



Transatlantic Regulatory Cooperation: A Possible Role for Congress

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December 1, 2009

Congressional Research Service

7-5700

www.crs.gov

RL34735

Summary

The United States and the European Union (EU) share a comprehensive, dynamic, and mutually beneficial economic relationship. Transatlantic markets are among the most open in the world and are deeply integrated. Although the global economic crisis has had a significant negative impact on the transatlantic economy, the great stake each side has had in the other's economy has afforded both sides the ability to withstand the worst of each other's current economic downturn. The key measure of the strength of the transatlantic relationship has been the ability of both sides to work with each other to weather the financial storm.

One issue that has worked against an even stronger economic relationship is the existence of regulatory barriers that limit a more integrated market from materializing. The United States and the EU have engaged in a number of attempts to reduce remaining non-tariff and regulatory barriers to trade. In the most recent effort, then President Bush and German Chancellor Merkel, serving as President of the EU, at the April 2007 U.S.-EU Summit agreed to establish the Transatlantic Economic Council (TEC). The TEC was directed to "advance the work of reducing or eliminating non-tariff barriers to transatlantic commerce and trade." The leaders also created an advisory group to "provide guidance and direction" to the TEC and invited the U.S. Congress, along with the European Parliament, to accept a new, more substantive role in transatlantic regulatory cooperation by becoming part of the advisory group. The Transatlantic Legislators' Dialogue (TLD), the formal exchange between Congress and the Parliament, was appointed to represent the legislatures in the TEC advisory group.

Since it began nearly two decades ago, transatlantic regulatory cooperation has been mostly limited to the executive branches and regulatory bodies on both sides of the Atlantic. However, the idea of legislators assuming a more proactive role in transatlantic economic and regulatory cooperation is not a new issue. At the 1995 launch of the New Transatlantic Agenda, the leaders of the United States and EU acknowledged that they "attached great importance to enhanced parliamentary links" and agreed to "consult with parliamentary leaders on both sides of the Atlantic regarding consultation mechanisms, including building on existing institutions, to discuss matters related to our transatlantic partnership." Advocates of the effort to achieve a more barrier-free transatlantic marketplace believe that ultimate success cannot be achieved without the strong commitment and active engagement of the U.S. Congress and the European Parliament.

Although the Transatlantic Legislators' Dialogue has been in existence since 1999, there continues to be an apparent lack of familiarity with its structure, membership, and function. With respect to its role in the TEC process, several questions have been raised including the make up of the TLD, the role of the standing committees in both the Congress and the Parliament, the staff, and the role of the U.S. Senate. A number of options for reform have been proposed.

This report provides background and analysis on the TEC process, the role of the Congress, and the TLD. For additional information see CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn, and CRS Report RL30608, *EU-U.S. Economic Ties: Framework, Scope, and Magnitude*, by William H. Cooper.

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Introduction

Since the end of the Cold War, the economies of the United States and Europe have experienced a period of accelerated integration interlinked by growing ties in trade, investment, and related employment.¹ Today, despite the recent global economic upheaval, the United States and the 27-member European Union (EU) continue to share a comprehensive, dynamic, and mutually beneficial economic partnership. Not only is the EU-U.S. commercial relationship, which advocates refer to as the transatlantic economy, the largest in the world, but for many practitioners in the transatlantic community it is also arguably the most important.²

Although hard hit by the current global economic downturn, the transatlantic economy continues to dominate the world economy by its sheer size and prosperity. The combined population of the United States and EU now approaches 800 million people who generate over half the world's production and are responsible for \$4.4 trillion in commercial exchanges annually.³ Transatlantic markets are among the most open in the world and are deeply integrated through investment flows, affiliate sales and related-party trade.⁴ The transatlantic economy generates an estimated \$4 trillion in commercial activity per year and accounts for close to 60% of global GDP and roughly 40% of world trade.⁵ The United States and EU are each other's largest overall markets for a host of goods and services, ranging from agricultural products to high-tech goods and services. Large values of goods such as chemicals, transportation equipment, computers, and processed food as well as transportation and financial services are traded in record amounts.

More significant as the pillars of transatlantic commercial activity and the driving forces behind deepening transatlantic economic integration over the past decade have been foreign direct investment (FDI) and the interrelated activities of foreign affiliates.⁶ In contrast to trade, mutual U.S. and European FDI results in "direct participation in each other's domestic economies."⁷

The fact that each side has a major ownership stake in the other's market may be the most distinctive aspect of the transatlantic economy. At the end of 2007, the total stock of two-way direct investment reached \$2.7 trillion (composed of \$1.4 trillion of U.S. direct investment in EU countries and \$1.3 trillion of EU direct investments in the United States), making U.S. and European companies the largest investors in each other's market. Roughly 47% of all U.S. foreign direct investment is located in Europe, while EU member states supply 42% of global FDI in the United States. European affiliate income in the U.S. reached \$82 billion in 2007 while U.S. affiliate income in Europe increased to \$147 billion during that same period.⁸ However, the global

¹ James Elles, "The Transatlantic Market: A Reality by 2015?," Transatlantic Policy Network, 2006.

² For Background on U.S. -EU commercial ties see CRS Report RL30608, *EU-U.S. Economic Ties: Framework, Scope, and Magnitude*, by William H. Cooper; and CRS Report RL34381, *European Union-U.S. Trade and Investment Relations: Key Issues*, coordinated by Raymond J. Ahearn.

³ Cited in a speech by Catherine Ashton at the U.S. Chamber of Commerce, Washington, DC., October 26, 2009.

⁴ Daniel S. Hamilton, "Creating the Transatlantic Marketplace," Commentary Section, American Institute for Contemporary German Studies, 2008.

⁵ Daniel Hamilton and Joseph Quinlan, "The Transatlantic Economy 2008," American Chamber of Commerce-EU and the Center for Transatlantic Relations, 2008.

⁶ James Elles, op. cit.

⁷ The Atlantic Council of the United States, "The Transatlantic Economy in 2020: A Partnership for the Future?" Policy Paper, 2004, p.2.

