. Furthermore, the Annex on Financial Services allows mutual recognition of prudential measures, facilitating the establishment and provision of financial services. The scope for removing technical and legislative barriers to trade could be examined for several services sectors, such as regulations governing bank branches, securities regulations and the licensing of professionals. Article VII requirements (and a similar requirement in the Annex on Financial Services) to give adequate opportunity for similar agreements with other countries would, however, need to be observed.

With regard to *government procurement*, WTO rules are to be found in the plurilateral Government Procurement Agreement (the GPA). The question of MFN treatment should be considered within the specific context of the GPA agreement which, on the one hand, imposes an MFN treatment between contracting parties and on the other hand, allows contracting parties to limit this by inserting "General Notes" in Appendix 1 to the Agreement which reintroduce bilateral relations based on reciprocity between two or more parties. Whilst an NTMA initiative in procurement would not encounter WTO compatibility problems, commitments undertaken by either party might, in some cases, involve extending EU-US bilateral concessions to EEA partners and, depending on the areas involved, to other GPA contracting parties.

In the *intellectual property* area, for the NTMA to be WTO compatible, any modifications to domestic legislation would have to be applied by the two Parties in compliance with the national treatment and MFN provisions contained in the TRIPs Agreement.

In the *investment* area, other than in services (see above), there are no WTO obligations affecting this proposal.

6. RELATIONS WITH THIRD COUNTRIES

The NTMA will not involve the creation of any new barriers with the rest of the world. Moreover, it is designed to encourage and facilitate wider multilateral

liberalisation, and the elements of the Agreement which provide for bilateral liberalisation would not necessarily remain exclusive to the EU and the US. It is also designed to permit extension to those third countries who are willing and able to match the commitments. While the impact on third countries, including in particular countries preparing for accession to the EU, is a factor to be borne constantly in mind during negotiation, overall there is likely to be a net positive and dynamic effect, which can be illustrated for each NTMA component, referring to different groups of third countries.

Tariff liberalisation

On tariffs, the conditional commitment to reduce industrial tariffs to zero would be on a strictly MFN basis, to be realised only by 2010. The NTMA as such will thus not have any effects on third countries in this area. However, once such a multilateral step would be taken, there will be a net positive effect on third countries. Those third countries which will join such a conditional EU-US offer and undertake similar commitments will provide the necessary 'critical mass' to turn the elimination of industrial tariffs into a reality. They will gain enhanced access to EU and US markets, and to each others' markets. At the same time they will open their own markets to EU and US industrial products, which would be a clear sign of their economic advance and the completion of a global process of reduction of industrial tariffs, which began in fact with the first Round after the creation of GATT in 1947.

Those third countries which are not in a position to submit such commitments, and this is likely in practice to be the case exclusively for the least developed countries, would benefit from greatly enhanced market access at zero tariffs not only to EU and US markets but also to neighbouring mid-income developing countries which undertook similar MFN tariff elimination commitments, without having to give up their national tariff protection.

These effects should be considered alongside the reduction of preferential market access currently enjoyed by ACP countries under the Lomé Convention, and any increase of competition in the Community market. The EU and US should also reaffirm their commitment to ensure that less developed countries secure a share in the growth in international trade commensurate with the needs of their economic development, with a view to their smooth and gradual integration into the world economy, as well as their commitment to address trade and development issues in the WTO. Further economic analysis, to be conducted before firm commitments are made in WTO multilateral negotiations, should cover the impact of the proposed elimination of industrial tariffs on the less developed countries, including the consequences of increased competition, the extent to which they will have to open their own markets, and the extent to which they will enjoy increased access in other markets.

Free trade area in services

On services, as indicated above, the NTMA would fully meet GATS rules and would be designed to be widened to the maximum extent possible into multilateral

liberalisation. The dynamics of the transatlantic services market should render it attractive to join the more ambitious NTMA services commitments on a reciprocal basis by countries who were in the past rather reluctant to join in multilateral liberalisation initiatives. There will be every reason for third countries to seek to match the NTMA bilateral liberalisation commitments because the EU and the US would in return bind their matched offers in the liberalisation package emerging from the GATS 2000 talks. The NTMA would not, in respect of any Member outside the agreement, raise the overall level of barriers to trade in services within the respective sectors or sub-sectors compared to the level applicable prior to such an agreement (GATS Article V(4)). Furthermore, third country services suppliers can benefit as, in accordance with GATS Art.V(6), a company incorporated and engaged in substantive business operations in the EU or US would be entitled to benefit from an EU-US FTA in services regardless of the ownership of its capital.

Technical barriers to trade

As regards the area of technical barriers, the EU is free under the WTO-TBT code to conclude mutual recognition agreements and to accept technical regulations of other countries as equivalent. The impact on third countries varies according to the degree of regulatory convergence which has been agreed with other countries. The countries most concerned are those which either apply the *acquis communautaire* of the Internal Market (e.g. Turkey, EFTA Members of the European Economic Area) or those who are committed to introduce Internal Market rules as part of the pre-accession strategy for candidate countries (CEECs, Cyprus). These countries should benefit most from the NTMA since their products would be produced according to those EU standards which would in future be recognised as being equivalent by the US or be harmonised in the transatlantic marketplace. Other third countries could eventually join the NTMA mechanism covering technical barriers, provided these countries were willing and able to undertake the same comprehensive regulatory commitments. This challenge would be particularly relevant for other major trading partners, who maintain hitherto substantial regulatory trade barriers.

C. ENVIRONMENT

7. ENVIRONMENTAL CONSIDERATIONS

All commitments under the NTMA should be implemented consistent with health, safety and environmental objectives and should aim at ensuring a high level of protection. This is a fundamental legal and political requirement which results directly from the provisions of the EC Treaty. Regulatory convergence in areas relating to health, safety and the environment should therefore be based on a high level of protection and should in no way lower of hamper the further development of the acquis in this area.

