

THE TRANSATLANTIC ECONOMIC PARTNERSHIP

OVERVIEW AND ASSESSMENT

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THE TRANSATLANTIC ECONOMIC PARTNERSHIP

OVERVIEW AND ASSESSMENT

Executive Summary

The Transatlantic Economic Partnership (TEP) launched at the May 1998 London Summit was designed to give a major new impetus to EU-US co-operation in the field of trade and investment within the framework of the New Transatlantic Agenda (NTA). At the beginning of November 1998, an Action Plan was agreed with the US Administration, including both multilateral and bilateral elements.

On the bilateral side, the EU and the US have maintained an on-going dialogue on most issues covered by the action plan (e.g. TBT in goods area, services, biotechnology, food safety, etc.). Generally speaking, and despite the existence of some problems, work has been satisfactory and progress made in areas such as technical barriers to trade, regulatory cooperation, consumer product safety, food safety, biotech and competition. In the services field, there have been positive developments on a number of issues, but on other issues the impossibility to progress has shed some shadow on the process. In other areas, such as the environment, cooperation was satisfactory particularly due to the pre-Seattle impetus, but has lost momentum since. Finally, progress in the field of intellectual property rights and procurement has been not possible largely due to difficulties in discussing issues which could involve changes in policy or legislation.

As far as the regular multilateral dialogue is concerned, this has taken place notably with the objective of launching a new WTO round. While it is obvious that no EU-US consensus has yet been reached, the exchanges between both sides have certainly been positive, and continue with a view to achieving EU-US consensus where this is possible.

The early warning mechanism has proven its usefulness as a means to flag the existence of potential trade problems before they become trade disputes and to bring them, if necessary, to the attention of the Senior Level Group (SLG) and Ministers. However, the follow-up to the specific items raised, and the solution of the problems, have often depended on the nature of the item and the position of each side's administration

In conclusion, the Commission services are of the view that, despite the obvious difficulties in ensuring the timely implementation of the Action plan, the TEP has proven a useful instrument for developing a more cooperative agenda in the trade and investment fields and, in particular, in serving as a forum for exchange and discussion between both sides of the Atlantic. It is evident that, in present circumstances neither the TEP nor any other structure can provide a solution to all outstanding problems in Transatlantic economic relations.

Despite the existence of frustrations and failures, the Commission services are convinced of the importance of the TEP as a whole and believe it should be given a further impetus and reinforced. There is also a certain need for restructuring and adjustment. To this end, there is a commitment to an ongoing exercise to improve existing structures and to focus on priorities. Discussions with the US on how to achieve this objective should start as soon as the new US administration will be in place.

I. INTRODUCTION

The Transatlantic Economic Partnership (TEP) launched at the May 1998 London Summit was designed to give a major new impetus to EU-US co-operation in the field of trade and investment. At the beginning of November 1998, an Action Plan, with target dates, was agreed with the US Administration.

The TEP includes both multilateral and bilateral elements. The core bilateral element of TEP is to tackle those trade issues – mainly regulatory barriers - which are now the main obstacle to transatlantic business, while preserving a high level of protection for health, safety, consumers and the environment. At the same time, TEP is designed to stimulate further multilateral liberalisation, by establishing closer EU/US co-operation on the preparations for new multilateral negotiations in the WTO. An innovative aspect of TEP is the joint determination to integrate labour, business, environmental and consumer issues into the process.

The purpose of this paper is, first, to give an overview and assessment of the actions undertaken in the different areas covered by the TEP Action Plan, including the main achievements and failures in those areas; and, secondly, to provide the a general assessment on the TEP as a whole. **This paper is not intended to** set guidelines for the way-forward, but rather to provide a basis for discussion of the role of the TEP within the larger discussion on the future of the EU's overall relationship with the US within the revision of the New Transatlantic Agenda and, also, in view of the new US administration.

A list of TEP Commission contact points is attached.

II. DIALOGUE AND COOPERATION ON BILATERAL ISSUES

II.1 TECHNICAL BARRIERS TO TRADE IN GOODS

The section of the TEP action plan on technical barriers to trade in goods covers four basic matters: (a) regulatory cooperation; (b) mutual recognition; (c) alignment of standards and regulatory requirements; and (d) consumer product safety.

The TEP WG on Technical Barriers to Trade in Goods co-ordinates, monitors and reviews progress on the actions foreseen under the matters mentioned above. This WG has met approximately 2 times per year and usually back-to-back with meetings of the Joint Committee under the EU-US MRA.

(a) Regulatory Cooperation

Achieving common principles/guidelines for regulatory cooperation is a formal objective in the TEP Action Plan. The main purpose of these principles/guidelines is to improve the overall quality, soundness and efficacy of regulation, facilitate trade in goods and contribute to the minimisation and resolution of trade issues which might otherwise result from such regulation.