⁸ *Completing the Transatlantic Market*, 2nd Annual Report, Transatlantic Policy Network, May 2008.

economic downturn has resulted in U.S. foreign affiliate income earned in Europe peaking in 2007 and actually declining by 2% by mid-2008. European affiliate earnings in the United States were reported to be flat in 2008.⁹

This massive amount of ownership of companies in each other's markets translates into billions of dollars of sales, profits, production, and expenditures on research and development. In addition, an estimated 6-7 million Americans are employed by European affiliates operating in the United States, and almost an equal number of EU citizens work for American companies in Europe.¹⁰ In the current global economic crisis, these figures have declined somewhat but will still constitute significant transatlantic economic and financial activity.

The combined weight of these two economic superpowers means that how the United States and EU manage their relationship and the difficult issues involving domestic regulations, competition policy, and foreign investment often helps determine how the rest of the world deals with similar issues. As the figures might suggest, both the United States and EU have implemented policies that are receptive to expanding the commercial relationship. In theory, both sides have appeared to acknowledge that there is nothing to gain from protectionist investment policies. This theory is being tested in the current global financial environment as both sides of the Atlantic have flirted with some forms of protectionist policies (i.e., "buy America" provisions included in the U.S. stimulus legislation). Leaders in both Washington and Brussels have cautioned and urged restraint in implementing such policies seeking to ensure that cooperation which could help one another emerge from the current crisis is not impeded in any manner.

The success of economic integration achieved thus far, however, does not guarantee that the transatlantic economies will continue to deepen. The current global economic crisis has had a negative impact on the transatlantic economy. Regulatory irritants and barriers to greater commercial ties on both sides of the Atlantic remain to be adequately addressed. A key measure of the strength of the transatlantic relationship has been the ability of both sides to work with each other throughout the current financial storm in such a way that would permit further integration and would promote expanded regulatory cooperation, as both sides of the Atlantic begin to experience an economic recovery.

This report is intended to serve as a companion piece to CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn, which provides an introduction and primer on the issue of transatlantic regulatory cooperation.¹¹ The main focus of this report is on (1) the creation of the Transatlantic Economic Council; (2) the role of legislatures in the regulatory process; and (3) the Transatlantic Legislators' Dialogue and its new role as an advisor to transatlantic regulatory efforts.

⁹ Center for Transatlantic Relations, Johns Hopkins University, *The Transatlantic Economy 2009, Executive Summary*, by Daniel S. Hamilton and Joseph P. Quinlan. Available at <http://transatlantic.sais-jhu.edu>

¹⁰ Center for Transatlantic Relations, Johns Hopkins University, *The Transatlantic Economy 2008, Executive Summary*, by Daniel S. Hamilton and Joseph P. Quinlan.

¹¹ See CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn.

Transatlantic Regulatory Barriers

Because many U.S. and European industries are already deeply integrated with each other and most tariffs are low, non-tariff and regulatory barriers are increasingly recognized as the most significant trade and investment impediments to the creation of a more integrated transatlantic market. However, some observers believe that while regulatory divergence does present an obstacle to trade, it does not automatically mean that the alignment of regulations in all sectors is possible or even desirable. In addition to domestic regulations, non-tariff barriers consist of elements such as safety norms, differences in health, environmental or engineering standards, rules of origin, or labeling requirements.¹² Such measures are due in part to different societal preferences and priorities, but also, to a significant degree, a lack of coordination or adequate information exchange between regulators and legislators on each side of the Atlantic who are subject to different legal mandates or engaged in different oversight procedures.¹³ One problem in addressing these different perspectives is the fact that the United States and Europe have very different regulatory processes and structures making attempts at regulatory convergence difficult.¹⁴

There have been a number of previous attempts to reduce existing non-tariff and regulatory barriers to trade. The aim of such efforts has been to reduce costs to businesses on both sides of the Atlantic, improve consumer welfare, and facilitate higher levels of economic growth. In June 2005, a report issued by the Organization for Economic Cooperation and Development (OECD) estimated that certain structural reforms in both the United States and EU that included the reduction of competition-related regulations, tariff barriers, and restrictions on foreign direct investment could lead to permanent gains in GDP per capita on both sides of the Atlantic of up to 3 to 3.5 percent.¹⁵

Attempts to seek meaningful regulatory cooperation began in 1995 when U.S. and European leaders launched the *New Transatlantic Agenda (NTA)*. This initiative was designed to raise the U.S.-EU relationship to a new level of dialogue and decision-making in four areas including economic cooperation. Since then, the United States and the EU have launched several additional initiatives such as Mutual Recognition Agreements (1997), the Positive Economic Agenda (2002), the Transatlantic Economic Partnership (2004), and the Transatlantic Economic Agenda (2005). Each of these projects has contributed in some way to achieving limited progress towards reducing regulatory burdens. However, both European and U.S. companies heavily engaged in the transatlantic marketplace argue that the results have not proved materially significant. For instance, there seems to have been some improvements in areas such as competition policy and financial services, but progress in other areas such as chemicals has not been accomplished.¹⁶

¹² See CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn, pp. 2-4.

¹³ Daniel S. Hamilton, "Creating the Transatlantic Marketplace," Commentary Section, American Institute for Contemporary German Studies, 2008

¹⁴ CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn, op. cit., pp.8-10.

¹⁵ OEDC, "The Benefits of Liberalizing Product Markets and Reducing Barriers to International Trade and Investment: The Case of the United States and the European Union," *Economics Department Working Paper 432*, Paris, May/June 2005.

¹⁶ CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn, op. cit., pp.14-19.

Creation of the Transatlantic Economic Council

In January 2007, German Chancellor Angela Merkel, upon assuming the rotating six-month presidency of the EU, proposed further liberalization of transatlantic trade and investment barriers by elevating the existing cooperation among U.S. and EU regulatory agencies. Building on the Merkel initiative, the April 2007 U.S.-EU Summit adopted a *Framework for Advancing Transatlantic Economic Integration*. The *framework* affirmed the importance of further deepening transatlantic economic integration, particularly through efforts to reduce or harmonize regulatory barriers to international trade and investment. A new institutional structure, a Transatlantic Economic Council (TEC), was established to advance the process of regulatory cooperation and barrier reduction by encouraging both U.S. and EU regulators to move forward on issues outlined in the *framework*.

