

TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE
CONSUMER DIALOGUE DES CONSOMMATEURS

TACD 2004 RECOMMENDATIONS REPORT

As part of its role as a consultative forum to the EU and US, TACD makes policy recommendations on issues of concerns to its European and American members.

This report brings together the recommendations made in 2004, to allow the governments to formally respond. For this reason, TACD's September 2003 recommendations on Agricultural Dumping have also been included, because it has not yet been responded to.

This report will begin an annual pattern of collecting TACD's recommendations in a year-end report to governments and the public.

TACD represents the demand side of the two biggest economic blocks in the world - the 735 million U.S. and EU consumers. Its network of 65 EU and U.S. national consumer organisations (and growing in the new Member States) has a direct paid-up membership of some 20 million consumers.

On both sides of the Atlantic, these groups have long track records of achievement in the consumer protection and safety fields. Many have successful publishing, research and product testing operations as well as advocacy and policy activities and are self-financed; others, according to their cultural traditions, are financed from public or foundation funds. All are independent.

More information can be found at www.tacd.org .

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Multilateral disciplines to phase out agricultural dumping

September 2003, Trade-13-03

(the full briefing paper, from which these recommendations were drawn, can be found at : www.tacd.org/docs/?id=199)

The TransAtlantic Consumer Dialogue believes that agricultural export dumping is a scourge that must be eliminated if developing countries are to have the opportunity and means to strengthen their food security and increase rural employment. TACD therefore calls on the United States and the European Union governments to:

1. lead a shift in orientation in the WTO negotiations on the Agreement on Agriculture towards developing enforceable rules to stop agricultural dumping
2. support the development of the OECD's ongoing work on the costs of agricultural policies to develop a uniform methodology for calculating agricultural dumping margins based on the cost of production, and the annual publication of a report on agricultural dumping by OECD countries
3. ensure that both the OECD and WTO agricultural export dumping discussions and negotiations provide a scheduled and formalized opportunity for comment by all interested parties on discussion and negotiating texts.

Resolution on Unsolicited Commercial Electronic Mail

January 2004, Internet-29-04

(this is limited to the recommendations – for the full resolution, including a description of the issue and the TACD survey, www.tacd.org/docs/?id=224)

Unsolicited commercial electronic mail (Spam) continues to place a heavy burden on people who use email. TACD coordinated an international online survey from September 8, 2003 to December 8, 2003, and made the following recommendations as a result.

1. TACD calls upon the US government to create a national “do not email” registry so that any email user in the US who does not wish to receive unsolicited commercial electronic mail may exercise that right. TACD further calls on both the US and the EU governments to work cooperatively to bring their laws regulating unsolicited commercial electronic mail into harmony where such consistency would provide the strongest protection for email users, and to actively promote common legislative approaches based on respect for the fundamental right of privacy in other regions of the world.
2. TACD urges Internet access and service providers to use all appropriate technological and legal measures to block unsolicited commercial electronic mail to the extent possible. TACD also urges Internet access and service providers to provide consumers with user friendly filter software, and inform them about their options and rights in respect to unsolicited commercial electronic mail.

3. TACD calls upon the US and EU governments to work in close cooperation with consumer organizations, Internet access and service providers, online marketers, educators, and others to provide children and younger people with more effective protection from unsolicited commercial electronic mail.
4. Finally, TACD urges the US and EU governments to implement effective means to enforce the legal requirements relating to unsolicited commercial electronic mail nationally, regionally, and on a transatlantic basis, and to promote effective global enforcement mechanisms.

Food Advertising and Marketing to Children

January 2004, Food-23-04

(The recommendations can be found online here: www.tacd.org/docs/?id=220)

A 2003 joint World Health Organization (WHO) / Food and Agriculture Organization (FAO) report highlighted the major public health threat of diet-related disease. The influence of advertising was among the range of factors that were identified as having a negative effect on health. The WHO states that governments have a responsibility to ensure that advertising is not misleading, is informative, and is unlikely to contribute to ill-health and obesity, a particular concern in the case of children.

