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HOUSE PRICE DETERMINANTS IN LIVERPOOL, UNITED KINGDOM

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ABSTRACT

Even though it is well established that housing features determine housing prices, such features are not normally traded explicitly and, thus, their contribution to value cannot be directly observed. The hedonic pricing model is one of the advanced valuation techniques that can be used to estimate the impact of features on prices. This paper employs the model to analyse the impact of housing features on prices in Liverpool. It also examines how purchasers in the present decade and the immediate past decade value housing features. The analysis is based on cross-section and time-series housing transaction data of about 103,730 observations covering the period of January 1990 to December 2008. It has been established from the analysis that: the number of floors, public rooms, bedrooms, bathrooms, showers and WCs; time-on-the-market; condition and type of property; and availability of glazing, garden, garage and central heating all influence house prices in Liverpool city. However, time-on-the-market has the least impact on house prices whilst the condition of the building in terms of age has the greatest impact. The

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results have also shown that house purchasers before 2000 and after 1999 value housing characteristics differently. House purchasers before 2000 value the number of public rooms, bathrooms and WCs, detached houses, and non-detached houses more than the purchasers after 1999 whilst house purchasers after 1999 value the number of floors, bedrooms, gardens and showers more than the house purchasers before 2000. The paper provides useful insights regarding the determinants of prices, which are relevant to market participants and professionals.

Keywords: Hedonic pricing model, housing features, Liverpool city, price determinants.

INTRODUCTION

The importance of landed property[1] in any economy cannot be over-emphasized. Land, for example, as noted by Abdulai (2010) is a primary commodity that provides space for human and economic activities. Thus, for many people around the world it is a very strategic socio-economic asset (USAID, 2005). It is, therefore, not surprising that in many countries in the developing world, landed property accounts for about 50% to 75% of the national wealth (Bell, 2006). Regarding the advanced world, the importance of landed property is, for example, amply demonstrated by the negative effects that the current real property market downturn is having on the economies of nations in the developed world (Abdulai and Hammond, 2008). According to Wilhelmsson (2009), the total landed property value in Sweden for instance, was almost three times higher than the Gross Domestic Product (GDP) of the country in 2006. Thus, landed property forms a major component of the total wealth of many countries.

Housing is one of the most important sub-sectors of the landed property sector. The sub-sector serves as a critical element of households' portfolio (Selim, 2008). Thus, awareness of its value or price is crucial to the owner, investors and other decision makers. First of all, the value of property to a person influences the way that person handles, preserves and uses it. Normally things that are considered to be of high value are used in more cautious way than things that are of relatively less value. It implies that knowledge of the

[1] Landed property, also called real property, connotes land and or the developments on it. In American parlance, it is called real estate.

true value or price of the thing influences the sensitivity of its usage and the extent of resources that has to be devoted to its preservation and management. Indeed, anything that people are likely to pay money for, offer opportunity for profit making and wealth creation. It is partly because of the above that housing and, generally, any other form of real property plays an important role in mortgage transactions - financial institutions are often willing to grant loans relying on the mortgagor's real property as collateral. Housing or real property is regarded as a suitable collateral asset because it is a commodity that is consumed in situ.

Furthermore, housing constitutes an important component of the real wealth of people who own it. Thus, the appreciation or growth of the value of housing translates into increases in the real wealth of owners. These can be turned into liquid properties through mechanisms as secure mortgages, asset backed securitisation, direct sales or sale and lease back arrangements. To be able to do this there is the need to be aware of the value of the real property concerned. It is, therefore, not surprising that housing has played a major role in shaping the business cycles of countries like USA, Britain, New Zealand, Australia and Canada (Hale, 2008). According to Hale, from 2000-2005, house prices rose by 78% in Australia, 65% in New Zealand, 50% in Canada, 102% in Britain and 50% in the USA and this housing boom within the period produced negative savings rates and higher consumer spending in such countries. The author, however, observes that the current weakness in house prices caused by the credit crunch has produced a downturn in consumer spending, especially, in Britain and the USA. In Britain, for instance, in 2008 there were 11.8 million residential mortgages, with loans worth over £1.2 trillion (CML, 2008). It implies that the value of housing has a major impact on households' consumption and savings opportunities (Case et al., 2004). As Tsatsaronis and Zhu (2004) observe, since the behaviour of house prices affects individual expenditure, the aggregate expenditure is also affected. House price changes affect consumer spending and business investment patterns through the wealth effect, which in turn affects the wider macro economy and the entire business cycle dynamics. The importance of house prices to real property developers, banks and policy makers cannot, therefore, be over-emphasised (Schulz and Werwatz, 2004).

The critical role that house prices play in consumer spending and business investment has triggered various studies into the housing market. The studies have covered various aspects of housing like affordability, supply, mortgages, construction of price indices and valuation. Various macro-economic variables, spatial differences, characteristics of community structure, the

environment and neighbourhood amenities all affect the housing market (Kim and Park, 2005). However, most of these housing neighbourhood and locational characteristics are not traded explicitly and so their prices cannot be directly observed. The hedonic pricing model, which is one of the advanced valuation approaches, can be used to estimate the effects of these locational and housing characteristics on the prices of landed property (Pagourtzi et al., 2003).

The hedonic pricing model has been used by various researchers to investigate the relationship that exists between prices and housing characteristics. However, such studies are conducted in different locations and geographical regions and so the impact of housing attributes on the price of the property may be different at different geographical regions. As Sirmans et al. (2005) have established in the study, the magnitude and direction of some housing characteristics are different in different geographical regions. Thus, the effect of housing attributes on house prices relate to particular housing markets or geographical locations and, therefore, a generalisation cannot be made regarding the effect of housing attributes on prices. In the light of the preceding, the objectives of the paper are to: (a) estimate the magnitude and direction of influence of housing characteristics on prices; and (b) determine the extent to which purchasers in the present decade and immediate past decade value housing attributes differently in Liverpool. A study of this nature in the context of Liverpool is notably non-existent.

The rest of the paper is structured as follows. The section, which follows this introduction, provides an overview of the hedonic pricing model whilst section three gives an overview of price determinants. Section four describes the case study area. In section five, the research methodology employed for this study is discussed. The penultimate section concentrates on data presentation, analysis and discussion whilst conclusions are summarised in the last section.

THE HEDONIC PRICING MODEL

Hedonic is defined as the weighting of the relative importance of the various components used in constructing an index of usefulness and desirability (Goodman, 1998, p. 292) whilst Rosen (1974, p. 34) defines hedonic prices as the implicit prices of attributes that are revealed to economic agents from observed prices of differentiated products and the specific amounts of characteristics associated with them. Therefore, the hedonic model

is based on the basic principle that the utility the various attributes of a particular product offers to the consumer determine the price of the product.

Authors like Goodman (1998), Malpezzi (2003) and Beer (2007) trace the origin of the hedonic pricing model to Court (1939). These authors note that Court (1939) was the first to apply the hedonic pricing model in the automobile industry to construct a price index and since then it has been applied in different disciplines. The model was used by Griliches (1958) in his study on demand for fertilizer whilst Abel et al. (2004) applied it to estimate price indexes for personal computers. Beer (2007) also used in the car industry to construct an index in Switzerland.

Regarding the housing sector, however, the model was first used by Lancaster in 1966. In his consumer theory, Lancaster (1966) provided a micro economic foundation for estimating the value of utility generating attributes. The work of Lancaster was followed by another study in 1974 by Rosen who focused on housing characteristics and price determination with less emphasis on utility. Rosen (1974) used the hedonic pricing model to estimate the implicit prices associated with housing characteristics. Thus, the study of Rosen developed the theoretical framework for the hedonic pricing model and provided the foundation for non-linear hedonic pricing models (Sirmans et al., 2005). Other studies that have applied the model in the housing sector have traditionally focused on making inferences about non-observable values of different attributes like neighbourhood amenities such as access to hospitals, schools, air quality and airport noise level (Janssen et al. 2001). In Sweden, for example, Wilhelmsson (2000) used the hedonic pricing model to assess the impact of traffic noise level on the value of single family houses. Ong et al. (2003), Berry et al. (2003) and Wilhelmsson, (2009) have extended the study of Wilhelmsson (2000) to cover the physical housing attributes like the number of rooms and bathrooms, living areas and other areas. The model has also been used by researchers like Can (1992), Ganesan et al. (1997), Sheppard (1999), Wilhelmsson (2000) Clapham et al. (2006) and Wilhelmsson (2009) to estimate households demand for various housing characteristics and to construct house price indices.

One of the main characteristics of housing and any other form of real property that distinguishes it from other economic commodities is its heterogeneity - no two housing units are the same in the sense that, for example, shirts of the same size and colour are the same in all respects and command the same price. Housing as a heterogeneous good can be viewed as a package of inherent characteristics in terms of location, quality, size and neighbourhood or environmental amenities. Thus, every housing unit is

different by virtue of, for instance, location, size, constructional details, services and aspect. Since most of these housing characteristics or attributes are not traded explicitly, their prices cannot be observed directly in the market. Therefore, in the housing sector, the hedonic pricing model is applied to estimate the marginal contribution of each property and neighbourhood characteristic to the house price. This is done by regressing the transaction price against the corresponding housing and neighbourhood attributes that determine the price (Fan et al., 2006; Wilhelmsson, 2009). In this regard, the empirical magnitudes of the coefficients of the various attributes constitute the hedonic prices of the various characteristics (Rosen, 1974). It implies that the willingness to pay for the attributes determines housing price.

Therefore, when the hedonic pricing model is used to analyse house prices, the dependent variable in the model is usually the transaction price, which is used as a proxy for the value of the house. Due to the fact that the transaction price is observable, it is seen as a better measure of the house price compared to other measures. However, as observed by Sirmans et al. (2005), there is almost no limit on the number and what independent variables to be included in the model. Providing the researcher has a strong belief that a particular independent variable can impact on the price of the house and there is data on that independent variable, it could be included in the model. The researcher or investigator, however, should be guided by the problem of multicollinearity. The problem of multicollinearity arises when two or more of the explanatory variables are very highly correlated; when this happens, only one variable should be included to avoid the problem of dependently distributed variables. According to Wooldridge (2009), in so far as this problem exists, the estimated regression coefficients may not be uniquely determined and the relative importance of the variables as indicated by the partial regression coefficients would be less reliable. The independent or explanatory variables could include both continuous and discontinuous variables. The discontinuous or discrete variables are usually coded in a dummy form and takes the variables of one if the attribute is present and zero if otherwise.

The functional form to be employed for the hedonic pricing model is often a struggled issue among investigators or researchers. In the hedonic pricing model, the functional forms include the linear, semi-logarithmic (log-linear), the quadratic and the interactive (Wooldridge, 2009). However, according to Cropper et al. (1988), economic theory places few restrictions on the form of the hedonic price function. Thus, in most hedonic pricing models the goodness of fit criterion is often used to choose an appropriate form for the hedonic

function. The log-linear functional form is, however, mostly employed in house price analysis studies (Sirmans et al., 2005). Such studies have stressed the merits of the semi-logarithmic form over the linear and the quadratic forms. Follain and Malpezzi (1980), particularly, have found that the semi-logarithmic form: (a) makes the interpretation of the regression coefficients easy – as the percentage change in the price given a unit change in the housing attribute; (b) allows for variations in the currency value of each housing characteristic; and (c) finally, helps to minimise the problem of heteroskedasticity. Despite the importance of the hedonic pricing model and its wide usage, authors like Sheppard (1999), Malpezzi (2003) and Fan et al. (2006) identified some problems associated with the use of the model. Some of these problems are discussed as follows.

Multicollinearity

As earlier noted, multicollinearity arises when two or more of the explanatory variables are very highly correlated. As already noted by Wooldridge (2009), to the extent that the multicollinearity problem exists, the estimated regression coefficients may not be uniquely determined and the relative importance of the variables as indicated by the partial regression coefficients would be less reliable. The best way to deal with the problem of multicollinearity is to discard some of the explanatory variables from the regression analysis. That is, if two or more variables are very highly correlated, the use of either one in the regression (rather than both) can capture the effect of both and so only one should be included to avoid the problem of dependently distributed variables (Wooldridge, 2009).

Heteroskedasticity

Heteroskedasticity is one of the problems associated with most regression analyses. Given the explanatory variables, the error term, u, associated with regression analysis is assumed to be normally and independently distributed with a mean of zero and a constant variance. However, if the variance of u is different for different values of the explanatory variables, then heteroskedasticity problem arises. In this case the estimates are still unbiased and consistent. However, the standard errors of the estimates are biased and so it is not possible to use the t statistics or the F statistics for drawing inferences.

To detect the problem of heteroskedasticity, the Breusch-Pagan Test is often used (Wooldridge, 2009). The problem of heteroskedasticity can be reduced by re-specifying the model or by using a heteroskedasticity robust procedure so as to yield robust standard errors.

Omitted Variable Bias

Omitted variable bias is a common problem associated with the use of hedonic pricing model (Wilhelmsson, 2009). More often, it becomes very difficult to collect data on all the quality characteristics of the properties. According to Hoesli and MacGregor (2000) in the case of the housing sector, some of the housing characteristics may be left out in the model and so the model will become biased. However, a stochastic term, *u*, is always included in the model, which is assumed to capture all the unobservable attributes.

Choice of Functional Form

A serious source of bias in hedonic pricing may be associated with functional form mis-specification. The goodness of fit criterion is often used to choose the best functional form. Box and Cox (1964) have developed a statistical test for the functional form providing the "best fit" based on likelihood ratio tests and most studies now employ this in choosing the functional form.

Other hedonic pricing problems include: (i) market segmentation; (ii) market disequilibrium and identification of supply and demand, which arises because different consumers have different tastes and preferences; and (iii) data recording problems that result in errors and outliers (Sheppard, 1999; Malpezzi, 2003 and Fan et al., 2006). Market segmentation arises because properties are located at different places with different neighbourhood characteristics. Thus, this location factor gives rise to different sub markets and property values, which are often difficult to model.

Due to the problems identified above, new methods like the decision tree and the quantile regression approaches have been proposed (Fan et al., 2006 and Sirmans et al., 2008). These proposed approaches attempt to avoid the problem of market segmentation and customer preferences that could have effects on the hedonic estimates. However, the theoretical framework is basically the same as the hedonic model – estimating the value of the utility

bearing housing characteristics and references are always made to the hedonic model. Thus, such proposed methods do not appear to be the panacea to the problems.

HOUSE PRICE DETERMINANTS

A lot of housing characteristics have been identified as the determinants of house prices. Even though there are some disagreements on both the direction and magnitude of impact that certain housing characteristics have on house prices, some of them are very consistent in the literature. In analysing the determinants of house prices in Turkey, Selim (2008) finds that the most influential determinants include water system of a house, access to swimming pool, type of house, number of rooms and house size. According to Sirmans et al. (2005) garage, time-on-the-market (TOM), number of bathrooms, age of property, house size, number of rooms and house type are some of the most explanatory variables often included in hedonic pricing.

Table 1 below presents some of the variables reported by Sirmans et al. (2005) and the number of times they appear as well as the direction they affect house prices. As shown in Table 1, each of the characteristics appears to have a particular direction even though in a few instances, goes the opposite direction. For example, 21 of the 40 studies that use the number of bedrooms as an explanatory variable record a positive effect on the price. Nine of them affect the house price in the negative direction and 10 of them have neutral effect. This means that there are some disagreements on the direction of impact of the number of bedrooms and the same could be observed for the other variables.

It is, however, important to note that these studies have been conducted in different regions and the hedonic specification forms are also different. Therefore, given these regional differences, different specification of models and alternative datasets, this finding seems unsurprising. Malpezzi (2003) also points out that different consumers may view the same set of housing characteristics differently. This is because individuals may not attach the same value to the same housing characteristics due to different tastes and preferences and so obviously will result in these variations.

From the study of Sirmans et al. (2005) as shown in the Table 1 above, the number of floors a property has appears to be positive on four occasions, negative on seven occasions and neutral on just two occasions. This finding is not surprising because on the positive side, as the floors of a property are

increased by just one level, the number of rooms and for that matter the area of the property increases and this should have a positive effect on the price of that property.

Table 1. Variables normally included in most hedonic pricing models

Name of housing characteristic	No. of times it appears	No. of positive signs	No. of negative signs	No. of neutral signs
Number of floors	13	4	7	2
Number of bathrooms	40	34	1	5
Number of public rooms	14	10	1	3
Number of bedrooms	40	21	9	10
Garage	61	48	0	13
Time-on-the-market (TOM)	18	1	8	9
Age	78	7	63	8
Square Feet (total area)	69	62	4	3
Fireplace	57	43	3	11
Pool	31	27	0	4

Source: Adapted from Sirmans et al. (2005).

Contrariwise, as the number of floors increases, homebuyers will spend much time (even if there are escalators or lifts) to get to the top floors and so comfort and pleasure decreases, which decreases the utility to be derived from the property. Therefore, as rational consumers, homebuyers will pay a lower price for the property and hence there will be a negative effect on the property. It could, thus, be argued that it is not clear as to which direction of impact the number of floors should have on the property. However, since the negative side dominates, it may be appropriate to conclude that the number of floors has a negative effect on the price of the property.

The number of rooms (bathrooms, public rooms and bedrooms) dominantly affects price in the positive direction. This means that as the number of rooms increases, the price of the property also increases. Rationally, as the number of rooms increases, the utility of homebuyers are expected to also increase because they will be able to allocate new rooms for other uses and ease the pressure on existing rooms. However, from theory, the utility should diminish beyond a certain number of rooms (Wooldridge, 2009). Nevertheless, if a log model is used, it will capture this effect and so the expectation of influence on the price is still positive. As the number of rooms

increases, the total area also increases and so it is not surprising total area also has a positive effect on the price.

Garage has a positive effect on house prices. This is so because if a house has no garage, homebuyers will be forced to park at the frontage of their houses. This, however, is not secure enough as the cars could be stolen or damaged. This lack of security, therefore, reduces utility when a garage is not in the house. As a result, homebuyers are willing to pay extra money for the garage and hence an increase in the price of the property.

TOM seems to have a neutral effect most of the times on the price of the property. The few times that it is significant, however, almost all the coefficients are negative. This supports the argument that the longer a property is advertised on the market, the more likely a seller will accept a price lower than the originally asking price.

In Table 1, age is consistently found to have a negative effect on the price of the property. This is not surprising because as the age of the property increases, the economic value of the property decreases and hence the utility to be derived from the property decreases. Furthermore, homebuyers would have to spend additional money on maintenance when properties are old. They are, therefore, willing to pay a price lower than a new property of similar but new attributes. Fire place and pool are usually represented as dummy variables and as shown in the Table, properties that have these amenities have higher prices than properties that do not have them. This is because these amenities increase leisure and satisfaction, and hence the willingness to pay more for them.

A DESCRIPTION OF LIVERPOOL CITY

Liverpool is one of the cities in the North West of England. It is the metropolitan borough of Merseyside along the eastern side of the Mersey Estuary and is well known globally for its architectural style of buildings, football, culture and music. Its reputation was further enhanced when in 2008 it received the accolade of European Capital of Culture. The inhabitants of Liverpool are referred to as Liverpudlians but are also known as Scousers, in reference to the local dish known as scouse (a form of stew), that has also become synonymous with the Liverpool accent and dialect. Liverpool's status as a port city has contributed to its diverse population, which historically, was drawn from a wide range of peoples, cultures and religions, particularly, those from Ireland.

The evidence from various research activities conducted from 2001 to the 2009 by organisations like Ecotec, Amion and the Centre for Urban and Regional Studies shows that Liverpool's housing markets are polarised; strong markets in the suburbs and the city centre coexist with neighbourhoods still recovering from housing market failure. Thus, Liverpool's housing sector is a mixed bag of affluent success ranging down to streets of unwanted terraces. Overall, the evidence shows that Liverpool lacks the housing quality and choice to attract and retain people to support economic growth within the city. Additionally, both the private rented sector and some owner occupied stock is a major cause for concern in terms of decency, quality, choice and affordability. In the northern end of the Liverpool, for example, there are a lot of pre-1919 terraced homes that do not meet the aspirations of people who work in the city. Thus, the area has many empty or abandoned properties, which people do not want to buy or move in to. In the worst affected areas, the Housing Market Renewal Initiative (a Housing Market Renewal 10 - 15 year programme launched in February 2003 working to address housing market failure) is trying to rectify the failing housing market by working with private house builders. Whereas some streets of older properties are being acquired for demolition to make way for a wider selection of new properties, many other older homes are being refurbished to bring them up to modern day requirements for the many people who still enjoy living in them and find them more affordable. Liverpool's Housing Strategy is to deliver 24,718 new homes by 2016/2017 and to reduce overall vacancy levels in all type of housing to 5% by 2014.

Despite the polarised nature of its housing markets, Liverpool is at the heart of the Northern Housing Market Area within Liverpool City Region alongside Knowsley, Sefton, Wirral, and West Lancashire. The prices of the most desirable properties in Liverpool rose dramatically between 2000 and 2008. This was partly due to the national trend, but in Liverpool's case this was further boosted by the city's rapidly growing economy bringing new and better jobs.

The winning of Capital of Culture status for the year 2008 also helped. The current recession has, however, seen values drop by lower percentages than elsewhere in the United Kingdom. Liverpool is made up of various areas but this study concentrates on the areas governed by Liverpool City Council (LCC), often referred to as Liverpool city. In terms of the residential property market, the LCC's previous Housing Strategy (2005/08) has classified Liverpool city into sub-areas with different housing market characteristics, which are described as follows.

City Centre

The growth of residential development within Liverpool City Centre is well established. Since the mid 1990's more people have wanted to live in the City Centre. Between 1971 and 1991, the number of people living in the City Centre had dropped from 3,600 to 2,340 but after the mid 1990s, this trend was reversed. By 2009, the number had reached almost 15,000. When Liverpool Vision was formed in 1999, City Centre Living was one of its main priorities. LCC has endorsed City Centre Living since 1993 and included it in the 1996 Draft Unitary Development Plan.

In the 1990's, Liverpool had many empty office buildings but some of these were listed and could not be made into modern offices. Additionally, there were also empty spaces above shops and in Victorian warehouses. These vacant buildings and spaces have now been changed into beautiful homes for those who wish to live in the City Centre of Liverpool. Even though there are now less empty buildings that can be changed into homes, demand is still strong. People are looking for large, luxury two and three bedroom homes. As a residential area, the City Centre has seen nearly 4,500 new dwellings completed in the last five years.

Until the current credit crunch took hold across the country, between 2000 and 2007, there was a large amount of capital and rental growth in property values in the City Centre. Instead of one bedroom studio flats, people were interested in buying two bedroom apartments. Until early 2008, these apartments were selling for an average price of £153,000. The biggest rise in prices was witnessed in the traditional Georgian terraces in the Hope and Canning areas of the City Centre. Prices rose from £97,500 in 2000 to an average of £227,000 in late 2005, a rise of more than 100% (that is 132%) in 5 years; this was a much higher increase than most of the rest of the United Kingdom.

Albeit house prices have stalled and started to reverse around much of the country with the current recession, it is predicted that the average price of Liverpool homes may not tumble as much as elsewhere since they started from a very low base and played catch-up with the rest of the United Kingdom. Indeed, between April 2008 and April 2009, prices within the City Centre actually rose by 22%, even though this was for higher value more desirable properties which are still selling. However, the market for average priced apartments in the L3 postcode, which includes the Liverpool Marina area, prices fell by 9% during the same period.

Inner Core (excluding the City Centre and Waterfront)

This part of the city has many of the characteristics associated with vulnerable housing markets and the area is the main focus of the regeneration activity. Characteristics of the area include concentration of social, terraced housing and improvements to properties in the 1970s are time-expired.

Waterfront

This area provides a major opportunity for new economic and development and alongside of the Inner Core; it is one of the main areas of focus for delivery of housing growth. The renaissance of the waterfront has seen the demand and prices for quality homes and apartments rise to at or sometimes even above the national average prices.

Suburban Core

The area contains the largest concentrations of the city's most affluent communities with a tenure portfolio heavily skewed towards owner occupation. Noticeable features of the area include low levels of empty and unfit properties, low levels of social rented accommodation and high levels of house price growth.

Central Buffer

The main characteristics of this area are diverse patterns of house prices, significant levels of disrepair and limited areas experiencing significant levels of unpopularity.

Southern Fringe

It is an area characterised by high levels of social housing and it is in transition as a result of economic development activity put in place some ten years ago.

Eastern Fringe

Characterised by a number of large former council estates, it has the most skewed tenure profile in the city of Liverpool.

RESEARCH METHODOLOGY

The three approaches often adopted in the social sciences to conduct research (qualitative, quantitative and multi-methodology) were examined as to their appropriateness and the quantitative research methodology was ultimately adopted. Specifically, the hedonic pricing model was used to estimate the influence of the various housing attributes on prices. As already explained, the hedonic pricing model is based on the premise that the price of a good is determined by the utility that the attributes of a particular product bears. When the transaction prices are regressed on the various attributes, the empirical magnitudes of the coefficients of the attributes constitute the hedonic prices of the attributes (Rosen, 1974).

The dataset used for the study comprised of property transactions in Liverpool city from the first quarter of 1990 to the fourth quarter of 2008. However, not all the property transactions between these periods were used for the analysis – this is because some of them did not constitute a fully consistent body of data for the purpose of house price analysis. Notably, any transaction that did not have data on any variable or housing characteristic was excluded since the inclusion of such a transaction was likely to lead to bias in the estimation. Again, properties that were likely to have been sold at prices which may not represent open market price, for example, sales to sitting tenants were excluded as the inclusion of such transactions may have introduced some bias in the results. Lastly, data on any transaction that seemed like an outlier was also excluded. An outlier here is defined as a transaction with log sales prices more than three standard deviations away from the annual mean. Since the outliers are extremely smaller or larger than the other observations, their inclusion could have cause bias and inefficiency in the parameter estimates. After cleaning the data, the empirical analysis was based on both cross-section and time-series housing transaction data of about 103,730 observations between 1990 and 2008 inclusive. The data was sourced from real estate agents. Generally, in Liverpool, residential real estate agents tend to be localised and, therefore, the data was obtained from prominent agents whose operations cover the sub-areas in Liverpool city like Halifax Real Estate

Agents, Beresford Adams and Entwistle Green. Table 2 below defines the variables that were used in the hedonic regression analysis.