In this respect, there is a strong link between regulatory cooperation and early warning: many trade disputes derive from the fact that different regulatory approaches are taken in the EU and the US to the same problem. For instance, adopting as a principle for regulating a given sector state-regulation in the EU and self-regulation in the US may give raise, in the future, to

a major trade irritant (an example of this could be data privacy). The same is true in relation to the type of requirements on which standards are based (for instance a design standard or a performance standard – Cf. hushkits – or a national instead of the international standard – Cf. UMTS). The ultimate goal is to interface our regulatory approaches, i.e. to make them compatible.

The process is however not intended to create binding reciprocal obligations which may have an adverse impact on the integrity of our rulemaking proceedings or to supersede our respective TBT obligations. It is neither intended to serve as the basis for a progressive harmonisation of EU and US regulatory approaches. It is rather intended, in a much more pragmatic way to establish a culture of cooperation, dialogue and transparency between the EU and US regulators. This implies allowing for informal dialogues of regulators, exchange of regulatory planning and priorities, exchange of scientific evidence and trying to adopt similar evaluation methods with respect to such evidence and finally exchange information about contemplated regulatory requirements.

The guidelines/principles for regulatory cooperation are designed to create a general framework for such regulatory cooperation. They are complemented by specific projects in given sectors with goals and work plans appropriate to the objectives pursued which could include where appropriate mutual recognition agreements, alignment to international standards, alignment or harmonisation of domestic standards and regulations.

Concrete steps have been taken both internally in the EU and with the US to ensure that the guidelines/principles for regulatory cooperation can be adopted. As a result, the **main achievements** in this field until now have been:

- EU and US have exchanged documents describing transparency in their legislative systems and have given them wide circulation to the public.
- EU and US have made an inventory of existing regulatory co-operation.

As regards the **state of play**, the projects which are presently in progress include:

- EU and US working on Guidelines/Principles on effective regulatory co-operation, which could be finalised by December 2000 EU-US Summit. However, a major obstacle remains to be solved in our discussions and that is the US insistence of addressing also principles of transparency to the public at large in a paper which, in the view of the Commission services, should address only cooperation between government regulators.
- Regulatory co-operation dialogue is kept open in the sectors of cosmetics, lifts and telecommunication equipment, where different actions are examined leading to closer regulatory systems.

(b) Mutual Recognition

Work within the group has also concentrated on mutual recognition agreements (MRAs). In this field, the main interest lies in exploring the so-called MRA+ concept (mutual recognition of technical requirements and conformity assessment procedures).

As regards the **state of play** on MRAs, projects in progress include:

- Negotiations are ongoing on a mutual recognition agreement on marine equipment based on the equivalence of EU and US technical requirements and conformity assessment procedures (MRA+). An agreement could be initialled at the Dec. 2000 EU-US Summit. However, a lot of work remains to be done.
- Negotiations are ongoing on advancing a framework for co-operation in the area of metrology, which includes a mutual recognition agreement on calibration and measurement certificates, but also other actions needed to facilitate trade.

The US had proposed to negotiate on a MRA road safety equipment, but this was not acceptable, at the moment, to Member States and European industry since: (i) Buy American provisions apply, (ii) US States impose their own requirements and approvals and (iii) European standards are still under development. It was agreed that this sector should be subject to a continued exchange of information at experts' level until the conditions for a MRA are more favourable.

(c) Alignment of Standards and Regulatory Requirements

No specific actions on the alignment of standards and regulatory requirements have been taken to date. There exists a long-standing co-operation and exchange of information between DG ENTR (ex, Dg III) and ANSI, the US standards co-ordination body. There is also an ongoing "discussion" between the EU and US in different international fora, e.g. in the WTO TBT Committee, on issues of relevance in the areas of conformity assessment and standardisation ,(e.g. on what an international standard is). However, the **state of play** is that no particular measures have been taken in relation to the actions foreseen in the Action Plan.

(d) Consumer Product Safety

In October 1999, it was agreed with the US Consumer Product Safety Commission (CPSC) to regularly exchange information both on dangerous products found on the respective markets and on issues related to risk assessment, product safety research etc. To this end it was decided to organise regular contacts between SANCO and CPSC. The latest conference took place on 11 October 2000. Additional exchange of information takes place whenever needed. Visits of representatives between the two administrations also take place occasionally.

The US side also agreed to immediately inform the relevant Commission services on product withdrawals on the US market. The Commission services have in addition supplied a list of Member State contact points interested in receiving the same information to CPSC.

The **state of play** is that, for the time being the EU side cannot, because of confidentiality requirements, supply information on dangerous products found on the EU market to the US authorities on a regular basis. A Commission proposal for amendments to the Directive on General Product Safety which would make such information exchange possible, is currently subject to discussions in Council and Parliament.

As an **overall evaluation and assessment in the area of technical barriers to trade in goods**, the Commission services consider that both WGs have acted as focal points for advancing bilateral EU-US co-operation in the TBT area, in particular as foreseen by the Action Plan.