The 2007 *Framework* presented the TEC with two priorities. The first was to build upon the established sectoral dialogues which had been taking place between U.S. and European Commission regulatory experts. These dialogues have included issues involving pharmaceuticals, automobile safety, cosmetics, consumer product safety, food safety, energy efficiency, and medical devices. The second priority was identified as the “Lighthouse Priority Projects.” These included a review of policies on intellectual property rights and piracy, secure ports and trade, financial markets, innovation and technology, and investment.

The creation of the TEC was predicated on the premise that past efforts to achieve regulatory cooperation or convergence had been inadequate due to the technical nature of the work, the case-by-case, ad hoc approach, often assumed by regulatory agencies, and a lack of political leadership committed to having the regulators cooperate. The TEC is headed on both sides by ministerial-level appointees with cabinet rank.¹⁷ Given that the two TEC leaders are cabinet-level appointees, the TEC was intended to have the high-level political support that previous efforts at economic integration may have lacked. Many observers believed the TEC, with its requirement to report annually to the U.S.-EU Summit, would receive that support. Such clout, it was argued, was needed to persuade domestic regulators to yield some of their authorities or to better cooperate with their counterparts across the Atlantic in harmonizing regulatory approaches.¹⁸ After two years, however, there appears to be some concern among observers of the TEC that certain structural weaknesses in the TEC have limited its potential effectiveness. A recent report co-authored by the Atlantic Council and the Bertelsmann Foundation has recommended that the United States appoint the Vice President as the U.S. co-chair of the TEC in an effort to upgrade the visibility and effectiveness of the TEC.¹⁹

¹⁷ To chair the TEC, the U.S. side initially named Alan Hubbard, Assistant to the President for Economic Policy and Director of the National Economic Council, and the EU appointed Gunter Verheugen, Vice President of the European Commission and Commissioner for Enterprise and Industry. David Price, Assistant to the President for International Economic Affairs succeeded Hubbard. The Obama Administration appointed Michael Froman, Deputy National Security Advisor for International Economic Affairs, National Economic Council as U.S. TEC chair.

¹⁸ For more information on the TEC, see Section IV in the U.S.-EU Framework for Advancing Transatlantic Economic Integration, April 2007, available at <http://www.whitehouse.gov/news/releases/2007/04/20070430-4.html>, and CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn, op. cit., p.20

¹⁹ *Resetting The Trans-Atlantic Economic Council, A Blueprint*,” A Report By the Atlantic Council and Bertelsmann Foundation, October 2009.

The TEC, in theory, is designed to enable U.S. and European regulators to anticipate and discuss potential differences in thinking about new regulations before they become actual obstacles to transatlantic commerce. These efforts include a wide range of alternatives including dialogues and information exchanges among regulators, mutual recognition agreements, cost-benefit analysis, recommendations for voluntary principles, and proposals for binding agreements.

As part of its mandate, the TEC is to accelerate ongoing efforts to reduce or harmonize regulatory barriers. The TEC was directed to accomplish this mandate, in part, by including broader participation of stakeholders, including for the first time, legislators, in the discussions and meetings. In particular, the *framework* document instructed the TEC to establish an “advisory group” that draws upon the heads of the “existing transatlantic dialogues” to provide input and guidance on priorities for pursuing transatlantic economic integration. The existing transatlantic dialogues include the Transatlantic Legislators’ Dialogue TLD, (the U.S. Congress-European Parliament exchange), the Transatlantic Business Dialogue (TABD), and the Transatlantic Consumers Dialogue (TACD). The TEC meets twice annually and reports to the annual U.S.-EU Summit on both achievements and areas where more progress is needed. To date, the advisory group has met with the TEC at each of the four TEC meetings held as of October 2009.

The first meeting of the TEC took place on November 9, 2007, in Washington, DC. A second meeting was held on May 13, 2008, in Brussels, and the third meeting took place on December 12, 2008, in Washington. For some observers, the results of these first meetings have been mixed. At the first meeting, the TEC agreed that in the field of financial accounting standards, both sides should pursue an agreement to accept the mutual recognition of each others accounting methods. At the second meeting, the TEC issued a joint statement affirming the commitment of both the United States and EU to promote open investment policies and to refrain from protectionist policies. The third meeting, the last of the Bush Administration, reviewed the operation of the TEC over its first 18 months and reaffirmed progress in areas such as investment and accounting standards, among others. The TEC also noted the importance of identifying issues suitable for TEC consideration and the need to avoid having the TEC agenda become too diffuse and unmanageable. The third TEC meeting convened in December 2008 as the global financial crisis began to have a significant impact on the transatlantic economy, highlighting for some the need for a stronger and more sustained transatlantic partnership.

The fourth meeting of the TEC was held on October 27, 2009, in Washington, DC. This meeting, the first of the Obama Administration and at the end of the EU Commission’s five-year mandate, featured a significant deviation from previous meetings. At the October meeting, the TEC leadership met separately with each of the advisory groups, ostensibly to allow the U.S. side more time to explore how the TEC can move forward in the future in an effective way. However, with a new slate of EU Commissioners scheduled to be appointed, there is some uncertainty about what the next Commissioner assigned to co-lead the TEC would see as the EU’s priorities and correspondingly how it might proceed in the future. Nevertheless, both sides committed the TEC to working more closely on energy related issues, services trade, financial regulatory compensation, and intellectual property rights. The TEC also agreed to set its next meeting for March 2010 and to develop plans to address issues such as innovation, labeling, and nanotechnology at that session.