Table 2. Variable Definitions

Variable	Definition
realprice[2]	Sale price adjusted for inflation; ln(realprice) is the dependent variable
numfloors	No. of floors the property has
numpublic	No. of public rooms, which include living rooms, dining rooms and kitchens.
numbedrooms	No. of bedrooms
numbathrooms	No. of bathrooms
numshowers	No. of showers
numwcs	No. of WCs
Time-on-the-market (TOM)	That is, the no. of days between when the property is advertised and when it is finally sold
newbuilding	1 if house is a new building, 0 otherwise
heating	1 if house has a central heating, 0 otherwise
glazing	1 if house has a glazing, 0 otherwise
garden	1 if house has a garden, 0 otherwise
garage	1 if house has a garage, 0
Dwelling type	1 if a house has a particular house type like detached, flat, non-detached, 0 otherwise.

As earlier noted, market segmentation is one of the problems of the hedonic pricing model and it arises because properties are located at different places with different neighbourhood characteristics giving rise to different sub-markets and property values, which are often difficult to model. This problem was encountered in the study. Liverpool city as already explained is categorised into seven zones with different housing market characteristics and within each zone can even be found different neighbourhoods with further sub-markets. This explains why even though location is generally known to be one of the factors that affect price it was not included as a price determinant or variable in the Table above. In order to find out if homebuyers of the present and immediate past decades value the housing characteristics in the same way,

[2] Because the dataset covers a period of almost 20 years, the prices have been adjusted for inflation so as to take any inflationary effect from the estimates. Therefore, the prices are all real prices.

the data was separated and grouped into two with the first group covering the period before 2000 and the second group covering the period after 1999.

The semi-log or log-linear functional form was used. Even though economic theory puts few restrictions on the form of the hedonic price function to use and so any form could be adopted, the log-linear functional form has been widely used. This functional form has also been found to perform well in terms of both the goodness of fit criterion and a model's ability to accurately estimate the marginal contribution of each attribute to the price of the property (Sirmans et al., 2005; Wilhelmsson, 2009). The dependent variable of the log-linear functional form is measured in log and this allows the marginal utility of each housing characteristic to be measured in percentages – that is, the log-linear or semi-logarithmic form allows for variation in housing characteristic prices across different property price ranges within the sample, an advantage both the linear or the quadratic functional form do not possess. The functional form for the model is, therefore, presented as:

$Y = \beta_0 + \beta_1 X + \beta_2 R + u$, where

- Y represents the dependent variable, the natural logarithm of transaction price of the property.
- β_1 represents the regression coefficients associated with the exogenous independent variables (the housing characteristics specified above), X.
- R is a matrix of dummy variables that represents the various types of housing in the sample and availability of garage, glazing, central heating and garden in the house.

The dummy variables take the form of one if the house has that type of characteristic and zero if otherwise.

For the housing type, the dummy takes the form of one for a particular type of housing like flat and zero if otherwise.

The stochastic or error term u represents all relevant attributes that are not captured by the matrix X. This means that no omitted variable bias problem exists.

To deal with the problem of heteroskedasticity, the heteroskedasticity robust procedure was used and so the standard errors were considered more robust leading to a reduction of the various t-values. Luckily, the correlations among the chosen variables were not too high and so no variable was omitted

from the analysis. The problem of multicollinearity was, therefore, reduced to a large extent even though all the variables were included in the analyses. Thus, even though the hedonic pricing model has its own problems, as discussed above, most of them were dealt with in this study and, therefore, it probably serves as a reasonably good model for the study.

DISCUSSION

Descriptive Statistics

Table 3 below presents the descriptive analysis of the variables used in the regression model. As shown in the Table, the average real price over the period is almost £109,000. The standard deviation is around 61% of the average price. The lowest transaction price over the period is as low as £43,700 whilst the highest transaction price (for that matter the most expensive house) over the period is around £2 million. Each house transacted over the period has an average of 1.5 number of floors. The average number of public rooms, bedrooms and bathrooms are 1.6, 2.5 and 1 respectively; that is, the ratio of bedroom to bathroom is around 2.5:1.The average period between when a property is put on the market for sale and when it is actually sold is 122 days and the lowest and highest times on the market are 1 and 3237 days respectively. This means that it takes an average of about four months for a property to get sold after it has been advertised and this supports the argument that the property market is not as liquid as compared to the equity markets where equities are transacted within hours or days.

Table 3. Summary statistics

	Mean	Std. dev	Min	Max
realprice	108 824	65 982	43 697	2 000 000
numfloors	1.52	0.43	1	21
numpublic	1.63	0.81	0	11
numbedrooms	2.48	1.19	0	36
numbathrooms	0.98	0.35	0	27
numshowers	0.26	0.55	0	11
numwcs	0.18	0.32	0	12
TOM	122	141	1	3237

Hedonic Regression Analysis

Table 4 below shows the empirical results from the regression pricing model. The estimated coefficients of the variables are presented in percentages with the corresponding t-values in parentheses. Table 4 shows three empirical results: the first column shows the variables used in the study; the second column indicates the results from the regression using the entire dataset; and the third column shows the results obtained by using the data from 1990 to 1999. Column four also contains the results from the dataset from 2000 to 2008.

As shown in the second column of the Table, the regression model explains approximately 75% of the total variation in house prices, which is represented by R^2. This means that about 75% of the variation in house prices are actually explained by the model. Only 25% is left unexplained. All the estimated parameters are statistically significant at a 5% significance level. This is because all their t-values have an absolute value of more than 1.96, which is the critical value for 95% confidence interval.

Table 4. Hedonic model estimates

Variable	The entire dataset	Dataset from 1990 up to 1999	Dataset from 2000 up to 2008
numfloors	1.68% (5.87)	1.42% (3.86)	1.98% (3.05)
numpublic	13.32% (52.84)	14.28% (41.49)	11.29% (32.86)
numbedrooms	19.22% (32.12)	17.13% (33.43)	20.36% (32.29)
numbathrooms	13.58% (15.56)	15.33% (6.31)	12.91% (17.21)
numshowers	14.72% (28.38)	12.34% (12.23)	15.22% (32.54)
numwcs	7.69% (22.06)	8.74% (17.15)	4.60% (9.32)
TOM	-0.72% (-63.12)	-0.58% (-42.34)	-0.87% (-22.31)
oldbuilding	-48.23% (-12.61)	-	-40.93% (-13.13)
noglazing	-8.20% (-13.44)	5.92% (7.80)	-
nogarden	10.8% (14.11)	3.11% (2.32)	13.52% (3.13)
nogarage	-10.43% (-19.23)	-15.77% (-19.02)	-19.64% (-18.76)
detached	19.73% (34.13)	19.33% (35.41)	8.00% (9.67)
nondetached	8.69% (13.23)	10.21% (12.25)	3.92% (0.27)
noheating	-28.87% (-54.42)	-14.25% (-32.08)	-
R^2	74.81%	76.86%	68.73%

In the third and the fourth columns also, the model explains approximately 77% and 69% of the total variation in house prices respectively. This means that only about 23% and 31% respectively are left unexplained. All the estimated parameters are statistically significant on a 5% significance level in the third column and with the exception of nondetached (non-detached houses) all the other estimated parameters are statistically significant at a 5% significance level in the fourth column.

The number of floors records positive coefficients in all the three columns. In the second column, the coefficient is 1.68%. This means that if the number of floors a house has increases by 1 level, the price of that property increases by some 1.68%. As shown in the third and the fourth columns, the coefficients of the number of floors are 1.42% and 1.98% respectively. This suggests that if the number of floors a house has increases by 1 unit and the house is transacted before the year 2000, the price of that house will increase by only 1.42%. Where the house is transacted after the year 1999, however, the price increment will be more – up to 1.98%. The reason for this difference may be due to the fact that the properties transacted after 1999 may have elevators and lifts and so even if the number of floors increases, the homebuyers could still get easy access to the top floors and so value the utility they would get from the additional space they are getting more than the difficulty in terms of accessibility. The positive sign supports the argument that as the number of floors increases, the number of rooms and for that matter the total area of the property also increases. As the area increases, homebuyers are able to reduce overcrowding in the property and hence increase their utility. This will, therefore, make them willing to pay a higher price for the property.

The numbers of public rooms, bedrooms and bathrooms all have the positive expected sign in all the three columns. The number of public rooms records a coefficient of 13.32%, 14.28% and 11.29% in the second, third and fourth columns respectively. This means that as the number of public rooms increases by 1 unit, the price of properties increases by an average of 13.32%. However, if the property was transacted before 2000, the price increment is a bit higher – up to 14.28%. A unit increase in the number of bedrooms increases property prices by an average of some 19.2% and a unit increase in the number of bathrooms increases property prices by an average of 13.58%. Thus, in terms of the impact of rooms on house prices, public room has the least impact whilst bedroom has the greatest influence.

It is worth noting that home buyers after 1999 value the number of bedrooms more than homebuyers before 2000. This is because if the number of bedrooms increases by 1, the former are willing to pay an additional

20.36% of the price of the property as against 17.13% the latter are willing to pay. It is also clear that homebuyers before 2000 value the number of bathrooms more than homebuyers after 1999 – with a difference of more than 2% of the property price. The reasons for these differences may be due to the taste and preferences of the customers at that time. With the reason given above for the coefficient sign on the number of floors, the positive sign on the number of rooms is not surprising. As the number of rooms increases, the total area of the property also increases and hence the price increases.

In the case of the number of showers and the number of WCs, they are all significant at a 5% significance level and they all have the expected positive signs for all the three datasets. However, the magnitude of impact between the number of showers and the number of WCs is quite high. On the average, if the number of showers increases by 1 unit, the price of the property increases by almost 17% but if the number of WCs increases by 1 unit, the property price increases by almost 9%. This means that on the average, the impact that the number of showers have on the property price is higher than the impact of the number of WCs and this observation cuts across in all the three datasets.

One other clear observation that needs to be mentioned is how customers after 1999 and those before 2000 value the number of showers and the number of WCs. While customers after 1999 are willing to pay around 20% of the price for 1 unit increase in the number of showers, customers before 2000 are willing to pay only 14%. Regarding the number of WCs, however, the homebuyers before 2000 are willing to pay 12.6% of the price for an additional increase in the number of WCs, which is higher than the only 7.3% of the price that the homebuyers after 1999 are willing to pay. These differences again could be attributed to the tastes and preferences of the customers.

TOM is also significant at a 5% significance level and has the expected sign in all the three datasets. The second column in the Table shows that on the average, if time on the market increases by 1 day, the price of the property decreases by 0.72%. The price even decreases further to 0.87% if the transaction was done after 1999. This finding supports the argument that as a property stays on the market for long, the more likely sellers of properties will reduce the property price so as to be able to sell them.

The condition of the building (that is, whether it is old or new) is also significant at a 5% significance level. If the property is an old building, the price of that property is almost 48% lower than when it is new. This is found to have the greatest impact on the price of the property. If the property is old, homebuyers have to spend additional money to do some maintenance in order

to raise the quality of the house to get the same utility as new houses will provide. In this case homebuyers estimate an extra expenditure of almost 48% of the property price.

The availability of glazing also has an effect on property prices. It is statistically significant at a 5% significance level. When the entire dataset is used, the direction of effect is negative. This means that if a property has no glazing, the price of that property decreases. For properties sold before 1999, however, the direction of effect is positive. This means that if the properties sold during that period do not have glazing, the price of that property rather increases.

The availability of a garden is significant in all the three datasets and the direction of impact is negative if the property has no garden. If a property has no garden, on the average the price of that property is 11% lower than if it has a garden. This finding is not surprising because the presence of a garden is supposed to add value to the environment and for that matter utility to the homebuyer. It was, therefore, expected that if a property has no garden, the price of that property will be lower than a property with a garden and this finding confirms the existing literature.

Garage also has the expected sign and it is statistically significant at a 5% significance level. If a property has no garage, the price of that property is 10% lower than the price of similar property but with a garage. This observation cuts across all the three datasets. The magnitude of impact increases to 16% when the property was transacted before the year 2000 and to 20% when it was transacted after the year 1999.

The type of house is also statistically significant at a 5% significance level. Detached houses are the most expensive houses in Liverpool city. The prices of detached houses in the city are 20% higher than the prices of flat houses and are 11.04% (19.73%-8.69%) higher than prices of non-detached houses. The prices of non-detached houses are also 8.69% higher than the prices of flats. The last housing characteristic is the availability of central heating and this is statistically significant at a 5% significance level. If a house has no central heating, on the average, the price of that property is approximately 29% lower than a similar property but with central heating.

CONCLUSION

This study has employed the hedonic model to investigate the determinants of house prices in Liverpool. Overall, the hedonic model explains

approximately 75% of the total variation in house prices across all the three datasets. All the housing characteristics are statistically significant at a 5% significant level when the entire dataset is considered. This means that the determinants of house prices in Liverpool include all the independent variables used in the study namely: number of floors, public rooms, bedrooms, bathrooms, showers and WCs; TOM; condition of the property; availability of glazing, garden, garage and heating; and type of property - whether it is detached, non-detached or a flat. The condition of the building in terms of age has the greatest impact on housing prices. The prices of old properties are approximately 48% lower than prices of new properties. TOM is also found to have the lowest effect on house prices with less than 1% decrease in house prices when the TOM increases by a day. Furthermore, detached houses are found to be more expensive than non-detached houses and flats.

Regarding how homebuyers before the year 2000 and after the year 1999 value the various housing characteristics, it has been established that the two groups of homebuyers value the housing characteristics differently. The former group of homebuyers value the number of public rooms, bathrooms, WCs and detached and non-detached houses more than the latter group of homebuyers whilst the homebuyers after 1999 value the number of floors, bedrooms, garden and showers more than the homebuyers before 2000. The study provides useful insights regarding the factors that influence prices, which are relevant to market participants and professionals.

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MULTILEVEL GOVERNANCE – PARTICIPATORY DEMOCRACY AND CIVIL SOCIETY'S ROLE IN GOVERNANCE IN THE PERSPECTIVE OF THE LISBON TREATY[1]

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It seems to be a quantum leap: from seeing Switzerland with rather unique mechanisms of direct democracy as outsider of European political culture – in many cases being even ridiculed for what was seen as oddity – to the European

[1] Elaborated and Extended notes for the NGO-Forum 2009 in Orebro, Sweden.

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Union, now stating in the potential Treaty (Council of the European Union, 2008):

> In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible.
> (15:1)

> And this is understood as demand that [t]he institutions shall maintain an open, transparent and regular dialogue
> (11)

There are other relevant messages in the Treaty when it comes to participatory democracy – not least the one on the citizen's initiative which allows the people to be pro-actors of policies, i.e. demanding the Commission in a referendum to get active (11.4 with reference to 24).

On the one hand I do not want to enter into this debate – I think it is a rather specific one; nor do I want to enter into the debate on something that may cause deep hesitation to even go further in thinking about participation in the framework of the Treaty – the fact of an inflation. The term participation occurs 54 times in the Treaty, we can find the term participate 38 times. And one can surely ask then if there isn't the danger of participation loosing any real meaning.

Leaving this inflation aside there is another issue that can be seen as ground for being in very principal terms sceptical. Article 10:3 reads

> 3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.
> (10:3)

It marks the tension between representative democracy as it is laid down in Article 10.1. and the claims of participatory democracy – a tension that has to be seen as hugely important for all attempts of participatory democracy going hand in hand with representative principles.

It is a simple logical tension: by such introduction the principle of representation is itself questioned and we find a paradoxical tension of following kind:

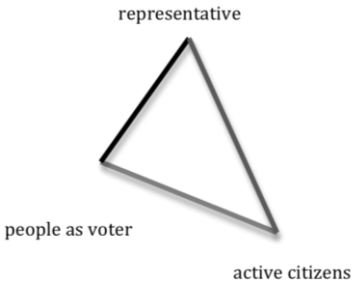

Figure 1.

Leaving the very principal difficulties aside, there are interesting features that are in particular ways linked with the fact of multilevel governance as it is seen specifically in the EU-context.

First, the general pattern is a shift from governing to governance – this seems to be a secular trend, opening more space for directly including citizens into the process of preparing, making and implementing decision. It is important to highlight that governance is to some extent a matter of differentiation and changing the feature of the state or statutory system – to some extent only consciously and pronouncedly separating between different phases of a process:

Decisions			
preparing: ventilating needs	planning	deciding	Implementing

Figure 2.

Second, in general we are now dealing not only with different levels of reference but – so the claim and envisaged architecture – with the direct and conscious interaction of and intervention in cross-level-governance.

	local		regional		national		supranational	
Preparing								
Planning								
Deciding								
Implementing								

Figure 3.

Third, we still have to get to a final feature of this pattern, namely the conscious integration of citizens into the architecture.

	local			regional			national			supranational		
	citizen	NGO	institution	c	n	i	c	n	i	c	n	i
Preparing												
Planning												
Deciding												
Imple menting												

Figure 4.

Any further attempt to present this in some visual form goes beyond capacity and it seems to be sufficient at this stage to bring forward a provocation: the debate is to a large extent jeopardised by the traditional understanding of participation. Strictly speaking the term goes back to the Latin language and translates from pars capere into taking part. This is quite different to what we get when looking at synonyms – they lead us for instance to contributing, input and sharing. For me such a shift from tribuere to capere – from giving to taking – seems to be quite remarkable.

So, it may be worthwhile as well to look primarily at what we actually do and can contribute and how we fit into the entire system of governance.

– One remark seems to be necessary before we move further: governance, seemingly a new pattern in policy-making, is in my view not really new. New is at most the structured and conscious way of dealing with processes of governance and then the attempt to look at these processes by way of applying some strict and systematic measures, as they had been outlined in the White Paper on Governance, published by the European Commission in 2001 (European Commission, 2001). These are coming across under five "Principles of Good Governance", namely

- Openness
- Participation
- Accountability
- Effectiveness
- Coherence

(ibid., 10)

Now, I will look mainly at the following questions:

1) Who wants to take part by contributing? – And being at the NGO-Forum means of course to look for a more positive definition of NGOs and civil society of which they are part.
2) To what and by which means can such contribution be undertaken?
3) What are the expectations of such contributions?
4) Finally, what is needed to contribute in this way?

Let me briefly state from where I am coming: having worked for a long time in advocacy and political groups, I got involved in academic work on the Third Sector while working on my PhD and later when I had been looking for "something new", searching for a field for my academic work – this had been in the 1980s, the question of European social policy emerging as a rather thin stripe at the horizon and the field of NGOs only a tiny, really marginal moment of this stripe. Academic work needs practice; and it needs this especially when it comes to – at the time – such an exotic field.

So I got in touch and got involved in building up what now seems to be a strong EUropean civil society. I had been involved in various positions and roles and can probably say with some reason that I know the development from within, and at the same time continuing from this perspective research on this topic. Probably not as academic as the work of some of my colleagues in the academic world – as they undertook the blueprint empirical work, not always having a foot close into the door. And not as pragmatic as some of my colleagues in the NGOs who had been facing the day-to-day challenges and their permanent threats and opportunities.

1. WHO?

Answering this question can be kept brief – though there are of course several academic discourses which raise complex questions about individual organisations, specific types and finally as well the "sector". This debate does not deserve further discussion here. Important is to maintain a wide understanding and in particular to look at the historical dimension. A crucial point is that we are in various regards confronted with a movement rather with organisations in the strict sense. Of course, in today's terms the focus is quite naturally on organisations, for instance in the understanding of the John-Hopkins Comparative Nonprofit Sector Project, defining them by five "features" and two "restrictions". Relevant organisations had been characterised by some formal structures, their private, i.e. non-governmental

character, not being profit-distributing, self-governing and voluntary; furthermore they had been considered as non-religious and non-political (see for instance Salamon/Anheier, 1994; 13-15).

This definition had been as well accepted as guiding the first EU-official document, dealing with the topic, published by the European Commission in 1995 (European Commission, 1995). However, looking historically at these organisations it is obvious that they emerged in different respects as processes against rigid structures. In very broad terms we can see them as externalised parts of the increasingly institutionalised capitalist market – as a kind of counterpoint; and we can see this as well reflected in their interpretation as countering market failure on the one hand and state failure on the other hand. It is important to highlight this historical background in order to maintain a dynamic understanding that goes beyond a structuralist approach.

In this respect a tiny detail appears to be interesting: the European Commission's document from 1995 can be found on the website of the DG enterprise. It is worthwhile to mention it and just to think for a second about it. Is it a matter of usurpation? Or is it a matter of acknowledging the important economic role? Or even a matter of redefining the economy, acknowledging its wider meaning?

2. WHERE AND HOW?

Keeping this in mind we can easily see that any contribution is in particular geared towards the interface. It must appear somewhat strange that we find on the one hand a certain negative sense of the sector: non-profit and non-governmental. The frequently used term third sector may be more helpful, expressing that it is a sector that allows the development of some kind of fortitude for the entire system. It is about allowing the other sectors functioning with a limited logic or rationality. This implies on the one hand a limitation of the sector as much as it is itself characterised by a specific particularism; and it is about the sectors standing as acting as complementing force. This is only to some extent grasped if we look at the negative side (non-profit and non-governmental). It is as well about the fact that the relevant organisations play a positive role in maintaining some kind of completing function. Such function can mean taking over certain soci(et)ally necessary functions that are otherwise neglected; or it can mean to act as vanguard or advocate. This means that these organisations are not defined by their negativity but by the positive role they play in society.

However, we have to be careful. Positive is not meant to provide an assessment in terms of values: many of these organisations are "negative": we find racist movements as well as we find extremely conservative organisations with respect to equal opportunities and many others could be added. However, the "positive" aspect is about their function. For this we have to consider that these organisations are in one or another way result of a process of differentiation. They fulfil functions that broke away from other parts within society – seemingly we return to the negative definition. However, the difference is that we actually do not start at all from characterising these organisations or the sector. Instead, we start from looking at society at large and located within a concrete society the role of different actors, in this context the organisations and movements in question. This entails possible conflicts and tensions and has nothing to do with any valuation.

3. EXPECTED OUTCOME

One of the central – or even the central – outcome is usually seen in two factors: (i) We find major service providers organised as NGOs; (ii) NGOs contribute to democracy and foster democratic values.

Let me be at least a little bit provocative on these two points – with respect to the first factor I want to say that the organisations in question are not service providers but in some way the major undermining factor when it comes to service provision – and we can see this as a positive factor. Where we find strong NGOs in form of self-help groups, in form of civil society movements, as matter of informal support networks where social services in the strict sense – as professional services – are actually not needed. Or they are at least not needed in the same extensive way as they would be otherwise. Paradoxically: they make professional services much more needs-oriented than they would be without such networks.

Coming to the second point, I dare to say that they are not contributing to democracy. It is more to see them as "democracy itself". Democracy is today commonly seen as representative democracy – and there is surely good reason to refer to such a system as it is not least based on the separation of power. However, we have to see as well that with this emerging new state and society of the modern world we enter a world which is characterised by two rather fundamental tensions: the one being the tension between society and state, the other being the tension between the economy and its civil 'counterpart'.

We can come back to the unequal triangle from above which looks in its more basic form like the following:

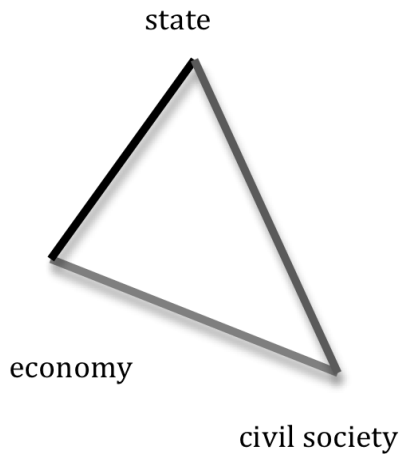

Figure 5.

This had never been an equal-sided triangle as the link between economy and state had been much stronger than the one between state and civil society.

A large part of the problematique can be seen in the fact that in today's world even the voting system is, if not a market itself so to a large extent depending on the economic standing. It is in its simplification the competition for votes – indeed on a market where votes are exchanged against promises of performance, of benefits for the voter rather voting for somebody who is truly representing interests in a wider contest of different societal powers. Such system is hardly geared towards a general interest. Rather, particularism is paradoxically not least a matter that is maintained in this "representative system" – and the critique is not so much directed towards the three agents – market, state and civil society.

Rather it is geared towards the fact of the braking points between the three corners, each corner being caught in the limited array of self-maintenance.

The result is easily a relationship of domination by which the economy gains the role of being basis and superstructure at the same time (as we see it

in particular in current politics: the domination of neo-liberal actors from the economic side over the other players which can take rather different forms[2]).

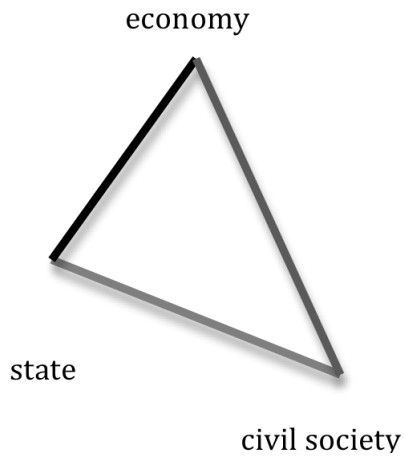

Figure 6.