In this sense, the TEP WG on Technical Barriers to Trade has been relatively successful in carrying out the actions. However, it remains to be seen whether further projects/sectors will be proposed. In addition, it should be noted that the Commission services have attempted to get European industry and the TABD more involved by encouraging them to propose sectors and/or subjects for co-operation. In this respect, the Commission services have presented the TEP Action Plan as a “menu” of instruments that can be used to solve the trade barriers encountered by industry. However, industry still has to better focus on the identification of concrete subjects for cooperation.

An additional element that should be valued is the spin-off effect of the EU-US MRA, which has led our regulators to come in much closer contact with each other and to recognise the need to co-operate (e.g. the US Food and Drugs Administration). The TEP Action Plan has offered a way to commit the US to some form of co-operation and a way of structuring it.

Furthermore, as regards the agreed EU-US contacts on consumer product safety, the Commission services also believe that co-operation in these contacts have proven to be well adapted to the purposes and a good level of understanding and trust has developed between the officials of both sides of the Atlantic.

In conclusion the TEP Action Plan has been very useful in pursuing an active agenda of co-operation with the US in the TBT area. For the future, particular importance should be given not to lose the momentum, due to an apparent lack of interest (or understanding) from industry. However, the Commission services are committed to maintain and foster work in this area and believes that to that end efforts could be made to review the Action Plan in terms of restructuring in the form of a more comprehensive trade facilitation “tool-box”.

II.2 SERVICES

The TEP Action Plan contains a section devoted to bilateral actions in the field of services. The main objectives of the Action Plan were: (i) keeping markets open; (ii) reducing existing barriers through mutual recognition; and (iii) undertaking bilateral work in establishing disciplines on trade aspects of services regulations.

In order to achieve these objectives, work within the TEP Services WG has concentrated on the following issues:

- Early warning: a consultation clause with the US, applicable also to services, was agreed in 1999.
- MRAs: negotiation on a framework agreement for MRAs failed due to absence of commitment of US at sub-federal level. It was then agreed at the end of 1999 to start sectoral mutual recognition negotiations on professional services (architects and engineers) and insurance to examine whether pragmatic solutions could be found.

In this respect, the present **state of play** of work within this WG may be summarised as follows:

(a) MRAs as a whole

At the first full sectoral session in Washington in April 2000, both sides were satisfied with the attitude and level of participation achieved¹. However, for the second session in Brussels, in June, the US did not offer the same satisfactory standard². On the substance, discussions have focused on work plans for each sector that would include the details of the issues to be negotiated and the clear objectives to be met.

However, given the apparent lack of interest from the US, their continuous difficulties to deliver at sub-federal level, and the substantial resources necessary on this file, the Commission services are currently analysing the follow-up in this area.

(b) MRAs on professional services (architects and engineers)

As agreed in Washington, an 'interprofessional dialogue' has begun: the European and US architectural associations have exchanged 'position papers' over the summer, and the EU architects are now working on a reply to the US paper. Engineers are not that advanced.

With regard to continuing the 'formal' negotiations, we expect now the US delegation to come to Brussels for a next session under TEP. The reaction of USTR at the informal meeting in June was similar to previous ones: it would be difficult to get a large delegation to Europe. This is lack of commitment on the US is certainly an important problem in this area as well as particularly unacceptable to the EU, given the very substantial European delegation that had gone to the discussions on Washington.

In addition, while the associations which had been present at the meeting in Washington (NCARB, USCIEP) have an important role in the process, the Commission insists on getting state regulators involved. USTR has reacted very negative to this demand. According to USTR, these associations are, first, the ones who usually negotiate recognition and, secondly, they would act as a kind of 'leader' for the states in that, while they cannot and will not commit any state, it would be probable that any agreement reached by them would have a good change of being implemented in the majority of states. Insisting on the presence of state regulators, and on the 'critical mass' was interpreted by the US as a lack of commitment by the EU, since this amounted to an attempt to stop the process, since we would know that 'nobody can commit the states' but the states themselves.

(c) MRAs on insurance

The discussions on the work plan have shown that the US prefers a "regulatory dialogue" than a full-fledged MRA on insurance. Following the June round, a text was sent in July to Member States for reaction. The Commission is presently awaiting Member States' comments on this.

¹ The EU delegation was made up of more than 40 people, including Commission and Member States' representatives.

² The US insurance delegation was composed of two representatives of USTR, an International Counsel of the National Association of Insurance Commissioners (NAIC) and two insurance commissioners (Maine and Virginia) . A meeting on professional services was also held, with USTR only.

The Commission services' **evaluation and assessment of the TEP work in the services sector** is that a satisfactory participation in the negotiations on the US side is essential in order to be able to reach mutual recognition agreements. The Commission services believe that it is important that the EU put its message across to someone "in control" on the US. However, this is a contradiction in terms, given the fact that neither USTR nor the US States' national sectoral bodies have a "mandate" to negotiate on behalf of the States, and the divergent approaches of different US States.³ The US has been taking an unambitious approach, consisting of pushing the process towards a simple regulatory dialogue and away from mutual recognition or the elimination of specific obstacles.