The difficulty of harmonizing regulatory activities or resolving disputes embedded in regulatory differences, however, was underscored at all three of the earlier TEC meetings by the failure to resolve a long-standing dispute involving U.S. exports of poultry to the EU. The outcomes of the four meetings thus far, while not seen as resolving any of the regulatory issues before the TEC,

have at least demonstrated that both sides remain committed to greater transatlantic economic integration and regulatory cooperation. In January 2009, the new Obama Administration came into office seeking to address both U.S. economic challenges as well as the global financial crisis. The new Administration appears to have acknowledged the importance of the transatlantic economic partnership and the potential role of the TEC when it relatively quickly designated Michael Froman, Deputy Director of the National Economic Council, as the Administration's point man for the TEC. In February, Mr. Froman met with the U.S. Director of the Transatlantic Business Dialogue, a major stakeholder in the TEC process, to discuss business issues and the future of the TEC.²⁰ President Obama also met with the EU leadership in Prague in early April 2009 and acknowledged the importance of energizing transatlantic ties and better coordinating policies to resolve the global economic downturn. Nevertheless, it took almost eight months to convene the first formal meeting of the TEC since the appointment of Mr. Froman.

For those advocates of the concept of a transatlantic marketplace free of artificial barriers and impediments to increased commercial and investment activity, the creation of the TEC was seen as a necessary measure. The goals and responsibilities established for the TEC as outlined by the U.S. and EU leadership seem designed to achieve that objective. According to some, the TEC promised to break new ground by enabling regular communication and exchange of information at a higher level on a variety of issues.²¹ For others, the TEC may be at a crossroads when the central role as a forum for discussing strategic issues and a facilitator of renewed economic growth between the U.S. and Europe, has to make a break from single-issue gridlock, such as the poultry dispute, that has bogged down the TEC.²²

One question that is raised is why regulatory cooperation should be done just in the context of transatlantic relations. Some advocates point out that many of these regulatory issues, such as regulating financial services industries, are global in nature and apply to regions such as Asia and Latin America, as well as Europe. For many, this is a legitimate question and is answered by some who point out that as highly developed economic systems, both the United States and the EU, could set the global standards for future regulation in broad economic categories.

The dilemma for the TEC, then, may continue to be the uncertainty over its role. Is the TEC to be a dispute settlement body putting out fires in transatlantic trade or is it primarily designed to promote regulatory convergence? The TEC also seems limited in its structure to deal with national interests or to overcome domestic political opposition to items on its agenda which is why some have suggested that the U.S. appoint a "sherpa" from the National Security Council and include the OMB in coordinating U.S. positions.²³ Whether the TEC will prove a more successful entity for actually accomplishing a reduction in remaining transatlantic regulatory and non-tariff barriers to trade remains uncertain.²⁴

²⁰ Conversation with the Executive Director of the Transatlantic Business Dialogue.

²¹ Daniel S. Hamilton, *op. cit.*, p.4.

²² *Resetting the Trans-Atlantic Economic Council*, p.1.

²³ *Ibid.*, p. 9.

²⁴ CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn, *op. cit.*, pp.20-22.

The Role of the Legislatures

Since it began nearly two decades ago, transatlantic regulatory cooperation has been mostly limited to the executive branches and regulatory bodies on both sides of the Atlantic. However, the idea of legislators assuming a more proactive role in transatlantic economic and regulatory cooperation is not a new issue. At the 1995 launch of the New Transatlantic Agenda, the leaders of the United States and EU acknowledged that they “attached great importance to enhanced parliamentary links” and agreed to “consult with parliamentary leaders on both sides of the Atlantic regarding consultation mechanisms, including building on existing institutions, to discuss matters related to our transatlantic partnership.”²⁵ For those interested in the transatlantic economic relationship, this broad mandate to include the legislators has resulted in an increased interest in the role the U.S. Congress and the European Parliament can or should play in regulatory cooperation and convergence. In fact, the implementation of the EU’s new Lisbon treaty could give the European Parliament more authority and possibly an enlarged role in regulatory decision making or oversight.

Representatives of Congress and the European Parliament have long argued for greater legislative participation, at least in the annual U.S.–EU Summit process. Numerous pieces of legislation have been introduced and even passed in both Congress and the Parliament over the past seven years calling for enhanced dialogue and coordination between the Congress and the European Parliament in matters related to the transatlantic economic relationship. In 2004 and 2005, the European Parliament passed resolutions supporting the completion of the transatlantic market by 2015. In 2006 the U.S. Senate passed a similar resolution in S.Res. 632.

Rationale for Including the Legislatures

Despite the NTA declaration regarding participation of legislators, and past legislative initiatives approved by Congress and the Parliament, incorporating the legislatures into the regulatory process has been met with questions and mixed views. Advocates of the effort to achieve a more barrier-free transatlantic marketplace believe that ultimate success cannot be achieved without the strong commitment and active engagement of the U.S. Congress and the European Parliament. Some of these advocates have decried the low level of engagement by Congress and the Parliament thus far in the overall economic integration and regulatory cooperation process and believe congressional committees need to be more active in the oversight process. These groups believe that, through more active oversight, Congress can articulate its support for, or concerns about, a particular regulatory direction before the regulators proceed too far down the negotiation path. They believe more enhanced oversight could serve to help Congress and the Parliament develop as stronger partners by understanding at an earlier stage, the rationale for traveling or not traveling down a certain regulatory path.

These advocates also believe Congress, through its authorization and appropriation roles, can prod the regulators to move the cooperative efforts forward and can provide the funds necessary to carry out that mandate. Some within this group have even suggested going further and inviting legislators to actively participate in high-level regulatory dialogues in addition to their role in the TEC advisory group.²⁶ Those in this general camp point to the “open skies” agreement

²⁵ Declaration of the New Transatlantic Agenda at the U.S. -EU Summit, December 13, 1995.

²⁶ See the American Chamber of Commerce to the EU(AMCHAMEU) position paper, “Advancing Transatlantic (continued...) ”

laboriously negotiated between the United States and EU, which was intended to make airline travel to and from and within both Europe and the United States more competitive. One key provision, which would have allowed 49% foreign ownership of U.S. airlines, was drastically scaled back at the eleventh hour by congressional action. Supporters of this agreement felt this outcome might have been avoided had Congress been included in the process at an earlier stage.

