

# TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE  
CONSUMER DIALOGUE DES CONSOMMATEURS

## **Consumers at the heart of International Trade TACD statement on the future of EU-US trade and economic relations**

### **Who is TACD ?**

TACD is a forum of US and EU consumer organisations which develops and agrees on joint consumer policy recommendations to the US government and the European Union to promote the consumer interest in EU and US policy making. We are supportive of close EU US economic and regulatory cooperation as a means to address common challenges and to deliver a fairer, safer and more vibrant marketplace for consumers.

### **Consumers at the heart of international trade**

It is key for decision makers in the transatlantic context to grant due consideration to the promotion of the consumer interest when designing trade relationships. Consumers play a major role in the functioning of competitive markets and recent experience has shown, in different sectors, that lack of consumer trust can lead to market collapses. It is therefore crucial that trade relationships that are oriented towards removal of barriers to trade are based on a high level of respect of the consumer interest. It is a priority to define consumer protection policy not as a burden to trade, but rather as an asset to develop healthy and above all stable trade relationships across the Atlantic.

In this context, special attention has to be granted to the need for balanced weighing of different stakeholders' interests. The promotion of the consumer interest must be put high on the agenda of the negotiators. Every initiative that is envisaged should be analysed on its potential impact, not only on industry and commerce, but also in terms of consumer welfare, which is a broader concept than just enhanced competition, but also refers to health, safety, privacy, and protection of other legal and economic interests.

### **Defining consumer welfare beyond enhanced choice and lower prices – to the benefit of the whole economy**

Increased international trade is often described as conveying consumer welfare by offering them choice between more products and services, and therefore, due to competitive structure, bringing down retail prices. However, it is key to understand that for this potential to materialize for consumers, many other conditions need to be met on retail markets : sufficient competition, consumer mobility, sufficient information, etc. In order for this to happen, and well beyond classroom

These potential benefits could also be neutralized by additional threats that consumers will have to face if the trade agreements lead to the removal (or amendment) of regulations that are genuinely protecting consumers' health and safety (antimicrobial treatment, non-therapeutic use of antibiotics, etc), or other legitimate economic and legal interests (balanced copyright enforcement, open standards,..). Beyond these, neutralisation of benefits can also take place by the fact that societal choices made in EU or US on basis of consumer

preferences (eg EU consumers do not wish GMOs or cloned animals on their dishes) would have to be abandoned for the sake of transatlantic business.

Fundamentally, where removal of barriers would lead to a reduction of consumer protection in one or several sectors, this could lead to a major crisis of consumer confidence, as has been observed in previous years, be it in the food or in the financial sector. Yet consumer confidence is key for flourishing markets. Therefore TACD calls upon EU and US policy makers, to take as a basis, in their discussions related to removal of barriers to trade, an ambitious level of protection of consumers in their different rights to safety, health, legal and economic protection.

### **Do transatlantic policy makers engage with consumers and their representatives ?**

In order to define an ambitious level of consumer protection, policy makers on both sides of the Atlantic need to be properly informed about consumer needs and expectations and also about the implications of policy decisions on consumer welfare. Therefore, TACD strongly recommends to closely and in due time **associate consumer representatives** to the preparatory discussions for them to properly inform the debates on the relevant consumer needs and expectations. It is key that consumer representatives be given a recognition of stakeholder – formally but also informally – that be equivalent to the one granted to business representatives from different sectors.

Several fora, such as TEC, HLRCF, have been set up that provide for stakeholder dialogue in the context of transatlantic relationships. TACD is pleased that work in these fora have led to greater cooperation and communication on issues of toy safety, and safety of imports from third countries.

Nevertheless, in spite of recent efforts to have more engagement with TACD in the preparation of agendas of TEC meetings and participation in some of the stakeholder meetings surrounding the High Level Regulatory Cooperation Forum, TACD representatives have never been able to significantly contribute to the works, because of late involvement, lack of access to preparatory work. A blunt analysis of the results of our efforts to contribute to the work of TEC/HLRCF is lack of outcome for consumer representatives, combined with a strong feeling of having been involved only cosmetically in the TEC/HLRCF.

### **A major concern : consumer welfare under the yoke of boosting trade relationships**

While TACD believes in consumers benefitting from global and open markets and favours in principle the removal of unnecessary barriers to trade, it is also strongly concerned by the precedence that the key policy makers in the transatlantic negotiations grant to trade relationships over the values of their societies, such as consumer health and safety. The values that prevail in the EU or in the US and that lead to different assessments of priorities, of opportunities and of risks, should not be endangered by a purely industry led push towards removal of trade barriers to boost their growth. Not only would such a latter approach lead to a growth bubble that questions the sustainability of our growth model (hence our current economic crisis), it also neglects the potentials of a more sustainable growth model, where innovation led by a multi-stakeholder approach, engaging more with civil society, would boost competitiveness and long-term sustainability of business.