Given the difficulties identified, notably the subfederal issue and the regulatory divergences between US States, a quick negotiation and conclusion of MRAs should not be expected.

II.3 PROCUREMENT

The TEP Action plan identified a number of priority lines of action to be undertaken by the TEP WG on Procurement. The **state of play** in each of these areas is described below:

(a) Co-operation on multilateral activities

Co-operation in this area has tended to take place on an *ad hoc* basis outside the framework of the TEP.

(b) Co-operation on electronic procurement

With respect to co-operation on electronic procurement, no substantial discussions have taken place in TEP framework, but the Commission (DG MARKT) maintains informal contacts with US counterparts on such co-operation. More specifically, the Commission has provided the US administration with detailed explanations on the EU system. However, the US has not yet reciprocated.

(c) Aim to lift telecoms related sanctions

In May 2000, the EC completed a questionnaire submitted by the US. The Commission still awaits reaction – hopefully by end October following inter-agency discussion. It is the Commission's view that there are no technical reasons why the US should not proceed to lift sanctions (and the EC the countersanctions). The Commission intends to continue to raise this matter in upcoming TEP meetings with a view to obtaining results by end 2000 if possible.

(d) Discussions with a view to increasing access to procurement opportunities

No progress has taken place on this matter, since the US has been completely unwilling/unable to discuss it with the EU.

The Commission services' **overall evaluation and assessment of the work carried out within this WG** is unsatisfactory. The EU had clear offensive interests to pursue and much to gain from a constructive dialogue. The EU was also prepared to show flexibility on issues

³ Some States are more open as regards improving the regulatory insurance climate. One State (D.C.) is even suggesting an MRA between the EU and D.C., which would facilitate access to the rest of the US.

of difficulty to the US, fully recognising that it will take years to address issues such as Buy American, set asides and the like.

The US, on the other hand, have shown little interest in this working group and do not appear prepared to participate constructively on any issue except that of electronic procurement. The result of such an attitude has been that multilateral cooperation and the sanctions issue can be pursued as effectively outside the framework of TEP.

The main reason behind the US lack of commitment to this WG seems to be that the barriers to trade experienced by EC suppliers in the US procurement market fall mainly within the purview of Congress or the States. The Federal Administration seems unable and/or unwilling to act. However, barriers to trade in the procurement sector remain a real problem for European industry.

On electronic procurement, further discussions would be possible provided that the information exchange becomes a two-way process (so far only the EC has provided any information). Much is underway on both sides of the Atlantic in this field, and the Commission would be particularly interested to discuss the new General Services Administration (GSA) schedule system.

II.4 INTELLECTUAL PROPERTY

The TEP Action Plan identified, in its bilateral section on IPR, five priority issues: (i) reduction of costs in the patent sector; (ii) EC accession to the Madrid Protocol; (iii) unauthorised use of software by governments; (iv) work related to the two 1996 WIPO treaties; and (v) geographical indications and trademarks.

Both sides agreed to focus bilateral work on these issues before addressing the mid to long-term objectives. To this end, both sides shared concrete fiches with each other on those priority issues which were in the respective offensive interests. These fiches and the respective issues were subsequently discussed on various occasions.

As regards the **present state of play** on the bilateral IP issues mentioned in the Action Plan, the U.S. continues to focus on areas of U.S. interest, such as cost reduction in the patent area in the Community, the Madrid Protocol and outstanding issues on copyright. On the other hand, it has refused to start serious work on issues which may require changes to U.S. legislation (e.g. 'first-to-invent') or changes of practices (e.g. reduction of litigation costs). No discussions have taken place on mid to long-term bilateral TEP Action Plan issues. Below follows a more specific account of the priority issues.

(a) Patent costs

- No agreement to even discuss the 'first-to-file' issue and litigation costs in the U.S.
- Both sides agree on reduction of litigation costs. U.S. has already done so. On EC side, envisaged Community Patent and the restructuring of the EPO might alleviate U.S. concerns on EU patent costs.

(b) Madrid Protocol

- Progress was made as regards the 16th voting right of the Community. Discussions with Member States continue on other problems areas (e.g. language questions) before a final decision to accede to the Madrid Protocol can be made by the EC.

(c) Unauthorised use of software by governments

- At present, no action is being taken in this regard by the Commission. Although some action was originally envisaged in the follow-up to the Green Paper on Piracy, this is no longer the case.

(d) WIPO Treaties

- The Council adopted on 16 March 2000 a decision to approve these treaties. However, the Community will not be in a position to ratify the Treaties until the Directive harmonising certain aspects of copyright and related rights in the Information Society has been adopted by the Community and implemented by Member States. The Directive will be adopted at the beginning of next year (2001) and provides for an implementation period of 2 years from entry into force. The Council Decision of 16 March 2000 provides that ratification by the Community will take place at the same time as ratification by Member States. In the circumstances, it is premature to discuss U.S. proposals to widen the exclusive rights contained in these treaties, but discussions in WIPO continue. The EC continues to stress the importance of the WIPO Treaties and advocates ratification on a bilateral basis with third countries.