Or: a chaotic system of different players, characterised by situational advantages and lack of strategic planning –

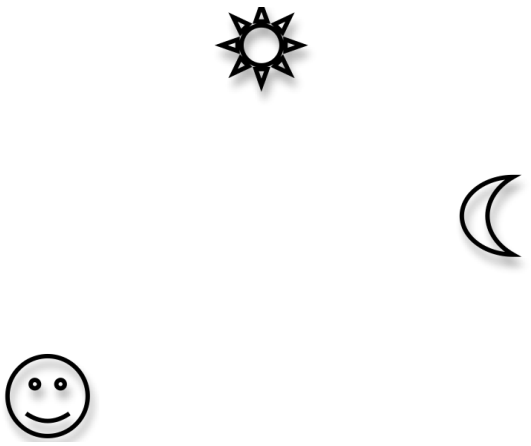

Figure 7.

[2] This may be just a matter of suppression but it may be also a matter of subordination but adaptation, as we can see it for instance in the managerialist approaches to equality or the profitable orientation on environmental topics.

– And I leave it to you to decide which symbol stands for which agent – and one may even ask oneself if any fixed attribution of roles actually does exist.

Figure 8.

4. REQUIRED FRAMEWORK

So far we had been to a large extent caught within a holy trinity – and I want to propose to overcome the limitation of this approach, now looking at the requirements for participatory democracy. It should be clear from the outset: (i) participatory democracy cannot and should not even try to replace representative democracy – and it is even problematic to speak of a complementary role. It is as complementary as potatoes are complementary to apples – the French language may propose a close relationship between the two but we should not be tempted to follow the simple terminological proposition. This, of course, equally forbids seeing them as opposites like hell and heaven, as the one is growing above the ground, the other beneath and in the soil.

Thinking complementarities is difficult – but we cannot get away with forcing complex questions into straightjackets. (ii) And we should not allow ourselves falling into the trap of looking for too much institutional safeguard. As important as that is, it is of crucial importance to recognise that a decisive moment of these organisations and movements is by definition their localisation somewhat outside of the system.

In particular as long as we maintain the unequal relative strength and the disjointing of the economy from society and the separation between state and demos, we have to face the fact of a severe tension.

Thus I propose not to look primarily at a "just space for NGOs in an unjust world". Instead we should claim a more substantial shift that acknowledges not least the need of regaining of a demos.

Commonly demos simply refers to the (ordinary) people of a commonality of the ancient Greek state.

If we take this as point of departure we can see the need for a shift as well in the currently only emerging debate on participatory democracy. Democracy has to be brought back to its substance, substance being defined as essential nature.

And this is not primarily about processes of decision-making. Rather, we have to put something else at the core of democracy: the social as being geared to enhance the extent to which people are able to participate in social relationships under conditions which enhance their well-being, capacity and individual potential (Beck et al. 2007: 25).

Now we can leave the trinity behind and move towards a more fruitful approach that allows looking at the organisations in question not as one sector defining and defending own orientations and rights. Instead, we face now a sector that contributes very specifically to social quality in the understanding just outlined.

Figure 9[3].

[3] Taken from the website of the European Foundation of Social Quality: ww.socialquality.org

Actually this view on conditional factors should be complemented by a set of constitutional and normative factors, all shown together in the following overview:

Conditional Factors	Constitutional Factors	Normative Factors
* socio-economic security * social cohesion * social inclusion * social empowerment	* personal security * social recognition * social responsiveness * personal capacity	* social justice (equity) * solidarity * democratic based citizenship * human dignity

Figure 10.

Taking this together, it means not least that we are able to overcome the residual role when it comes to defining the "third sector".

Important is that we have now a focus towards we can relate the different actors and activities. Making a further step away from thinking in the triangular model we may try to contemplate on different sets of "open concentric circles":

* One set would be located in the four corners of the factors, looking for the contribution of different actors – but as well the opportunities to contribute.

The actual question would be: To which extent do and can actors contribute to socio-economic security etc.? And furthermore: in which way do and can different actors contribute (the latter requiring the "open circles"). For instance are business organisations surely "closer" to economic issues. However, this does not mean that economic activities or activities securing the socio-economic status are not relevant when it comes to NGOs or civil society organisations. – Cum grano salis, this can be examined for the different factors.

* An entirely different set would be oriented towards the centre, looking at the contribution of the different agents to "the social" and its quality.

The question then would be around the role played towards integrating the different factors. Are agents "remaining in their corner" or are they are actually linking the different poles? In which way are they actively contributing to the further development of the social by actually allowing people to actively engage in and influence their social being rather than forcing them into socially isolated roles?

This can have very different dimensions and I do only want to mention a few points which are in my view crucially important when it comes to multilevel governance and the EU.

1) Mutuality seems to be an issue that is at the centre in three ways.

* On the one side the further shift of policymaking away from the local and national level means that we face a need for maintaining identity. This is increasingly difficult (and can be seen in the "precarious, free-floating individual of postmodernity"), but on the other hand it requires the manageable space in which action is taken and decisions are prepared. The "democratic deficit" is not least a deficit of recognising local policies – the needs and their recognition on the central level. His goes far beyond the need of institutional reforms on the central level. And I am sure that there is more to be done to make the Open Method of Coordination really work. The reason is quite simple: from what we know from the different member states, the democratic process actually barely reaches really the level of "every day's life of ordinary people".

* On the other side we find needs of creating new mutuality. We can see this most clearly when it comes to specific groups which build some new kinds of solidarities and mutual support systems, I think of special importance are here – for obvious reasons – young people and, to the extent to which resources can be secured, people living in poverty.

* Furthermore, the interpenetration of economics by radical neo-liberalist politics had a counter-effect, namely the strengthening of some germs of an alternative economic policy. The social economy – for many without doubt part of the organisations we are looking at – could enter certain areas and actually changed at least some orientations of the economic system as well. We should not underestimate the role of various European programs actually supporting civil society organisations by taking such stances (of course, a major problem being that these usually remain being outsiders).

2) A real challenge can be seen in the process of regaining and maintaining proximity

Usually this is seen as matter of civil society organisations providing proximity services. This is surely one point. But another point is that these actors are able to establish proximity. If we speak of a democratic deficit it is usually considered as lack of appropriate institutional mechanisms. What I see

as more important is the lack of this kind of proximity: the emergence of a people, a demos.

In this respect it is simply necessary (i) to foster civil society as bearer or expression of such demos; but (ii) it is necessary as well to refine civil society, not allowing it to stand outside as "third sector" but fostering the attention to truly holistic approaches – not as matter of personalities but also in terms of societies. This requires not least as well a thorough consideration of economics and of the true challenges of multilevel policies.

As important as it is to utilise in this case appropriate instruments as e.g. the open method of coordination, the real challenge is to bring the Community Method in the widest understanding down to the ground. It may be – and hopefully is – a little bit provocative: as important as it is to get a voice of civil society heard in Brussels, it is more important to make the European ears listen to civil societies on the ground: where every day's life can be found and where it is not divided between economic, political and civil life but where it is concerned about the overall social quality of being.

WHERE TO GO? – THESES, PROPOSING AN OUTLOOK

First

Paradoxically, re-localisation of policies means to Europeanise politics. Mind the double meaning: The localisation of politics is currently extremely difficult. Recently, being confronted with the Manifesto of the Spring Alliance, José Manuel Barroso apparently expressed his support, however, stating that any progress would be blocked by the unwillingness of the member states. However, we probably all remember cases where on the member state level the EU had been accused not to allow certain policies which would have been favoured from their side. The problem is that probably both sides are wrong. If we look at academic analysis we find complex patterns as opting out possibilities, package deals, co-decision procedures et altera. The actual problem is that it is not clear who is responsible – so in this sense it is necessary to locate the responsible entities. The current pattern does not allow any clear decision – and in turn it means that general frameworks are developed, perforated and watered down by exemptions, exceptions, adaptations etc.. Even the Treaty as it stands currently for ratification is characterised by about 37 protocols, 50 general declarations and 15 declarations by the member states – thus by a huge amount of exceptions even

in respect to the EU's most general framework. Another point in question is that the lack of a clear localisation subsequently leads to the lack of power of the legislative institutions and the gain of power of the jurisdiction. Overcoming such a lack of clarity would mean locating responsibility. And it is such a process that would actually allow relocating policies in the understanding of its applicability on the local level.

Second

This has to be explained – not least as this is not an automatic mechanism. It can only work if the gained clarity is complemented by strict accountability. The problem with this principle is that accountability is by no means a question of formal accountability. At the centre is the need to establish a link between the demos. Being accountable to a demos – as said: (ordinary) people of a commonality – means that expertise has to be developed not as matter of knowledge about legal details and technical questions of implementation. This clearly defines the need to closely link to people's everyday's life. And this is to be found for instance in spatially defined communities, in certain groups that organise themselves across borders along lines of specific interests or gatherings on the basis of demographic or physical characters.

Third

In this sense the open method of coordination actually could have allowed to make huge progress: bringing in a loop of permanent feedbacks, i.e. EU-plans, local expertise and strategic policy-making. However, how it actually works is problematic: due in particular to a lack of obligation of member states to follow real processes of consultation.

Fourth

We are back to field one: The need of localisation. Currently, policy making lacks to a large extent accountability: if something happens or if it doesn't is not of central importance. It seems that the muddling through of contemporary systems is largely grounded on two principles. (i) the Mathew principle according to which somebody else can be blamed; and (ii) the emergency-principle: needed is action only when it is actually too late (as previously clearly shown with the debate ion the Constitution and the later

Plan D). Political action has to be accountable also in the sense of having consequences for forbearing doing the necessary.

Fifth

Not least, it means: NGOs should not primarily look for ways to enter the institutions. Nor should they look for providing "better services" in the sense of increasing their competitiveness. On the contrary: NGOs should see it as at least equally important to force politicians out of the institutions as laws may be made inside but rights are negotiated outside (see in this context Herrmann, forthcoming); and to show that democracy is not about votes but about daily life; and that services are not about competition but about social quality.

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EUROPEAN UNION ENLARGEMENT: A STATUS REPORT ON TURKEY'S ACCESSION NEGOTIATIONS*

Vincent Morelli and Carol Migdalovitz

ABSTRACT

October 2009 marks the fourth anniversary of the European Union's decision to proceed with formal negotiations with Turkey toward full membership in the Union. It will also mark the fourth time a formal report on Turkey's accession progress will be issued by the European Commission. The occasion will likely be marked by a mixed assessment of Turkey's accomplishments thus far in working through the various chapters of the accession process that have been opened, as well as continued skepticism on the part of many Europeans about whether Turkey should be embraced as a member of the European family. The principal issues center around what the EU believes has been a slowing of certain critical reforms within Turkey, a perceived ambivalence toward the EU by the current Turkish leadership, and Turkey's failure to live up to its agreement to extend the benefits of its customs union with the EU to Cyprus, including the continued reluctance by Turkey to open its sea and air ports to Cypriot shipping and commerce until a political settlement has been achieved on Cyprus. Further complicating the accession process is the ongoing debate within parts of Europe over the implications of the growing Muslim population in Europe and the impact Turkey's admission into the Union would have on Europe's future.

For some in Europe, December 2009, when the EU Council must decide the next steps in the accession process, could mark a critical

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juncture for the future of Europe's relationship with Turkey. While unification talks have again resumed between Greek and Turkish Cypriots, a settlement by December remains elusive, and short of such a settlement, Turkey appears unlikely to open its ports to Cyprus. The EU Commission could issue its annual report on Turkey's accession progress as early as mid-October. Nothing new or dramatic other than perhaps a more harshly worded assessment of Turkey's progress is expected from the Commission, which apparently does not view its 2009 report as any more important than previous annual reports. The action will likely be in the Council, where some may see December 2009 as a deadline for Turkish action, perhaps forcing EU member states into a difficult debate pitting loyalty to another member state being shunned by a candidate for Union membership versus Europe's long-term strategic interests in Turkey. Thus, the talk could once again be of "train wrecks," the suspension of negotiations, expressions of doubt, revised talk of a different relationship with Turkey, and renewed suggestions that Turkey should never be admitted into the Union. More likely, however, is that if the talks regarding a political settlement on Cyprus appear to be making some positive progress, critical for Turkey's prospects, the Council, after what could be a difficult debate, will defer any decisions regarding Turkey's accession negotiations to a later time.

The U.S. Congress has long been supportive of Turkey's eventual membership in the European Union and President Obama, in his visit to Ankara in the spring, reiterated the U.S. government's continued support for Turkey's membership.

For additional information on European Union enlargement, see CRS Report RS21344, *European Union Enlargement*, by Kristin Archick.

THE EU ACCESSION PROCESS [1]

The European Union (EU) views enlargement as an historic opportunity to promote stability and prosperity throughout Europe. The criteria for EU membership require candidates to achieve "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union" [2].

Under Article 49 of the Treaty on the European Union, any European country may apply for membership if it meets a set of criteria established by the Treaty. In addition, the EU must be able to absorb new members, so the EU can decide when it is ready to accept a new member.

Applying for EU membership is the start of a long and rigorous process. The EU operates comprehensive approval procedures that ensure new members are admitted only when they have met all requirements, and only with the active consent of the EU institutions and the governments of the EU member states and of the applicant country. Basically, a country that wishes to join the EU submits an application for membership to the European Council, which then asks the EU Commission to assess the applicant's ability to meet the conditions of membership.

Accession talks begin with a screening process to determine to what extent an applicant meets the EU's approximately 80,000 pages of rules and regulations known as the acquis communautaire. The acquis is divided into 35 chapters that range from free movement of goods to agriculture to competition. Detailed negotiations at the ministerial level take place to establish the terms under which applicants will meet and implement the rules in each chapter. The European Commission proposes common negotiating positions for the EU on each chapter, which must be approved unanimously by the Council of Ministers. In all areas of the acquis, the candidate country must bring its institutions, management capacity, and administrative and judicial systems up to EU standards, both at national and regional levels. During negotiations, applicants may request transition periods for complying with certain EU rules. All candidates receive financial assistance from the EU, mainly to aid in the accession process. Chapters of the acquis can only be opened and closed with the approval of all member states, and chapters provisionally closed may be reopened. Periodically, the Commission issues "progress" reports to the Council (usually in October or November of each year) as well as to the European Parliament assessing the progress achieved by a candidate country. Once the Commission concludes negotiations on all 35 chapters with an applicant, in a procedure that can take years, the agreements reached are incorporated into a draft accession treaty, which is submitted to the Council for approval and to the European Parliament for assent. After approval by the Council and Parliament, the accession treaty must be ratified by each EU member state and the candidate country. This process of ratification can take up to two years or longer [3]

The largest expansion of the EU was accomplished in 2004 when the EU accepted 10 new member states. In January 2007, Romania and Bulgaria joined, bringing the Union to its current 27 member states. Since then, the EU has continued supporting the enlargement process.

Currently, there are three candidate countries—Croatia, Turkey, and Macedonia. There also is speculation that Iceland will soon join this list.

For enlargement to continue, two barriers currently exist. First, and although not explicitly stated, certain conditions established by the 2000 Treaty of Nice seem to limit the EU to 27 members. In order for any other new country to be admitted to the Union, the Nice Treaty would have to be amended or a new treaty ratified to allow further expansion of the Union. The formally proposed Treaty for a European Constitution would have facilitated further enlargement, but that Treaty was rejected by France and the Netherlands in the spring of 2005. The successor attempt, the Lisbon Treaty, [4] was agreed to in 2007. The Lisbon Treaty, which would, among other things, facilitate further enlargement, was rejected in 2008 by Ireland, halting the ratification process. A second national referendum on the Treaty was held in Ireland on October 2, 2009, and this time the Treaty was overwhelmingly approved. The Treaty must now be signed by the presidents of Poland and the Czech Republic in order for the provisions of the Treaty to take effect. A second barrier to the current accession structure would involve any candidate country whose accession could have substantial financial consequences on the Union as a whole. Under this provision, admission of such a candidate can only be concluded after 2014, the scheduled date for the beginning of the EU's next budget framework [5]. Currently, only Turkey's candidacy would fall under this restriction.

THE CYPRUS DILEMMA [6]

In December 2002, in advance of the conclusion of the EU's accession negotiations with Cyprus, then-U.N. Secretary General Kofi Annan presented a comprehensive plan to resolve the political division on Cyprus and to reunite the island. Although the decision to admit Cyprus into the Union was taken several years before, the EU had hoped to admit a unified Cyprus by May 2004 and quickly endorsed the Annan Plan. Over the next 18 months, the U.N. worked to negotiate the Annan Plan so that both the Greek and Turkish Cypriots could accept a final settlement. On March 29, 2004, Annan presented his final revised plan. Neither side was fully satisfied with the proposal but agreed to put it to referenda in the North and the South on April 24. The Plan was accepted by the Turkish Cypriots but rejected by the Greeks.

The EU expressed regret over the Greek Cypriots' rejection of the Annan Plan and congratulated the Turkish Cypriots for their "yes" vote in the referenda. Nevertheless, the EU, in part under pressure from Greece, agreed in May 2004 to include the divided island as one of 10 new EU members. EU

leaders indicated that they were determined to put an end to the isolation of the Turkish Cypriot community and facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community even as the Greek Cypriot part of the island began to enjoy the benefits of membership in the Union, including the ability to approve or veto future applicant states.

On July 7, 2004, the EU Commission proposed several measures to end the Turkish Cypriots' isolation and to help eliminate the economic disparities between the two communities on the island. In addition to a package of financial assistance, the EU proposed to allow direct trade between northern Cyprus and the EU member states. The Greek Cypriot government agreed to the aid if it were to be administered by the government of Cyprus but rejected the trade measure as something close to international recognition of a Turkish Cypriot state. The Greek Cypriots also insisted that all trade between the north and Europe be conducted via the south. The EU has since opened an aid office in the North and has facilitated regulations to enhance trade between the North and South. Turkey and the Turkish Cypriots, however, seek additional measures to end what they consider the "isolation" of northern Cyprus.

After the Greek Cypriots rejected the Annan Plan, four years followed during which the U.N. appeared to distance itself from the settlement process as the Secretary General chose not to name a new Special Advisor on Cyprus to oversee it and the two sides on the island did not engage in substantive negotiations. In February 2008, however, a new Cypriot President, Dimitris Christofias, took office and said that he hoped to achieve a "just, viable, and functional solution" to the Cyprus issue, and the process was revived. In March, Christofias met Turkish Cypriot leader Mehmet Ali Talat, and they agreed to establish working groups and technical committees to lay the foundation for resuming negotiations. On May 23, the two leaders reaffirmed their commitment to the U.N. Security Council's principles for a settlement: a bizonal, bicommunal federation characterized by the political equality of Greek and Turkish Cypriots. In July, the Secretary General named former Australian Foreign Minister Alexander Downer as his Special Advisor on Cyprus, and the two leaders agreed to start "full-fledged" negotiations in September 2008. At the same time, the two sides undertook confidence-building measures intended to improve cooperation in areas such as criminal justice, environmental protection, crisis management, and the like.

In the first round of negotiations, which began in September 2008, Christofias and Talat held 40 meetings on core issues—governance and power-sharing, property, European Union affairs, security and guarantees,

economy, and territory—in order to identify areas of convergence and divergence. They reported progress on governance, European Union affairs, and the economy. Property is said to have been particularly difficult, and territory will be dealt with in the end. Security and guarantees also will be dealt with in the end, as it will involve countries named in the 1960 Treaty of Guarantee, i.e., the United Kingdom, Greece, and Turkey. A second round of negotiations began in September 2009, and Christofias and Talat have agreed to expedite the schedule by holding at least two meetings a week instead of one. Turkish officials have supported Talat since the talks began. Both they and Talat insist that the Turkish security guarantee continue in any settlement, which the Greek Cypriots oppose. It remains to be seen if this major obstacle can be overcome or finessed.

While there is no official deadline for reaching a settlement and holding new referenda, unofficial ones may affect the process. These include the forthcoming 2009 EU progress report on Turkey, which is likely to address Cyprus as it relates to Turkey's membership prospects. The EU undoubtedly will be pleased that the two sides have made progress on the issue of European Union affairs, which apparently has not been divisive. Should negotiations still be underway as the report is issued, the EU is expected to take the constructive approach of urging the parties onward. "Presidential" elections in northern Cyprus scheduled for April 2010 may present another deadline. Talat, a champion of the Annan Plan and of the settlement process, will face a challenge from his "Prime Minister" Dervis Eroglu, an opponent of the Annan Plan and critic of Talat's negotiating positions. Eroglu's party won an overwhelming victory in the December 2008 parliamentary elections in northern Cyprus. Talat has attributed that victory to the Turkish Cypriots' dejection after they had voted for the Annan Plan and to the failure of the European Union and others in the international community to end their isolation.

TURKEY'S INITIAL PATH TO EUROPEAN UNION ACCESSION

Immediately after the EU's decision in May 2004 to admit 10 new members, the EU turned its attention to future candidates for Union membership, including Turkey.

Turkey and the European Commission first concluded an Association Agreement (Ankara Agreement) aimed at developing closer economic ties in 1963. A key provision of that agreement was the commitment by Turkey to establish a customs union that would be applied to each EU member state. In 1987, Turkey's first application for full EU membership was deferred until 1993 on the grounds that the European Commission was not considering new members at the time. Although not technically a rejection of Turkey, the decision did add Turkey to a list, along with the United Kingdom, of nations to have been initially turned down for membership in the Union. In 1995, a Customs Union agreement between the EU and Turkey entered into force, setting a path for deeper integration of Turkey's economy with that of Europe's. In 1997, the Luxembourg EU summit confirmed Turkey's eligibility for accession to the EU but failed to put Turkey on a clear track to membership. The EU recognized Turkey formally as a candidate at the 1999 Helsinki Council summit but asserted that Turkey still needed to comply sufficiently with the EU's political and economic criteria before accession talks could begin [7]

In February 2001, the EU formally adopted an "Accession Partnership" with Turkey, which set out the priorities Turkey needed to address in order to adopt and implement EU standards and legislation. Although Ankara had hoped the EU would set a firm date for initiating negotiations at the December 2002 Copenhagen Summit, no agreement was reached. As mentioned, two years later, 10 new member states, including a divided Cyprus, were admitted into the Union. In December 2004, and despite the fact that Turkey had still not met its obligations regarding its customs union, the European Council stated unanimously that Turkey had made enough progress in legislative process, economic stability, and judicial reform to proceed with accession talks within a year. In the aftermath of the Council's decision, the European Parliament voted overwhelmingly to support the Council's decision to move forward with Turkey.

Under a compromise formula agreed to by the Council, Turkey, before October 2005, would have to sign a protocol that would adapt the 1963 Ankara Agreement, including the customs union, to the 10 new member states of the Union, including the Republic of Cyprus. Turkey signed the Protocol in July 2005 but made the point that, by signing the Protocol, it was not granting diplomatic recognition to the Republic of Cyprus. Turkey insisted that recognition would only come when both the Greek and Turkish Cypriot communities on the island were reunited. The decision by Turkey to make such a declaration regarding Cyprus immediately served to sour attitudes of

many within the EU. In September 2005, the EU Council issued a rebuttal to Turkey. In that declaration, the EU reminded Turkey that Cyprus was a full member of the EU, that recognition of all member states was a necessary component of the accession process, and that the EU and its member states "expect full, non-discriminatory implementation of the Additional Protocol to all EU member states ... and that failure to implement its obligations in full will affect the overall progress in the negotiations" [8]

On October 3, 2005, after a prolonged debate over the status of Cyprus and expressions of concern by some European member states over admitting Turkey altogether, the EU Council agreed to a "Negotiating Framework," and opened formal accession talks with Turkey. However, the language of the Framework included an understanding that the negotiations would be open-ended, meaning an outcome (eventual full membership) could not be guaranteed. This language was to become a significant rallying point for some European governments which support a relationship with Turkey that falls short of full membership in the Union.

CURRENT STATUS OF TURKEY'S ACCESSION

The relationship between Turkey and the European Union has vacillated between support for and doubt over future membership. In general, concerns regarding immigration, jobs, and uncertainties over its Muslim population have continued to cloud European attitudes about Turkey. Although projected by many to require 10 or more years to accomplish, the question of Turkey's membership in the Union became a debating point during consideration of the Treaty for a European Constitution in the spring of 2005. Many observers suggested that one of the factors contributing to the defeat of the Treaty in France and the Netherlands was voter concern over continued EU enlargement and specifically over the potential admission of Turkey, which was considered by many as too large and too culturally different to be admitted into the Union.

The controversy over Turkey's accession continued until the decision in October 2005 to begin accession negotiations. Expressions of concern by Germany, France, and Austria, which proposed that Turkey be given a "privileged partnership" instead of full membership, forced the Council to go to the 11th hour before agreeing to open accession talks.

For Turkey, 2006 became a more difficult year in its relations with the EU even as formal negotiations between Brussels and Ankara began. The membership of Cyprus in the Union, despite the Greek Cypriot rejection of the

U.N. unification plan, and Turkey's public stance on not dealing with the Greek Cypriot government, served to aggravate relations further and, in the opinion of some observers, may have contributed to a changing attitude within Turkey towards the EU. At the outset, Cyprus expressed its opposition to formally opening and closing the first of 35 negotiation chapters unless Ankara met its obligations to recognize all 10 new EU member states, including Cyprus. Despite the Cypriot position, the Science and Research Chapter, considered one of the least controversial of the acquis, was opened on June 12, 2006. However, on June 16 the EU Presidency issued a statement that referred implicitly to Turkey's continued refusal to open its ports to Greek Cyprus as required by Turkey's customs union with the EU. The EU again asserted that Turkey's failure to "implement its obligations fully will have an impact on the negotiating process" [9]

Ankara responded that Turkey would not open its seaports or airspace to Greek Cypriot vessels until the EU ended the "isolation" of the Turkish Cypriots by providing promised financial aid and direct trade between the EU and the north, aid that at the time was being blocked by Cyprus. EU Enlargement Commissioner Olli Rehn warned Ankara that the resolution of the Cyprus issue was a central stumbling block in the accession talks and that a "train crash" was coming later in the year if Turkey did not resume implementing reforms and honoring its commitments in the Accession Agreement and the additional Protocol [10]

In July 2006, Finland assumed the rotating Presidency of the EU, and the Finnish Prime Minister urged Turkey to resolve the contentious issue with Cyprus over access to ports and airports by the end of 2006. In Turkey, advocates for closer relations with the EU began to believe that European interest in Turkey was changing and that what should have been EU incentives to promote and encourage necessary reforms in Turkey had become conditions that many Turks felt were designed to discourage Turkey. As a consequence, many observers believe that the reform process in Turkey began to slow as a reassessment of the relationship began to take hold [11]. In September, both EU Commission President Jose Manuel Barroso and then-Finnish Foreign Affairs Minister Erkki Tuomioja warned Turkey over the pace of reforms and the issue of Cyprus.