To ensure the possibility for the parties to maintain, establish and implement effective domestic policies and measures to ensure a high level of health, safety and environmental protection, the Agreement should include a specific safeguard

mechanism for certain measures in these areas which would otherwise be inconsistent with the Agreement. This safeguard mechanism could take the form of a general exception clause following the precedent of GATT Article XX and GATS Article XIV.

The environmental dimension needs to be taken into account throughout the negotiating process. Bearing in mind the recommendations of the OECD made in 1993, it could also be appropriate to review the environmental impact of the NTMA, allowing parties to identify potential environmental effects and to devise effective policy responses.

It should also be noted that the lack of US participation in several multilateral agreements (for example the biodiversity convention, and the Basle Convention and the Kyoto Protocol under the Climate Change Convention) can distort competitiveness and causes substantial asymmetry between EU and US international obligations in the field of environment. Full US participation in these conventions is therefore highly desirable.

D. COMPONENTS OF THE NTMA

8. FREEING TRADE IN GOODS OF TECHNICAL BARRIERS

Technical barriers still hamper Transatlantic trade

Differences of law, procedure and practice on both sides of the Atlantic at present cause many technical barriers to the free movement of goods.

Barriers typically arise from a divergence in obligations concerning:

- information and labelling of goods;
- technical specifications or performance requirements relating to goods and their packaging;
- specifications concerning tests and test procedures with which goods must comply;
- any declarations or certificates that have to be provided;
- accreditation of bodies entitled to carry out tests or issue certificates; and
- marking of goods to indicate their conformity with requirements.

Technical specifications agreed by standards bodies, or arising *de facto* from the practices of major market players, are also a potential source of trade barriers, where voluntary compliance with them brings marketing advantages.

Such divergence, whether it arises at the regulatory or other levels, may reflect different positions as regards the desirable level of security, the means used to achieve that level, and the method chosen to demonstrate conformity with the requirements. Nevertheless, there is no unavoidable reason why such legitimate differences should act as barriers to trade.

What should an NTMA achieve in this respect

The key to barrier-free trade is to achieve a climate of public confidence in the safety and security of products placed on the market, on either side of the Atlantic. Where the EU and the US share similar concerns and aims regarding the protection of public health, safety, consumers and the environment, this should be achievable. The NTMA should work towards this goal by developing a framework for convergence of law, procedure and practice involving the various legislative and regulatory bodies, as well as for the application of the principle of mutual recognition.

To this end, and taking due account of the need to preserve our high level of protection for health, safety, consumers and the environment, the NTMA should aim to create conditions in which goods legally marketed in the territory of one party can, as far as possible, move across the Atlantic and be marketed in the territory of the other without facing further formalities or duplicate requirements.

The regulatory structures of the parties are the guarantee of the integrity of their domestic markets. Without them, those markets could not be maintained. Therefore the NTMA cannot avoid facing the issue of convergence. Yet the prize is great enough to justify the effort involved.

It is essential to ensure that the NTMA is implemented in a way consistent with the fundamental requirements concerning protection of human, animal and plant life or health and the environment laid down in the EC Treaty. To this end, all measures under the NTMA aimed at removing technical barriers to trade in goods relating to these areas should at least maintain our existing high level of protection.. It should furthermore be recognised that both the EU and the US maintain all the rights, granted to them under the WTO SPS-Agreement, including to establish a level of sanitary and phytosanitary protection which is higher than the level resulting from international health standards. There should be provision for the possibility to take specific safeguard measures when necessary.

How can these objectives be pursued

An appropriate combination of convergence of law, procedure and practice and of the application of the principle of mutual recognition (which, moreover, are complementary and not mutually exclusive) will have to be found for different categories of goods. The aim of an NTMA should be to seek the most ambitious and trade liberalising such combination, while meeting the requirements in sensitive areas set out in the previous paragraph. The EU should also be able to develop further its levels of protection in these areas, while taking into account the differences that may exist in regulatory approaches and traditions.

Convergence of law, procedure and practice is the key to ensuring that similar public policy concerns are not pursued through radically different and sometimes incompatible means, thus giving rise to avoidable and undesirable barriers to trade. Convergence can be achieved in different ways, and notably through regulatory co-operation and through harmonisation.

To the extent that those public policy concerns are already being pursued through different means on the two sides of the Atlantic, there is room for acceptance of such alternative means to achieve them, insofar as the levels of protection which are to be achieved are equivalent. This can be achieved through different techniques or a combination of them, such as mutual recognition of technical requirements; mutual recognition of conformity assessments; or resort to a supplier's declaration of conformity.

The public confidence needed to guarantee success to the NTMA means that effective implementation of commitments on both sides will be crucial. This will require co-operation between regulatory authorities at the appropriate level, covering such issues as consultation and administrative co-operation, a commitment to implement the necessary legislation and an effective dispute settlement system.

In which sectors/products can this be pursued

The parties will need to identify early in the negotiating process a sufficient number of candidate sectors/products to produce eventually a balanced and mutually interesting result. In order to be credible to the business community, there would also need to be an early and sufficient reduction of any unnecessary or duplicate regulatory burden on business, through a critical mass of concrete commitments. Longer-term actions would be developed on the basis of these.

The search for convergence and mutual recognition can be pursued as a priority in those industrial sectors/products where there is an important existing interest to Transatlantic industry, such as telecoms, chemical products and motor vehicles. In a number of these sectors, work is already under way in international *fora*, such as the International Telecommunications Union for telecoms equipment, the International Conference for Harmonisation for medicinal products, or the UN-ECE for motor vehicles and tyres. Effective implementation on international standards is another way forward towards a higher level of convergence. Whereas the necessary arrangements are in place in Europe, the use of international standards is insufficient in the US. In still other areas there may be scope for building on existing mutual recognition of tests and certificates, and upgrading the level of agreement to a higher level of liberalisation.