On the other hand, there are many in the business and regulatory communities who are concerned about the autonomy of the U.S. regulatory process even though that process is sometimes influenced by legislative direction. Others worry that the involvement of legislators in the TEC process will undermine the sovereignty of both the U.S. and European regulatory processes. These groups accept the congressional and Parliament responsibility to conduct oversight. However, some in this group seem reluctant to encourage more active engagement of legislators in the regulatory reform process beyond oversight hearings. This group does not believe Congress or the Parliament is at the point politically where they are willing to discuss proposed regulatory changes in the context of the impact on the transatlantic relationship. These skeptics point to the recent U.S. economic stimulus legislation which subjected some funds to “Buy America” restrictions, despite the understanding that U.S. economic recovery can only be successful if the global economy is also improving and willing to buy U.S. products.

Some believe that involving the legislators as advisors alongside the business and consumer communities is not an appropriate role for legislators who will frequently need to be called upon to make changes to legislation, such as the 100% cargo screening requirement, in order to accomplish the TEC agenda.²⁷ These skeptics also point to the recent expressions of concern over free trade and globalization, and the recent negative reaction to European participation in the Air Force air refueling acquisition program as indications that further transatlantic economic integration may not yet be a concept that is fully accepted by a majority of the Congress. This group also raises concerns of what happens when the legislatures decide to take, what for some would be regulatory matters, into their own hands without close consultation with transatlantic regulatory bodies or the outside stakeholders that may be impacted. This group has referred to the Sarbanes-Oxley legislation passed by Congress or the Registration, Evaluation, and Authorization of Chemicals (REACH) directive adopted by the European Parliament, as examples of well intentioned initiatives that have ultimately caused some regulatory problems that affected the transatlantic relationship. Many doubt, however, that the TEC process could have prevented such legislative actions no matter how engaged the regulators were with the legislatures at the time these issues arose.

Concerns with the Legislatures

Not every regulatory proposal on the U.S.-EU agenda would need legislative action by Congress. But the ability of Congress or the Parliament to disapprove of, reverse through legislation, or prohibit the expenditure of funds to implement a regulatory change is a power that has been recognized and which must be considered.

(...continued)

Economic Integration,” October 2007.

²⁷ Comments presented by the U.S. Chamber of Commerce and Business Europe to the TEC, October 1, 2008.

One problem that has arisen since 1995 regarding the dialogue with the legislators, at least in the United States, has been that successive Administrations have had difficulty deciding who it is to consult with, how to do it, and when. No single congressional committee exercises jurisdiction over the broad array of issues on the regulatory agenda. And, the committees that have the primary authority to oversee the transatlantic political relationship, the House Foreign Affairs Committee under House Rule X and the Senate Foreign Relations Committee under Senate Rule XXV have no authority on the specific regulatory issues under consideration.

Another concern that is raised is the question of whether the legislators, themselves, are prepared to take on a more substantive partnership in the transatlantic regulatory process. Given the nature of regulatory cooperation, the multiple layers of agencies involved, the sometimes slow pace of reform, and normal legislative demands, some observers feel the Congress may not be adequately prepared to apply a transatlantic dimension to this process. To address these concerns, the decision taken in the House in 2000 to create a Subcommittee in the then International Relations Committee solely dedicated to Europe, along with the formation of a Members Caucus on the EU in 2005, have provided important new venues for a more focused discussion of transatlantic relations that now must be energized. Beginning with the launch of the New Transatlantic Agenda, organizations such as the Transatlantic Policy Network, the German Marshall Fund and other think-tanks and public policy groups, have become more involved in developing the transatlantic knowledge base of the Congress. Publications, such as the annual transatlantic economic report, issued by the Center for Transatlantic Relations, have served to bring the economic message to the forefront. Ongoing efforts by groups such as the Transatlantic Business Dialogue, the U.S. Chamber of Commerce and the European-American Business Council have injected more specificity to the debate.

Whether the attempt from these outside organizations to increase the level of awareness and interest among at least a portion of the Congress, including within congressional committees that have jurisdiction over the issues involved, will have a significant impact on both regulatory cooperation or transatlantic relations, continues to be unclear. Most observers understand that the transatlantic impact of legislation is not often a central consideration during the legislative process. Nor do many believe Congress would submit its own legislative initiatives to any form of a transatlantic impact statement or cede its authority to react to a national crisis, such as a terrorist attack, banking or corporate failure, without first consulting the EU. Some in Congress are not sure what their role in the transatlantic regulatory process should be. Even those Members of Congress initially contacted and asked to participate in the TEC advisory group have expressed uncertainty over their role and continue to seek more clarity on exactly what they are expected to provide to the TEC.²⁸

Nevertheless, some observers believe the efforts to elevate congressional awareness of the expanding U.S.-EU partnership, the magnitude of the transatlantic economic relationship, and the increasing dialogue involving transatlantic economic integration and regulatory cooperation over the past several years has begun to pay off through a more notable desire by some in Congress to become more engaged in that process.

The TEC was created by those who supported the importance of a structured, institutionalized dialogue between the transatlantic business and consumer communities, the European Parliament, and the U.S. Congress. Supporters anticipate that under this structure, legislators can become

²⁸ CRS interviews with congressional staff.

more aware of the potential impact on transatlantic trade and investment stemming from their legislative work and may be more sensitive to initiatives that might strengthen or undermine further transatlantic economic integration efforts.²⁹ Skeptics, however, maintain that the danger here is that the TEC process, with legislative participation, could serve to slow or even undermine regulatory integration efforts.

The Transatlantic Legislators' Dialogue

History

According to the Transatlantic Legislators' Dialogue (TLD) website³⁰ (found only on the European Parliament's website), formal exchanges between the U.S. House of Representatives and the European Parliament can be traced back to 1972, when the first group of Members of the House traveled to Brussels for the express purpose of meeting and exchanging views with the Parliament. This parliamentary exchange, which only involved the House, became known as the US-EU Community Inter-parliamentary Group. Since 1972, with few exceptions, the parliamentary exchange has met twice annually, once in the United States and once in Europe.