### **Urgent need for an analysis beyond business interests**

From the consumer perspective, it is crucial that whatever priority sector is identified by various business sectors, a **holistic analysis** is undertaken by policy makers that takes proper account of implications – positive or negative – on consumer interests. Any free trade agreement, whatever the priority sectors covered, should properly reflect consumer concerns

from both sides of the Atlantic and should not lead to dismantling – in total or in part - of consumer protection regulations.

Below, one will find a list of sectors where these aspects are particularly highlighted. In general, in the sectors concerned, TACD also calls for **enhanced cooperation between surveillance authorities**, as a globalised economy needs coordinated enforcement :

- The **digitalisation and globalisation** of world economies has led to frontiers and national/supranational regulation to become less relevant. It is therefore essential that a global regulatory framework is set up that addresses the challenges in terms of consumer protection linked to digital products and services within our **information society** : data and privacy protection, internet of things, cloud computing, e-health, distance selling contracts, intellectual property rights, digital content products and services contracts, etc.
- The focus on innovation as a key tool for sustainable growth leads to encouraging **emerging technologies**, such as nano-and biotechnologies, other medical technologies, e-payments and mobile payments, but also smart grids and energy saving technologies. While these technologies can provide potential benefits to consumers, they also bear risks not only for consumers, be they health related or else, but also for the environment. It is key that proper risk assessment – and management – methods are designed and made applicable. While these measures may be perceived as “barriers” in the short term, in the long term these measures create markets that are protected from volatility and unanticipated costs, as, might happen if a poorly assessed consumer product were found to be causing illness and death, and had to be withdrawn, at great expense by retailers. Therefore, the decisions as to the roll out innovative technologies onto the markets should not only be based on their benefits in terms of economic growth and competitiveness, but also on a proper risk assessment and risk management from the consumer and environmental perspective.
- The economic crisis that EU and US are facing has provided more than needed evidence that world markets need a sound **financial system** and that the sustainability of this system not only relies on prudential elements, but also on conduct of business. Too many scandals have hit the headlines over the last years that have shown that lack of consumer protection in retail financial services has contributed to the current crisis. This crisis also highlighted the shortcomings of a regulatory system that lacks proper enforcement and that is characterised by regulatory capture : the supervisory authorities in the financial sector were either not properly resourced to monitor in an independent way the banking sector. Another lesson learned concerns the global interconnectedness of our financial systems, which calls for an enhanced regulatory and enforcement cooperation between the EU and the US.
- **Food safety** is a recurrent concern in transatlantic relationships where consumer health and safety needs are often questioned in order to enable transatlantic trade. This is the case with differing approaches to food hygiene practices (chemical washes of meat, etc).novel foods, and especially cloned animals and their offspring, as well as transgenic animals, anti-microbial resistance, GMOs, etc. In no case should negotiations between the EU and US result in reduced protections, either of safety, or of information and disclosure, for consumers. In parallel, enhanced cooperation is particularly crucial in this sector, to develop common strategies for handling emergency food safety issues, such as findings of dangerous pathogens in

sprouts. There is also potential for cooperative efforts to address obesity, through product labeling and other tools, which is a common problem.

- Those concerns are also applicable in the area of **product safety**, where exchange of best practices has led to mutual reinforcement of product safety laws. Here also, enhanced cooperation between surveillance authorities, also in the context of relationships with China, are key to effectively protect consumers' safety.
- Furthermore, TACD work on **sustainability and climate** change aims to ensure that the consumer dimension is sufficiently addressed in EU and US policy. In particular, the upcoming negotiations constitute a unique opportunity to create the necessary framework to facilitate the transition to more sustainable consumption patterns, in order to transfer a livable planet to future generations. It is crucial to adopt a mind-set, both at policy making and at industry level, to substitute short term profitability, competitiveness and growth, with long-term sustainability of our economic model. This change of approach is too often considered as a hurdle to overcome the current economic crisis. In reality, it is an opportunity to match innovation and long-term survival.

### **Removing regulatory barriers should not dismantle consumer protection**

In general, TACD supports the removal of unnecessary administrative burdens to trade. However, while we appreciate that harmonization of standards can be a valuable tool for increasing market outcomes for businesses, this harmonisation should always take place at a ambitious level of consumer protection, and consumer protection and safety should never be subordinated to trade promotion interests. Existing protections should never be reduced as a result of harmonization. Therefore, the concept of "regulatory barriers" is not sufficiently defined and could lead to confusion as to the scope of trade negotiations. It is crucial to guarantee to consumers that those regulatory measures that are linked to their protection should not be watered down in the context of international trade : consumers are entitled to the same level of protection whatever the country of origin of the product/service they are being offered on the market.