A number of agriculture-related issues which fall outside the WTO agreement could be dealt with in the context of the NTMA. In this respect, the soon to be adopted EU-US Veterinary Equivalency Agreement offers the most suitable framework to intensify and deepen mutual efforts to arrive at more convergence in the area of veterinary issues while at the same time maintaining each sides' high level of health protection. Extending the scope of the Veterinary Agreement to cover questions like animal welfare, phytosanitary issues or other questions relevant in the trade of food could be foreseen.

The field of biotechnology is highly sensitive. This should not discourage us from addressing it under the NTM. Systems for facilitating the exchange of scientific

information relating to such products would be a first step to build confidence and to promote the greatest possible common approach between the EU and US.

9. *TARIFF ELIMINATION*

Tariff barriers remain an obstacle both to Transatlantic trade and to trade between the EU and its other trading partners.

For *industrial* tariffs, although the average level of industrial tariffs in OECD economies is low, a variety of tariff peaks remain. The most effective way to remove these tariffs is on a multilateral basis. However, it has often been necessary in the past for a number of WTO members to show leadership within the multilateral system by offering to reduce their tariffs on an MFN basis if the largest possible critical mass of others follow suit, so as to minimise the risk of free riding and maximise the liberalising effect and the economic benefits for the EU. This happened during the Uruguay Round, where there were a number of Quad initiatives for tariff reductions, and on the Information Technology Agreement (ITA). The NTM would build on that approach by offering a conditional political commitment to work toward the elimination, by 2010, of all *industrial tariffs* on a MFN basis. The two Parties could agree to go to zero provided a critical mass of trading partners joins. This condition would need to be spelled out, either in terms of broad geographical coverage or as a percentage of world trade (as was done in the ITA). The commitment would only turn into an actual tariff elimination if a critical mass of countries in addition to the EU and US were prepared to make those reductions. However, the prize of zero industrial tariffs would be an attractive reason for trying to achieve that critical mass.

Such an initiative would play directly into comprehensive tariff negotiations during the next global WTO negotiations. It will serve our joint interests in achieving meaningful tariff reductions from third parties within a set timeframe. This is in addition to the benefits of removing remaining tariffs between the EU and US.

Fish and fish products are not industrial products in the strict sense. While these products are not excluded from the NTMA in principle, the specificity and sensitivity of the fisheries sector may require a selective approach and the current Council debate on the Commission Communication on the Future of the Market in Fisheries Products in the European Union[1] will have to be taken into account.

Regarding agriculture a WTO process is already under way in Geneva (Analysis and Information Exchange, A.I.E.) to prepare the resumption of negotiations on agriculture which are scheduled to start at the end of 1999. The negotiations will shape future trade in agriculture. As the WTO Agreement on Agriculture is already fairly comprehensive, covering internal support, subsidisation and market access (including tariffs), and future negotiations can be expected to at least mirror such an approach, a parallel process in an NTM context would not be helpful. Furthermore, it must also be borne in mind that not only are there fundamental structural differences between agriculture in the US and the EU; domestic policies of the two parties are also radically different. Complete free trade would therefore be difficult, if not impossible, to imagine, without a degree of prior harmonisation of our respective

[1] See COM(97)719 final, 16.12.1997.

policies, which is likely to be unacceptable to either side This is why agricultural tariffs and subsidies cannot be included in the NTM negotiation.

10. SERVICES

A Free Trade Area (FTA) for services would be an ambitious liberalisation initiative. It would need to meet GATS rules, covering "substantially" all services sectors (as defined in the GATS) including sectors such as telecommunications, financial services, business and professional services and transport. We should aim at the elimination of all restrictions to the right of establishment, either immediately or, for the most difficult areas, over a transitional period. As regards cross-border services, the objective should be to establish clear obligations to liberalise such trade. The services element of the NTMA would combine two main approaches to achieve effective liberalisation:

- Liberalisation of market access on the basis of host country control: Substantially all restrictions to market access and to national treatment should be eliminated within a certain period, for all the covered sectors. For some highly regulated sectors progress may be particularly difficult on cross border services and the NTMA would concentrate on the right of establishment of a commercial presence. The agreement would in principle apply to all modes of delivery (including in particular cross-border services and consumption abroad).
- Elimination of regulatory obstacles on the basis of mutual recognition: Taking into account the importance of non-discriminatory regulatory barriers in certain sectors and also for certain cross-border transactions, the agreement would envisage the mutual recognition of qualifications, regulations and other requirements.

i) Elimination of restrictions to market access and to national treatment

An NTMA would aim at eliminating remaining restrictions on national treatment and market access (both through establishment in the form of subsidiaries, branches, or representative offices; cross-border provision of services; and purchase/consumption of services abroad) scheduled by both partners in GATS. It would be based – unlike the Internal Market, and with the exception of cases where mutual recognition for regulations is achieved – on the application of host country rules and host country control. As regards the US, it should bind both the Federation as well as the States, and should offer a degree of market access similar to that offered by the EU. It would result in benefits for EU industry in the US, such as:

a. New public procurement possibilities, in particular for the highly competitive EU construction services sector, and equal access for the subsidiaries of EU companies to public funded research programmes in the US.
b. More opportunities to provide on a cross-border basis banking, securities and certain insurance services (such as large industrial risks) into the US, and a substantial relaxation of current rules that prevent EU financial conglomerates from

establishing, for instance, banking and insurance operations in the US. The EU and US should continue to support IOSCO.