(e) Geographical indications and trademarks

- On the bilateral wine agreement, negotiations took place on 27/28 July 1999 in Washington and on 15/16 December 1999 in Brussels. Good technical progress is being made.
- U.S. requested WTO dispute settlement consultations on the Community Regulation for geographical indications without awaiting the answers to their list of questions on this issue submitted in the TEP framework. The Commission regrets that the U.S. took this approach, but is currently exploring ways to address U.S. concerns.

The multilateral cooperation in the field of intellectual property rights should also be mentioned. In this sense, an obvious candidate for closer co-operation appeared to be the review of implementation of the TRIPs Agreement by developing WTO Members now that the TRIPs transitional period for these countries expired on 1 January 2000. Although both sides agreed to inform each other about ongoing activities as a basis for further action without necessarily aiming at 'joint action', but rather 'co-ordinated action', recent contacts during and around the meetings of the TRIPs Council, did not achieve the necessary outcome.

As an **overall evaluation and assessment** of this Working Group, the Commission regrets that only little progress was made so far, notably on issues which require a change in the U.S. current IPR system/legislation. This appears to be the result of limited resources on both sides and the U.S. insistence to only address issues of interest to the U.S. side. The US Government was not prepared to enter into a discussion on delicate matters (first-to-file) which could have led to criticism by US Congress. As a result, only a limited amount of work

is in the process of being undertaken on certain areas covered by the TEP Action Plan, such as EU patent costs, WIPO treaties and geographical indications.

II.5 FOOD SAFETY

The TEP Action Plan identifies a series of specific areas for possible enhanced co-operation on food safety, plant health and animal health. The hope is that in pursuing increased co-operation in these rather specific areas, the TEP can contribute in a modest but practical way to improving transatlantic relations.

Since its creation, work within the TEP on food safety issues has taken place through a number of *ad hoc* audio-conferences and has mainly concentrated on:

- (a) early warning, where to improve 'early warning' on food safety developments likely to impact on the other side, the US and EU agreed to nominate a single contact point for food safety.;
- (b) exchange of scientific and technical experts, involved in food safety inspection and control, notably with the objective of inter-linking our rapid alert systems for food emergencies;
- (c) structured dialogue on plant health, with a view to ensuring co-ordination and enhancing cooperation on pesticides, vitamins and minerals, as well as increased dialogue on risk assessment methodology.

The Commission services believe that lack of resources on the US and EU sides have hampered progress in this area of the TEP action plan, in that it has not permitted frequent close contacts between experts. Nevertheless, good discussion has taken place on some issues laid down in the Action Plan. There is a real possibility of progress on the rapid alert systems and on early warning. Future prospects on risk assessment and further exchange of experts seems less positive. The EU and the US are also aware of the need to ensure complementarity (and prevent overlapping) with the EU/US veterinary agreement.

II.6 BIOTECHNOLOGY

Biotechnology is a policy area which involves a wide range of issues and concerns from ethical consideration, food safety and, of course trade. It is an area where there are considerable differences of approach between the EU and US Governments, shaped by differences in public perception. Recognising these factors, the main objective of the TEP Action Plan in this area was to strengthen our bilateral dialogue.

The Action Plan provides for the creation of an over-arching group to (i) monitor progress of the dialogue on the various technical issues carried out in existing groups with a view to reducing unnecessary barriers to trade; and (ii) to seek to increase and enhance scientific and regulatory cooperation and information exchange and to promote transparency and information of consumers.

The work of the TEP biotechnology working group has been successful in its primary objective of strengthening regular bilateral dialogue on trade and regulatory aspects, and maintaining an overview of the technical issues. In order to ensure that the dialogue was

pursued on a broader range of issues, including meeting genuine public concerns about possible environmental risks, effects on health and ethical issues, the EU-US Summit of 17 December 1999 gave a further push to EU-US dialogue on the broad range of biotechnology-related issues through enhanced government to government discussions within framework of the New Transatlantic Agenda (notably through the biotech Senior Level Group) and by bringing input from non-governmental representatives into the process. In this context, a Consultative Forum with a number of eminent non-governmental persons, including representatives of various stakeholders and areas of expertise, was established in order to take forward an informed and constructive debate and to report to the EU-US Summit in December 2000.

One concrete area of technical co-operation begun under the auspices of the TEP is the TEP pilot project on biotechnology launched in October 1999 and still ongoing. The pilot project has two phases: a first phase looking at the data required by EU and by US for the scientific analysis undertaken on a product which has already gone through our respective approval systems, and a second phase to be undertaken in relation to a new simultaneous application for product approval.

Finally, this TEP WG has also addressed the practical aspects related to access to the EU corn market of EU-approved varieties originating in the US. The TEP biotechnology group has had two meetings so far this year: in May 2000 and, most recently, on 17 October 2000.