Given the transatlantic nature of the exchange, the U.S.-EU group came under the jurisdiction of the House Foreign Affairs Committee. Its annual meetings initially focused more on a foreign policy agenda dedicated to the issues involving the cold war and the evolving nature of the European Union. In response to the launch of the New Transatlantic Agenda in 1995, the delegations of the U.S. House and the European Parliament, at their 50th meeting in January 1999 agreed to change the group's name to the Transatlantic Legislators' Dialogue. In announcing the formation of the TLD, the two delegations stated that the Dialogue "will constitute the formal response of the European Parliament and the U.S. Congress to the commitment in the New Transatlantic Agenda to enhance parliamentary ties between the European Union and the United States."³¹ In response to the decision to change the group's name to the Transatlantic Legislators' Dialogue, the U.S. House in November 1999, during consideration of the Consolidated Appropriations Act for Fiscal Year 2000 (H.R. 3194/P.L. 106-113), amended Section 109(c) of the Department of State Authorization Act for Fiscal Years 1984/1985 (22U.S.C. 276) to officially change the name of the group. Since then the TLD's agenda for each meeting has included a broader discussion of economic and trade issues, and a nod to its role as a potential influence in the transatlantic regulatory process.

Although formal engagement between the U.S. House and the European Parliament has occurred regularly for some 36 years, some observers believe the TLD remains little known both within and outside the House. This has been disappointing to some because over the past years many delegations have traveled to Europe and several senior Members of the House have participated in exchange activities or knew of the exchange sessions. For instance, in 1987, then-Speaker Jim Wright attended the exchange meetings in Madrid. Between 1994 and 2000, the Chairman of the House International Relations Committee also served as the U.S. Chairman of the TLD. In 2007,

²⁹ Transatlantic Economic Council, *Report to the EU-U.S. Summit*, April 2008.

³⁰ Information on the TLD can be found at http://www.europarl.europa.eu/intcoop/tld/default_en.htm.

³¹ Joint statement of the delegations of the U.S. Congress and the European Parliament, January 16, 1999.

the visiting EU TLD delegation was received by House Speaker Pelosi and Senate Majority Leader Reid.³²

The lack of knowledge of the TLD seemed to contribute to the surprise of many in the transatlantic community when the TEC leadership invited the TLD to be a key member of its Advisory Group. In fact, there has been little evidence that anyone at the White House at the time of the 2007 U.S.-EU Summit thought to inform the House leadership that the Administration was about to unilaterally assign a new role to the legislative branch. Nor did it appear prior to the announcement in the summer of 2007 that anyone had informed the USTLD Chair that the group was to be handed a new, rather far-reaching responsibility—that of formally representing the views of Congress in the transatlantic economic integration and regulatory cooperation process.³³

According to some, the initial lack of familiarity with the TLD, its membership, its function, and its understanding of the TEC process, might have been due to the fact that unlike several other parliamentary exchanges that operate in the Congress, such as the NATO Parliamentary Assembly or the British-American Parliamentary Group, the TLD has never been statutorily authorized. Apparently, this circumstance had caused some concern within the transatlantic community with respect to the TLD's ability to carry out its new role as advisor to the TEC. Although the TLD continues to lack statutory standing, it appears more and more attention is being paid to the TLD, or at least the Congress, by those committed to the TEC process. The October unveiling of the previously mentioned Atlantic Council/Bertelsmann report on the TEC at a meeting of Members and staff in the U.S. House served as a recognition of the importance of the Congress in this process.

The TLD Structure

One question which has risen in the past has been the issue of what Members actually belong to the TLD. In the European Parliament there is a formal group of 32 members that constitute the Delegation for Relations with the United States. Participants to the TLD meetings are drawn from this delegation. In the U.S. Congress, other than the appointment of the Chair and Vice-Chair by the Chairman and Ranking Member of the House Foreign Affairs Committee, there is no formal nomination of any other USTLD member. While many Members have participated in past meetings, participation in the USTLD often seemed to be on an ad hoc basis, involving little continuity of participants and, in some instances, largely dependent on the ability of the Chairman to convince Members to attend the annual meetings.³⁴

Although participation in TLD sessions appears lately to have reached a significant level of continuity, there is still a concern among some observers that the TLD continues to have difficulty attracting and maintaining a broad group of Members willing to participate on a permanent basis. This is an important issue for many because frank and open exchanges of views often come more easily through long-term relationships that rely on personal interactions developed between legislators over time and through familiarity. Often it seems that regular communication only takes place between the U.S. and EU Chairs or their staff. Some EU participants have observed that if they had a particular issue that was of interest to them they

³² See the TLD website for additional information.

³³ CRS interviews with congressional staff.

³⁴ CRS interviews with congressional staff.

might not know any other member of the U.S. delegation that they could contact for discussion. There have also been attempts to promote on-going dialogues between U.S. and EU TLD members through the use of video conferences so that TLD members can keep in touch between regular meetings. For the transatlantic business and consumer community this also presents a problem in that there is no permanently established group of TLD members with whom these outside interest groups can meet to discuss issues on the regulatory agenda on a regular basis.³⁵ There have been several ideas put forward to help restructure the TLD. One such suggestion involves creating a political committee and an economic committee within the TLD. Members from both the U.S. and Europe would be assigned as Chairs and Vice-Chairs of each. Rapporteurs might also be assigned to report on specific issues. This structure would at least offer Members/MEPs of the TLD the opportunity to focus some of their attention on issues for which they may have a particular interest or expertise. The committee Chairs would report to the entire body at some point during the TLD meetings on the issues discussed in the committees. Assigning Members/MEPs as Chairs, Vice-Chairs, and rapporteurs would also convey a sense of responsibility within the TLD and could guarantee a more consistent group of attendees.

A second question that has been raised involves the capacity of the TLD, as currently structured, to dedicate more time and effort to addressing those economic and regulatory issues that will appear on the TEC agenda and how the TLD will interface with standing committees of jurisdiction. While the TLD, at its past annual meetings, has engaged in a broad discussion of issues, foreign policy matters often seemed to dominate the agenda. However, the Chairs of the TLD did include the more specific TEC process as a regular agenda item, including at the most recent April 2009 meeting held in Prague. The elections for the European Parliament held in June 2009 has resulted in a new EU leadership and possibly new representatives for the next TLD meeting, which is scheduled for December 2009 in New York City. This could mean a considerably different perspective from the EU Parliament from the most recent meetings and may reflect different ideas for how the TLD should operate in the future.