c. Greater certainty of access to the US maritime transport services sector, where the EU industry has a strong position. Other objectives would include the phase out of the different obligations for US Government-owned or financed cargoes to be carried on US-flag commercial vessels, and other restrictions, but it must be recognised that these are sensitive issues.

d. Elimination of nationality restrictions and non-transparent licensing procedures at State level for professional services, and in particular for certain legal and medical services, as well as other restrictions regarding a number of business services such as personnel placement services;

e. Ensuring non-discriminatory access of European operators to provide satellite-based telecommunications services in the US, including satellite personal communications services (S-PCS) and one-way satellite transmission services. Elimination of the remaining restrictions to direct ownership in US telecommunications services (limitation to 20 % of direct foreign shareholding for radio licenses) and coverage of postal services, without undermining internal EU policy making on services of general economic interest.

f. Access to the energy services sectors through opening the possibility for the establishment and acquisition of companies, mainly in the areas of transmission and distribution of gas and electricity, including facilities supplying ancillary services, and in the context of recently adopted EU directives.

g. Elimination of remaining restrictions in other sectors such as quality services (testing, inspection and certification) and environmental services.

For the majority of sectors effectively covered by the GATS, this should pose no particular problem. A wide sectoral coverage and a high degree of liberalisation should contribute to the achievement of an overall balance and to increase the attractiveness of such a deal. However, it must be recognised that some areas are particularly sensitive. In the audio visual sector, the exception which the EU secured in the Uruguay Round, by combining MFN exemptions and the absence of commitments on national treatment and market access in the GATS agreement, must be fully preserved and therefore excluded from the NTMA negotiations.

The NTMA will not impact on the current aviation discussions (June 1996 Mandate) aimed at establishing a common aviation area and which will develop in parallel. This involves substantial expansion of the air transport services open to airlines of both sides. It covers market access in a wide sense, through the conclusion of an open market agreement ensuring equal access to each other's market and *inter alia* lifting US restrictions to foreign ownership of US carriers.

An NTMA could also provide a useful opportunity to improve some of the features of GATS. For instance, the adoption of a negative listing system (everything is liberalised except for what is listed) as a method of securing liberalisation commitments as well as increased transparency; and, possibly, the introduction of

generic rules for investment and the movement of people (in particular service providers, intra-company transferees, business visitors and key personnel). The NTMA could also break new ground by including in the liberalisation process sectors which are so far excluded from the GATS basic rules (maritime transport) or which have not been subject to much attention in the past (e.g. energy services), for which liberalisation in the EU is recent.

In addition, the national treatment provisions should fully apply to the public procurement of services, which are provided either on a cross-border basis or on the basis of a local establishment: at present, Article XIII of GATS excludes the application of the national treatment and most favoured nation provisions to the public procurement of services. This is an area where the EU has already opened its market on a generally non-discriminatory basis, and where considerable new business opportunities could be created for EU service suppliers because of the present existence of significant US discriminatory laws and practices based on different *Buy America* provisions.

ii) Mutual recognition of regulations

The agreement should make use of the opportunities provided for by the GATS to conclude agreements for the mutual recognition of qualifications, licenses, or regulations and other requirements concerning the provision of services in certain sectors. In many services sectors, it is domestic regulation that now constitutes the main barrier to foreign businesses or individuals. The sectors that lend themselves most to MRAs are professional services, educational and training services, and financial services.

In the few areas where they have been concluded so far, MRAs in the field of qualifications have been carried out between professional bodies responsible for governing the different regulated professions. The situation in the EU, with at least fifteen authorities responsible for governing each profession, and the US, where often every state has its own authorities, means that mutual recognition in any of the professional areas is complex. For instance, recent negotiations between the UK and US accountancy bodies have proved difficult because there are many authorities seeking recognition in each other's territory. The splintered responsibilities in this sector might make it ripe for the two transatlantic partners to try to set up a framework of binding rules within which the responsible authorities (including professional bodies) could achieve mutual recognition. Taking into account the differences in education and training between and within both the EC and the US, a model which is close to the EC's General System of mutual recognition of qualifications would provide flexibility to require aptitude tests or adaptation periods in case where there are substantial regulatory differences. A network of administrative cooperation, applicable to all regulated professions covered by the agreement, could oversee the functioning of the system and help solve problems. The WTO Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector could also be used as a model.

In the financial services sector examples where mutual recognition of regulations and

possibly home country supervisory control (probably combined with additional market access elements) could be explored and form a balanced package for both sides could be:

a. The conditions for the operation of branches. A greater convergence of regulations and strengthening of co-operation and exchange of information between EU and US regulators and supervisors and could enable the establishment of bank branches without endowment capital requirements or lending or other operational limits based on the branch capital. The agreement could include the ability to operate branches in more States (in particular, the so-called inter-State *de novo* branching). Similar facilities could be provided for in the insurance and securities areas, where there are particular difficulties in establishing branches in the US. The EC's financial services directives - as well as Article 59.2 of the Treaty of Rome- contain specific provisions allowing for negotiations leading to granting third country branches the freedom to provide cross-border services within the EU;

b. The mutual recognition of mutual funds for cross-border marketing between the US and the EU - a long-standing EU request from the EU asset management industry, as well as the mutual recognition of prospectuses in particular in cases of public offers of securities and for the listing of securities in a stock exchange;

c. The exemption from the application of detailed US regulations and jurisdiction to trade in securities by US residents in non-US securities markets;

d. An additional relaxation of rules restricting EU financial conglomerates from having banking and non-banking financial subsidiaries in the US, for instance to avoid cases where the affiliation under a single holding company of a bank and an insurance company may lead to compulsory divestment of either the banking or the insurance operations in the US;

e. Further regulatory cooperation on payment systems with a view of establishing a transatlantic payment instrument.

f. There is scope for strengthening the process of co-operation and exchange of information between supervisory authorities, for instance regarding the consolidated supervision of financial groups

11. GOVERNMENT PROCUREMENT

Procurement accounts for between 10 and 15% of combined GDP and any serious effort to create an NTMA should therefore address this sector. The inclusion of government procurement in the NTMA should result in the extension of full national treatment between the parties.