In September 2006, the European Parliament joined in the criticism of Turkey when the Committee on Foreign Affairs issued a progress report on Turkey's accession. The Parliament's finding suggested that reforms in Turkey had slowed, especially in the implementation of freedom of expression, religious and minority rights, law enforcement, and the independence of the

judiciary, and urged Turkey to move forward. During a visit to Paris in September, Turkey's then- Foreign Minister Abdullah Gul promised additional reforms and noted that the Turkish Parliament had reconvened a week earlier than normal in September in order to discuss a new reform package. The EU Parliament also stated that "recognition of all member states, including Cyprus, is a necessary component of the accession process and urged Turkey to fulfill the provisions of the Association Agreement and Additional Protocol" [12]. On September 14, 2006, then-Cyprus Foreign Minister George Lillikas suggested that without Turkey's compliance with its obligations, Cyprus would likely object to opening any further chapters of the acquis [13]

With Commissioner Rehn's warning of a "train crash" fast approaching in the Fall of 2006, the Finnish Presidency, committed to the accession process, worked with all parties to try to reach a compromise that would avoid any serious disruption in Turkey's candidacy for membership. On November 29, 2006, the EU Commission issued its assessment of Turkey's accession negotiations. Although acknowledging that negotiations should move forward, the Commission noted that Turkey had not met its obligations toward Cyprus and recommended that the Council take actions regarding the opening of any new chapters in the acquis. At the EU Summit in December a compromise was reached that averted the worst possible outcome but clearly enunciated a strong opinion against Turkey. Based on the recommendations of the EU Commission, [14] the Council again noted that Turkey had not fully implemented the additional Protocol to the Ankara Agreement and, more importantly, decided not to open negotiations on eight chapters of the acquis covering policies relevant to Turkey's position on Cyprus, or to provisionally close any chapters until the Commission had confirmed that Turkey had fully implemented its commitments under the Additional Protocol [15]. The Council further required the Commission to report on Turkey's progress "in its forthcoming annual reports, in particular 2007, 2008, and 2009." [16] While the compromise decision prevented the feared "train crash," it did portend a slowing of the accession negotiations and, in the eyes of some Turkey skeptics, presented a deadline of sorts for Turkey to implement the Additional Protocol by December 2009, which is now fast approaching. Others, however, point out that 2009 was identified simply because it was the final year of the current Commission's term.

The accession process entered 2007 with a mixed sense of direction. Turkey apparently felt its EU aspirations had been dealt a serious blow with the EU decision to condition negotiations on certain key chapters until the Cyprus issue was resolved. Matters were further complicated within Turkey as

the ruling Justice and Development Party (AKP) began to come under fire from a determined opposition. In addition, presidential elections were scheduled in Turkey which would necessarily complicate the timing of the accession negotiations. Finally, the issue of Turkey's membership entered France's 2007 presidential election campaign, during which conservative candidate and then-Interior Minister Nicholas Sarkozy, in a campaign speech, stated that he felt Turkey should never become a member of the Union [17]

Turkey's 2007 presidential election became mired in controversy. The Turkish Grand National Assembly (parliament) had the responsibility to make the selection and the ruling AKP then held a comfortable majority in the legislature, but its numbers fell short of the two-thirds majority needed to elect a president on the first or second ballot. Prime Minister Recep Tayyip Erdogan named his close associate, Foreign Minister Abdullah Gul, to be AKP 's candidate for president. Because AKP has Islamist roots, the prospect of its controlling the presidency as well as the parliament threatened secularists in the military and the political opposition. The main opposition party, the Republican People's Party (CHP), boycotted the first round of the voting, in which Gul won a majority but less than two-thirds of the vote. CHP then argued that the vote was invalid because a quorum was lacking and petitioned the Constitutional Court to nullify it. At the same time, the Office of the Chief of the General Staff posted a warning on its website as a reminder that the Turkish Armed Forces are the "sure and certain defenders of secularism"—an ineptly veiled threat of possible military interference in the political process, which has occurred several times in Turkey's past [18]. Shortly thereafter, the Constitutional Court nullified the first round of the presidential election on the grounds that a quorum had not been present.

Prime Minister Erdogan then called early national elections for July 22. AKP won with almost 47% of the vote, a larger plurality than in 2002, and 341 seats in the 550-seat parliament. CHP lost 37 seats, and the far-right Nationalist Action Party (MHP) returned to the legislature after having failed to cross the threshold in 2002. Although AKP supports Turkey's EU aspirations and both the CHP and MHP criticize (but do not outright oppose) it, the EU was not an issue in the campaign nor did EU statements exert much influence over domestic political developments leading to the election. Instead, the parties competed on parochial Turkish-based issues. With its parliamentary majority secure, AKP was able to elect Gul president in August in a first round of voting with the support of MHP.

Despite the internal political events in Turkey which slowed the reform process, the EU agreed to open three additional chapters of the acquis and

identify the benchmarks necessary to open 14 additional chapters should Turkey meet the requirements for doing so. By the end of the year, the EU Commission, in its annual recommendations to the Council, noted some progress in the political reform process but also pointed out areas where additional progress was needed. These areas included freedom of expression, the fight against corruption, cultural rights, and civilian oversight of the security forces. In its December 2007 conclusions, the EU Council praised Turkey for the resolution of the political and constitutional crisis earlier in the year and the conduct of the presidential and parliamentary elections as signs that democratic standards and rule of law were sufficiently implemented and supported in Turkey. However, the Council also expressed regret that overall political reform had achieved limited progress and once again warned Turkey that it had not made any acceptable progress in establishing relations with Cyprus [19]

Throughout 2008, the Turkish government continued to deal with multiple political challenges, including the call for the dissolution of the AKP and for the banning of several prominent politicians, and an investigation into an alleged conspiracy involving several retired military officers and others, to create chaos throughout Turkey and provoke the military to overthrow the government. In July 2008, the Constitutional Court found that the AKP was indeed a focus of "anti-secularist activity," but the vote fell one short of the 7 out of 11 justices required to close the party. The conspiracy investigation has led to numerous arrests and continues.

These internal political affairs polarized the political atmosphere in Turkey, and the global economic crisis also began to consume the government's attention. Despite these problems, which virtually ground the accession negotiations to a halt, six additional chapters of the acquis were formally opened by the EU. However, key chapters relating to energy, external relations, and security and defense matters have been held up by several EU member states, including France, although in the case of energy, some have suggested that France did propose to open this chapter during its 2008 Presidency of the Council.

Averting another constitutional and political crisis was seen as sign that democracy in Turkey was strong. Nevertheless, Turkey again came in for EU Council criticism when it reviewed the Commission's annual progress report. Although upbeat about the internal political situation in Turkey, the Council again stated that "Turkey has not yet fulfilled its obligations of full non-discriminatory implementation of the Additional Protocol to the Association Agreement and has not made progress towards normalization of its relations

with the Republic of Cyprus" [20] Perhaps recognizing that the future of the accession negotiations faced a 2009 decision it set in 2006, the Council, in its conclusions, stated that "progress is now urgently awaited."

In early 2009, Turkey, in a sign of a renewed commitment to the accession process, announced the appointment of its first full-time EU accession negotiator, State Minister Egemen Bagis, and it has moved forward on a number of reform fronts. In June, the 11th chapter of the acquis was opened.

In March 2009, Turkey's accession process hit a political bump in the European Parliament, which adopted three resolutions based on enlargement reports issued by special rapporteurs. In the resolution on Turkey, the Members of Parliament noted with concern the "continuous slowdown of the reform process" and called on Turkey "to prove its political will to continue the reform process." The resolution also stressed the need to reach a solution to the Cyprus question and called for Turkey to remove its military forces from the island. Finally, the Parliament noted that the customs union agreement, specifically with Cyprus, had not been fully implemented, and pointed out that "the non-fulfillment of Turkey's commitments by December 2009 will further seriously affect the process of negotiations" [21]

POSSIBLE SCENARIOS

All three institutions of the European Union have expressed concern that Turkey's efforts to enact and implement critical political reforms have been slow and, worse, insufficient. Yet, some do recognize advances, such as restricting the jurisdiction of military courts, other judicial reforms, and the granting of more rights to Turkish Kurds. However, Turkey's failure to open its ports and airspace to the Republic of Cyprus, in accordance with its Protocol agreement, increases the risk that accession negotiations between Turkey and the EU could come under new pressures by the end of 2009, when the Council has to issue conclusions based on the recommendations the Commission is scheduled to issue in October.

Some observers believe that this year's Commission Report and Council decision will be the subject of very difficult internal debate due to a lack of consensus among the member states on how to respond to Turkey's shortcomings in the reform process and its failure to meet its customs union obligations toward Cyprus after four years [22]

Under the accession process, discussion of an EU response to a candidate country's failure to meet its accession requirements can only take only place

when the Commission releases its Progress Report and before the Council issues its conclusions. Since the 2006 Council conclusions specifically listed 2009 as a possible deadline for certain progress to be made as part of the accession talks, many Turkey skeptics in Europe have begun to suggest that the accession process may have to be significantly altered. For instance, in an interview with Spanish news media, French Secretary of State for European Matters Pierre Lellouche again reiterated his government's position that if Turkey fails to satisfy the requirements for membership or if the European Union's capacity for absorption does not permit it, alternatives should be considered. Although not specifically stating that the EU needed to prepare such alternatives by the end of 2009, Lellouche did state that "we wonder whether it is not the time to begin reflecting on alternative paths [for Turkey] without interrupting the negotiations" [23]. This statement reflects France's (and perhaps others') continued opposition to full membership in the Union for Turkey and support for a yet-to-be defined "special relationship" or "privileged partnership," which Turkey has rejected. Similarly, on September 11, 2009, Cypriot Foreign Minister Markos Kyprianou stated that while Cyprus was "a genuine supporter of Turkey's EU course," Cyprus was "one of the strictest supporters who are not prepared to compromise the principles and values that the EU is founded upon just for the sake of a speedier accession of our neighbor" [24]

Between now and the EU Council meeting in December 2009, it is likely that a good deal of behind-the-scenes diplomacy between Brussels and Ankara, Brussels and Nicosia, and Brussels and the capitals of the member states may be necessary if a possible "train wreck" is to be avoided in December.

For most observers, of course, a "best-case" scenario for moving forward would be if a political settlement on Cyprus could be reached and if Turkey opened its ports to Greek Cypriot ships and aircraft. In return, the Council would unfreeze the eight chapters of the acquis, allowing the accession process to continue on a normal course. Although leaders on both sides in Cyprus seem genuinely committed to reaching a fair settlement of the political stalemate, a comprehensive agreement by December does not seem likely and, thus, action by Turkey is not anticipated.

A variation of this scenario that could be pursued by the Swedish Presidency might include a compromise in which Turkey would open a few of its ports, perhaps without formally recognizing the government of Cyprus, if negotiations over the status of Cyprus appeared to be making significant progress. In return, although more problematic, the EU would permit direct

trade between the North and the EU. Enhanced EU economic assistance would also be provided to the North. Complicating this possibility is the perception of limited flexibility on the part of both Ankara and Nicosia. Domestic politics have already made it difficult for Ankara to compromise on the Cyprus issue without winning concessions for the Turkish Cypriots. Greek Cypriots contend that recognition of the Republic is a legal condition set by the Union that cannot be compromised indefinitely. Nicosia also has the added issue of just how much compromise can be accepted without threatening the current coalition government. Thus far, the Turks do not appear to be open to this idea, and the Greek Cypriots continue to reject any linkage between Turkey's customs union obligations and EU assistance or other outreach to the Turkish Cypriots.

A "worse-case" scenario for Turkey would be a temporary suspension of all accession negotiations on those chapters of the acquis already in progress and a veto of any proposals to open additional chapters until Turkey complies with the Protocol. It has been suggested that other EU member states may sympathize with such a suggested course of action if requested by the Greek Cypriots. This scenario, however, is complicated by what may be a Greece–Greek Cypriot agreement that Cyprus cannot be the one that would ultimately sabotage Turkey's EU prospects.

A fourth option, and one that would seem to suit the Swedish Presidency and others, would be that the Council would issue a very sternly worded criticism of Turkey's failure to move quickly enough on the reform front or to live up to the obligations it agreed to, but then for the sake of the ongoing negotiations on Cyprus, defer any actions on the negotiation process until a later point in time.

U.S. PERSPECTIVES

Although the United States does not have a direct role in the EU accession process, successive U.S. Administrations and Congresses have continued to support EU enlargement, believing that it serves U.S. interests by spreading stability and economic opportunities throughout the continent. During the Bush Administration, the United States had been a strong and vocal proponent of Turkish membership in the European Union, apparently much to the displeasure of many EU member states who felt that the United States did not fully understand the long and detailed process involved in accession negotiations, did not appreciate the long-term impact the admission of Turkey

could have on Europe, and defined the importance of Turkey in too-narrow terms, generally related to geopolitical and security issues of the region. This latter view seems to be one held by countries such as France, and perhaps Germany and Austria.

Most European member states believe that the Obama Administration and the 111th Congress will continue to support Turkey's EU membership aspirations. President Obama's statements in support of Turkey during his April visit to Ankara and his assertion that Turkey's accession would send an important signal to the Muslim world affirmed this but also caused anxiety among some Europeans who feel that putting Turkey's accession in those terms suggests that anything short of full EU membership for Turkey would represent a rejection of Turkey by the West, and by association, a rejection of the Muslim world. Many in Europe hope that the United States will scale back its rhetoric and use U.S. relations with Turkey in more constructive ways for the EU. For instance, some Europeans seem to feel that when the United States interjects itself into the EU's business of who can join the Union by promoting Turkey's EU membership, the United States should also be more helpful in encouraging Turkey to move more rapidly on reforms and to comply, at least in part, with the Additional Protocol regarding Turkey's customs union. When asked in an interview in June whether the United States could be more helpful on this point, Assistant Secretary of State for Europe and Eurasia Philip Gordon demurred, saying that "ultimately, this is an EU issue; we're not directly involved in it.... This is between the EU and Turkey" [25].

Other Europeans believe that Turkey's membership in NATO is a good venue to demonstrate whether Turkey can interact constructively with an organization dominated by most of the same European countries that belong to the EU and play a positive role in foreign policy matters that impact Europe, whether it is the Europe of the EU or the Europe of NATO. The Europeans would like to see the United States use its influence to help shape a more constructive NATO-EU relationship, which is strained in a large part by actions taken or not taken by Turkey because of the Cyprus issue.

Afghanistan is another area where Europeans would like to see more cooperation from Turkey and help from the U.S. Turkey, with one of the largest standing armies in NATO, deploys over 30,000 troops to Cyprus, an EU member state, while deploying fewer troops to the NATO ISAF mission in Afghanistan than non-NATO ally Australia. Recently, however, Turkey did announce that it would be deploying additional troops to Kabul in mid-November.

ASSESSMENT

For supporters and opponents of Turkey's EU membership, arguments come from two different sets of talking points. While Turkey and its supporters, such as the United States, argue in support of Turkey's role as an important regional energy and foreign policy actor, many in Europe express concern regarding Turkey's political, economic, social, and religious orientation. Turkey and its supporters argue that Turkey, through the EU plan to build the Nabucco gas pipeline in part through Turkey, will play an even more important energy role and could play an important role with respect to Iraq, Iran, Russia, and the Black Sea region. These advocates sometimes seem miffed that the EU does not appear to appreciate that role or place a greater importance on those issues when considering Turkey. Europeans, on the other hand, point out that while energy security and foreign policy are important elements in the operations of the EU, those issues comprise only two or three of 35 chapters in the acquis, and Turkey must come into compliance with the requirements of the entire acquis. In addition, many Europeans argue that Turkey is already playing an important role on defense and foreign policy matters with Europe through its membership in NATO. Further, many Europeans point to public opinion attitudes in both Europe and Turkey with respect to membership in the EU.

In the latest publication of the German Marshal Fund's Transatlantic Trends, [only] 32% of Turks polled held a favorable opinion of the EU. According to the poll, [only] 34% of Turks believed Turkey shared the same values as the West and Turkish support for EU membership since 2004 has fallen from 73% to 48% [26]. In that same study, [only] 20% of the Europeans polled thought Turkey joining the EU was a good thing. Finally, while many Turks believe the change in atmospherics between Europe and the Obama Administration could make U.S. support for Turkey's accession more effective with the Europeans, this era of goodwill appears unlikely to persuade the Europeans to be more open- minded about Turkey's membership in the EU.

For now, all attention seems to be focused both on the current negotiations in Cyprus and any comments the government in Ankara may make regarding its commitment to the Protocol as the EU Council prepares to receive the recommendations of the Commission and issue its own conclusions. If it becomes less likely that a settlement between the Greek and Turkish Cypriot communities will be reached this year, and thus unlikely that Turkey will comply with the requirements of the Protocol, the EU will have a major debate on its hands come December.

In this case, it is possible that the Republic of Cyprus and a few other EU member states may dig in their heels and push for some type of "sanctions" on Turkey or at least sufficiently critical remarks on Turkey's lack of commitment in meeting its obligations by the December meeting of the Council unless Turkey opens its ports to all member states. On the other hand, the Swedish Presidency, along with a few others, seems determined not to allow Turkey's accession talks to come to a halt during its Presidency, especially if the talks involving Cyprus give the appearance of progressing. Sweden will likely engage in intensive talks with all parties to find a way to once again avoid the ultimate "train crash" and postpone any significant decisions about Turkey's accession negotiations until a later time.

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TRANSATLANTIC REGULATORY COOPERATION: BACKGROUND AND ANALYSIS*

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ABSTRACT

Commercial ties between the United States and the 27-member European Union are substantial, growing, and mutually beneficial. However, differences in regulatory approaches limit an even more integrated marketplace from developing. To deal with this situation, a variety of government-to-government efforts have been created to dismantle existing regulatory barriers and to prevent new ones from emerging. These efforts fall under the rubric of transatlantic regulatory cooperation (TRC) and are at the heart of today's U.S.-EU economic relationship.

This report is intended to serve as an introduction and primer on a complicated, broad, and often highly technical set of issues. Since the mid-1990s, both U.S. and European multinational companies have viewed divergent ways of regulating markets for both goods and services as the most serious barriers to transatlantic commerce. The primary reason why these companies seek to achieve greater harmonization in standards and regulatory procedures is to reduce costs imposed by having to comply with two different sets of regulations and standards.

TRC must deal with a number of key differences between the United States and EU concerning approaches to regulation. These differences involve political support for regulation and public attitudes towards risk and transparency. Until they converge or are re-aligned, a transatlantic gap in regulatory policies is likely to persist.

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Regulatory cooperation is an umbrella concept that incorporates a broad range of activities. At one end of the spectrum are information exchanges and dialogues among regulators that are designed to build trust and confidence. At the other end of the spectrum are activities designed to harmonize regulatory approaches through acceptance of common principles and standards. In between are activities that involve varying degrees of intrusion into the autonomy of regulators.

TRC initiatives have made progress in reducing costs to businesses and consumers in some sectors, but not in others. One of the key obstacles to more extensive cooperation frequently cited is the domestic orientation of regulatory agencies involved in the process. To promote more effective TRC, two policy options are commonly advanced: (1) attracting high-level political support and (2) increasing dramatically the involvement of legislators (Congress and the European Parliament). The Transatlantic Economic Council (TEC), which was created in April 2007, was designed, in part, to generate the kind of high-level political support that previous initiatives may have lacked.

TRC has been mostly an executive branch driven process. Yet, through authorization and appropriations of the many different regulatory agencies involved in TRC, Congress could play a more central role if it decided to move in this direction. As domestic regulation takes place in an increasingly integrated transatlantic marketplace, Congress will be called upon to balance the often competing demands of trade expansion and barrier reduction against domestic health and safety concerns. This report will be updated as events warrant.

For additional information, see CRS Report RL34735, *Transatlantic Regulatory Cooperation: A Possible Role for Congress*, by Raymond J. Ahearn and Vincent Morelli.

INTRODUCTION

The United States and the 27-Member European Union (EU) share a huge, dynamic and mutually beneficial economic partnership [1] Not only is the U.S.-EU commercial relationship, what many call the transatlantic economy, the largest in the world, it is also arguably the most important [2]. While the transatlantic market is today highly integrated due in large part to a massive amount of foreign direct investment by both U.S. and European companies in each other's markets, differences in regulatory approaches, standards, and philosophies militate against the development of an even tighter and more integrated marketplace. Regulatory differences are also behind some of the most politically sensitive bilateral trade disputes.

To deal with this situation, a variety of government-to-government efforts and transatlantic dialogues have been created to increase understanding between policymakers and regulators on both sides of the Atlantic, to minimize existing regulatory barriers, and to prevent the emergence of new regulatory barriers. These efforts, falling under the rubric of transatlantic regulatory cooperation (TRC), are seen as being important to today's U.S.-EU economic relationship. Proponents maintain that TRC undertakings can not only prevent disruptive and costly trade disputes from occurring, but also spur trade and investment flows by reducing costs for producers and consumers on both sides of the Atlantic.

Since the establishment of the New Transatlantic Agenda (NTA) in 1995, there have been a number of new TRC initiatives, all aimed at removing or reducing regulatory barriers to trade [3]. While each of these initiatives has made some progress towards reducing regulatory burdens, many U.S. and European companies heavily engaged in the transatlantic marketplace maintain that the results have not been materially significant.

At the 2007 U.S.-EU Summit, leaders of the EU and U.S. committed their governments to increasing the efficiency and transparency of transatlantic economic cooperation and to accelerating the reduction and elimination of barriers to international trade and investment with the ultimate objective of achieving a barrier free transatlantic market. They also agreed on a Framework for Advancing Transatlantic Economic Integration (the Framework) and created a new institutional structure, the Transatlantic Economic Council (TEC), to advance the process of regulatory cooperation and barrier reduction. Headed on both sides by ministerial-level appointees, the TEC is designed to oversee the efforts outlined in the Framework, with the goal of accelerating progress and guiding work between the Summits [4]

Whether the TEC will herald a new era of more effective cooperation remains to be seen. Much could depend upon whether the TEC can exert enough political leverage to convince regulators to make reforms that will result in reduction of regulatory barriers between the EU and the United States, as well as increase the role that legislators on both sides of the Atlantic play in the process. Three TEC meetings have been held since it was established in 2007, and a fourth meeting of the TEC is expected to take place this fall in Washington, DC. The two sides, however, are discussing possible changes in the structure of the TEC process [5]

In this context, Congress might play an important and pivotal role in transatlantic regulatory cooperation. Through authorization and appropriations of many different independent regulatory agencies, Congress is in a position to

facilitate or impede progress in this undertaking. As domestic regulation takes place in an increasingly integrated transatlantic marketplace, Congress must try to balance the often competing demands of trade expansion and barrier reduction against domestic health and safety concerns.

This report is intended to serve as an introduction and primer on a complicated, broad, and often highly technical set of issues. It is presented in seven parts: the first section describes the nature and scope of U.S.-EU regulatory barriers; the second section explains the rationale for regulatory cooperation; the third section highlights the differences in U.S.-EU regulatory approaches; the fourth section examines the various forms of regulatory cooperation; the fifth section evaluates the results of past initiatives at regulatory cooperation; the sixth section analyzes the creation and operation of the Transatlantic Economic Council; and the last section highlights the role of Congress in transatlantic regulatory cooperation. This report will be updated as events warrant.

U.S.-EU REGULATORY BARRIERS

Since the mid-1990s, both U.S. and European multinational companies (MNCs) have viewed divergent ways of regulating markets for both goods and services as the most serious barriers to transatlantic commerce. Redundant standards, testing, and certification procedures are seen by these companies as far more costly and harmful than any trade barriers imposed at the border, such as tariffs or quotas. While the purpose of many regulations is to protect consumers and the environment, divergent domestic regulations and standards can affect the competitive position of firms, helping some and disadvantaging others by affecting the importation of products not produced or grown according to those requirements [6].

To the extent that product standards differ, exporters may find their goods prohibited from certain markets or subject to expensive re-labeling, re-packaging, or re-testing. For example, European winemakers intending to sell in the U.S. market must label their bottles according to U.S. requirements, which are different than EU requirements. Similarly, U.S. exports to the EU of poultry washed with anti-microbial treatments have been blocked for years by different health and safety standards.

Different regulations add to the cost of doing business on both sides of the Atlantic and serve as non-tariff barriers to trade in many different economic activities and sectors. These include but certainly are not limited to differences

in accounting and financial reporting requirements, antitrust or competition procedures, consumer protection (safety and health) standards, environmental regulations, and personal data transmission. Each of these divergences can materialize into politically charged disputes and threaten the functioning of the transatlantic market.

In no area has this been a greater problem than in chemicals. In this sector, the U.S. and EU have fundamentally different regulations on issues such as genetically modified organisms (GMOs), hormones, and the registration and restriction of chemical substances. In the case of GMOs, these differences have translated into longer authorization times and stricter standards for approval, release, and marketing of GMOs in the EU than in the U.S. Moreover, GMOs have been the subject of a long and bitter trade dispute brought before the World Trade Organization [7].