There is much support for the idea of restricting advertising to children, and that support will grow if the problems are not effectively tackled.

Food advertising

1. TACD calls on the European Union (EU) and US Government to recognize the potential health impact of food advertising and review existing codes of practice and / or regulations on advertising of food to ensure that advertising supports, rather than undermines, nutrition and public health goals. Such rules should ensure that food advertising does not undermine progress towards national dietary improvement by misleading or confusing consumers or by unfairly setting bad examples. In particular, advertisements, either individually or collectively, should not encourage excessive consumption of foods that are high in fat, sugar and /or salt.
2. Food advertising regulations should be consistent with food labelling regulations.

Food Marketing and Advertising to Children

1. Children require special consideration and protection with respect to advertising. Childhood obesity and associated type 2 diabetes are now major issues across

the EU and US and measures are needed to help tackle this and protect against health problems in later life.

2. The EU and US Government should therefore introduce restrictions on the advertising and marketing of foods to children that protect them from misleading and unfair advertising, marketing and promotional activities, through whatever media.
3. Advertising of high calorie, 'energy-dense, nutrient-poor foods [foods high in fat, sugar and /or salt] should be restricted during television programming commonly viewed by significant numbers of children.
4. Advertising regulations should take account of the age of the likely child audience, with younger children requiring greater protection.
5. The EU and US Government should use advertising and marketing tools to actively promote healthier eating among children ('social marketing'), and help them separate fact from marketing hype. This should include funding initiatives in broadcast media, in schools, and in the broader community.
6. The EU and US Government should also consider the effect of, and ensure the adequacy of controls upon, marketing that uses devices such as 'free gifts' and celebrity or cartoon link-ups to encourage consumption of energy-rich foods and drinks, high in fat, sugar and / or salt.
7. Guidelines for commercial activities in schools need to be developed and implemented to prohibit marketing of energy-rich foods and drinks high in fat, sugar and / or salt in schools, e.g. through sponsorship and collector schemes.

Enforcement

1. Agencies within the US and EU Member States should ensure that systems are in place to enforce compliance with advertising regulations. Broadcast advertisements should be pre-vetted and violations should be promptly addressed so that advertisements are stopped before they are widely disseminated to the public.
2. Effectively-enforced sanctions should be imposed to deter future misleading advertisements, including corrective advertising and monetary penalties.
3. There should be greater regulatory co-operation between the EU and US governments and advertising regulatory agencies to facilitate enforcement and to notify other countries when an advertisement has been stopped.

The adoption and implementation of the WHO Global Strategy on Diet, Physical Activity and Health

May 2004, Food-24-04

TACD urges the governments of the United States and the European Union to support approval of the draft World Health Organization Global Strategy on Diet, Physical Activity, and Health at the meeting of the World Health Assembly commencing on May 17, 2004.

TACD furthermore urges the governments to take steps to implement the Strategy, taking into account the relevant recommendations adopted by TACD.

These can be found at the following links:

- Resolution on Food Advertising and Marketing to Children, Food-23-04 - www.tacd.org/docs/?id=220
- Resolution on the WHO Report on Diet, Nutrition, and the Prevention of Chronic Disease, Food-21-02 - www.tacd.org/docs/?id=198
- Resolution on Misleading Food Labelling, Food-14-00 - www.tacd.org/docs/?id=13
- Resolution on Health-Related Claims, Food-12-00 - www.tacd.org/docs/?id=20
- Resolution on Nutrition Labelling, Food-08-99 -
- Resolutions on Food and Dietary Supplements, Food-20-02 and Food-04-99 - www.tacd.org/docs/?id=181 and www.tacd.org/docs/?id=8

Passenger Name Records

June 2004, Internet-30-04

(this is limited to the recommendations – for the full resolution, including a description of the issue and the reasons for TACD’s recommendations please go to www.tacd.org/docs/?id=254)