The NTMA provides an opportunity to completely liberalise the two respective public procurement markets in a way which is fully consistent with WTO rules, without creating new trade obstacles to third countries. The NTMA should go beyond what is

laid down in the Government Procurement Agreement (GPA) in order to extend market access. It should not be necessary to impose common detailed procedural rules as existing national rules provide for the necessary levels of transparency and legal recourse in procurement once extended to the other party.

For the EU, at "above threshold"[2] levels, this would not present specific difficulties as the market is already open. At "below threshold" levels, it would suffice for the EU to commit itself to an exchange of national treatment and a guarantee of fair and transparent treatment of all suppliers and service providers from both parties. For the US, it would require, *de jure*, disapplying all federal "Buy American" preferences for EU goods, and extending exemptions for SMEs and minority enterprises to cover EU companies.

Access to US electronic procurement systems (by which a large majority of SME preferences in particular are operated) and the application of preferences at sub-federal level would also need to be addressed. In addition, the question of the interpretation of the application of the security exception in defence-related procurement could be addressed to ensure an even-handed approach.

In particular, the NTMA should address the following:

a. eliminating exceptions from national treatment in areas already covered by commitments under the WTO Agreement on Government Procurement and the EC-US agreement of 1995.[3]
b. completing geographic and entity coverage.[4]
c. elimination of existing sanctions.[5]

12. INTELLECTUAL PROPERTY

In the area of *patents*, the US is the only country in the world which continues to use the anachronistic first-to-invent system. The rest of the world follows the first-to-file approach. It is obvious that a system which relies on the uncertain moment of the invention is extremely demanding in terms of evidence for all inventive activities and creates the potential for extensive and highly costly litigation. Furthermore, the coexistence of different systems leads to interface problems. The issue has been discussed for many years. Its importance is highlighted by the fact that it has figured for years on top of the TABD agenda and that the TABD has recommended a change

[2] The EC Directives apply to procurement contracts which have a value higher than the threshold set out in the Directives. Below threshold procurement is regulated by member states.
[3] US exemptions include a number of Buy American and related requirements, local preferences applied at both federal and sub-federal level, and small and minority set-asides. The US also maintains a cargo preference - an obligation to use US flag vessels when importing certain products procured by US.
[4] At present only 39 out of 50 States and 5 out of 24 large cities are covered.
[5] In May 1993, US imposed sanctions on the EC under Title VII for discriminating against US telecom equipment businesses. EC imposed equivalent countermeasures. Both remain in force and are counterproductive to Transatlantic business.

to adopt the first-to-file approach in the US. No progress has been achieved up to now.

As recommended by the TABD, measures should be taken to significantly reduce the high costs of obtaining and enforcing patents. The problem of high litigation costs is of a general nature in the US, but turns out to be particularly burdensome in the area of patents, mainly because of extensive pre-trial discovery procedures and, to some extent, the trial of patent cases before a jury. Alternative ways of settling disputes should be examined, without changing the system as such. An estimate or study on litigation costs should be carried out, since it is difficult at present to quantify costs in absolute figures in the absence of systematic, reliable and mutually agreed statistics. Based on the results of such a study, the objective should subsequently consist of progressively reducing the costs.

Today, if an inventor applies for a patent at the European Patent Office (EPO) and the US Patent and Trademark Office (USPTO), such patent applications concerning the same invention are completely examined by both offices. This implies that full search reports to find out the relevant state of the art are made twice, with the associated costs for the applicants. Discussions have already been initiated among the offices concerned to improve the exchange of information on technical matters related to patents. Contacts should be intensified to reach some degree of acceptance or even mutual recognition of parts of the patent procedures, such as search reports.

A number of shortcomings exist in the area of *government use* without the consent of the rightholder, which, in practice, is similar to compulsory licences. While some issues were already addressed in the Uruguay Round, others are still waiting for a satisfactory solution. The aim should be to proceed as for any other compulsory licence. A full patent search should be carried out and the patent holder be informed prior to any government use, except in cases of national emergency. Such use should only be permitted after efforts by the government to obtain authorisation from the rightholder on reasonable commercial terms have not been successful, within a reasonable period of time.

The limitations of the *internet domain name system* are giving rise to legal battles involving national right holders sharing the same trademark. Companies are rapidly becoming aware of the great value of easily memorable internet domain names. Trademarks are territorial, yet names registered under the domain name system are both unique and international. In this context, trademark holders should be provided with the same rights and dispute settlement mechanisms as they have in the physical world. Questions of competent jurisdiction should also be addressed.

In the area of *geographical indications,* it would be desirable either to eliminate altogether or, at least, to reduce the number of indications, which US producers can continue to use under the grandfather/generic use provisions of TRIPs (Article 24 par. 4 and 6), such as, for example, Vermouth, Chablis, Champagne, Chianti, Porto or Sherry. This would contribute to considerably improving the situation of EC rightholders. Bilateral negotiations are underway, but progress is extremely slow.

The legal *protection of databases* requiring substantial investment is currently the subject of multilateral negotiations in WIPO. The Berne Convention and TRIPs provide copyright protection for creative databases, but not as regards databases which are not « original » in the copyright sense. The EU and the US should continue their bilateral dialogue in order to agree on a common approach to the WIPO negotiations, securing a mutually acceptable outcome at the multilateral level as the ultimate goal. Community legislation already offers a higher level of protection.[6] It also provides for the possibility of concluding bilateral agreements on a reciprocal basis with countries offering a comparable protection to EU database makers.[7] The fulfilment of this condition by the US through the adoption of legislation by Congress would lay down the basis for the conclusion of a bilateral agreement, securing a higher level of protection for EU database makers in the US.