Pharmaceuticals is another sector where regulatory differences have been described as not only significant, but also bewildering. Just in the area of drug approvals, primary regulatory elements governing testing protocols, submission of clinical data, and certification of good manufacturing practices vary considerably between the U.S. and EU. Moreover, within the EU, where public health policy is still a national prerogative, rules and protocols can vary greatly from member state to member state. Because each member state has its own rules and protocols, it can be quite expensive for pharmaceutical companies to achieve marketing authorization throughout the EU or even a subset of countries [8].

Another example comes from the automotive sector, where American and European car makers sell similar products in the United States and Europe. But there are different standards and testing requirements for all kinds of parts, ranging from headlights, wiper blades, light beams, and seat belts to crash standards—which critics maintain are without measurable differences in safety benefits.

There are even multiple crash test dummies of the same or similar size and purpose—a clear example of where regulatory requirements diverge [9].

Despite the salience of regulatory barriers in transatlantic commerce, a comprehensive, sector-bysector study or inventory of regulatory barriers has not been undertaken. Proponents argue that such a report could identify regulatory differences that impose substantial burdens on transatlantic commerce and possibilities for their reduction or convergence without compromising either U.S. or EU health and safety priorities. In 2003, the European Commission (EC) proposed that such a study be undertaken and jointly funded, but the U.S. government did not back the initiative. Both sides,

however, note the major regulatory divergences that are considered trade barriers in their respective annual trade barrier reports. In the 2008 U.S. trade barriers report, for example, 12 pages are devoted specifically to EU regulatory barriers [10].

RATIONALE FOR TRANSATLANTIC REGULATORY COOPERATION

Efforts to enhance TRC draw on both economic and political justifications and are strongly supported by business interests and governments on both sides of the Atlantic. At the same time, within the United States, some interests, mostly academics, see greater benefits derived from regulatory competition and independence, whereby each side is free to maintain its own approach to regulating consumer, health, and environmental issues. The case for non-cooperation or at least caution is also based on concerns that domestic health and safety standards may be compromised by a process that is driven substantially by business interests and stakeholders and could be affected by a "race to the bottom" regarding U.S. and EU standards.

Economic Rationale

The primary reason why many export industries seek to achieve greater harmonization in international standards is to reduce costs associated with complying with two different sets of regulations and standards. To the extent that transatlantic regulatory standards and procedures differ, the costs of engaging in transatlantic commerce increase [11].

A good example comes from the auto industry. According to a trade association, a U.S.-based producer of light trucks looked into exporting a model to Europe and found that its design was incompatible with a European regulation on exterior edge projection (the U.S. has no comparable standard). The truck was never exported because it would have required a major and costly redesign. The same truck manufacturer then undertook to ensure that another model on the drawing boards would have maximum export potential built into its design. In order to sell this product in Europe, the manufacturer reportedly utilized 100 unique parts, incurred an additional $42 million in design and developmental costs, and committed an additional 130 people to

the program. Yet, the performance of the vehicle, in terms of safety, was unchanged. European-based manufacturers face the same issues in reverse when contemplating selling a European-designed model in the United States. These separate regulations, in turn, may cost manufactures millions of extra dollars to comply with, but may result in no changes in the vehicle in terms of safety or fuel economy [12].

A 2005 OECD study is often cited to illustrate how costly regulatory barriers to producers and consumers on both sides of the Atlantic. This study estimates that regulatory divergences between the U.S. and Europe costs the United States a sum that is equivalent to 1 %-3% of GDP annually [13].

In addition to cost savings that might be derived from the harmonization of regulations so as to facilitate open markets, it is argued that regulatory cooperation between states will help ensure that regulatory standards will not serve as obstacles to freer trade or unfair trade advantages [14].

Just as internal regulatory divergences can become a source of competitive advantage or trade tension, proponents of regulatory convergence assert that differences in emissions standards, labeling requirements and attitudes towards public health risks between countries can become a market access barrier for foreign products or provide domestic producers with "unfair" competitive advantages.

Proponents of regulatory cooperation maintain that it could have the effect of preventing a welfare-reducing "race to the bottom" as jurisdictions seek to advance the competitiveness of their own industries through lax regulation or lower standards.

This rationale for regulatory cooperation served to justify a large expansion of federal legislation and institutions in the United States in the areas of environmental regulation, consumer protection, health and safety, and labor protections. Similar fears of trade distortions and races to the bottom led to the implementation of sweeping harmonization programs and centralized legislation in the EU [15]

Cast in the context of the global economy, some view TRC as a way for the U.S. and EU to promote global regulatory standards. In the absence of world standards, the U.S. and Europe are often competing for acceptance of their respective regulations in third markets.

Proponents of TRC indicate that the net effect of this competition is that India and China can play the United States off against Europe, developing their own technical standards and financial regulations, complicating world trade for everyone [16]

Political Rationale

Supporters of TRC note that since the end of the Cold War, the United States and Europe have been searching for various ways to bolster the foundation of the relationship. Absent the common enemy embodied in the threat posed by the former Soviet Union, both sides have felt freer to pursue their own narrow economic and political interests. In the process, trade disputes have appeared to increase in frequency, focusing often on differences in regulation, rather than the traditional barriers of tariffs and subsidies.

To deal with the joint task of giving the relationship a new rationale as well as bolstering overall ties, numerous attempts have been made since the 1995 NTA to enhance transatlantic economic cooperation. In this context, efforts to advance regulatory cooperation have been part of attempts to reinvigorate and upgrade the bilateral relationship.

Annual summits, attended by the U.S. President, the President of the European Commission, and the President of the European Council, have been the venue for bringing high-level political attention and focus on efforts to enhance transatlantic regulatory cooperation. Regulatory cooperation, now entailing an expanding group of stakeholders and networks, has become a significant component of the U.S.-EU economic relationship. Supporters argue that through such cooperation the partners may be able to find ways to amicably and expeditiously resolve commercial disputes, as well as establish joint approaches to a number of common regulatory challenges that have global importance [17].

Because the United States and European Union collectively represent over 50% of global production, in areas where they can agree on a common regulatory policy or approach, they are well-positioned to promote it globally. Where they disagree, there is often deadlock, reflecting the equal size of their economies and markets [18].

While there are other forums (such as the World Trade Organization and international treaties) to promote regulatory cooperation, they are seen as having shortcomings. The WTO, for example, promotes regulatory cooperation by giving some international standards legal effect, nudging WTO Members to actively participate in international standardization bodies. It also puts national provisions to the test in various committees and offers its members a platform to facilitate regulatory cooperation [19].

But the number of transatlantic regulatory differences that fall within the scope of WTO rules constitute a relatively small proportion of the regulatory policies and procedures that involve firms on both sides of the Atlantic.

Moreover, the few regulatory-based trade disputes that the WTO has decided sometimes exacerbate rather than lessen tensions between the US and EU.20 For this reason, it is argued that the United States and EU need to develop bilateral mechanisms for coordinating their regulatory policies [21].

Counter-Arguments

Although there is strong support for TRC among business and government leaders on both sides of the Atlantic, the concept and rationale have their critics. This opposition is based, in part, on an alternative view of the benefits of regulatory competition as opposed to a centrally adopted regulatory framework constructed through regulatory cooperation.

These mostly academic critics see benefits in variations in regulatory approaches across jurisdictions (either intra-state or interstate) as a way of disciplining overarching governments and creating incentives for bureaucratic efficiency. They argue that regulatory competition leads to the adoption of standards of varying stringency that efficiently match the needs and desires of each jurisdiction. Because conditions, tastes, and incomes tend to vary across jurisdictions, this school of thought maintains that an optimal regulatory policy for one jurisdiction will not necessarily be optimal for another.

Some consumer groups caution against the influential role that business groups play in transatlantic regulatory cooperation. The concern is that safety and health concerns may be compromised if business groups play such a prominent role in negotiations over testing requirements and standards for their own products.

Rather than reducing barriers per se, the Trans Atlantic Consumers Dialogue maintains that the purpose of regulatory cooperation between the United States and EU should be to promote higher health and safety standards, thereby improving consumer welfare on both sides of the Atlantic [22].

Opponents of TRC assert from this perspective that a great number of centralized regulatory programs should be dismantled and regulatory powers should be decentralized. They believe that regulatory cooperation also reaches its limits where there is lack of institutional architecture to enforce decisions [23].

U.S.-EU DIFFERENCES IN REGULATORY APPROACHES

Transatlantic regulatory cooperation must deal with a number of key differences between the United States and EU concerning approaches to regulation. Key differences bear on political cycles affecting regulation, public preferences and tolerance for risk, attitudes towards transparency, and institutional capacities to undertake regulatory reforms.

These key differences—whether they pertain to product safety, environmental protection, securities trading, or customs procedures—in how regulations are developed and applied, in turn, raise challenges about whether and how to merge, harmonize, or converge the varied approaches. Until the regulatory structures themselves become more convergent or aligned, the major divergences in regulatory policies are unlikely to disappear.

Political Cycles

Over the last 50 years, the political cycles of regulatory policy stringency and expansion in the EU and the United States have not moved together. In the process, many important European and American regulations have diverged [24].

Beginning in the 1960s, many U.S. regulatory standards were likely more comprehensive and stringent than those adopted by the EU and most member states. The U.S. was typically first to identify new consumer and environmental risks and more likely to adopt relatively risk-averse or precautionary standards for dealing with those risks. For example, from the early 1960s through the mid-1980s, American standards for the approval of new pharmaceutical products were more stringent than in any EU member state, and American automobile emission standards were consistently more stringent than those adopted in Europe. The United States also restricted the use of lead in gasoline more rapidly than did Europe and also acted more aggressively to restrict the use of ozone-depleting chemicals [25].

But over the last 15 years, a number of European standards have become more stringent and comprehensive than U.S. standards [26]. For example, European standards for the approval and labeling of genetically modified (GM) foods and seeds are far more stringent than those adopted by the United States. Recently approved legislation on chemicals (Registration, Evaluation, and Authorization of Chemicals or REACH) has made European standards for the approval of both existing and new chemicals much more demanding than

in the U.S. The EU has also moved more aggressively than the United States to impose restrictions on greenhouse gas emissions.

However, in the aftermath of rising concerns about the safety of imported products and the financial crisis caused by the proliferation of sub-prime mortgages, support for more aggressive regulatory actions is rising in the United States. If the pendulum in the United States swings back towards increased regulation, this may narrow some of the current transatlantic regulatory divergences [27].

Values and Public Preferences

Some transatlantic regulatory differences reflect different public preferences and values. For example, many European consumers tend to prefer "naturally produced" foods, while many American consumers are more accepting of products produced by advanced forms of agricultural production. This difference helps to explain, in part, why Europe has imposed restrictions on the use of growth hormones for both beef and dairy cows, while the U.S. has not. It also explains, in part, the relative lack of political controversy in the U.S. surrounding the introduction of biotechnology compared to the more negative response to this technology in Europe [28].

The United States and EU also operate two different systems of risk management. As in the case of GMOs, the U.S. system is relatively science-based and prefers to regulate once significant problems have been identified. This approach has strong support of farmers, industry, and government officials. On the European side, the public tends to favor a more cautious approach, preferring to regulate out of precaution before a problem has occurred. The food safety scandals of the 1990s increased the resolve of EU member governments to put in place ever more strict regulation for the pre-approval, traceability and labeling of all GMOs, independent of their individual safety characteristics [29].

Transparency and Rule-Making

The United States and EU provide for very different degrees of public participation in rule- making. In the United States, Congress passes laws, but generally grants broad authority to the administrative or regulatory agencies to

implement those laws through regulations. On occasion, Congress also provides specific direction to these agencies.

Regulations proposed by U.S. administering agencies are subject to considerable public input due in large part to the requirements of the U.S. Administrative Procedures Act (APA), the Freedom of Information Act, and the Government in the Sunshine Act, which permit public scrutiny of regulatory activity.

A myriad of laws, executive orders, and bulletins ensure that transparency remains part of the regulatory process. Federal agencies are required to publish in the Federal Register, not just the proposed rule, but the supporting justification for the rule and the entire analytic justification behind it.

EU directives (which serve the same function as U.S. regulations) tend to be developed by the European Commission without as much input from either the public, business or elected officials. The European Parliament, however, has to approve or pass the directives (legislation) proposed by the Commission. While the EU has a number of "better regulation" procedures and guidelines, it has no effective equivalent to the APA [30]

Recognizing that the United States and EU have become each other's most important stakeholder, both sides may have an interest in ensuring that the other will have the opportunity, method, and forum for participating constructively in each other's regulatory process.

Institutional Capacity to Undertake Reforms

There also major differences in institutional capacities to undertake regulatory reforms. The EU's institutional framework is well suited to making regulatory changes. In broad terms, the EU has developed as a regulatory state with the European Commission taking a leading role in coordinating European wide regulatory policies in pursuit of building a Single Market. The Commission has ample authority to coordinate cooperation on transatlantic regulatory issues. The regulatory culture within the EU internal market is considered "trade friendly" because EU and national regulators operate with dual missions to promote free trade within the internal market while ensuring public safety. But enforcement is usually left to member states, which often results in a different levels of enforcement and different treatment of European and U.S. companies [31].

In general, U.S. regulatory agencies have the mandate and funding to focus on domestic regulatory issues and they enjoy a fair amount of

independence on policy and implementation matters. However, the United States lacks a clear-cut institutional mechanism to coordinate cooperative efforts. And neither the Commerce Department nor the Office of U.S. Trade Representative (USTR), the lead agencies for U.S. undertakings in the realm of transatlantic regulatory cooperation, have authority to overhaul domestic regulatory policymaking. While Commerce and USTR may bring the heads of U.S. regulatory agencies to the negotiating table, the regulatory agencies are not usually funded nor mandated to engage in TRC activities [32].

An added structural complication on the U.S. side is the role that states play in regulating activities, particularly professional services. Insurance, banking, private pension fund management, and professional services such as engineering and architecture are all subject to state regulation (and some sectors exclusively) [33].

FORMS OF TRANSATLANTIC REGULATORY COOPERATION

Regulatory cooperation is an elastic concept that subsumes a broad range of activities. At one end of the spectrum, these activities may include simple discussions and sharing of information between regulators—most often on prospective regulations. At the other end of the spectrum, these activities may involve attempts at harmonizing regulatory approaches through acceptance of common principles and standards. In between are activities that involve varying degrees of intrusion into the autonomy of regulators. One such category is agreements that recognize each other's standards or certification procedures.

These agreements are known as MRAs or mutual recognition agreements. The line between each category can be arbitrary and vague, and there are other activities associated with regulatory cooperation that may not fall neatly into one of the above categories [34].

To date, most efforts at transatlantic regulatory cooperation have been associated with information exchanges and dialogues. Considerable efforts have also been made at negotiating MRAs for a range of goods, as well as other attempts to recognize the adequacy of each others standards in specific areas such as data privacy and accounting. Little has been undertaken in regard to harmonization of standards. What follows is a short elaboration of activities that apply to each of these regulatory activities.

Information Exchanges and Dialogues

The most basic form of regulatory cooperation involves the establishment of a working group or dialogue for an exchange of information. The group, which may be comprised of technical experts or regulators from different jurisdictions, may meet on an ad hoc and informal basis or may be more structured. A primary objective of these consultations may be to better understand technical differences in standards or regulations and to consult with each other prior to new regulations becoming effective.

Making an effort to work with or consult with each other prior to new regulations becoming effective is viewed as one way to minimize unnecessary regulatory barriers. The exchange of people and information is also expected to build trust and confidence, with the hope of making for more informed and coordinated regulations and may eventually lead to agreement on what constitutes best regulatory practice.

While an exchange of views and a discussion of different issues will not necessarily bring about a meeting of the minds in the technical assessment of a certain field of regulation, it is a necessary first step if convergence is to take place. Where there is no attempt at dialogue, efforts to restrain unilateral legislative actions that could create new regulatory barriers are unlikely to be successful [35].

In the transatlantic context, a number of U.S. regulatory agencies (e.g. the Securities and Exchange Commission, the Food and Drug Administration, the National Highway Traffic Administration, and the Occupational Safety and Health Administration) have engaged in these kinds of information exchanges and non-binding dialogues with their European counterparts over the past decade. These exchanges were encouraged by the Guidelines on Regulatory Cooperation and Transparency which the United States and EU negotiated as part of the 1998 Transatlantic Economic Partnership (TEP). The guidelines were intended to enhance cooperation between EU and US regulators in the development of technical regulations and specifically referred to regular consultation, exchange of data and information, as well as informing one another at an early stage on planned new regulation.

Since 2004, the annual U.S.-EU summits have reinforced efforts at regulatory cooperation. A Roadmap for Regulatory Cooperation provides a framework of specific activities in 15 different sectors (e.g. pharmaceuticals, telecommunications equipment, food safety, and auto safety). Subsequent summits have prescribed cooperation for “lighthouse projects” in the fields of intellectual property rights, secure trade, financial markets, innovation and

technology, as well as the elimination of obstacles to investment. In addition, a High Level Regulatory Cooperation Forum, comprised of regulators from both sides, was established to find common ground on horizontal issues such as risk assessment, cost-benefit analysis and impact analysis when promulgating regulations.

Mutual Recognition Agreements

A stronger form of cooperation involves MRAs. This cooperation entails an agreement by regulators to accept products or services from another jurisdiction under specified conditions, so that actors complying with the regulations of one jurisdiction will be considered to be in compliance with the rules in another jurisdiction. These kind of agreements can focus on the mutual recognition of conformity assessment certifications or the alignment of relevant standards.

Under full recognition of standards, companies, for example, could sell pharmaceuticals in the United States after meeting European standards without first obtaining FDA approval. An agreement on conformity assessment procedures is a smaller step, requiring domestic regulators to accept the competency of their foreign counterparts to conduct product testing, inspection, or certification. The basic premise behind this kind of MRA is that products could be tested once and considered to have been tested in both markets [36].

In 1998, the United States and EU completed an MRA for testing and certification requirements covering multiple sectors, including telecommunications and information technology equipment, pharmaceuticals, electronics, electromagnetic compatibility, sports boats and medical devices. The MRA did not provide for mutual recognition of product standards, but it identified certification bodies in the exporting country that could assess the conformity of a range of traded goods with standards of the destination country. The MRAs, thus, introduced competition between assessors or certification bodies.

Competition among certification entities was familiar in Europe, where private firms had long provided certification, but was new in the United States where government agencies had dominated the process. As a result, while some U.S. officials believed that the MRAs would lead to cheaper and more rapid certification, others were concerned about its implications for product safety [37].

The MRAs did not result in any kind of binding legal agreement between the United States and the EU. Rather they were accomplished through an exchange of letters between the heads of the relevant regulatory agencies. To be implemented successfully, MRAs require that regulators on both sides of the Atlantic have confidence that the other side will not try to attract more business by being deliberately lax. Similarly, regulators need to recognize that each other's safety standards and inspection requirements are basically equivalent [38].

Harmonization / Agreement on Regulatory Standards

The strongest form of regulatory cooperation involves harmonization or agreement on the same standards or rules applied across jurisdictions. This could extend not only to regulatory targets (e.g. the permissible level of a particular pollutant in each jurisdiction or reserve requirements among banks), but also to the manner by which regulators ensure compliance with their regulations.

In the transatlantic context, few precedents exist for acceptance or adoption of similar or identical standards. While there have been numerous political declarations calling for regulatory convergence and harmonization, few changes have been enacted in each side's existing laws that would move their regulatory regimes in this direction. The transatlantic market, of course, is not a single market with common institutions pushing for further economic integration. But various stakeholders, frustrated by the slow progress in transatlantic regulatory cooperation, have made proposals that could push the two sides in the direction of adopting a new institutional architecture, such as a binding regulatory cooperation agreement [39].

Those who see a binding treaty or regulatory cooperation agreement as necessary institutional architecture to achieve a transatlantic single market point to EU integration as a model. In moving towards the completion of a Single European Market, the Commission issued a white paper that listed the pieces of legislation requiring harmonization, and simultaneously identified the institutional mechanisms to achieve specified ends [40].

U.S. public support for such an approach could depend on whether the goal of such a treaty or legal agreement was the development of identical legislation or comparable legislation. If the goal was identical legislation, much resistance to this kind of deeper integration could be expected from a number of quarters. This is particularly true from stakeholders who view

movement in this direction as leading to a loss of regulatory autonomy for U.S. authorities. If the goal was the development of similar or comparable legislation that facilitates mutual recognition, much less resistance perhaps could be expected [41].

RESULTS OF PAST INITIATIVES AT REGULATORY COOPERATION

The United States and EU have pursued a variety of policy initiatives and new mechanisms over the past 15 years to reduce or eliminate regulatory barriers. The results have been mixed. A number of these initiatives have been successful in some regulatory areas, while transatlantic regulatory cooperation has not made material differences for businesses or consumers in some other sectors. Assuming it is concluded that stronger regulatory cooperation is desirable, an assessment of past efforts could be useful.

Highlights of Past Initiatives

Beginning in 1990 with the Transatlantic Declaration, regular U.S.-EU summits were initiated to reinvigorate and upgrade the bilateral relationship. Attended by the U.S. President, the President of the European Commission, and the President of the European Council, the summits were intended to bring high-level focus to cooperative activities. Successive summits have led to a number of agreements relating to transatlantic regulatory cooperation:

- *At the 1995 summit in Madrid*, the United States and EU formally adopted the New Transatlantic Agenda (NTA) in an effort to provide a new foundation for the partnership. The NTA was accompanied by a detailed action plan. In addition, the NTA set up a comprehensive and regular government-to-government dialogue, as well as four dialogues between stakeholders on both sides of the Atlantic. These included the Transatlantic Business Dialogue (TABD), the Transatlantic Labor Dialogue (TALD), the Transatlantic Environmental Dialogue (TAED) and the Transatlantic Consumer Dialogue (TACD).
- *Pursuant to the NTA*, the two sides focused particular attention on problems posed by divergent standards and certification systems. In

addition to promoting the convergence in regulatory systems, efforts were undertaken to negotiate MRAs covering several sectors. In 1998, MRAs affecting sectors such as electrical equipment, pharmaceutical products, telecommunications and information technology equipment were reached.

- *At the 1998 summit in London*, the Transatlantic Economic Partnership (TEP) was created to improve bilateral economic and trade relations and to help create a more open world trading system. The TEP established deadlines for particular actions within the areas of regulatory cooperation, mutual recognition, and consumer product safety.
- *At the Bonn Summit in June 1999*, a Joint Statement on Early Warning and Problem Prevention Mechanisms was adopted. The warning system was designed to identify regulations, preferably still in draft form, that might contribute to non- tariff barriers to trade.
- *At the 2000 U.S.-EU Summit in Lisbon*, the Consultative Forum on Biotechnology was established to improve communication and understanding on the various concerns involved in biotechnology.
- *At the May 2002 summit in Washington*, the two sides reached agreements on Guidelines for Regulatory Cooperation and Transparency. These sought to take the idea of an early warning system a step further by encouraging U.S. and EU regulatory agencies to consult on a voluntary basis, sharing work plans that identify areas of anticipated regulatory action for the coming year and offering opportunities for reaction before regulations are finalized [42].
- Moving towards a more systematic cooperative approach, a Roadmap for EUU.S. Regulatory Cooperation and Transparency was developed in June 2004. It listed 10 specific projects for regulatory discussion and also expanded the approach to horizontal initiatives.
- *The 2005 EU-U.S. Summit produced a second Roadmap for EU-U.S*. Regulatory Cooperation and Transparency and expanded the list to 15 sector-specific projects. It also established two new dialogues. One was between the European Commission and Office of Management and Budget on transparency and methodologies for impact and risk assessment, in order to improve understanding of each other's regulatory systems. A second, a High-Level Regulatory Cooperation Forum, was tasked to develop a joint regulatory work plan based on mutual best practices. Its members include senior U.S. and European

Commission officials, academics, business executives, and other officials.

Accomplishments

Among the accomplishments are the following.

[1] Most observers would agree that new mechanisms for dialogue and information exchange have improved mutual understanding and day-to-day working relationships among economic regulators in a wide range of sectors; Arguably, cooperation is now far deeper, broader, more decentralized and routine than it had been before in areas such as pharmaceuticals, medical devices, financial services and marine equipment.

The NTA process and related efforts at regulatory cooperation fostered closer relationships among many stakeholders, including business people representing the major corporations investing in both Europe and the United States. In particular, the TABD, representing a transatlantic coalition of big businesses on both sides of the Atlantic, developed into an "effective framework for enhanced cooperation between the transatlantic business community and the governments of the European Union and the United States." [43].

[2] The NTA and subsequent summits enhanced on-going efforts to increase the compatibility of U.S. and EU approaches to competition policy. According to one observer, much convergence in substantive standards has been achieved voluntarily through the exchange of ideas and institutional learning processes [44].

[3] MRAs (discussed previously) covering over $50 billion in trade were implemented in three sectors, leading to significant cost savings for U.S. businesses; several of the agreements provided for U.S. and EU testing facilities to recognize each other's standards over time, thus allowing firms to have products tested only once on either side of the Atlantic. The Commerce Department estimated that the agreement would save U.S. industries more than $1 billion in testing and certification costs [45].

[4] The 2002 Guidelines for Regulatory Cooperation promoted a number of procedural steps that most likely have facilitated a more effective dialogue. These steps included arrangements to permit sharing of non-

public information between regulators. The Roadmap for Regulatory Cooperation now provides a framework for consultations and dialogue in fifteen different sectors (e.g. pharmaceuticals, telecommunications equipment, food safety and auto safety) with a focus on prospective regulations and reducing regulatory barriers.

[5] The U.S.-EU Safe Harbor Agreement was implemented in 2002. This agreement provided an innovative mechanism whereby U.S. firms could be certified as meeting the EU's more demanding data privacy requirements for exporting personal data.