The Trans Atlantic Consumer Dialogue (TACD) has strong concerns about how the current disclosure of personal data in airline reservations for flights from the EU to the US will affect travelers’ privacy rights. TACD therefore urges the governments of the United States and the European Union:

1. To stop the disclosure of personal data of US-bound passengers flying from the EU, and its use by the US government, *inter alia* for testing of passenger pre-screening systems such as the CAPPS II program, until:
 - all privacy issues regarding the implementation of this program have been addressed in a satisfactory manner as recommended by the US General Accounting Office report of February 2004; and
 - EU-specific concerns have been addressed pursuant to the recommendations of the European Parliament and the Article 29 Data Protection Working Party
2. To suspend implementation of the EU-US PNR agreement of May 2004 until the Court of Justice of the European Communities has examined the compatibility of the Commission’s adequacy decision and of the EU-US PNR agreement with EU

rules, and until it has ruled on whether the European Parliament's assent is necessary before the agreement can enter into force

3. To encourage the US Congress to assess the specific privacy risks related to passengers' personal information and passenger pre-screening programs, and determine whether they warrant any specific legislative measures
4. Not only to question the adequacy and purposes of the regime surrounding the transfer of passenger data, but also the reality of its implementation. This is because it may lead to a system of global surveillance for general law enforcement purposes, as well as to increased cooperation between the US government and commercial entities to work on data mining projects without proper privacy safeguards. The purposes for which passenger data are collected have to be strictly defined and their use limited to the fight against terrorism and terrorism-related crimes
5. To establish a strong legal framework for transferring airline data to government authorities in the US in a way that is compatible with strong data protection principles. This entails:
 - limiting the data elements to what is proportionate to the aims sought;
 - ensuring the accuracy of the records, and of the matching of passenger records against suspects';
 - making the data retention periods short and proportionate;
 - providing clear and comprehensive information to passengers, including about the content and scope of the data required, the purpose of collection and the data recipients before their travel information is collected;
 - providing passengers with a judicially enforceable right to access, correct, modify and/or delete their personal data.
 - providing consumers with truly independent redress, compensation and appeal mechanisms in case of governmental abuse and infringement of passengers' rights;
 - determining the US agencies and authorities to which PNR data would be disclosed
6. To make the EU-US PNR agreement and the US Undertakings legally binding in the United States in order to enable air travelers to obtain redress before US courts
7. To prohibit transfers of passenger data when they are made to non-EU government agencies or law enforcement authorities, unless they comply with the EU-US PNR agreement, or other existing third-party information-sharing rules with equivalent data protection requirements
8. To suspend the implementation of the EU-US PNR agreement until the technical mechanisms to put in place a "push" system of data transfer are available
9. To assess passenger data transfer schemes, new standards for travel documents, as well as passenger pre-screening and biometric identification systems, such as CAPPs II, US-VISIT programs, together when negotiating agreements to protect travellers' privacy. Common data protection rules should apply to interconnected programs that use or will use the same personal data

10. To modify the privacy policy applicable to the US-VISIT Program in order to provide travelers, covered by both the EU-US PNR agreement and the US-VISIT program, with the same level of privacy protections
11. To encourage all authorities involved in the PNR discussion to consult with consumer protection groups, as well as to include representatives of consumer organizations and data protection authorities in discussions of ICAO and other relevant standards proposals, and in government delegations to ICAO meetings and working groups, in particular in any cases where proposed standards would override or alter national or EU consumer protection or data protection laws or regulations.

REACH – proposed EU Chemicals Policy

June 2004, Trade-14-04

(the full briefing paper, from which these recommendations were drawn, can be found at : www.tacd.org/docs/?id=253)

The proposed EU chemicals policy is called 'Registration, Evaluation, Authorisation and Restrictions of Chemicals' (REACH). The goals and principles of REACH have been supported by a wide array of consumer, public health and environmental groups in Europe including many members of TACD. TACD members in Europe have submitted comments to improve REACH in the consumer interest, while many TACD members in the U.S. have watched with dismay the coordinated U.S. industry and governmental effort to weaken the proposed policy.

