

Priorities for the Transatlantic Economic Council

Proposals from the German Industry

Date
11 March 2008

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➤ **Regulatory Convergence**

- **BDI Assessment:**
 - Different regulatory regimes on both sides of the Atlantic cause unnecessary transaction costs for companies and consumers.
 - More harmonization and mutual acceptance serve the interests on both sides and will strengthen competitiveness and growth of the transatlantic economy.
- **BDI Position:**
 - We particularly call for a transparent and efficient impact assessment with special emphasize on the economical impact, in order to identify potential barriers and to induce their reduction as efficient as possible. The faster we move on basic issues such as methodology, the better we can address the concrete problems companies face.

➤ **Intellectual Property Rights**

- **BDI Assessment:**
 - We appreciate that the U.S. and the EU are willing to drive the issue of patent law harmonization forward. We support intelligent moves that can bring the two systems closer together.
 - The first-to-file system is our main concern, as this system significantly increases the legal certainty for the users of the patent system worldwide.
 - The damages caused by counterfeiting and piracy have increased dramatically. IPR protection also relies on effective enforcement.
- **BDI Position:**
 - We observe that in the U.S., there are ongoing discussions on a fundamental reform of the patenting system.
 - We should use this window of opportunity to step up the issue of international patent law harmonization by adjusting the systems in the U.S. and Europe, in particular by implementing the first-to-file system in the U.S. We understand that due to different legal traditions both sides have to face far-reaching

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compromises. For the sake of harmonization and for the benefit of industry worldwide both sides should stay open-minded in the ongoing negotiations.

- We should intensify our discussions on the 18-month grace period. German Industry is critically positioned to it. It is a risk for the legal certainty.
- A publishing duty of the Patent Office after a period of 18 months is also necessary for legal certainty.
- We wish to strengthen the cooperation in the international fight against counterfeiting and piracy.

▪ Current Developments:

- In April 2007 the U.S. Congress introduced a bipartisan bill on reforming the U.S. patent system (“Patent Reform Act of 2007”). Among many other important reforms, the bill would create a pure “first-to-file” system.

BDI Position:

- We welcome the efforts of the U.S. Congress to reform the U.S. patent system. The realization of the “Patent Reform Act” would bring needed clarity and certainty to the U.S. patent system and facilitate international harmonization.

➤ Investment

▪ BDI Assessment:

- Foreign investment is the driving force of the transatlantic economy. The EU is the most important source of direct investment in the U.S. and vice versa.
- Mutual investment creates jobs and stimulates innovation in both our economies. It enhances competitiveness of the transatlantic economy in an environment of growing international pressure.

▪ BDI Position:

- In order to reduce barriers to transatlantic investment, we appreciate that the G8 have encouraged the OECD to continue its work on freedom of investment, especially by identifying best practices and by further developing general principles.

➤ Secure Trade

▪ BDI Assessment:

- German industry welcomes the envisaged goal of mutual recognition of customs-business partnership programs and the roadmap agreed by the TEC on 9 November 2007.
- On 27 March 2008 the U.S. Customs and Border Protection and the European Commission adopted a more detailed roadmap towards mutual recognition of trade partnership programs. Still, the details and conditions of the agreed roadmap have to be clarified and published in order to provide a reliable

framework for business decisions, and a number of tasks remain throughout the upcoming year.

▪ BDI Position:

- Mutual recognition must result in a full acceptance of the C-TPAT (Customs Trade Partnership Against Terrorism), respectively AEO (Authorized Economic Operator) program on both sides of the Atlantic without any additional validation from the other side. Double certification procedures and double standards must be avoided.
- Mutual recognition should be achieved before 1 July 2009 when the EU customs security initiative will enter fully into force and when companies will have to submit detailed pre-arrival and pre-departure declarations.

▪ 100 % scanning:

- On 3 August 2007 President Bush signed a comprehensive homeland security bill which includes tightened security measures for maritime and air cargo as well as passenger traffic.
- Amongst others, it requires a 100% scanning of sea and air freight at foreign ports before being shipped to the U.S. (sea cargo within 5 years, air cargo within 3 years).

BDI Position:

- We sharply criticize the law as it impedes transatlantic trade by causing additional operating costs and transportation delays for foreign ports.
- The law contradicts all existing customs security initiatives, which are based on target risk analysis. In this regard, it especially contradicts the transatlantic economic framework agreement.