There is scope to improve the *protection of textile and clothing designs*. The objective should consist of reviewing existing unsatisfactory procedures to ensure a higher level of protection through easy, cheap and short procedures. So far, designs are protected by copyright law, offering an easy access to protection, but making litigation more difficult. Design patents grant better protection, but are less attractive from an economic point of view, since they imply considerable costs and are time-consuming. The details for a concrete proposal still have to be elaborated, depending on the precise definition of interests by EU industry.

On *artists' resale rights* (droit de suite) the Community should continue its regular contacts with the US Administration with a view to reinforcing this right in the multilateral framework of WIPO. Following the future adoption of a Community Directive harmonising the artists' resale right, the adoption by the US of an equivalent system would further the establishment of free trade in relation to the twentieth century art market.

Finally, taking into account the sensitivity of the subject matter concerned, any broadening of the scope of possible negotiation in the area of intellectual and industrial property rights would require further reflection.

13. INVESTMENT

On investment it is important to maintain an ambitious approach to develop a Multilateral Agreement on Investment (MAI) whose key features are MFN and national treatment. This agreement would cover market access and protection for investment in both goods and services, as well as for financial assets. As things stand, it would not provide, for preferential "treatment" within free trade areas (as mentioned earlier the interface between a FTA in services and the MAI would thus need to be explored). At the end of that negotiating process, an evaluation should be made of what has been achieved and of what more might be done with the US.

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[6] EU database makers are guaranteed a sui generis protection under Article 7 of Directive 96/9/EC of 11 March 1996 which had to be implemented by 1 January 1998.

[7] See Article 11 par. 3 in conjunction with recital 56 of the Directive.

For example, this might include:

a. a strong investor-to-state and state-to-state dispute settlement procedure, which is the backbone of every bilateral investment treaty.
b. improved national treatment (e.g. in-state treatment and access to publicly funded research and development programmes).
c. the so-called new issues (such as temporary entry, stay and work of investors and key personnel, senior management and boards of directors, employment requirements, performance requirements, privatisations, investment incentives and corporate practices).

14. OTHER POSSIBLE COMPONENTS

i) Trade and labour

The adoption of core labour standards throughout the world is a shared priority. As a minimum, the EU and US should implement fully the existing ILO conventions in our respective legal systems. In addition as part of the NTM there should be further dialogue between our social partners and greater co-ordination with a view to adopting a common position in discussions on these issues in all multilateral fora.

ii) SMEs and Enterprise Policy

In the context of the New Transatlantic Marketplace we should promote mutually beneficial partnership activities based on practical initiatives with emphasis in fields such as improving business environment, access to risk capital, enhance entrepreneurship, access to innovation and training and benefiting from trade liberalisation opportunities.

iii) Electronic Commerce

The NTMA should pay particular attention to the liberalisation of cross-border services when they are provided by electronic means. International trade in electronic commerce raises a number of questions that, to some extent, go beyond those which in the past have been given more relevance in the context of "traditional" trade in services. Traditionally, liberalisation of services has put great emphasis on the market access of economic operators and on national treatment. Electronic commerce requires to go a step further and to place the emphasis on the need for free circulation of services.

Electronic commerce may in many instances not only consist in the provision of services across borders but also in the simultaneous provisions of such services to a number of different countries. Thus, the electronic provision of one single service will have to comply with a multitude of national regulatory standards. As a result, we can expect that the major trade obstacles that electronic commerce will face are those resulting from regulatory divergences and from legal uncertainty. These obstacles are

not 'per se' discriminatory and therefore the problems they create may not just be solved by the application of the national treatment obligation.

If the NTMA is to effectively liberalise services provided electronically, it will have to consider (beyond the opportunities already provided by the GATS) the need for mutual recognition of regulatory standards and, in certain cases, for harmonisation of legislation. In addition, the NTMA would have to consider ways to improve the transparency and legal predictability of the rules applicable to electronic commerce.

There is a need to extend discussion on the different aspects of electronic commerce to all regions of the world and in a multilateral context, in order to co-ordinate and strengthen the activities of the various international fora and to involve as many countries as possible as well as the private sector. The Commission recently proposed the creation of an 'International Charter on Global Communications'.[8]

iv) Data Protection

In the Joint EU-US statement on Electronic Commerce of 5 December 1997, both sides have recognised that the effective protection of privacy with regard to the processing of personal data on global information networks needs to be ensured.

In the EU the privacy of individual as regards the processing of their personal data and the free flow of such data is secured by the Data Protection Directive. The Directive requires *inter alia* that Member States shall only allow personal data to be transferred to third countries where its adequate protection is ensured. In order to avoid existing differences in levels of protections causing disruption to the free flow of personal data, it would be desirable to agree to substantive provision as to the nature of guarantees necessary to secure an adequate level of protection.

v) Competition

With regard to the possible inclusion of competition policy in the NTMA, a distinction must be made between anti-trust and state aid.

On anti-trust, EU and US have successfully developed co-operation in the framework of the bilateral agreement on competition policy of 1991. In 1998, this bilateral co-operation will be strengthened by the conclusion of the EU-US agreement on the application of positive comity in the enforcement of competition law. EU-US co-operation on anti-trust matters will be further developed at its own pace and on its own merits, outside the scope of the NTMA.

Regarding state aid, the US has no control and authorisation procedures similar to the ones provided for by Articles 92-94 EU Treaty. The Commission should examine before the NTMA negotiation whether there is a need to negotiate disciplines on state aid as an element in avoiding distortions of competition.