With the following recommendations, TACD calls for REACH to be strengthened and for a trade war over the policy to be avoided:

1. **Hazardous chemicals should have no volume threshold for registration and authorization.** The main thrust of the REACH proposal is to prioritise chemicals on the basis of volume of production. However, as there is no correlation between between tonnage and hazard, the focus of the REACH instead should be on identifying the most hazardous chemicals. To accomplish this, industry should screen all their chemicals according to dangerous properties including identification of possible vPvB and PBTⁱ properties. For these chemicals, there should be no volume threshold for registration and authorization. The screening of all chemicals can be done if the computer model QSAR is used as a screening method. The newly created European Chemical Bureau should evaluate these data files within three years from registration.
2. **The authorization procedure for chemicals of high concern should be strengthened.** This entails placing the principle of substitution as the core of the procedure to create an assumption that chemicals known to have safer alternatives will be removed from the marketplace. Furthermore, endocrine disrupting chemicals and sensitizers must be added to the group of high concern chemicals requiring authorization. Authorized substances (preparations and

articles) must be clearly labeled with a hazard symbol, without regard of the concentration of the chemical.

3. **All consumer articles containing chemicals– domestic and imported – should be assessed, whether they are intended to be released or not.** Producers of consumer articles must also provide information about the chemicals used in their products. This information should be publicly available. As it currently stands, REACH grants industry excessive secrecy due to industry claims of business confidentiality and does not give citizens the right to know certain key information such as producers names, total tonnage, general exposure information etc. Furthermore REACH has no mechanism for appealing decisions on the withholding of information and such an appeals procedure should be developed in the final draft.
4. **REACH must be a horizontal measure integrated in with related product safety directives.** REACH should form the basis for all existing and future product directives, setting a horizontal obligatory minimum safety level for chemicals in all uses, whether paints, toys, cosmetics and pharmaceuticals, foods etc.
5. **The U.S. should immediately cease its campaign against REACH and the U.S. and the EU must avoid a trade dispute over REACH.** TACD believes that open, transparent and inclusive regulatory and trade-related processes are essential precursors to the development of sound public policy, and are necessary to avoid costly, potentially embarrassing and unsuccessful trade disputes. The U.S. government should cease its campaign against REACH and reassess its position on the matter by consulting a wide variety of interested parties. TACD once again calls upon U.S. agencies to solicit public comment on REACH and other public interest policies perceived to be trade irritants by posting notice in the Federal Register, holding public meetings and soliciting opinions from a balanced group of stakeholders. The EU could also improve performance in public consultation by soliciting testimony on the public health benefits of REACH and the costs of non-implementation.
6. **TACD once again calls upon the governments to incorporate the Precautionary Principle in regulatory decisions involved in consumer health and safety and the environment, particularly in cases of scientific uncertainty and complexity.**ⁱⁱ We urge Congress to develop legislation to strengthen TSCA using REACH as a model and we urge the U.S. EPA to form a special committee to explore the overhaul of TSCA to provide for the registration and authorization of chemicals on the market that predate the U.S. law utilizing REACH as a model. We call upon the committee to solicit testimony from U.S. and EU experts on the benefits of a REACH approach as well as the costs, and to examine the costs of nonaction on U.S. public health, environment and taxpayers.

ENDNOTES

ⁱ vPvB: very persistent and very bioaccumulative chemicals, PBT: persistent, bioaccumulative and toxic chemicals.

ⁱⁱ TACD is on record supporting the Precautionary Principle as a “priority” agenda item for the governments. In the 2001 priorities statement, TACD calls on the governments of the US and the EU to incorporate the Precautionary Principle in regulatory decisions involved in consumer health and safety and the environment.