➤ Financial Markets: IFRS/U.S. GAAP

▪ BDI Assessment:

- We strongly welcome the SEC's regulation on allowing non-U.S. companies to file their financials using IFRS without reconciliation to U.S. GAAP.

▪ Current Developments:

- On 15 November 2007 the SEC unanimously voted to eliminate the reconciliation requirement for registrants using IFRS as issued by the IASB ("IFRS").
- On 21 December 2007 the SEC issued on its website final rules to accept by foreign private issuers in their filings with the Commission's financial statements, prepared in accordance with IFRS as issued by the IASB, without reconciliation to generally accepted accounting principles ("GAAP") as used in the U.S.

- The final rule was posted on 4 January 2008 to the Federal Register. The effective date of the rule amendments is 4 March 2008 (60 days after publication).
 - **BDI Position:**
 - We support the move by the SEC. Remaining differences between IFRS and IFRS as adopted by the EU should be eliminated.
 - We welcome the elimination to U.S. GAAP reconciliation for registrants applying IFRS under the following conditions:
 - The registrant must be a foreign private issuer that periodically reports on Form 20-F.
 - The registrant must include an explicit and unreserved statement that its financial statements comply with IFRS as issued by IASB in an appropriate note to the financial statements.
 - The auditor's opinion must be on whether the financial statements are in accordance with IFRS as issued by IASB.
 - A special temporary IAS 39 "carve out" is allowed for existing registrants, but only for two years and requires the registrant to reconcile his financial statements to IFRS as issued by the IASB.
 - We are concerned about the requirement to rely exclusively on SEC sources when guidance for the application of IFRS is not available from the IASB (final rule: footnote 123).
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Specific Sectors

➤ **Chemicals**

- **BDI Long Term Goal:**
 - Approximation of the laws governing chemicals between the EU and the U.S. in order to enable mutual acceptance of chemicals
- **BDI Short Term Initiatives:**
 - We call for solving the outstanding REACH implementation issues with regard to international trade with the general objectives of mutual recognition.
 - We call for developing a joint approach on risk assessment and risk management with regard to chemicals.
 - We call for cooperation on the implementation on the Globally Harmonised System (GHS) for the classification and labelling of chemicals in order to have one GHS.
 - We call for development of a Global HPV (High Production Volume) information portal.
 - We call for harmonization of integrated QSAR risk modelling programs.

- We call for taking into account the relevant OECD activities in the about mentioned points.

➤ **Automotive**

- **BDI Assessment:**
 - Global harmonization and mutual acceptance of standards would minimize transaction costs for companies and consumers.
 - Common standards in the technical field would lower the production costs of EU and U.S. manufacturers, without having negative effects on the product's quality and safety.
 - Future regulation should be designed with a maximum of synergies.
- **BDI Position:**
 - We call for accelerated harmonization of standards in the framework of the UN/ECE Agreements of 1958 and 1998 through joint initiatives developed by the competent regulatory agencies of the U.S. and the EU.
 - We call for cooperation in research and the setting of standards and regulations in the areas of fuel economy, vehicle-safety, and alternative fuels, especially regarding bio-fuels.

➤ **Mechanical Engineering**

- **BDI Assessment:**
 - More harmonization and mutual acceptance of standards would minimize transaction costs for companies and consumers.
 - Common standards in the technical field and in the area of machinery safety would lower the production costs of EU and U.S. manufacturers, without having negative effects on the product's quality and safety.
- **BDI Position:**
 - We call for common standards on horizontal safety aspects (in particular for electrical safety of machinery) and for common machine specific safety standards covering the most important machine families.
 - We call for cooperation in the area of other relevant technical aspects (e.g. exhaust emission of mobile machinery).

➤ **Electrical Equipment**

- **BDI Assessment:**
 - We call for initiating an exchange on conformity assessment procedures for the safety of electrical equipment.
 - We call for acceptance of the Supplier's Declaration of Conformity (SDoC) without mandatory third party certification as required by the Occupational Health and Safety

Administration (OSHA) for all electrical equipment used in the workplace.

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- The OSHA regime presents technical barriers to trade and causes high costs and time losses for European manufacturers.

▪ BDI Position:

- We call for harmonization of the requirements for conformity assessment.
- We call for acceptance of SDoC by OSHA in several steps, starting with a catalogue of low-risk electrical products.
- We call for acceptance of the use of the relevant international standards of IEC and ISO.
- We call for harmonization of the rules of the Federal Communications Commission (FCC) relating to electromagnetic compatibility (EMC) with EU requirements and EU methods of conformity assessment.