The Commission services' **overall evaluation and assessment** of the work carried out within this Working Group is that it has been effective in progressing technical debate on specific issues relating to biotechnology, and on ensuring a co-ordinated approach to bilateral dialogue in this area. Meetings of the group will continue to take place on a regular basis, with the next meeting proposed for December 2000.

II.7 ENVIRONMENT

The Environment Chapter of the TEP Action Plan provides for the creation of TEP Environment Group (TEPEG). The TEP WG on environment is intended to focus on environment issues with a trade dimension, and supplements the annual EU-US High Level Consultations on environment policy in general, which take place in the New Transatlantic Agenda framework.

More concretely, the role of the TEPEG, as listed in the Action Plan, includes: (i) the development of common objectives on trade and environment; (ii) increasing co-operation between EU and US regulators and scientists; (iii) informing trade negotiators of the impact of the TEP on the environment; and (iv) developing common approaches to trade-related issues in the negotiation of MEAs.

The TEPEG was particularly active in 1999, when two meetings took place – February 1999 (in Europe) and June 1999 (in US). In practice, work of the group to date has fallen into two broad categories, covering most of the above:

(a) Discussion of trade and environment issues

This has been the most important aspect of the TEPEG's work, largely focussing on crosscutting multilateral trade and environment issues (e.g. the precautionary principle,

relationship WTO-MEAs) and in particular our pre-Seattle agendas for the WTO. There has also been discussion of particular negotiations, notably the Biosafety Protocol.

The EU and the US have also agreed to facilitate further technical level contacts on various subjects, e.g. waste policy (as part of the TEP function of de-escalating potential trade irritants at the earliest possible stage).

(b) The 'greening' of the TEP

At its first meeting, the TEPEG agreed guidelines for reporting between it and the different TEP WGs and Steering Group in order to fulfil its mandate of ensuring that environment considerations are taken into account in all TEP discussions. Ultimately, the TEPEG has committed to carrying out an environmental impact assessment of any bilateral agreements reached under the TEP.

In addition, the EU and US worked together, in particular in the TEPEG, to build consensus for the March 1999 High Level Symposium on Trade and Environment – an important step forward in promoting international discussions on the trade and environment interface. And, both sides have worked together with the Transatlantic Environment Dialogue (TAED) which is interested in the TEP work. The TAED is referred to in the Environment chapter of the TEP Action Plan as a formation to be supported to inform EU and US Governments on environmental issues.

As regards the present **state of play**, work within the group appears to have slowed down in the year 2000. The Commission services are currently considering the way forward in this group, notably in the light of present organisational problems.

The Commission services' **overall evaluation and assessment of this WG** is that the TEPEG discussions were particularly useful pre-Seattle in helping to clarify our differing positions on trade and environment in relation to the New Round. In this respect, the EU and the US achieved consensus on some of the more general points (Civil Society consultation, need for sustainable development to be a key trade policy objective). However, by the time of Seattle there was still little agreement on the more important details of our agendas, and therefore little real progress was made.

In addition to this, the Biosafety Protocol negotiations, which had been a key TEPEG topic of debate, ended in spring 2000, reducing further the interest in the TEPEG agenda. The EU side resisted entering into more detailed discussions on waste-related issues, which the US consistently pushed for, since there was no internal EU agreement on this matter. The US side seemed to have little appetite for discussing anything else than waste. In addition, the other major role of the TEPEG - 'greening the TEP' – directly depended on the existence of bilateral agreements being made within the framework of the TEP.

Finally, it should also be mentioned that the High Level Consultations on the Environment - run by DG ENV, with active DG Trade participation, in May 2000 - provided an alternative opportunity for most of the TEPEG subjects to be discussed in a forum which included many of the TEPEG participants. The opportunity has also been taken for discussion between the EU and US on trade and environment issues in the margins of the WTO's CTE. The existence of these alternative fora reduces to a certain extent the enthusiasm for re-convening the TEPEG.

II.8 LABOUR

The TEP Action Plan foresees the establishment of a dialogue between the EU and the US on trade related labour questions. Both sides have exchanged views on their respective working rights considerations in their GSP schemes. Furthermore, two successful joint initiatives were developed in addition to the regular meetings of the TEP WG on employment and labour issues: a seminar on the social dimension of economic integration and a seminar on entrepreneurship. The working group meeting was also an opportunity to review progress since December 1988 on cooperation in a number of areas. In conclusion the bilateral work is on track and rather satisfactory.

In addition, both sides have confirmed their commitment to support the Transatlantic Labour Dialogue (TALD).

II.9 CONSUMERS

The TEP Action plan foresees that the Transatlantic Consumer Dialogue (TACD), which was launched in September 1998, should feed into the TEP process. As with all other dialogues, the TEP has taken into account input from the TACD in as much as this dialogue has been able to focus on specific issues and priorities. The TACD has since produced a number of recommendations on TEP related issues.

II.10 COMPETITION

The TEP action plan underlined the importance of cooperation in the area of competition, in particular with respect to implementation and concrete cases. Such Cooperation between the Commission's Competition DG and its US counterparts, the US Department of Justice and Federal Trade Commission, is carried out on the basis of the 1991 and 1998 EU/US agreements on cooperation in competition/antitrust matters. This cooperation functions very well, with staff-to-staff contacts on a more or less daily basis.