[6] In February 2004, the U.S. and EU signed an MRA on marine safety equipment covering $150 million to $200 million annually in two-way trade [46].

[7] The U.S.-EU High Level Regulatory Cooperation Forum, established in 2005, has focused on methodologies for generating good regulatory practices. To the extent both sides are able to develop a methodological framework that ensures the comparability of regulatory reviews, with an emphasis on risk assessments, cost/benefit analysis, and trade and investment impacts, unilateral legislative initiatives and the creation of new regulatory barriers can be curtailed.

[8] By 2006 the Financial Markets Regulatory Dialogue had reported some progress on recognizing each others' financial standards in specific areas [47]. In particular, progress has been made on gaining the mutual acceptance by 2009 of the equilevance of accounting standards—that is the U.S. Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS). This will make it easier for European companies to raise capital in the United States and for U.S. companies to raise capital in Europe [48].

Disappointments

Specific disappointments include the following.

1. Enthusiasm for mutual recognition as a regulatory strategy faded when three of the six agreements failed to become operational by established deadlines [49] In the view of some analysts, these MRAs were never implemented due to the U.S. reluctance to recognize the equivalency of European certifiers. In the pharmaceutical and medical device sectors, for example, the FDA had continuing doubts about the

capability of some EU member states to oversee high pharmaceutical standards in laboratories. In the electrical equipment sector, OSHA refused to cede its right to designate which laboratories in Europe could evaluate and certify new electrical products for sale in the United States [50]. A related obstacle on the European side was the EU inclination to regulate at the European level, only to leave enforcement to Member States, which often results in different levels of enforcement and different treatment of European and U.S. companies [51].

2. Irrespective of annual summits, the TEP, by some accounts, went into hibernation from 1998 to 2004. Despite the many recommendations and political declarations issued during this time period, there were few material accomplishments [52].
3. Pieces of legislation adopted unilaterally by both sides in 2002 served to put a break on regulatory cooperation by violating the 2002 Guidelines on Regulatory Cooperation and the "Early Warning System." On the one side, the EU imposed its views on how to regulate chemicals by adopting legislation known as REACH, which affected the testing and approval of chemicals, without much input from U.S. stakeholders. On the other side, the United States adopted legislation (Sarbanes-Oxley), which reformed public accounting standards, without taking into account EU views. Both pieces of legislation created considerable difficulties for transatlantic businesses, from companies attempting to raise capital to firms that manufacture everyday goods.
4. Despite extensive efforts at cooperation for nearly two decades, the transatlantic regulatory divide remains large in the area of chemicals. The two sides still maintain fundamentally different regulations on issues such as hormones, genetically modified organisms (GMOs), cosmetics, and the registration and restriction of chemical substances. U.S. and EU regulators continue to operate with starkly different regulatory philosophies and styles. And the record of transatlantic regulatory cooperation in this sphere has been highly contentious, prompting the United States to file a legal complaint with the WTO [53].
5. There has been lack of material progress in many other sectors, such as autos, and pharmaceuticals. Moreover, past TRC initiatives have tended to be fragmented, poorly coordinated, and lacking in political accountability for success and failure [54].

Obstacles and Options for More Extensive Cooperation

In evaluating the history of past initiatives, a number of observers have pointed to several key obstacles to more effective regulatory cooperation. High on this list are the independence of regulatory agencies involved, the lack of committed resources for transatlantic regulatory collaboration, and the sheer complexity of the undertaking. To promote more effective TRC by overcoming these obstacles, three policy options are often put forth: (1) attracting high-level political support for TRC; (2) increasing dramatically the involvement of legislators on both sides in the process; and (3) developing an institutional architecture that can prioritize the problems and challenges that need to be addressed.

Regulatory cooperation, particularly mutual recognition, requires domestic regulators to accept the competency of their foreign counterparts to conduct product testing. A key obstacle, however, is that regulators remain accountable to domestic legislators for the product standards that are applied both to domestic and foreign products. As a result, regulators on both sides of the Atlantic are generally reluctant to transfer authority to a foreign body, and the MRA negotiations demonstrated that some regulatory bodies are more reluctant than others [55].

Based on the premise that enhanced regulatory cooperation, particularly through mutual recognition, will never happen if matters are left to individual regulatory agencies, high-level political pressure is commonly prescribed. Such pressure, either from the White House, the Congress, or both, may be employed to convince regulators to adopt reforms that result in a reduction of barriers between the United States and EU and/or to make greater efforts to accommodate transatlantic interests when promulgating new regulations.

Successful regulatory cooperation also requires resources for the necessary meetings and dialogues to take place. At least on the U.S. side, the regulatory agencies have no dedicated budgets to support these activities. Accordingly, some stakeholders, such as the U.S. Chamber of Commerce, have proposed that Congress consider the creation of specifically funded mandates to enable U.S. agencies better participate in these transatlantic dialogues.

The scope of the transatlantic regulatory agenda is also extremely broad and technical. Encompassing most regulatory agencies, ranging from the Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC) to the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA), and diverse

sectors, ranging from pharmaceuticals and cosmetics to telecommunications and marine safety, the status of the agenda at any one time is not easy to ascertain. To move issues forward that are by their nature abstract and technical, some observers have called for creation of a institution that is capable of setting priorities and deciding on which issues are ripe for resolution with the help of higher-level political intervention.

THE TRANSATLANTIC ECONOMIC COUNCIL

Predicated on the notion that past initiatives failed to make significant progress in enhancing regulatory progress, the Transatlantic Economic Council (TEC) was established in April 2007 at the U.S.-EU Summit as a key component of the Framework for Advancing Transatlantic Economic Integration. Created as a new entity by German Chancellor Angela Merkel (then EU Council President), European Commission President Barroso, and President Bush, the TEC is designed to provide minister-level political guidance for implementation of a work program as outlined by the Framework to foster regulatory cooperation and to reduce or eliminate regulatory burdens to trade. The Summit leaders also created an advisory group to the TEC and invited the U.S. Congress, along with the European Parliament, to accept a new, more substantive role in transatlantic regulatory cooperation by becoming part of an advisory group. In short, the TEC and the Framework are designed to deal with some of the suggested shortcomings (described above) of previous transatlantic regulatory initiatives: lack of high level political leadership and not enough involvement of legislators and other stakeholders in the regulatory process.

The TEC consists of two co-chairs (ministerial-level appointees with cabinet rank) from each side, as well as a number of EU Commissioners and U.S. Cabinet Members for the broad-ranging policy areas covered in the Framework. Permanent members of the TEC include the Secretaries of the Treasury and Commerce and the U.S. Trade Representative and the European Commissioners for External Relations, for Trade and Internal Market and Services. In addition, other U.S. Cabinet Members and European Commissioners may participate when the agenda covers issues falling under their jurisdiction [56].

Given that the two TEC leaders are cabinet-level appointees, the TEC was expected to have the kind of high-level political support that previous efforts at economic integration may have lacked. Such clout, it is argued, may be needed

to persuade domestic regulators to yield some of their authorities or to better cooperate with their counterparts across the Atlantic in harmonizing regulatory approaches [57].

TEC efforts to foster cooperation and reduce regulatory barriers focus on two main types of issues: (1) differences in regulatory processes and approaches; and (2) sectoral or bilateral barriers and disputes. The goal in the first issue area is to find ways to reduce barriers to transatlantic economic integration posed by new regulations and or prevent them from happening. The primary avenue for accomplishing this objective entails efforts to reform, harmonize or converge regulatory processes, both through the development of comparable methodologies to assess risk and do cost-benefit analysis and intensified interactions among regulators. How regulations are developed and applied can have a large impact on the how companies do business not only in the transatlantic marketplace, but in third markets as well.

The goal in the second issue area is to reduce barriers to transatlantic integration caused by regulations in specific sectors. This is to be accomplished by intensified sector-by-sector cooperation, including the promotion of the 2002 U.S.-EU Guidelines for Regulatory Cooperation and case-by-case examination of specific projects called for by the Roadmap for Regulatory Cooperation [58].

Three meetings of the TEC have been held to date, the last taking place in December 2008. The first two meetings appeared to stumble over efforts to resolve disputes involving sales of poultry, cosmetics, and electrical equipment. The U.S. side, in particular, expressed displeasure and concern about the pace of changes in EU regulations that would allow the importation of poultry meat using pathogen reduction treatments, as well as concerns that the implementation of the EU's REACH regulation not cause trade in cosmetics and personal care products to be disrupted. On the other hand, the EU expressed concerns that OSHA regulations are continuing to make it unduly difficult for EU electrical and electronic equipment producers to gain certification in the U.S. market.

The scant progress made in settling these disputes highlighted the limited capacity of the TEC to break new ground in the area of dispute settlement. Composed of cabinet-level officials from both sides, the TEC is a transatlantic inter-governmental entity that skirts the "normal" channels for affecting policy changes in both the United States and EU. As a transatlantic entity or coalition, the TEC may have difficulty matching the power of domestic constituencies that plead for trade protection or support regulations that tilt the playing field in one direction or another. Nor may the TEC be well-positioned

to change the domestic dynamics of who supports any particular regulatory regime[59]. That is to say that domestic coalitions (in both the United States and Europe), acting in support of regulatory competition, may have more success in challenging other domestic interests that support the status quo than a transatlantic coalition [60].

While changing existing regulations and resolving disputes is a formidable challenge, the TEC's efforts to foster regulatory cooperation and reduce regulatory barriers may prove more fruitful as it focuses on differences in regulatory processes and approaches. By focusing on the development of comparable methodologies to assess risk and do cost-benefit analysis, the TEC can try to reduce barriers to transatlantic integration posed by new regulations or prevent them from happening. How regulations are developed and applied—whether they pertain to product safety, environmental protection, securities trading, or customs procedures—can have a large impact on how companies do business in the transatlantic marketplace.

In some cases, the TEC value may be able to help resolve differences in views among agencies that are blocking regulatory progress and try to ensure that transatlantic impacts and integration are taken into account when legislation and regulations are being drafted [61]. To be effective, the TEC must also gain a realistic understanding of what kinds of regulatory cooperation are politically feasible [62].

ROLE OF CONGRESS [63]

Since it began nearly two decades ago, transatlantic regulatory cooperation has been for the most part a wholly run undertaking between the executive branches and independent regulatory agencies on both sides of the Atlantic. By and large, TRC exchanges and dialogues have been confined to regulators and officials of the executive branches on both sides of the Atlantic. The Guidelines on Regulatory Cooperation and Transparency, in fact, do not apply to Congress or the European Parliament.

The role of Congress in transatlantic regulatory cooperation in the past has been limited mostly to oversight hearings (See Appendix A for a listing) and the introduction of a few resolutions [64]. But Congress has on occasion taken actions that have both thwarted and facilitated regulatory cooperation. For example, on the one hand, some Members of Congress became concerned in the late 1990s that the MRAs the administration was negotiating could harm consumers and undermine health and safety standards. As Representative

Henry Waxman (D-CA) put it, "there is no question that international agreements of this kind can enhance the efficiency of commerce, but it is equally clear that they can potentially depress American health and safety standards." According to one observer, such concerns made some U.S. regulators reluctant to participate in the MRA negotiations [65].

On the other hand, Congress also passed legislation directing the FDA to support efforts of the Department of Commerce and USTR to implement MRAs. In the Food and Drug Administration Modernization Act of 1997 (P.L. 105-115), a bill to speed the FDA approval process for new drugs and medical devices, a provision directed the FDA to support the efforts of Commerce and the Office of the U.S. Trade Representative to implement MRAs. According to the same observer, inclusion of the MRA language in the legislation was an important step toward finishing the agreement [66].

These examples highlight a larger and more pivotal role Congress could play in regulatory cooperation if it chose to become more involved. To the extent that an overwhelming domestic orientation of regulatory agencies is a problem in moving TRC initiatives forward, Congress has the power through both the authorization and appropriations process to mandate that U.S. regulators cooperate. Congress can also ensure that the U.S. agencies involved in regulatory cooperation have the necessary budgetary and organizational resources to get the job done. Conversely, if Congress views transatlantic initiatives as moving too far in the direction of trade expansion at the expense of safety and health concerns or other priorities, Congress can make it difficult for U.S. agencies to continue on that course of action.

Beyond providing guidance to U.S. regulatory agencies on TRC initiatives, Congress also could play a bigger role in preventing new legislation from causing new transatlantic regulatory barriers. Currently, taking the transatlantic impact (trade and investment effects) into account is not considered in any structured or formal fashion during the legislative process. Yet, political declarations from past U.S.-EU summits backed by the transatlantic business community, have urged a more institutionalized process for making Congress more aware of the potential impact of new legislation on transatlantic trade.

How this could be done is the subject of considerable speculation. One of the factors that has to be considered is the wide range of congressional committees that have primary jurisdiction over issues that are high on the agenda of TRC. As shown in Appendix B, many different authorizing committees have primary jurisdiction over some of the main regulatory agencies involved in TRC activities. On the House side, the Energy and

Commerce, Transportation, Judiciary, and Agriculture Committees all have important oversight roles. Counterpart committees on the Senate side include Commerce, Science, and Transportation, Health Education, Labor, and Pensions, Energy and Natural Resources, Environment and Public Works, and Agriculture. Notably absent from this list are the committees charged with overall responsibility for oversight of transatlantic relations, the Senate Foreign Relations and the House Foreign Affairs Committees, and the committees that have primary jurisdiction over trade and investment issues, Senate Finance and the House Ways and Means.

Currently, the only formal institutional link between Congress and transatlantic regulatory cooperation is through the Transatlantic Legislators Dialogue (TLD), an inter-parliamentary exchange between selected Members of the House of Representatives and the European Parliament. The TLD serves as an advisor to the TEC, but its membership and function have raised questions concerning how well it can carry out its role as an advisor to the TEC [67].

Much of this begs the question whether Congress should be an advisor or a participant in the TRC process, including the annual U.S.-EU Summits. While a more pro-active role for Congress would likely enhance the political basis of support for transatlantic regulatory cooperation, it is no means certain that there a consensus in favor of developing the necessary mechanisms and mandate to move in this direction.

APPENDIX A: CONGRESSIONAL HEARINGS ON TRANSATLANTIC REGULATORY COOPERATION

House Committee on Commerce. *Imported Drugs: U.S.-EU Mutual Recognition Agreement on Drug Prescriptions*. October 2, 1998, 32p.

House Committee on Commerce. *The EU Data Protection Directive: Implications for the U.S. Privacy Debate*. March 8, 2001, 48p.

House Committee on Financial Services. *The EU's Financial Services Action Plan and Its Implications for the American Financial Services Industry*. May 22, 2002, 122p.

House Committee on Financial Services. U*.S. -EU Regulatory Dialogue and Its Future*. May 13, 2004, 106p.

House Committee on Financial Services. *U.S.-EU Regulatory Dialogue: The Private Sector Perspective.* June 17, 2004, 79p.

House Committee on Financial Services. *U.S.-EU Economic Relationship: What Comes Next?* June 16, 2005, 86p.

House Committee on International Relations. *Transatlantic Trade Agenda: Conflict or Cooperation?* September 29, 1999.

House Committee on International Relations. *Recognizing the Continued Importance of the Transatlantic Relationship and Promoting Stronger Relations with Europe by Reaffirming the Need for a Continued and Meaningful Dialogue Between the U.S. and Europe*. October 29, 2003, 16p.

Senate Committee on Foreign Relations. *U.S.-EU Cooperation on Regulatory Affairs.* October 16, 2003, 55p.

Senate Committee on Foreign Relations. *U.S.-EU Regulatory Cooperation on Emerging Technologies,* May 11, 2005, 62p.

APPENDIX B: U.S.-EU REGULATORY COOPERATION BY SECTOR, U.S. REGULATORY AGENCY, AND COMMITTEE OVERSIGHT

Sectora	U.S. Regulatory Agencyb	Committeesc
Pharmaceuticals	Food and Drug Administration (FDA)	House: Energy and Commerce;
		Senate: Health, Education, Labor, and Pensions and Commerce Science and Transportation
Automobile Safety	National Highway Traffic Safety	House: Energy and Commerce;
	Administration (NHTSA)	Senate: Commerce, Science and Transportation
Information and	Department of Commerce, National	House: Energy and Commerce;
Communications Standards in Regulations	Institute of Standards and Technology (NIST)	Senate: Commerce, Science and Transportation

Sectora	U.S. Regulatory Agencyb	Committeesc
Cosmetics	FDA	House: Energy and Commerce; Senate: Health, Education, Labor, and Pensions
Consumer Product Safety	Consumer Product Safety Commission (CPSC)	House: Energy and Commerce;
		Senate: Commerce, Science, and Transportation
Consumer Protection Enforcement Cooperation	Federal Trade Commission (FTC)	House: Energy and Commerce, and Judiciary;
		Senate: Commerce, Science and Transportation, and Judiciary
Unfair Commercial Practices	FTC	House: Energy and Commerce, and Judiciary;
		Senate: Commerce, Science, and Transportation, and Judiciary
Nutritional Labeling	FDA	House: Energy and Commerce, and Agriculture;
		Senate: Heath, Education, Labor and Pensions, and Agriculture
Food Safety	FDA	House: Energy and Commerce Agriculture;
		Senate: Commerce, Science, and Transportation, and Agriculture
Marine Equipment	U.S. Coast Guard	House: Transportation and Infrastructure;
		Senate: Commerce, Science, and Transportation
Eco-Design	Environmental Protection Agency (EPA);	House: Energy and Commerce and Science;
	Department of Energy Office of Efficiency and Renewable Energy	Senate: Energy and Natural

Appendix B. (Continued)

Chemicals	Environmental Protection Agency	House: Energy and Commerce;
		Senate: Environment and Public Works
Energy Efficiency	EPA and Department of Energy	House: Energy and Commerce
		Senate: Energy and Natural Resources
Medical Devices	FDA	House: Energy and Commerce;
		Senate:
Telecommunications and Radio Communications Equipment	Federal Communications Commission and Department of Commerce, National Institute of Standards and Technology	House: Energy and Commerce; Senate: Commerce, Science, and Transportation

Source: Source CRS.

Notes:

a. These sectors are identified in the 2005 Roadmap for Regulatory Cooperation, http://www.ustr.gov?World_Regions/Europe_Middle_East/Europe/US_EU-Regulatory-C.

b. These agencies are also identified in the 2005 Roadmap for Regulatory Cooperation.

c. Depending on the focus of each sectoral initiative, other committees could also have oversight responsibilities. Regarding appropriations, the appropriations subcommittees would tend to vary as well. For example, the House and Senate Appropriations subcommittees on agriculture have jurisdiction over FDA's appropriations. This arrangement reflects, in part, the agency's origin within the Department of Agriculture as the Bureau of Chemistry in 1862.

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Trade and Investment Relations: Key Issues, coordinated by Raymond J. Ahearn.

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LONG-RANGE BALLISTIC MISSILE DEFENSE IN EUROPE*

Steven A. Hildreth and Carl Ek

ABSTRACT

In early 2007, after several years of internal discussions and consultations with Poland and the Czech Republic, the Bush Administration formally proposed deploying a ground-based midcourse defense (GMD) element in Europe of the larger Ballistic Missile Defense System (BMDS) to defend against an Iranian missile threat. The system would have included 10 interceptors in Poland, a radar in the Czech Republic, and another radar deployed in a country closer to Iran, all to be completed by 2013 at a reported cost of at least $4 billion. The proposed European BMD capability raised a number of foreign policy challenges in Europe and with Russia.

On September 17, 2009, the Obama Administration announced it would cancel the Bush- proposed European BMD program. Instead, Defense Secretary Gates announced U.S. plans to develop and deploy a regional BMD capability that can be deployed around the world on relatively short notice during crises or as the situation may demand. Gates argued this new capability, based primarily around current BMD sensors and interceptors, would be more responsive and adaptable to growing concern over the direction of Iranian short- and medium- range ballistic missile proliferation. This capability would continue to evolve and expand over the next decade.

This report is updated for Senate consideration of the defense appropriations bill (H.R. 3326) currently planned for the week of September 21, 2009. There are some reports that the issue of the European 3rd site will be considered during Senate floor debate.

* This is an edited, reformatted and augmented version of CRS Report RL34051, dated September 23, 2009.

Although the terms of the debate over the Bush-proposed European BMD capability have changed significantly, this report will be retained for historical purposes to include background information and analysis up to the Obama Administration's decision to cancel it. It will be updated as necessary.

RECENT DEVELOPMENTS

In 2007, the Bush Administration requested about $310 million in the FY2008 defense budget to begin the design, construction, and deployment of a ground-based midcourse defense (GMD) element of the Ballistic Missile Defense System (BMDS) in Europe [1]. This followed several years of discussions between the United States and Poland and the Czech Republic. The proposed system would have included 10 silo-based interceptor missiles to be deployed in Poland, a fixed radar installation in the Czech Republic, and another transportable radar to be deployed in a country closer to Iran (which was never publicly identified). Deployment of the GMD European capability was scheduled to be completed by 2013 at an official estimated cost of at least $4 billion (including fielding and Operation and Support), according to the Bush Administration. The Bush proposal raised a number of issues within Europe and encountered strong opposition in Russia. The United States signed agreements with Poland and Czech Republic in summer 2008. Polish and Czech ratification of those agreements stalled for various reasons.

On September 17, 2009, the Obama Administration announced it would cancel the Bush Administration's proposed European 3rd site. Instead, Defense Secretary Gates announced U.S. plans to develop and deploy a regional, transportable BMD capability that could be deployed around the world on relatively short notice during crises or as the situation may demand. Gates argued this new capability, based primarily around existing BMD sensors, communication systems, and interceptors, would be more responsive and adaptable to the growing threat from short- and medium-range ballistic missiles. This capability would continue to evolve and expand over the next decade at an estimated cost of some $5 billion. Eventually, this mobile, regional BMD capability could cover an area as large as all of Europe, according to Secretary Gates.

The Obama Administration argues this new approach is designed to address increasingly growing concerns over the pace and direction of Iranian short- and medium-range ballistic missile proliferation in a manner that can be

deployed more quickly and effectively than the Bush- proposed European site with its more difficult to expand plan to place fixed silo-based interceptors in Poland and a large radar in the Czech Republic. President Obama pointed out that his decision came after extensive consultations with U.S. allies this year.

Some critics have argued the Obama Administration's decision was meant to appease Russia or garner its support for other issues because of Russia's strong opposition to the Bush plan. Others have charged that the Obama Administration has harmed relations with Poland and the Czech Republic by cancelling agreements reached with those two countries. Still others believe the Obama Administration is ignoring the growing nuclear and ballistic missile threat from Iran.

The response throughout Europe appears to have been largely positive. The leaders of Germany, France, the UK, Austria, and Slovakia, for example, all praised the policy reversal. NATO Secretary General Anders Fogh Rasmussen stated that the decision was a "positive step" that would "not weaken the defense of any ally." The alliance chief suggested further that a joint NATO-U.S.-Russia missile defense system be taken into consideration [2]

Reaction in Poland and the Czech Republic was mixed. Although Polish and Czech leaders were not publically critical of the Obama Administration's announcement, some Conservative Polish tabloids spoke of "betrayal," while former Polish President Lech Walesa and former Czech Prime Minister Mirek Topolanek criticized the Obama administration's policy toward the region [3]

Polish Prime Minister Donald Tusk claimed that the shift "should not affect the security of Poland" and would not undermine relations with the United States. Foreign Minister Radek Sikorski stated that, even though the interceptors would not be emplaced in Poland, the United States would still transfer armed Patriot anti-air missiles to Poland, as had been promised under an agreement the two governments signed in August 2008. In addition, the Obama Administration left open the door to the possibility of basing missile defense facilities on Czech and Polish soil in the future—possibly by date 2015. The Polish government appeared to be interested in the proposal.

Czech President Vaclav Klaus pronounced himself unsurprised by the announcement, and assured that he was "100 percent convinced that this decision ... does not signal a cooling of relations" between the two countries [4] However, a group of ruling party senators expressed concern over the "somersault in the U.S. foreign policy." In addition, Agence France Presse reported that Czech Foreign Minister Jan Kohout "called for the United States

to ‘fill the empty space’ left by the scrapped missile plan ‘with concrete projects’” [5]

Some Polish and Czech elected officials are likely displeased with the decision because they believe that needlessly expended considerable political capital in supporting the Bush Administration plan—which had significant popular opposition in both countries. U.S. analysts, however, counter that the Czechs and Poles have dragged their heels on agreeing to host the facilities. Although formal negotiations over the interceptor and radar bases began in January 2007, and discussions were initiated years before, final agreements were not struck until July and August of 2008, and parliamentary ratification of the accords—a U.S. congressional precondition for site construction and deployment of the missile defense complexes—is still pending.

In Russia, President Dmitry Medvedev called the decision “a responsible move,” adding that “we value the responsible approach of the U.S. President to our agreement. I am ready to continue our dialogue” [6]. In addition, Moscow appears to be backing away from its earlier signal that it might deploy short-range Iskander missiles to the Russian exclave Kaliningrad, which borders Poland. Some observers on both sides of the Atlantic, however, have argued that the abandonment of the Bush Administration’s proposal could be viewed by Moscow and others as a climb-down resulting from Russia’s incessant diplomatic pressure. Analysts are asking what the Kremlin may offer in return [7]

Further, some critics have faulted the current White House for not having gained anything from Moscow in exchange for its walk-back on missile defense. Obama Administration supporters, however, maintain that Russia likely would not wish to reveal an obvious quid pro quo immediately. Administration backers advise critics to wait and see what actions Russia takes in coming months, for example, with respect to cooperation with the United States on policy toward Iran.

Most of this report that follows will retain background information and analysis of the Bush- proposed European BMD initiative up to the Obama Administration’s decision to cancel it. This report will be available primarily for historical purposes. It will be updated as necessary.