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[8] Communication from the Commission of 4 February 1998 on 'Globalisation and the Information Society - The Need for Strengthened International Co-ordination', COM 98(50) final.

vi) Taxation

Given the growing influence of preferential tax regimes on the location of capital, the EU and US should address the issue of harmful tax competition. EU Ministers have given a strong signal of determination to tackle this, both within the EU and beyond, in the agreement of 1 December 1997. This includes in particular a code of conduct on business taxation and action to ensure a minimum of effective taxation of savings income. In both cases Member States have undertaken to promote the establishment of equivalent measures in third countries.

E. OTHER ASPECTS OF THE INITIATIVE

15. IMPLICATIONS FOR EU COMMON POLICIES

As regards the *Common Commercial Policy* the NTMA does not envisage the preferential removal of tariffs. It could instead result in the total elimination on a MFN basis of industrial tariffs, if sufficient reciprocity from third countries were forthcoming. The NTMA is aimed at reducing costs for businesses, facilitating trade, increasing market opportunities and improving economic efficiency. In this respect it is fully consistent with the general goals of the EU *Industry Policy* as contained in Art. 130 of the EC Treaty.

In the area of *trade in goods,* the main policy concerned is the *Internal Market*, in particular as regards the free movement of goods. EU policy in this area is based on the strict limitation imposed by the Treaty in Articles 30-36/EC on the scope for Member States to restrict the free movement of goods. Such restrictions, as interpreted by the case law of the European Court of Justice, are confined to a list of imperative requirements (such as public health, safety, consumer protection and the environment) and are subject to restrictive conditions (such as proportionality). Where Member States impose technical requirements in accordance with these principles, free movement of goods is maintained by the mutual recognition of laws, supported if necessary by approximation of these laws at Union level. This means that a product legally placed on the market of one Member State should be accepted on the market of another, without having to meet further requirements. There are a number of mechanisms aimed at preventing the emergence of new barriers, such as the Information Directive 83/189 and Council Decision 3052/95. In the light of the importance that the EU attaches to the Internal Market and to its progressive introduction in the CEECs (Central and Eastern European countries), any external initiative needs to be compatible with those objectives.

This is not a proposal to extend the Internal Market to the US. However, the principles of convergence and of mutual recognition of law, procedure and practice, set out in this Communication as the means to reach the Union's objective of freeing Transatlantic trade in goods from technical barriers draw upon elements of the Internal Market approach. The process of convergence is likely to require some change in EU law, procedure or practice. The same would obviously apply on the US side.

Bilateral convergence should be pursued in close connection with wider international co-operation, in line with long-standing EU policy and the recommendations of the WTO-TBT (Technical Barriers to Trade) Agreement. Insofar as the development of international standards would be involved, mainly in the International Standards Organisation (ISO) and the International Electrotechnical Commission (IEC), the necessary arrangements are in place for their adoption by the European standardisation bodies CEN (Comité Européen de Normalisation), CENELEC (Comité Européen de Normalisation Electrotechnique) and ETSI (European Telecommunications Standards Institute). Overall, therefore, the results of agreeing international standards under the New Transatlantic Marketplace should be manageable within the existing structures.

As far as mutual recognition is concerned, a Mutual Recognition Agreement (MRA), covering a number of industrial sectors, was initialled between the EU and the US in 1997 and is scheduled to be formally concluded and implemented in 1998. This MRA only concerns mutual recognition of conformity assessments and provides for goods produced on one side of the Atlantic to be tested and certified there, to the technical requirements of the other side. Implementation and enforcement of this Agreement will necessitate close co-operation with the Member States' authorities. The legal relationship between the MRA and an NTMA will need to be clarified.

In general terms (and more in particular where more than just conformity assessments are concerned) mutual recognition of law, procedure and practice will require close scrutiny of the regulatory approach followed on either side of the Atlantic, taking full account of public policy objectives. The impact of any differences of approach in this respect between the EU and the US (for instance as regards the use of preventive requirements, compared with resort to producer's liability) will need to be considered. The objective of this will be to maintain public confidence that the requirements of protection of health, safety, the consumer and the environment, which are at the foundation of the Internal Market, are not impaired.

In the area of *trade in services*, the NTMA should focus firstly on liberalisation based on national treatment and - unlike in the case of the Internal Market - the application of host country rules, and on the elimination of restrictions to market access. This will imply that within the EU, as of course within the US, remaining restrictions on the right of establishment in any form of commercial presence (subsidiaries, branches, representative offices, etc.) will have to be eliminated in full conformity with GATS rules.

The NTMA would not alter the rules governing the functioning of the Internal Market, nor imply its extension to the US. US firms will benefit from the Internal Market rights only once they meet the non-discriminatory criteria established by the EC directives (applicable in the same way to EC companies), except in those cases where under the NTMA we voluntarily agreed to mutual recognition or harmonisation. Third countries companies, once incorporated in Europe, already enjoy the benefits of the single market. The general principle that the benefits of the

internal market are limited to institutions incorporated in the EU and subject to harmonised internal market rules would not be altered.

While US companies wishing to enter the EU market would find it easier, they would still need to comply with the rules prevailing in the Internal Market which have to be followed by every company wishing to operate in the EU (and which could progressively approximate in some areas thanks to regulatory co-operation in the NTMA framework). They would also need to comply with rules applicable in each Member State where no harmonised regulations at Community level exist. The full respect of the public policy objectives pursued by Internal Market regulations and national legislation would therefore be preserved.

Progress in the area of *Mutual Recognition* (of qualifications, regulations and other requirements, supervisory practices, etc.) could result in partially granting benefits allowed under the Market to US companies and service providers without the need to be subject to the relevant EU rules, but with the equivalent US regulations. This would need to be done in such a way that neither imbalances the Internal Market nor distorts conditions of competition. In exchange, EU companies would get equivalent access to the US market.