### **Priority actions to consider in the consumer interest**

#### *Animal Identification*

The U.S. and EU should seek agreement on animal identification systems for tracing food to its origin. Traceability of food animals is an essential component of early and effective control of health risks from communicable or zoonotic diseases. The EU currently requires all animals to be tagged or otherwise identified while the U.S. has failed to implement an effective animal traceability system. Although EU traceability does not impose a legal requirement on U.S. exporters, they nonetheless face contractual barriers as their EU customers demand equivalent or better traceability.

#### *Antibiotic Resistance*

Antibiotic resistant bacteria are becoming an increasing threat to human health, and as a result national efforts to address overuse of antibiotics in animal husbandry may affect trade. The European Food Safety Authority identifies misuse and overuse of antibiotics in food animals as a link in the emergence and spread of antibiotic resistant bacteria. This led to legislation banning the use of antibiotics for growth promotion in the EU in 2006 and this reference in the EU Action Plan Against the Rising Threats from Antimicrobial Resistance: Increasing global trade and travel favors the spread of antimicrobial resistance between countries and continents. Therefore, antimicrobial resistance is a global public health concern.

The outlines of an agreement would have the countries agree to phase out use of antibiotics for growth promotion and non-therapeutic purposes, i.e. disease prevention. This would reduce the pressure for the EU to introduce barriers as part of its effort to control the emerging problem of antibiotic resistant bacteria in the food supply.

#### *Rapid alert notification systems*

Foodborne illness contributes to morbidity and mortality burdens worldwide. The growth of international trade, migration, and travel has led to the increased spread of pathogens and contaminated food. To control disease and protect public health, a strong system to quickly and efficiently alert authorities and consumers nationally and internationally must be put in place and supported through transatlantic coordination and communication

TACD calls for the introduction of cross-atlantic Food Safety Rapid Alert Notification Systems as to facilitates the exchange of emergency food safety information between regions, states, and countries. An effective and collaborative rapid alert system that disseminates information about serious risks detected in the food supply AND effectively communicates those risks to the public will provide the greatest public health protection.

We believe that having such systems in place does not only protect consumers, but will also lead to reductions in costs for withdrawing harmful products by food business operators.

#### *Need for stronger cooperation between authorities*

From the consumer perspective, the major concern linked to border enforcement is the lack of resources that customs authorities have to supervise entry into the EU and US territory of products that do not comply with EU and US rules, be they related to safety or counterfeiting. The EU and US would benefit from increased cooperation to address and insure safety in imports, and to prevent “port shopping” where products rejected in one market might seek entry into another.

#### *A balanced intellectual property right system for a vibrant and innovative economy*

The economy needs a balanced IP system in which the needs and rights of consumers are given equal consideration to those of rights holders. TACD promotes an IP system that effectively promotes innovation while maintaining access for users. The recent failure of ACTA shows that this approach is shared by society and constitutes a wake up call that indicated very clearly to policy makers that society is in need of a more proportionate IP framework.

Transatlantic discussions up to date are focused in an imbalanced manner on right holders' protection and fail to provide a sustainable framework that would create the conditions for a vibrant and innovative economy.

TACD strongly believes that negotiations concerning common rules for the enforcement of intellectual property rights should be transparent and based on objective evidence and should not undermine essential human rights. IPR enforcement policies should also distinguish between the intentional or unintentional character of acts, and between the commercial or non-commercial nature of infringement. The priority issues in this area are : compliance with competition law in creative and digital technology markets, promotion of open standards, balanced and flexible copyright exceptions, balanced and proportionate IPR enforcement procedures, multi-territorial licensing, orphan works, access to innovation and medical technologies,

*Preventing the climate bubble from bursting*

Citizens in the US and the EU are among the planet's biggest energy consumers. They are also increasingly concerned about **climate change** and keen to adopt 'greener' consumption behaviours<sup>1</sup>. However, government policies aimed at consumers have been mostly of the 'softer' kind, focusing on information and awareness raising; these have not been very effective in changing consumption behaviour patterns. EU and US initiatives in different areas, such as energy efficiency are welcome steps. However much more remains to be done to enable collective action and make 'green' and socially responsible choices the easy and default options. It is essential that regulatory measures taken to enhance sustainable consumption and production on either side of the Atlantic be not watered down because of a search of removal of barriers to trade. On the contrary, the negotiations should take as a base an ambitious plan to tackle proactively the sustainability and climate change challenges in order to transmit a livable planet to the future generations.