HISTORICAL BACKGROUND

When it first requested funding in 2007, the Bush Administration argued that the proposed GMD European capability would help defend U.S. forces

stationed in Europe, U.S. friends and allies in the region, as well as to defend the United States against long-range ballistic missile threats, namely from Iran. In its last budget request for FY2009, the Bush Administration requested $712 million for development, fielding, and military construction of the European GMD element. Some $618 million was available from the FY2009 defense budget for the European 3rd site, had Polish and Czech ratification gone forward. Earlier in 2009, the Obama Administration proposed an additional $50.5 million for FY2010, before announcing its decision to cancel the program in September 2009.

The prospect of a GMD capability based in Europe raised a number of significant international security and foreign policy questions. Central to the debate for many was how the proposed U.S. system might affect U.S.-European-Russian relations. For FY2008, Congress eliminated funding to start construction of the European site pending final approval of international agreements with Poland and the Czech Republic and receipt of an independent study of alternative missile defense options for Europe [8]. Congress largely supported the Administration's request for FY2009, but restricted funding for site construction until after the Polish and Czech Parliaments ratified the agreements reached with the Bush Administration. Congress continued to withhold funding for deployment of the ground-based interceptor missiles themselves until after the Secretary of Defense certified to Congress that those interceptor missiles would work effectively.

The Obama Administration

During the 2008 presidential campaign, Senator Obama said he supported the deployment of ballistic missile defenses that were operationally effective. In her January 2009 nomination hearings for Undersecretary of Defense for Policy, Michele Flournoy said the Obama Administration would review plans to deploy elements of a missile defense system in Europe [9].

Flournoy said the plans should be reviewed as part of the QDR (Quadrennial Defense Review) and "in the broader security context of Europe, including our relations with Russia," noting that any final policy decision should consider it in the interest of the United States if Washington and Moscow could agree to cooperate on missile defense. Flournoy also said the final contours of any decision would require close consultations between the Administration and Congress. At his nomination hearing before the Senate Armed Services Committee for Deputy Secretary of Defense, William Lynn

responded to a question suggesting he would support making the MDA's budgetary, acquisition, testing, and policy processes more open and similar to the military services. "I think that all our military programs should be managed through those regular processes," he said, and "that would include missile defense. I would think any exceptions should be rare and fully justified" [10]. Representative Ellen Tauscher (D-Calif.), head of the House Armed Services Strategic Forces subcommittee, reportedly predicted such changes would be made in the new administration [11]. On the White House website, the Obama Administration said it would "support missile defense, but ensure that it is developed in a way that is pragmatic and cost- effective; and, most importantly, does not divert resources from other national security priorities until we are positive the technology will protect the American public." [12]

In April 2009, Defense Secretary Robert Gates announced a number of recommendations regarding the FY20 10 defense budget. Although Secretary Gates provided some details about a number of BMD programs, little was said about the European 3rd site. Joint Chiefs of Staff Vice Chairman Gen. James Cartwright only offered that there are "sufficient funds in '09 that can be carried forward to do all of the work that we need to do at a pace we'll determine as we go through the program review, the Quadrennial Defense Review, and negotiations with those countries."

The President's Budget was released later in May 2009. It included $50.5 million for the European 3rd site. Additionally, there remained about $618 million from FY2009 appropriated funds for the European 3rd site pending Polish and Czech ratification of the missile defense agreements signed in 2008. The Obama Administration conducted a major BMD Review and the Quadrennial Defense Review (QDR) in summer 2009. After this review and extensive consultations with U.S. allies, the Obama Administration cancelled the proposed European 3rd site and announced a new regional BMD initiative based largely around current capabilities and initiatives underway.

THE THREAT

The Bush Administration argued that North Korea and Iran constituted major strategic threats. North Korea claims to have tested a nuclear device and has a ballistic missile and satellite launch program. The Bush Administration argued that Iran continued to acquire and develop ballistic missiles of various ranges [13].

Iran successfully launched a small satellite into orbit for the first time in early February 2009. The Bush Administration argued that Iran had an active nuclear weapons development program, but in November 2007, a U.S. National Intelligence Estimate (NIE) stated that "in Fall 2003, Tehran halted its nuclear weapons program," and that Iran is keeping open the option to develop nuclear weapons at some point. The Iranian nuclear weapons program reportedly also included developing a warhead that could fit atop an Iranian ballistic missile [14]

The Bush Administration regarded both countries as unpredictable and dangerous, and did not believe they could be constrained by traditional forms of military deterrence, diplomacy, or arms control. On a trip to attend a meeting of NATO foreign ministers in early December 2007, Secretary of State Rice told reporters: "I don't see that the NIE changes the course that we're on" to deploy a European missile defense system [15]. Accompanying her on the trip, Undersecretary of State John Rood, lead U.S. negotiator for the European missile defense talks, added: "the missile threat from Iran continues to progress and to cause us to be very concerned.... Missile defense would be useful regardless of what kind of payload, whether that be conventional, chemical, biological, or nuclear." [16]

According to long-standing unclassified U.S. intelligence assessments, Iran may be able to test an ICBM (Intercontinental Ballistic Missile) or long-range ballistic missile capability by 2015 if it receives significant foreign assistance, such as from Russia or China. Many in Congress and elsewhere share this specific assessment, or that the potential threat may not emerge by 2015 but is sufficiently worrisome to address it now. Many therefore believe it was prudent to move forward with plans to deploy a long-range missile defense system in Europe to defend U.S. forward deployed forces in Europe, friends and allies, and the United States against long-range ballistic missile threats. Some in the larger international security policy and ballistic missile proliferation community argue that evidence of an Iranian ICBM program is scant and unpersuasive. Additionally, the Iranian government reports (which cannot be verified) that Iran only has a limited missile capability with a range of about 1,200 miles [17] and that it has stopped development of ICBM range missiles. Nonetheless, Iran continues to test ballistic missiles, some of which are capable of reaching as far as NATO's Southern Flank (i.e., Turkey). Also, Iran successfully tested a short-range ballistic missile using solid rocket motors, a development many see as indicative of Iran's interest in building longer range ballistic missiles. This, and other developments, was cited by the

Obama Administration as part of the reason to address such Iranian threats with current BMD capabilities sooner than that of the Bush Administration.

Although some Europeans have expressed concern about Iran's suspected nuclear weapons program, some U.S. friends and allies in Europe continue to question assessments of Iran's potential ICBM threat or of Iran's threat to Europe itself. Hence, some questioned the need for a European 3rd site. In December 2008, the European Council of the European Union approved a two-year study of ballistic missile proliferation trends. In congressional testimony in 2009, MDA Director Gen. O'Reilly testified [18] that MDA's projections of the threat from long-range ballistic missiles from rogue nations was off "by a factor of 10-20."

THE BUSH-PROPOSED SYSTEM

The U.S. Department of Defense began deploying long-range missile interceptors in Alaska and California in late 2004 to address long-range missile threats primarily from North Korea. Currently, the U.S. GMD element of the BMDS includes more than two dozen silo-based interceptors in Alaska and several in California. As part of an integrated Ballistic Missile Defense System (BMDS) capability, the United States also has a number of ground-based radars in operation around the world, space-based assets supporting the BMDS mission, command and control networks throughout the United States and the Pacific, as well as ground-mobile and sea- based systems for shorter-range BMD.

What remained necessary as part of the global BMDS, according to the Bush Administration, was an ability in the European theater to defend against intermediate-to-long-range ballistic missiles launched from Iran. The Department of Defense (DOD) argued it was important to U.S. national security interests to deploy a GMD capability in Europe to optimize defensive coverage of the United States and Europe against potential threats both into Europe and against the United States.

There have not been a large number of intercept flight tests of the deployed GMD element, and the flight test record was mixed. Nonetheless, the Bush Administration and many U.S. military leaders expressed confidence in the deployed system [19]. However, most agree there is the need for further operational testing. Some observers continue to question how much confidence there should be in the system's potential operational or combat effectiveness based on the types of tests conducted and the test results to date.

The current GMD program began flight tests in 2002. This effort was built on several earlier long-range BMD programs with decidedly mixed results themselves since the early 1980s. Since 2002, a number of GMD intercept flight tests have taken place with mixed results [20]. In each of these tests, most all other flight test objectives were met. Some have argued the flight test results have demonstrated significant improvement in the system capabilities, but other technical experts have noted these tests are scripted to achieve those successes.

In 2002, the GMD moved to the operational booster and interceptor. The interceptor system flew two developmental tests in 2003 and 2004, and the GMD element of the BMDS was deployed in late 2004 in Alaska and California. Two planned intercept flight tests of the new configuration for December 2004 and February 2005 were not successful. After technical review, the interceptor successfully demonstrated a booster fly-out in 2005. In September 2006, a successful flight test exercise of the GMD element as deployed took place. (Although a missile intercept was not planned as the primary objective of this data collection test, an intercept opportunity occurred and the target warhead was successfully intercepted.) Additional intercept flight tests of the deployed element whose primary objectives were intercepts of long-range ballistic missile targets were originally scheduled for later in 2006, but then subsequently postponed. Then a May 2007 intercept test was scrubbed when the target missile failed to launch as planned. A follow-on attempt scheduled for summer 2007 was completed successfully on September 29, 2007. The Missile Defense Agency reported a successful intercept in December 2008, but some were critical of this assessment as the test objective was for the intercept to occur amidst a field of decoys, which decoys failed to deploy from the test target.

Supporters and many military officials express confidence in the deployed system, but others continue to question the system's potential effectiveness based on the mixed intercept flight test record. Most observers agreed, however, that additional, successful flight testing remain necessary. Supporters add that a significant number of non-flight tests and activities are conducted that demonstrate with high confidence the ability of the GMD element to perform its intended mission [21].

What would the European element of the BMDS look like? The Bush proposal was to deploy up to 10 Ground-based Interceptors (GBI) in silos at a former military base in Poland. It should be noted that the proposed GBI for the European GMD site were not identical to the GBIs deployed now in Alaska and California. Although there is significant commonality of hardware,

there are some differences. For example, the European GBI would consist of two rocket stages in contrast to the three-stage GBI deployed today [22]. This particular two-stage configuration was never tested and was a basis for additional questions about the proposed system's effectiveness. Proponents of the system would argue that the two-stage version is fundamentally the same as the three-stage system, however [23]. In Europe, the GBI reportedly would not need the third stage to achieve the range needed to intercept its intended target [24].

This issue raised the question for some observers as to whether other U.S. systems designed for shorter or medium-range ballistic missile threats, such as Patriot, THAAD (Terminal High Altitude Area Defense), or Aegis (sea-based BMD) might be more appropriate for addressing the current and prospective Iranian ballistic missile threat to Europe. DOD's Missile Defense Agency (MDA) argued during the tenure of the Bush Administration that those systems would not have been adequate to counter prospective Iranian ballistic missile threats over the mid-term and longer.

Deployment of the silos and interceptors in Poland was scheduled to begin in 2011 with completion in 2013. This timeline was not certain, however, given the delay in ratifying the BMD agreement. The interceptors were to have been deployed at Redzikowo, near the town of Slopsk in northern Poland. The field of the 10 interceptors itself would likely have comprised an area somewhat larger than a football field. The area of supporting infrastructure was likely to be similar to a small military installation.

In addition, a U.S. X-Band radar (a narrow-beam, midcourse tracking radar), that was being used in the Pacific missile test range, would have been refurbished and transported to a fixed site at a military training base in the Czech Republic. The site currently identified was in the heavily forested Brdy Military Training Area, about 150 kilometers southwest of Prague. The X-Band radar with its large, ball-shaped radome (radar dome) is several stories in height.

A second, transportable forward acquisition radar would have to have been deployed in a country never identified, but closer to Iran. Some European press accounts once mentioned the Caucasus region, but the Bush Administration never publicly indicated where this radar might be located.

Additionally, the proposed GMD European capability would have included a communications network and support infrastructure (e.g., power generation, security and force protection systems, etc.) A few hundred U.S. personnel would have been stationed there to secure and operate both the

interceptor and radar sites. The Bush Administration intended for the United States to have full command authority over the system.

The initial request in FY2008 included $310.4 million for the proposed European GMD across several program elements of the Missile Defense Agency (MDA) budget. The Bush Administration estimated the costs for the European site were about $4 billion (FY2007- FY2013), including Operation and Support costs through 2013. Although relatively small in U.S. defense budget terms, the FY2008 request represented a significant commitment to the proposed European system. The FY2009 request was for $712 million. The Obama Administration's FY2010 request was for $50.5 million.

In 2007, both the House and Senate Armed Services Committees asked for studies of alternatives to the Administration's proposed European GMD deployment (see "Congressional Actions"). This classified review was provided to Congress in August 2008. Some, such as Representative Ellen Tauscher, suggested the Administration consider instead a combination of sea-based (Aegis SM-3) and land-based systems (PAC-3, THAAD). Then MDA Director General Henry Obering argued that most of the current Aegis fleet would be required to defend Europe, and that the cost would be considerably greater than the current Bush Administration proposal [25]. MDA's assessments, however, assumed the need for 24/7 coverage. Other assessments based on deployment on a contingency basis or crisis reduced significantly the estimated cost of such alternatives.

In May 2009, the U.S.-based EastWest Institute released a report critical of the ability of the European 3rd site to defeat Iranian ballistic missile threats [26]. The report concluded that the threat from Iran was not imminent and that the proposed European 3rd site would not be effective against an Iranian ballistic missile threat. Similarly, a fact sheet prepared by staff of the House Armed Service Committee said the proposed European 3rd site would not provide any capability against Iran's current ballistic missile inventory [27]. Missile defense supporters took strong issue with the report's conclusions. The report sparked a constructive technical debate in open-source literature about Iranian and North Korean ballistic missile programs.

THE LOCATION

In 2002 the Bush Administration began informal talks with the governments of Poland and the Czech Republic over the possibility of establishing missile defense facilities on their territory. Discussion of a more

concrete plan—placing radar in the Czech Republic and interceptor launchers in Poland—was reported in the summer of 2006. The issue was increasingly debated in both countries. In January 2007, the U.S. government requested that formal negotiations begin. Agreements were struck with both countries—the Czech Republic in spring 2008 and Poland in summer 2009. Neither country ratified their agreements before the Obama Administration cancelled the program.

Poland

Some analysts maintained that in Poland the notion of stationing American GMD facilities was more or less accepted early on in the discussions and that the main questions subsequently revolved around what the United States might provide Warsaw in return. Some Poles believed their country should receive additional security guarantees in exchange for assuming a larger risk of being targeted by rogue state missiles because of the presence of the U.S. launchers on their soil. In addition, many Poles were concerned about Russia's response. Both of the past two Polish governments reportedly requested that the United States provide batteries of Patriot missiles to shield Poland against short- and medium-range missiles [28].

Formal negotiations on the base agreement, which required the approval of the Polish parliament, began in early 2007 under the populist-nationalist Law and Justice (PiS) party, led by Jaroslaw Kaczynski. As talks began, Civic Alliance (PO), then the leading opposition party, had questions about the system—particularly the command and control aspects—and urged the government to ensure that it be integrated into a future NATO missile defense program. The former ruling leftist party supported deployment of the missiles, but also called for greater transparency in the decision-making process. The smaller parties of the governing coalition expressed some skepticism, mainly for reasons of sovereignty, and indicated support for a public referendum [29].

In snap elections held on October 21, 2007, Poles turned out PiS and replaced it with a center- right two-party coalition led by PO; its leader, Donald Tusk, became prime minister. During the campaign, Tusk indicated that his government would not be as compliant toward the United States as PiS, and that it would seek to bargain more actively on missile defense.

As he left office, former Prime Minister Kaczynski urged the incoming government to approve the missile defense proposal, arguing that an agreement would strengthen relations with the United States. In a post-election

news conference, however, Tusk was cautious about the plan: "If we recognize that the anti-missile shield clearly enhances our security, then we will be open to negotiations.... If we recognize, jointly in talks with our partners from the European Union and NATO, that this is not an unambiguous project, then we will think it over." Two weeks later, however, newly minted Defense Minister Bogdan Klich stated that Poland should again "weigh the benefits and costs of this project for Poland. And if that balance results unfavorably, we should draw a conclusion from those results." [30] Foreign Minister Radek Sikorski later indicated that the new government would discuss the project with Russia.

Talks between Warsaw and Washington resumed in early 2008. Some observers forecast that the new Polish government would strongly renew the argument for the United States to provide additional air and/or short-range missile defenses [31]. On February 2, 2008, during a visit by Sikorski to Washington, DC, U.S. Secretary of State Rice voiced support for strengthening Poland's air defenses. Although there was said to be agreement "in principle" on the missile defense issue, an accord was not signed when Prime Minister Tusk visited the United States in the following month [32].

The major sticking point in the negotiations was the question of U.S. assistance for Poland's military "modernization," mainly in the form of PAC-3 air defense. During Prime Minister Tusk's visit to Washington, DC, in March 2008, however, President Bush declared, "Before my watch is over we will have assessed [Poland's] needs and come up with a modernization plan that's concrete and tangible." Nevertheless, the meeting of the two leaders did not result in a deal being struck. In addition, Poland was anxious that the two projects not be too explicitly linked, for fear of further alienating Russia. Concerning the likely future of the program, Polish Ambassador to the United States Robert Kupiecki in spring 2008 told a Polish parliamentary committee that "there are serious reasons to think that the project will be continued" by Bush's successor, no matter whom it might be. A Czech newspaper reported that MDA Director Obering "said [on April 2 that] the United States will be interested in stationing the radar in the Czech Republic even if it does not reach agreement with Poland." [33] What this might have meant for the overall system without the interceptors sited in Poland was not clear. However, some suggested that the radar would be useful if used in conjunction with other medium-range BMD systems, such as Aegis, in the absence of GMD interceptors based in Poland. In addition, Bush Administration officials reportedly held discussions on the interceptor basing issue with the government of Lithuania [34].

In early July, the Polish media reported that a meeting in Washington between Foreign Minister Sikorski and Secretary Rice failed to produce an agreement [35].

In a surprise move on August 14, Polish and U.S. government officials initialed an agreement; the formal accord was signed six days later by Rice and Sikorski. Some observers believe that the negotiations, which had stalled in July, received impetus from concerns over Russia's military incursion into South Ossetia in early August. While some U.S. officials denied an explicit linkage between the two events, U.S. Defense Secretary Gates on August 15 commented that Russia's neighbors have "a higher incentive to stand with us now than they did before, now that they have seen what the Russians have done in Georgia" [36] Under the agreement, Poland received from the United States enhanced security guarantees, which Minister Sikorski likened to a "kind of reinforcement of Article 5 [the NATO treaty's mutual defense clause]." [37]. The United States also pledged to help modernize Poland's armed forces, in part by providing a battery of Patriot air defense missiles, which reportedly would be re-deployed from Germany and would initially be manned by U.S. military personnel.

Most public opinion surveys indicated that a majority of Poles disapproved of a missile defense base being established in their country. Most objections appear to have been based on concerns over sovereignty, as well as over the belief that the presence of the system would diminish rather than increase national security and might harm relations with neighboring states and Russia. However, the Russian military action in Georgia and its subsequent threats to place tactical missiles in Kaliningrad (see below) may have increased support in Poland for the missile shield— and for the battery of Patriots [38]

The Polish legislature did not immediately ratify the agreement. Parliamentary speaker Bronislaw Komorowski said that he would not "rush" the vote, and added that "it would be worth knowing if the election result in the U.S. would have an influence on the U.S. attitude towards this program." In an August 19 news conference, Prime Minister Tusk said that he had requested Foreign Minister Sikorski to discuss missile defense with "both candidates John McCain and Barack Obama—and both conversations, although less decisively in the second case, indicated support for the project." [39] President Kaczynski's office criticized Prime Minister Tusk for postponing ratification until after elections. Despite the delay, U.S.-Polish negotiations on GMD continued. In addition, the Poles continued to hold high-level discussions with Moscow [40]

Shortly after the U.S. elections, President-elect Obama spoke by phone with President Kaczynski; there was apparent confusion on the Polish side over whether or not President-elect Obama had made a commitment to continue with the GMD plan. During a meeting with residents of the village near which the interceptors would be based, U.S. Ambassador to Poland Victor Ashe reportedly said that the GMD project would likely be in suspension until such time as the Obama Administration had formulated its policies [41]

In a mid-November 2008 interview, Foreign Minister Sikorski estimated the chances of the system's continuation at more than 50%. He added, however, that budgetary pressure might lead to the project being "put on hold"—a regrettable possibility, in his view. Sikorski has also noted that, "[t]here are clauses in the agreement that say it can be cancelled if there's no financing." During an address delivered in Washington in late November, Sikorski said that he hoped the GMD project would continue, as it was a sign of transatlantic cooperation. He also implied that hosting the interceptor base would bolster Poland's security, commenting that "everyone agrees that countries that have U.S. soldiers on their territory do not get invaded" [42] Polish President Kacyznski and Foreign Minister Sikorski both have expressed hope publically that the Obama Administration will continue the program [43]

Some observers believed that Polish MPs, like their Czech counterparts, were reluctant to approve a treaty that may not be acted upon. Olaf Osica, a fellow at Warsaw's Natolin European Center, commented that "[o]ne of the worst scenarios for the Polish government would be if the agreement is ratified and then it turns out that Americans are no longer committed to it." [44]

On May 21, 2009, a U.S. State Department spokesperson confirmed that the U.S. government intended to proceed with the transference by year's end of a battery of 96 Patriot missiles to Poland, regardless of the status of the treaty regarding the missile defense interceptors. There was some debate over whether or not the Patriots would be permanently installed or temporarily, for training purposes, and whether they would be armed or unarmed [45].

Czech Republic

In September 2002, the Czech defense minister, a member of the Social Democratic Party (CS SD), announced that he had "offered the United States the opportunity to deploy the missile defense system on Czech soil" [46].

In June 2006, inconclusive elections toppled the CSSD government and replaced it with a shaky coalition led by the center-right Civic Democratic Party (ODS). As with the outgoing government, the new one voiced support for GMD. However, the CSSD, now in opposition, began to backpedal on its support as polls showed increasing public skepticism, and by mid-2006 only the ODS was unambiguously backing deployment. When a relatively stable ODS-led government was finally formed in January 2007, the ODS apparently persuaded its coalition partners to support GMD (the Greens made their agreement contingent upon NATO approval). In January 2007, the United States requested that official negotiations be started, and in March the Czech government formally agreed to launch talks.

In October 2007, U.S. Defense Secretary Robert Gates visited Prague to discuss several issues— including the planned radar installation—with Czech leaders. During the visit, he reportedly proposed that, in the interest of transparency, Russia be allowed to station personnel at the radar site. Czech Prime Minister Topolanek had no immediate comment but appeared to concur with Gates's observation that the presence of Russians on Czech territory would have to be approved by Czechs first. Gates also suggested that activation of the missile defense system could be delayed until such time as there was "definitive proof of the threat—in other words, Iranian missile testing and so on." On the same day, however, President Bush delivered a speech in which he called the need for the missile defense project "urgent." Some analysts argued that the U.S. proposal to include Russia might complicate Topolanek's efforts to secure approval for an eventual agreement with the United States [47]. On March 19, 2008, a State Department official announced that the Czech Republic had agreed to join in proposing to Russia an agreement that would permit reciprocal inspections of missile defense radar facilities. However, during an April 7 interview, Czech Foreign Minister Schwarzenberg said, "If Russians want to check something on our soil, they will have to speak with us first." [48]

On December 5, 2007, the Czech Foreign Ministry issued a statement asserting that the U.S. intelligence community's conclusion that Iran had suspended its nuclear weapons program in 2003 would not affect Prague's decision to host the radar facility, as the threat had the potential to re-emerge in the future [49]. In late January 2008, Jiri Paroubek, leader of the opposition CSSD party, argued that, because of the high and increasing public resistance to the radar, the government should freeze negotiations until after the results of the November 2008 U.S. presidential elections were known. He also urged that

Prime Minister Topolanek report on the substance of his upcoming talks on the issue with President Bush [50]

During a visit to Washington in late February 2008, Topolanek said that the two sides were "three words" away from an agreement. On April 3, 2008, during the NATO summit in Bucharest, Czech media reported that Foreign Minister Karel Schwarzenberg had announced that Prague and Washington had reached an accord over the terms of the proposed U.S. radar base, and that a treaty would be signed in May. The signing was postponed due to scheduling conflicts, and finally took place on July 8, during a visit by Secretary of State Rice. As part of the deal, the United States reportedly agreed to provide ballistic missile defense—from Aegis system-equipped U.S. Navy vessels—for the Czech Republic [51].

The agreement then awaited ratification by the parliament, but approval was not a foregone conclusion. In April 2008, Schwarzenberg said that he thought "the conclusions of the NATO summit regarding US MD should be sufficient for the junior government Green party to vote in favor of the radar." However, a Czech newspaper stated that "[a]t the moment the government lacks at least five votes." Although the Green Party leadership reportedly called for its members to oppose the radar despite the NATO summit declaration, some members reportedly intended to support the project.52 On July 9, 2008, Czech Deputy Foreign Minister Tomas Pojar expressed confidence that parliament would ratify the treaty by the end of the year or early in 2009, and added that "it is probable that the [ratification] vote will be after the election in the United States, however, that does not mean that it would be after the new (U.S.) President takes office."