This means that, as the functioning of the Internal Market would not be altered, implications for EU common policies would mainly consist of what could flow from increased competition in the EU market in the different services sectors, and of the need to take advantage of increased market access opportunities for EU companies in the US.

16. INSTITUTIONAL ASPECTS

Institutional structure

In order to ensure the effective realisation of the NTM and its proper functioning, and taking into account the need to preserve the EU's internal procedures, it will be necessary to create some new institutional structures. What exactly these should be will become clearer as the negotiation progresses. Their articulation with existing NTA structures and other existing EU-US arrangements will need to be carefully considered. It may be appropriate to establish:

- a joint committee structure (either building on existing structures, or adapting them) which would oversee the implementation of the Agreement;
- a mechanism for the efficient settlement of disputes;
- a consultative body bringing together EU and US parliamentarians.

Scientific Cooperation

It may also be appropriate to establish a scientific consultative body, involving the widest possible exchange of scientific knowledge in the regulatory process, in particular, by bringing together scientists from both sides of the Atlantic.

The prevention of disputes

One aim of the NTM is to prevent trade disputes arising. The Joint Committee would play an important role here. At a minimum, dispute prevention should be based on:

- clarity of the parties' legal obligations under the Agreement;
- fostering public transparency and support through a structured dialogue, or separate dialogues among interested parties (including consumers, labour and business);
- reliance on voluntary standards whenever this is possible without compromising public policy concerns;
- increased regulatory cooperation through notification and consultation procedures between the parties' public authorities at all appropriate levels when new laws or regulations are being considered;
- day-to-day administrative co-operation between enforcement and supervisory or monitoring authorities on both sides of the Atlantic.

Domestic implementation of commitments

The benefits of the NTMA for EU and US citizens and firms rest on effective implementation by the parties in their respective legal orders of the commitments undertaken in the Agreement. In turn, these domestic law obligations will be enforceable by each party's jurisdiction.

The resolution of disputes arising under the agreement

In the event of disputes between the parties arising nevertheless, in spite of the bilateral and domestic mechanisms described above, there would be a need for an effective bilateral mechanism for resolving such disputes. While the precise institutional nature of such a mechanism would inevitably depend on the kind of obligations it would eventually have to deal with, it should at a minimum:

- not foreclose the possibility of a consensus-based resolution of the dispute;
- be based on objective elements;
- provide legal certainty to the parties (and ultimately to their citizens and firms) as to the extent and content of the rights and obligations under the Agreement;
- be carried out within a reasonably short time-span so as to enhance such legal certainty;
- provide assurances that the outcome will be accepted and enforced by the parties.

Relationship with WTO dispute settlement

The above mechanism should be structured in a way which ensures the continued integrity and effectiveness of the WTO dispute settlement mechanism. Nor should it in any way curtail the right of the parties to resort to WTO dispute settlement. The exact relationship between the two mechanisms will depend largely (albeit not exclusively) on the relationship between the substantive rights and obligations for the parties under the WTO and the NTMA respectively.

F. CONCLUSION

The Commission requests the Council to proceed to an early in depth discussion of this proposal.

The Commission will submit draft negotiating directives to the Council for a New Transatlantic Marketplace Agreement covering the elements described above.

Annex

KEY ECONOMIC FIGURES

From an economic viewpoint, the Transatlantic partners enjoy a high degree of integration. The EU and the US are each other's single largest trading partner (taking goods and services together), and each other's most important source and destination for foreign direct investment (FDI). Their economic relationship is characterised by a high degree of intra-industry, intra-firm trade and trade in intermediate products. Transatlantic firms are increasingly using new and innovative ways of doing business, including by means of electronic commerce.

In 1996 *two way trade in goods and services* amounted to more than 355 bn ECUs. The EU and the US each account for around 19% of each other's total trade in goods which in 1996 amounted to 227 bn ECUs. The trade relationship is not only large in size, but it is also substantially balanced. Transatlantic trade is concentrated in sophisticated high-technology products. It is estimated that the latter products account for 20% of total EU-US merchandise trade.

The area of *trade in services* appears particularly dynamic. Transatlantic trade in services figures show that while in 1985 EU-US bilateral trade in services accounted for 32% of total bilateral trade, by 1995 this figure had risen to over 38% of total bilateral trade. In 1996 the combined cross-border trade in services reached 128 bn ECUs. This remarkable increase still leaves considerable scope for trade growth given the fact that the services sector has become the largest and fastest growing part of both economies. In fact, services currently account for more than 66% of total value added in the EU economies on average, and more than 70% in the US, and for comparable shares of employment. In comparison, the share of services in world production amounts to above 50%. As a consequence, the EU and the US are the world leaders in services trade, accounting for 47% of world exports in services.

The importance of the *EU-US investment relationship* is demonstrated by the level of FDI stocks, with each of the two sides being the other's largest investor. By 1996 cross investment stocks between the EU and the US on a historical-cost basis reached 720 bn USD, by far the largest investment relationship in the world. EU investment in the US was valued 372 bn USD and the US investment position in the EU was estimated to reach 348 bn USD. The EU therefore is by far the biggest investor in the US accounting for 59% of total FDI stock by 1996. At the same time 44% of US FDI stock was located in the EU. As with the bilateral trade relationship, investment stocks are both balanced and substantial. They have also been growing very quickly over the past few years, doubling between 1989 and 1996. The service sector plays an increasing role as destination of FDI, with a yearly average share of cross border investment flows in services of total FDI in the period 1992-1995 close to 50%, although the main beneficiary of EU investment in the US is still the manufacturing sector.

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