Some observers fear, however, that as the regulatory dialogue proceeds on issues such as the mutual recognition of accounting standards, supply chain security, copyright and patent protection, preferred traveler programs, cosmetics testing and medical device certification, an unstructured TLD may find itself further down the learning curve than its transatlantic business and consumer partners in the TEC and may be reluctant to become more specialized in economic and regulatory matters at the expense of other broader transatlantic policy issues, especially because the regulatory process moves slowly and the TEC meets only twice per year.

Role of the Committees³⁶

With respect to the committees of jurisdiction, until the beginning of the 111th Congress the current USTLD Chair and Vice Chair sat on the Trade Subcommittees of the House Committee on Ways and Means and the Committee on Energy and Commerce, respectively, positions from which they both could speak on trade and regulatory issues. Neither, however, sat on the Foreign Affairs Committee which has jurisdiction over the TLD. This situation changed with the new Congress when the U.S. Chair was appointed to the Committee on Foreign Affairs and its Europe

³⁵ CRS interviews with representatives of the business community.

³⁶ For a listing of congressional committees involved see CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn, pp. 26-27.

Subcommittee but lost her seat on the trade subcommittee. From the position of this new assignment, the U.S. Chair is able to address the broader issue of transatlantic relations and the specific issues of regulatory cooperation with the EU. Despite the greater connection between the USTLD Chair and the Foreign Affairs Committee, it still remains unclear whether other committees, such as the House Committee on Financial Services, the Committee on the Judiciary, or the Committee on Homeland Security that have jurisdiction over issues such as financial services, technology innovation, intellectual property and homeland security will defer to the TLD to provide advice and guidance to the TEC on behalf of those committees or how an information sharing process between the TLD and the committees would be accomplished. This issue was somewhat addressed at the recent meeting between the TLD leadership and the TEC leadership when a member of the Financial Services Committee, which is deeply engaged in new financial services regulation, participated in the discussions. It is important that Committees that have jurisdiction over issues potentially on the TEC agenda be included in these sessions because when the TEC meets and issues its recommendations on how the U.S. and EU might deal with issues such as the mutual recognition of accounting standards, poultry, consumer product safety or port security functions, they will likely do so with what they believe will have been the best guidance, not from two or three individual Members of Congress or EU Parliament who happen to be the TLD Chairs and Vice-Chairs, but from the House of Representatives and the Parliament as a whole. The challenge, then, for the TLD continues to be how to develop a relationship with the appropriate House and Senate standing committees, and the House and Senate Leadership for that matter, that would provide for a useful exchange of views on what the Committees are thinking on the issues under consideration by the TEC and how the TLD can present those views formally to the U.S. executive branch and European Commission with some degree of authority without at the same time diminishing the traditional and rightful authority of the Committees.

Staffing the TLD

A third question for those actively engaged in the transatlantic regulatory process seems to involve the issue of who the business and consumer communities should deal with at the congressional staff level on an everyday basis for issues related to the TEC process. On the U.S. side, there are two principal staff assigned to the TLD with one designated the “U.S. secretariat.” These staff are part of the House Foreign Affairs Committee structure and have their own portfolio of responsibilities beyond the TLD. Observers note that while the Foreign Affairs Committee staff are highly professional for what they do for the committee and knowledgeable of transatlantic relations, none of the top issues listed in the U.S.-EU “framework” or those likely to be addressed by the TEC over the next few years, are issues that fall under Rule X of the Foreign Affairs Committee. For some observers, it may be a real stretch to expect that Foreign Affairs staff who are responsible for following issues and events in places like Georgia, Kosovo, Ukraine, and elsewhere throughout Europe can somehow also find the time to become proficient on automobile crash testing, container scanning, toy safety or hedge fund transparency. Realistically, it would also seem that neither the Foreign Affairs Committee nor the TLD Co-Chairs could hire a whole cadre of staff with the kind of expertise needed to be responsive to the TEC process.

For the transatlantic business and consumer community it is unclear how they are to work with the staff of the committees of jurisdiction on the specific technicalities of a TEC agenda while at the same time working with the Foreign Affairs Committee staff assigned to the TLD. The Atlantic Council-Bertelsmann “Blueprint” suggests that in order to optimize legislative participation in the TEC, some type of Committee designated “coordinators” must work with the TLD secretariats as a way to allow the staff of the TLD to tap into the expertise of the

professional staff of the committees that exercise jurisdiction over these issues. This may be difficult currently as it appears many committee staff outside of the Foreign Affairs committee are unfamiliar with the TLD, the TEC, or the new congressional responsibility as an advisor to the transatlantic regulatory process and may be less inclined to share the work they are doing for their committees with the staff of the TLD.³⁷ This recommendation is problematic because it implies that the staff of the Foreign Affairs Committee have the time to meet with multiple “coordinators” to discuss issues related to those committees of jurisdiction.

Role of the Senate

Finally, some observers have raised the question of what role the Senate will play in this process. The fact that the Senate has a co-equal role in regulatory oversight, but is not included as part of the TLD, seems to have been missed by the decision makers who agreed to include the TLD in the TEC Advisory Group. As of October 2009, the TEC has met for four sessions with the Advisory Group yet there does not seem to be a formal mechanism within the TLD to include the Senate in its activities nor within the TEC Advisory Group to solicit Senate opinion. For instance, while the TEC leadership met with the TLD leadership in the House on October 27, 2009, for one hour as part of the TEC advisory process, it appears that neither TEC co-chairs met with any Member of the Senate to discuss their work. Thus, while the TLD over time could develop some level of authority to represent the views of the House on issues addressed in the Advisory Group’s meetings with the TEC, the TLD, as currently structured, could not claim to speak on behalf of the Senate. This oversight will have to be addressed if the TEC intends to receive the advice of the whole Congress.