Following the last bilateral meeting between DG Competition, the US Department of Justice and the US Federal Trade Commission, in October 1999, it was agreed that a working group on intensified transatlantic antitrust cooperation in the field of merger control should be set up. This working group has been mandated to focus on, firstly: the scope for further convergence of analysis/methodology in merger cases being treated in both jurisdictions, particularly regarding our respective approaches towards oligopoly/collective dominance and, secondly; an in-depth study of our respective approaches to the identification and implementation of remedies (in particular, divestitures), and to post-merger compliance-monitoring. The objective would be to identify "best practices". The working group is making satisfactory progress.

II.11 ELECTRONIC COMMERCE

The TEP Action Plan refers to the «Joint US-EU Summit Statement on Electronic Commerce», which lists a number of items for further bilateral review and discussion.

In order to implement the mandate of initially focussing on carrying out specific actions on trade facilitation, both sides exchanged lists of trade irritants in the field of electronic

commerce (for instance, the US complained on the EU data privacy law and on the EU taxation framework; and both sides complained on each other's telecommunication liberalisation).

Since then the work carried out has tended to take place on an *ad hoc* basis, depending on the relevant issue at stake (e.g. negotiation of the recognition of the US "safe harbour" for data privacy between DG MARKT and the DOC, discussion in the OECD and in other fora on the EU proposal on VAT, discussion of telecommunications liberalisation in the UE-US Information Society dialogue), rather than as indicated in the TEP action plan.

As regards the **state of play**, it appears that given the broad nature of the problems falling under the label «electronic commerce», as well as the rapidly changing environment and the existence of a number of other fora, both sides have found that *ad hoc* contacts on specific subjects is for the time being the most adequate way forward. Co-operation between both Administrations within this loose framework is increasingly taking place.

III DIALOGUE ON MULTILATERAL ISSUES

The TEP action plan foresees in an intensification of EU-US multilateral contacts by establishing a 'regular dialogue on multilateral issues'. The Action Plan identifies a broad range of multilateral items for EU-US co-operation. The dialogue is carried out via bilateral contacts on individual items, and overall meetings covering the broad range of multilateral TEP items.

Apart from the TEP process, the EU US Summit of 17 December 1999 was the opportunity to adopt a joint statement on the WTO. This statement conveys the clear message that the EU and the US will continue to work to launch a new Round as soon as possible. Further meetings between Commissioner Lamy and Ms. Barshefsky have offered the opportunity to discuss the new round areas on which there are still significant EU US differences. The discussions have been constructive on these issues and it has been agreed to continue to consult intensively with a view to launching a round as soon as possible.

As regards the **state of play**, since Seattle, dialogue with the US on WTO issues has been intense and has included, among others :

- (a) Discussions at both the political and working level on all the issues that could be part of a New Round agenda. This dialogue has promoted a much better understanding of respective positions and narrowed remaining differences.
- (b) Dialogue between the EC and US was instrumental in developing a Quad contribution towards the presentation of a number of confidence-building measures in Geneva. These included market access for the least developed, a new approach on technical assistance and an implementation work programme.
- (c) Regular contacts have also been maintained as regards China's accession to the WTO, as well as other accessions.

The Commission services' assessment of the TEP Multilateral Dialogue is that it has been characterised by its informality and results-oriented nature. Both parties are keen to ensure that all available opportunities are used to maintain a dialogue on WTO matters. The TEP has

reinforced this commitment, in an area where close EU-US contacts are essential to attain our multilateral objectives.

IV. THE EARLY WARNING MECHANISM

The EU and US agreed at the Bonn Summit on 21 June 1999 the EU and the US on a set of principles and mechanisms to ensure the identification and prevention of potential trade disputes at an early stage before they escalate and risk becoming full-fledged trade disputes.

Early warning is intended to improve the capacity of each side to take the other side's interests into account when formulating policy, legislative or regulatory decisions without limiting each side's existing decision making autonomy and without prejudice to the EU and US respective rights and obligations relating to international dispute settlement, notably under the rules of the WTO.

The **present state of play** is that designed in the Early Warning statement, i.e. the TEP Steering Group serves as the forum for dealing with potential trade and investment related problems, and the NTA Task Force as the forum for other potential problems. In addition, the various transatlantic dialogues have been invited to contribute to this effect by identifying problems and offering proposals for resolution in the early warning field.

As far as the TEP is concerned, in almost all TEP meetings, be it the Steering Group or Working Groups, early warning items are brought up by both sides. In such cases, the TEP has undertaken to ensure appropriate follow-up procedures, notably by designating specific officials as contact points, and requesting reports.

The Commission services **assessment** is that the Early Warning mechanism is working very satisfactorily as regards the raising of potential trade irritants. Certainly, there are deficiencies and appropriate follow-up and resolution of the problem is not always achieved, but both sides are conscious of the importance and value of being aware of these issues from an early stage. Therefore, both the EU and the US make full use of this mechanism and are keen on raising all those potentially troubling issues and on insisting that the other Party undertakes necessary action.

As regards **prospects** of the mechanism, the Commission services and the US Administration have begun to exchange views on how the system and the procedures can be improved. This result of this exercise should however not be the creation of rigid rules.

V. TEP ORGANISATIONAL AND PROCEDURAL FRAMEWORK

The main body in charge of the day-to-day running of the TEP is the TEP Steering Group (SG). This Group is established within the institutional structure of the NTA and informs the Senior Level Group and Ministers of progress made within the TEP framework. The SG is assisted by *ad hoc* or specialised Working Groups covering most of the matters mentioned in the Action Plan.

The SG has met regularly since its creation and has monitored the realisation of TEP objectives, the implementation of agreements reached under the TEP, has identified and reviewed co-operative objectives on an ongoing basis and has constituted the horizontal

forum both for receiving input on trade matters from the different transatlantic dialogues and for bilateral consultation and early warning on trade and investment matters.

The overall assessment of this group is, in some ways, the overall assessment of the TEP. Whilst, on the one hand, the SG has been unable to ensure that many of the actions foreseen in the Action Plan be carried out as planned, it has, on the other hand, given both administrations a comprehensive overview of the transatlantic trade and investment relations, which has permitted the SLG and the Ministers to better focus and prioritise decision-making, as well as to intervene when necessary to solve conflicts before escalation.

One of the main reasons behind the fact that the work within the SG has not always provided the desired results relates to the fact that, with hindsight, the target dates set in the Action Plan proved to be over-optimistic. Furthermore, often the number of issues was too large to permit the most efficient tackling of such issues. Some times, the position of the EU or the US did not permit the necessary progress to be made. In this respect, the Commission services are engaged in an ongoing process of assessment and improvement of the functioning of the TEP organisational and procedural framework, and this will be a particularly important subject to discuss with the new US Administration.

VI. OVERALL ASSESSMENT OF THE TEP AND CONCLUSION

The achievements and the failures on specific trade matters have already been discussed and assessed. Generally speaking, and despite the existence of some problems, work has been satisfactory and progress made in areas such as technical barriers to trade, regulatory cooperation, consumer product safety, food safety, biotech and competition. In the services field, there have been positive developments on a number of issues, but on other issues the impossibility to progress has shed some shadow on the process. In other areas, such as the environment, cooperation was satisfactory particularly due to the pre-Seattle impetus, but has lost momentum since. Finally, progress in the field of intellectual property rights and procurement has been hampered by the difficulty to discuss issues which could involve a change in its policy or legislation.

As far as the regular multilateral dialogue is concerned, this has taken place notably with the objective of launching a new WTO round. While it is obvious that no EU-US consensus has yet been reached, the exchanges between both sides have certainly been positive, and continue with a view to achieving EU-US consensus where this is possible.

The TEP, as the working basis for our trade relations with the US (independently of the results in specific areas) has also had its positive and its negative sides. On the positive side, it is particularly worth mentioning:

- permitting effective EU-US co-ordination in the field of trade relations;
- maintaining communications channels open, both from a general trade relations and from specific subject-matter points of view;
- providing decision-makers with the necessary structure for political overview and control;
- providing a basis for closer cooperation between EU and US regulators in policy, legislative and regulatory areas likely to affect transatlantic trade;
- increased awareness of each side's positions and sensitivities;
- co-operative atmosphere and building-up confidence between both administrations;

- reinforcing in both sides the political commitment to EU-US relations.

On the other hand, the TEP as such has also had its down side:

- the difficulties to have established regulations and practices in both sides changed in order to take into account the other party's interests and concerns;
- the difficulties to solve problems caused by the different decision-making structures in both sides of the Atlantic;
- the impossibility/unwillingness of both sides to move on certain issues
- the large number of issues which hinders appropriate focus on priorities;
- the lack of resources on both administrations devoted to the TEP.

In view of the above, the conclusion which may be withdrawn from a general angle is, in the balance, positive. Despite the obvious difficulties in ensuring the timely implementation of the Action Plan, the TEP has proven a useful instrument for developing a more cooperative agenda in the trade and investment fields and, in particular, in serving as a forum for exchange and discussion between both sides of the Atlantic. It is evident that, in present circumstances neither the TEP nor any other structure can provide a solution to all outstanding problems in Transatlantic economic relations.

Despite the existence of frustrations and failures, the Commission services are convinced of the importance of the TEP as a whole and believe it should be given a further impetus and reinforced. However, if the TEP is going to continue and to receive further impetus, both sides will have to rethink the functioning of the TEP, notably the ways and means to prioritise and structure the dialogue in order to ensure a better rate of positive results and prevent the relatively numerous number of failures which the TEP has had in certain specific sectors. Discussions with the US on how to achieve this could start as soon as the new US administration will be in place.

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