Structural Options

Most observers of the TEC process thus far maintain that the Transatlantic Business Dialogue (TABD) and the Transatlantic Consumer Dialogue (TACD) can and will support the TEC process even as both organizations have been critical of certain aspects of transatlantic regulatory cooperation. There is, however, uncertainty about the role of Congress and its representative, the TLD. The TLD is an inter-parliamentary entity, and as such, does not have, at this point, a mandate to formally represent Congress as a whole or even the House separately. Until the TLD and Congress itself, have a better understanding of what is expected of it and how it will carry out its mandate as an advisor to the TEC, doubts will remain. Some engaged in the transatlantic regulatory process have suggested that the TLD as a whole, and the USTLD specifically, be restructured in order to make it a more effective partner in the TEC advisory role. At the very least, this group believes the TLD should be formally authorized and given a status slightly different than the other parliamentary groups in the Congress.³⁸ There are several options which the TLD, itself, could explore in an attempt to make it more responsive.

One option may be for the U.S. and EU TLD co-chairs to announce the creation of their own TLD/ TEC Working Group or Groups. The co-chairs could appoint one U.S. and one EU member who have regularly attended the TLD meetings to co-chair the group. The co-chairs would recruit

³⁷ CRS staff discussions and interviews with Congressional staff.

³⁸ Some in the business community have discussed the option of promoting legislation that would formalize the TLD’s role in the TEC process.

other regular TLD participants or members of the appropriate committees of jurisdiction for the working group(s). In the case of the USTLD, recruitment could also come from groups such as the EU Caucus. Other than the co-chairs, the members of this group would not have to agree to join the TLD on a regular basis but would work closely with other standing committee members, the TEC, and the two other advisory partners, the TABD and the TACD. The working group(s) would brief the TLD co-chairs prior to any formal meeting of the TEC. The U.S. working group co-chair(s) could also attempt to reach out to colleagues in the Senate to help provide Senate input into this process. The downside of this option may be the fact that recommendations to the TEC would still come from an inter-parliamentary group that, while reflective of the views of their wider legislative bodies, would still not have a mandate to speak on behalf of those bodies.

A second option might involve the TLD reaching out to the members of groups with similar interests, such as the Transatlantic Policy Network (TPN) which includes members of both the House and Senate. The TPN, which is a mix of legislators and private sector representatives, already has a Task Force on the Bi-lateral Economic Partnership. The TLD could invite that TPN Task Force to serve as an informal advisor to the TLD. The co-chairs of the TPN Task Force are Members of Congress and the European Parliament and several of the TPN members have participated in past TLD meetings. Much of the work of the Bi-lateral Economic Task Force mirrors the work of the TEC with respect to regulatory reform. The TPN Task Force would continue with its own independent work which could be shared with the TEC, but periodically, the co-chairs and/or their staff could meet with the TLD co-chairs and/or their staff to share ideas, information and recommendations. A briefing for the TLD co-chairs by the TPN Task Force could be arranged in advance of each TEC meeting. The TPN Task Force could also be invited to make a formal presentation to the regular TLD meetings. Downsides of this option would again be the issue of a parliamentary group speaking for Congress, whether the TPN would be willing to share its work with the TLD, and the fact that the TPN Task Force may not include key Committee Chairmen who would be omitted from the process.

A third option could involve the Chair and Vice-Chair of the USTLD requesting that the House and Senate Leadership appoint a special bi-partisan, bi-cameral, "Regulatory Cooperation Advisory Group" to the TLD. This group would consist of the TLD leadership plus representatives of the appropriate House and Senate standing committees, including committee or subcommittee chairmen with jurisdiction over the issues identified as being of interest to the TEC. This advisory group and their committee staff would follow the work of the TEC through the agencies these committees oversee. Periodic meetings between the TEC staff and committee staff could take place to update the TEC process. Once an agenda is clarified for an upcoming TEC meeting, the TLD Chair and Vice-Chair could convene only those advisory group members whose issues were identified on the TEC agenda. Such a Leadership appointed advisory group would elevate the TEC process and the TLD role to a higher level to one that would now include the House and Senate Leadership as a stakeholder in the process. The downsides to this option could include the potential conflict between the legislatures and the regulators over agenda setting, the potential for partisan conflict due to the make up of the advisory group to the TLD, and disagreements over jurisdiction among the committees.

Whether any of these options, or others are pursued, some observers of the TEC process who support Congressional participation in the Advisory Group believe the TEC would receive a real boost if the Obama Administration sent a clear signal to the Congressional leadership that the role of the Congress in the transatlantic regulatory cooperation process was important and that a stronger representation from the Congress through an enhanced TLD participation in the TEC Advisory Group would be welcome. The fact that the October 2009 meeting of the TEC did

include a separate meeting, on the Hill, between the TEC leadership and the TLD leadership may have been an opening move for such an Administration strategy.

Conclusion

As the TEC process attempts to move regulatory cooperation toward the ultimate goal of a well-functioning, unencumbered transatlantic marketplace, the role the Congress will or should actually play has raised several questions among those participating in that process. These issues have led many observers to believe that the TLD, although never intended to be anything more than a mechanism for exchanging views among parliamentarians, currently wields little influence or authority as a transatlantic policy resource and is not a representative of Congress' views on economic integration. Nevertheless, the decision to include an advisory group with representation from the transatlantic legislative communities, through the Transatlantic Legislators' Dialogue, has been viewed by some as a real opportunity for the Congress and Parliament to assume a more direct role as a stakeholder in the long-term development and completion of the transatlantic marketplace. Despite some short-comings in the current structure of the USTLD, all indications are that the current Chair and Vice Chair, along with their counterpart EU Chair, are fully committed to making the TLD a more active partner in the TEC process.³⁹

If the identified concerns with the TLD, along with its responsibilities as a member of the TEC Advisory Group are more fully addressed, the TLD might become an organization capable of taking on a more substantive role in regulatory cooperation. For many observers, this could lead the TLD to become, over time, a more important stakeholder in regulatory cooperation and a voice for transatlantic relations in the Congress. In the near term, however, these observers believe the TLD's role as a force for the promotion of greater transatlantic economic integration and regulatory cooperation, on behalf of the U.S. Congress, will remain its greatest challenge.

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³⁹ CRS interviews with congressional staff.