At the end of October, the Czechs announced that ratification would take place after the inauguration of the next President. Prime Minister Topolanek explained that "We want a delay to make sure about the attitude of the new American administration." In mid-November, Miloslav Vlcek, chairman of the lower house of parliament—a member of the opposition CCSD— confirmed that a ratification vote would not be held until after Barack Obama had been inaugurated; in addition, he expressed doubts that the treaty would be approved, and also suggested that the radar deployment might face a constitutional challenge. Although the Czech Senate on November 26 ratified the agreement by a vote of 49-31, it still required approval in the chamber of deputies, where approval was less certain [53]. A scheduled March 18, 2009, vote on the treaty was postponed—likely until after the Obama Administration had indicated whether or not it intended to proceed with the plan. Parties on

both sides of the issue were hopeful that the new U.S. government would validate their position on missile defense [54]

In addition to the changes in the U.S. government, the missile defense issue was being complicated by a crisis in Czech political life. On March 24, 2009, the Czech ruling coalition failed a narrow no-confidence vote, and Prime Minister Mirek Topolanek offered his government's resignation. The turnaround came as a complete surprise to most observers, who had reasoned that the various factions and parties would make efforts to patch over their political differences during the time (January-June 2009) that Prague is holding the six-month revolving European Union (EU) presidency. On May 15, President Vaclav Klaus announced the installation of an interim government, intended to complete the Czech EU presidency and govern the country until new parliamentary elections can be held—most likely in October 2009. In the meantime, Jan Fischer, who is head of the caretaker government, stated in a meeting with NATO Secretary General Jaap de Hoop Scheffer that the Czech decision over whether to proceed with the U.S. radar should be the responsibility of the next elected government [55]

The effort to form a new government may be hampered by disagreements within as well as between political parties. Polls showed the opposition CSSD with a lead. The political crisis added some uncertainty to the future of the missile defense agreement, as the CSSD has opposed the planned radar. Public opinion surveys consistently showed strong (60%-70%) opposition to the plan among Czechs, who shared many of their Polish neighbors' concerns [56]. With memories of the Nazi occupation and the 1968 Soviet crackdown still fresh in the minds of many Czechs, the public has been resistant to the notion of any foreign troops—unfriendly or allied—being stationed on their soil.

POLICY ISSUES

U.S. proponents of the missile defense program note that the bases being planned would be part of a limited defensive system, not an offensive one. The missiles would not have explosive payloads, and would be launched only in the event that the United States or its friends or allies in Europe were under actual attack. Critics responded that Europe did not currently face a significant threat from Iran or its potential surrogates, but that Polish and Czech participation in the European GMD element would have created such a threat. If American GMD facilities were installed, they argued, both countries would

likely have been targeted by terrorists, as well as by missiles from rogue states—and possibly from Russia—in the event of a future confrontation.

Debate in Poland and the Czech Republic

Some proponents of the proposed GMD European capability system asserted that cooperation would have helped consolidate bilateral relations with the United States. In Poland in particular there is a sense, based in part on historical experience, that the United States is the only major ally that can be relied upon. Therefore, some Poles argue, it would be beneficial to strengthen the relationship by becoming an important U.S. partner through joining the missile defense system. In addition, some Czechs and Poles believe that the missile defense sites would become a prestigious symbol of the two countries' enhanced role in defending Europe. Some would argue that the Czechs and the Poles see this formal U.S. military presence as an ultimate security guarantee against Russia; when asked shortly before Poland's October 21, 2007, parliamentary elections about the missile defense issue, former Prime Minister Kaczynski singled out Russia as a threat [57]

Opponents, however, contend that this is not a valid reason for accepting missile defense facilities because the two countries, which joined NATO in 1999, already enjoy a security guarantee through the alliance's mutual defense clause. Polish missile defense skeptics also maintain that their country does not need to improve its bilateral security relationship with the United States because it has already shown its loyalty through its significant contributions to the military operations in Iraq and Afghanistan and the global war on terrorism. Some Polish and Czech political leaders reason that the United States may proceed with missile defense with or without them, so they may as well be on board. However, the missile bases are unpopular among the Czech and Polish public, and any government that agreed to host such facilities might lose political support. In addition, some Czechs and Poles may be speculating whether it would be worthwhile to expend political capital on the GMD bases, as the issue may become moot. One Polish observer asserted that if the project is discontinued, "Poland will become an international laughingstock" [58]

A Czech member of parliament noted that, if the U.S. Congress determines not to fund a European arm of missile defense, "[t]he USA will thus solve the problem for us" [59].

Some Czechs and Poles have argued that the extra-territorial status of the proposed bases would impinge upon national sovereignty. However, the Czech

position is that the base "would be under the Czech Republic's jurisdiction" [60]. In addition, some have raised questions over command and control—who would decide when to push the launch button and what would the notification system be? Polish and Czech government leaders reportedly acknowledge that the time between the detection of the launch of a missile by a hostile regime and the need to fire off an interceptor would be so brief as to preclude government-to-government consultations.

Opponents have also cautioned that the interception of a nuclear-tipped missile over Polish or Czech territory could result in a rain of deadly debris. Supporters argue that an enemy missile would not be intercepted over Eastern Europe, and that even if it were, the tremendous kinetic energy of impact would cause both projectiles to be obliterated and any debris burnt upon atmospheric reentry. Skeptics point out, however, that testing of these systems is never performed over populated areas.

European/Russian Response

The proposed U.S. system has encountered resistance in some European countries and beyond. Some critics claim that the program is another manifestation of American unilateralism and argue that, because of opposition by major European partners, Polish and Czech participation in the GMD program could damage those countries' relations with fellow EU members [61] Supporters, however, counter that the establishment of a missile defense system would protect Europe as well as the United States.

Some European leaders have asserted that the Bush Administration did not consult sufficiently with European allies or with Russia on its GMD plans. German Foreign Minister Frank-Walter Steinmeier faulted the Bush Administration for failing to adequately discuss the proposal with affected countries. Former French President Chirac cautioned against the creation of "new divisions in Europe." Bush Administration officials, however, maintained that these arguments were disingenuous, as they had held wide-ranging discussions on GMD with European governments, and with Russia, both bilaterally and in the framework of the NATO-Russia Council [62].

In addition, critics charged that establishing a European GMD base to counter Iranian missiles implied a tacit assumption on the part of the Bush Administration that diplomatic efforts to curb Iran's nuclear and ballistic missile aspirations were doomed to failure, and that Iran's future leaders would be undeterred by the prospect of nuclear annihilation. Finally, an

analyst with the Swedish Transnational Foundation Research Center has argued that the U.S. missile defense system is being built in order to enable the use of a first strike [63]

Europeans also have raised questions about the technical feasibility of the program as well as its cost-effectiveness. According to a wire service report, "Luxembourg's Foreign Minister Jean Asselborn called the U.S. [missile defense] plan an 'incomprehensible' waste of money" [64].

Other European leaders, however, including the former prime ministers of Denmark and Britain, indicated that they supported the missile defense project as a means to protect Europe from threats from rogue states. In addition, some European allies do not appear to be averse to the missile defense concept per se. Foreign Minister Steinmeier indicated that Germany and other countries were interested in building a comparable system, but lacked the technological know-how [65].

NATO also has been deliberating strategic missile defenses. A feasibility study of such a program called for in the 2002 Prague Summit was completed in 2005. In the final communiqué of their 2006 Riga summit, NATO leaders stated that the alliance study had concluded that long-range BMD is "technically feasible within the limitations and assumptions of the study," and called for "continued work on the political and military implications of missile defence for the Alliance including an update on missile threat developments." Supporters contend that the U.S. facilities intended for placement in Eastern Europe would be a good fit—and therefore not inconsistent with—any future NATO missile defense. However, other policymakers have recommended that the establishment of any anti-missile system in Europe should proceed solely under NATO auspices rather than on a bilateral basis with just two NATO partners. A Bush Administration official declared that "the more NATO is involved in [GMD], the better" [66].

Some observers have suggested that the Bush Administration chose not to work primarily through NATO because consensus agreement on the system was unlikely. However, in mid-June 2007, alliance defense ministers did agree to conduct a study of a complementary "bolt-on" anti-missile capability that would protect the southeastern part of alliance territory that would not be covered by the planned U.S. interceptors. Bush Administration officials interpreted the move as an implied endorsement of the U.S. GMD plan and an adaptation of NATO plans to fit the proposed U.S. system. In addition, NATO Secretary General Jaap de Hoop Scheffer stated "The roadmap on missile defense is now clear.... It's practical, and it's agreed by all" [67].

The Bush Administration hoped that NATO would endorse missile defense at its 2008 summit meeting, held April 2-4 in Bucharest, Romania [68] The Summit Declaration stated that the alliance acknowledges that ballistic missile proliferation poses an increasing threat. It further affirmed that missile defense is part of a "broader response," and that the proposed U.S. system would make a "substantial contribution" to the protection of the alliance. It declared that the alliance is "exploring ways to link [the U.S. assets] with current NATO efforts" to couple with "any future NATO-wide missile defense architecture." The declaration also directed the development, by the time of the 2009 summit, of "options" for anti-missile defense of any alliance territory that would not be covered by the planned U.S. installations. These options would be prepared "to inform any future political decision." In addition, the document declared support for ongoing efforts to "strengthen NATO-Russia missile defense cooperation," and announced readiness to look for ways to link "United States, NATO and Russian missile defense systems at an appropriate time." Finally, alliance members stated that they are "deeply concerned" over the "proliferation risks" implied by the nuclear and ballistic missile programs of Iran and North Korea, and called upon those countries to comply with pertinent UN Security Council resolutions [69].

The Bush Administration interpreted the Summit Declaration as an endorsement of its missile defense project; Secretary of State Condoleezza Rice hailed the statement as a "breakthrough document." Concerning the question of whether ballistic missiles from rogue states were a threat, National Security Advisor Stephen Hadley declared, "I think that debate ended today" [70]. Representative Tauscher welcomed "NATO's acknowledgment of the contribution that the long- range interceptor site could make to Alliance security" and to make "cooperation with NATO a cornerstone of its missile defense proposal" [71].

In the final communiqué of their December 3, 2008, meeting, the foreign ministers of NATO member states reiterated the language on missile defense that had been included in the Bucharest summit declaration, while also noting "as a relevant development the signature of agreements by the Czech Republic and the Republic of Poland with the United States regarding those assets." The communiqué also called upon Moscow "to refrain from confrontational statements, including assertions of a sphere of influence, and from threats to the security of Allies and Partners, such as the one concerning the possible deployment of short-range missiles in the Kaliningrad region." (see below.) The latter statement was likely included at Warsaw's insistence [72].

NATO's 2009 summit was held in Strasbourg, France, and Kehl, Germany, in early April. The summit declaration "reaffirmed the conclusions of the Bucharest Summit about missile defence," but noted that there was more work to be done. Specifically, it recommended that "missile threats should be addressed in a prioritised manner" that addresses "the level of imminence of the threat and the level of acceptable risk." It tasked the Council in Permanent Session with studying and making recommendations on "architecture alternatives," including usage of the ongoing Active Layered Theater Ballistic Missile Defense program, which is currently intended to protect deployed NATO forces [73].

European opponents of the proposed U.S. plan also contend that statements by Russian officials are evidence that deployment of the U.S. system would damage Western relations with Russia. At a February 2007 security conference in Munich, former President Putin strongly criticized GMD, maintaining that it would lead to "an inevitable arms race." Russia has threatened to abrogate the 1987 Intermediate-Range Nuclear Forces (INF) Treaty, which eliminated this class of U.S. and then-Soviet missiles that were stationed in Europe. Putin also announced that Russia had suspended compliance with the Conventional Forces in Europe (CFE) Treaty, [74] and on another occasion indicated Russia might now target Poland and the Czech Republic and transfer medium- range ballistic missiles to the Russian exclave of Kaliningrad. Some U.S. and European officials dismissed Russia's alleged concerns and have noted that Moscow has known of this plan for years and has even been invited to participate [75]. GMD proponents maintain that the interceptors are intended to take out launched Iranian missiles aimed at European or American targets and could not possibly act as a deterrent against Russia, which has hundreds of missiles and thousands of warheads. The chief of the Czech general staff has noted that "by simple arithmetic, Russian generals can see that U.S. missile defenses cannot imperil Moscow's arsenal." Some Russians contend, however, that the modest GMD facilities planned for Eastern Europe are likely just the harbinger of a more ambitious program.

Russian officials have also argued that North Korean or Iranian missiles would not likely enter European airspace, and that the real reason for GMD is to emplace U.S. radar in eastern Europe to monitor Russian missile sites and naval operations. A Czech military officer dismissed the charge of electronic espionage as "absolute nonsense," arguing that "the radar monitors the already launched missiles, and it cannot monitor what is going on the ground"—a task that is already being performed by U.S. surveillance satellites [76]

Some argue that Russia has other motives for raising alarms about the U.S. missile defense system: to foment discord among NATO member states, and to draw attention away from Russia's suppression of domestic dissent, its aggressive foreign policy actions, and its nuclear technology cooperation with Iran. Observers note that Russia blustered about NATO expansion, too, and argue that Russia's veiled threats may actually stiffen resolve in Prague and Warsaw. Some observers note, however, that Russian acceptance of NATO expansion was conditioned on a tacit understanding that NATO or U.S. military expansion into the new member states would not occur. The European GMD in this regard is seen as unacceptable to Russia.

On June 7, 2007, during the G-8 meeting in Germany, Putin offered to partner with the United States on missile defense, and suggested that a Soviet-era radar facility in Azerbaijan be used to help track and target hostile missiles that might be launched from the Middle East. President Bush responded by calling the proposal an "interesting suggestion," and welcomed the apparent policy shift. The following day, Putin suggested that GMD interceptors be "placed in the south, in U.S. NATO allies such as Turkey, or even Iraq ... [or] on sea platforms." Military and political representatives from both countries have met to discuss the proposal, but some experts point out that Azerbaijan is technically not the ideal place to locate the radar because it would be too close to potential Iranian launch sites; they also argue that the radar is outmoded.

In the meantime, Putin urged the United States not to deploy elements of GMD until his offer had been examined. One week later, however, U.S. Defense Secretary Robert Gates stated that even if the United States were to accept Russia's offer to share use of the Azeri radar, that facility would be regarded as "an additional capability" to complement the proposed GMD sites planned for Europe [77]. In late July 2007, MDA Director Obering said the United States was looking at the proposal very seriously. He said the Azeri radar could be useful for early detection of missile launches, but that it does not have the tracking ability to guide an interceptor missile to a target— which the proposed Czech radar would be able to do.

At a July 1-2, 2007, meeting in Kennebunkport, ME, Putin expanded on his counterproposal by recommending that missile defense be coordinated through offices in Brussels and Moscow. He also suggested the possible use of radar in south Russia and said that cooperation could be expanded to other European countries through the use of the NATO-Russia council— eliminating, he added, the need for facilities in Poland and the Czech Republic. President Bush reportedly responded positively to Putin's new proposal, but insisted on the need for the Eastern European sites [78].

Despite ongoing discussions over the issue, Russian criticism of the program has continued, edged, at times, with sarcasm. During an October 2007 visit to Moscow by Secretaries Gates and Rice, President Putin remarked "of course we can sometime in the future decide that some antimissile defense system should be established somewhere on the moon." Putin later likened the U.S. placement of the missile defense facilities in central Europe to the 1962 Cuban missile crisis—a comparison disputed by U.S. officials. In late November 2007, Russia rejected a written U.S. proposal on the project, arguing that it failed to include the points Secretary Gates had discussed a month earlier, including "joint assessment of threats, ... Russian experts' presence at missile shield's sites, [and] readiness to keep the system non-operational if there is no actual missile threat" [79] In December, the chief of Russia's army suggested that the launching of U.S. missile defense interceptors against Iranian missiles might inadvertently provoke a counter launch of Russian ICBMs aimed at the United States. However, critics assert that a Russian counterstrike could not be prompted so easily and mistakenly. In February 2008, Putin reiterated earlier warnings that, if construction commenced on the missile defense facilities, Russia would re-target ICBMs toward the missile sites [80].

During President Bush's post-Bucharest meeting with Putin at the Russian resort of Sochi, the two leaders reportedly sought to find common ground on missile defense; they agreed to introduce greater transparency in the project, and to explore possible confidence-building measures. In the meantime, Russia remains opposed to the proposed European bases. The two sides agreed to "intensify" their dialogue on missile defense cooperation. After the meeting, however, Iran's ambassador to Poland warned that if the missile defense system is installed, "the United States will acquire supremacy over Russian nuclear forces" [81]

Following the signing of the U.S.-Poland agreement, Russia once more vociferously objected to the missile defense plan. On August 16, a highly placed Russian general officer stated that Poland's acceptance of the interceptors could make it a target for a nuclear attack. Later, newly inaugurated President Dmity Medvedev reiterated Russia's conviction that the interceptors constitute a threat, and added that Moscow "will have to respond to it in some way, naturally using military means." On August 20, it was also announced that the governments of Russia and Belarus had launched discussions on the establishment of a joint air defense system; the move was interpreted by ITAR-TASS as a "retaliatory measure" in response to the planned U.S. missile defense system [82]

The day after the U.S. elections, in his State of the Federation speech, President Medvedev said that Russia would deploy short-range Iskander missiles to the Russian exclave of Kaliningrad, which borders Poland and Lithuania, if the U.S. GMD system is built. However, Medvedev later told a French newspaper that it the United States does not deploy the system, Russia would not transfer its missiles to Kaliningrad. Prime Minister Putin later reiterated that Russia would scrap its plans for the Iskanders if the United States cancelled its European GMD project.83 Some observers believe that the announcement created more concern in central than in western Europe. Shortly thereafter, however, European Commission President Jose Manuel Barroso stated that "cold war rhetoric" was "stupid," and U.S. Defense Secretary Gates states that "such provocative remarks are unnecessary and misguided." [84]

In mid-November 2008, French President Nicolas Sarkozy recommended that the U.S. and Russian plans be discussed by NATO and the OSCE in the spring of 2009, and that, "until then we should not talk about missile or shield deployments which lead to nothing for security, which complicate things and rather make things go backwards." Czech Deputy Prime Minister Alexandr Vondra criticized Sarkozy's remarks as inappropriate, and Polish Prime Minister Tusk stated that GMD was a Polish-U.S. project, and that "I don't think that third countries, even such good friends as France, can have a particular right to express themselves on this issue." Sarkozy later appeared to backtrack somewhat, saying "every country is sovereign to decide whether it hosts an anti-missile shield or not" [85].

In late January 2009, the Russian media reported that Moscow had "suspended" plans to move short-range missiles to Kaliningrad because the Obama Administration was not "pushing ahead" with the European GMD deployment. The Obama Administration has indicated that it is prepared to open talks with Teheran if it is willing to shelve its nuclear program and renounce support of terrorism. On February 7, at the 2009 Wehrkunde security conference in Munich, Vice President Biden stated that "we will continue to develop missile defenses to counter a growing Iranian capability.... We will do so in consultation with our NATO allies and Russia" [86] During a February 10 visit to Prague, Secretary of State Hillary Clinton said that any change in U.S. policy on missile defense would depend upon Iran, but that "we are a long, long way from seeing such evidence of any behavior change" in Iran [87]

In early March 2009, the media reported that President Obama had sent a letter to President Medvedev offering to stop the development of the missile defense program if Russia cooperated on policy that would help halt Iran's

nuclear weapons and missile programs. President Obama denied such a quid pro quo, stating that "what I said in the letter was that, obviously, to the extent that we are lessening Iran's commitment to nuclear weapons, then that reduces the pressure for, or the need for a missile defense system. In no way does that in any—does that diminish my commitment to [the security of] Poland, the Czech Republic and other NATO members" [88].

In a joint statement issued at their "get acquainted" meeting on April 1, 2009, Presidents Obama and Medvedev acknowledged that differences remained in their views toward the placement of U.S. missile defenses in Europe, but pledged to examine "new possibilities for mutual international cooperation in the field of missile defense." Later that month, however, Russian Deputy Foreign Minister Sergei Ryabkov charged that "[U.S.] work in the missile defense has intensified, including in the NATO format." Shortly thereafter, in a Russian media interview, Ryabkov was asked to comment on U.S.-Russia-NATO cooperation on missile defense through the use of Russian radar installations. He explained that the Russian offer is predicated upon the fulfillment of "certain preliminary stages," including the U.S. cancellation of the Poland/Czech GMD facilities, followed by a threat assessment, and then by political and economic measures to eliminate the threat [89]

In May 2009, the East-West Institute, a joint U.S.-Russian research organization, released a report that concluded (1) Iran likely would not be able to acquire both nuclear weapons and delivery systems within the next five years, and (2) the missile defense system proposed by the Bush Administration for deployment in central Europe would be ineffective against eventual Iranian missiles outfitted with decoy devices and other countermeasures [90]

In early June 2009, a Russian official indicated that Moscow would not likely be willing to reduce its nuclear weapons arsenal unless the United States were to scrap plans to establish its missile defense site in Poland and the Czech Republic. The Russian government also indicated that it might deploy Iskander missiles to Kaliningrad if the United States were to transfer Patriot missile batteries to Poland [91].

In mid-June, Russia reiterated its refusal to collaborate with the United States—and Poland and the Czech Republic—on missile defense vis-à-vis Iran, and would only reconsider cooperation in the event that the Obama Administration abandoned the Bush Administration's plan to station missile defense facilities in central Europe [92]

Some observers believed that the ongoing dialog between Russia and the United States might help reduce tensions. Many thought that eventual Russian cooperation in missile defense could remove a significant impediment to the

program and could dampen criticism by European and other leaders. It also might open the door to a more favorable attitude by NATO toward missile defense.

CONGRESSIONAL ACTIONS

Fiscal Year 2010

The Obama Administration requested $50.5 million for the European 3rd site. This is in addition to some $618 million that remained available from FY2009 appropriations, pending Polish and Czech ratification of the missile defense agreements reached with the United States.

In June 2009, the House Armed Service Committee marked up H.R. 2647, the FY2010 National Defense Authorization Act. The committee reserves $343.1 million from funds available for the MDA in fiscal years 2009 and 2010 to develop missile defenses in Europe for one of two purposes:

a) either the Secretary of Defense continue with research, development, test and evaluation of the proposed radar and interceptor site in Poland and the Czech Republic pending Czech and Polish ratification, and certification by the Secretary of Defense that the proposed interceptors will be operationally effective, or
b) the Secretary may pursue development, testing, procurement and deployment of an alternative integrated missile defense system to protect Europe from threats posed by all types of ballistic missiles. This option is conditional on certification from the Secretary of Defense that the alternative is consistent with NATO efforts to address ballistic missile defense threats, that any alternative addresses ballistic missile threats to Europe in a prioritized manner that includes the level of imminence of the threat and level of risk, and that any alternative be cost-effective, technically reliable and operationally available in protecting Europe and the United States.

The House approved the FY2010 defense authorization bill (H.R. 2647) on June 25, 2009, including the above provision on the European 3rd site.

The Senate Armed Services Committee marked up its version of the defense authorization bill in July 2009 (S. 1390). It included $50 million to

fund the European 3rd site as requested. The Senate approved this amount in passing S. 1390 on July 23, 2009.

The House Appropriations Committee provided $50.5 million as requested in the defense appropriations bill (H.R. 3326), and rescinded $114.7 million previously appropriated for the European site. On July 30, the House passed its version of the defense appropriations bill, which included the committee recommendations.

The Senate Appropriations Committee provided $50.5 million for the European BMD program in its version of H.R. 3326, which was approved on September 10, 2009.

Fiscal Year 2009

For FY2009, the Bush Administration requested $712 million for the European GMD Element. The reported cost of the European element is $4 billion (FY2008-FY2013), according to the Administration, which includes fielding and Operation and Support costs.

On May 14, 2008, the House Armed Services Committee approved its version of the FY2009 defense authorization bill (H.R. 5658). The committee provided $341 million for the proposed European GMD site, reducing the total by $371 million ($231 million in R&D funding and $140 million in Military Construction). The committee expressed concerns about the slower-than-expected pace of the Iranian long-range missile program, the effectiveness of the GMD system based on program testing results, the ability to spend the proposed funds, and the lack of signed and ratified agreements with Poland and the Czech Republic.

On April 30, 2008, the Senate Armed Services Committee approved its version of the FY2009 defense authorization bill (S. 3001). The committee provided full funding for the European GMD Element, but noted that certain conditions have to be met before those funds could be expended: (1) military construction funds cannot be spent until the European governments give final approval (including parliamentary approval) of any deployment agreement, and 45 days have elapsed after Congress has received a required report that provides an independent analysis of the proposed European site and alternatives, and (2) acquisition and deployment funds, other than for long-lead procurement, cannot be expended until the Secretary of Defense (with input from the Dir., Operational Test and Operations) certifies to Congress that

the proposed interceptor has demonstrated a high probability of accomplishing its mission in an operationally effective manner.

President Bush signed a continuing resolution into law on September 30, 2008 (P.L. 110-329), which incorporated defense appropriations and authorizing language for FY2009. According to a Press Release from the Senate Appropriations Committee dated September 24, 2008, Congress provided $467 million for the European BMD sites and development and testing of the two-stage interceptor. According to authorizing language, [93] funding for the Czech radar and site will then be available only after the Czech Parliament has ratified the basing agreement reached with the United States and a status of forces agreement (SOFA) to allow for such deployment and stationing of U.S. troops is in place. Funding for the Polish interceptor site will only be available after both the Czech and Polish parliaments ratify the agreements reached with the United States, and a SOFA with Poland is also in place for the site. Additionally, deployment of operational GBIs is prohibited until after the Secretary of Defense (after receiving the views of the Director of Operational Test and Evaluation) submits to Congress a report certifying that the proposed interceptor to be deployed "has demonstrated, through successful, operationally realistic flight testing, a high probability of working in an operationally effective manner and the ability to accomplish the mission."

Fiscal Year 2008

In its report on the FY2008 defense authorization bill, the House Armed Services Committee cited its concern from last year (FY2007) that investment in the European BMD site was premature [94]. In part, the Committee's concerns focus on the need to complete scheduled integrated end-to-end testing of the system now deployed in Alaska and California. Additionally, the Committee notes its reluctance to fund the European site without formal agreements with Poland and the Czech Republic and without knowing the terms under which the estimated $4 billion program costs would be expended. Therefore, the Committee recommended that no funds be approved for FY2008 for construction of the European GMD site [95]. The Committee did, however, recommend $42.7 million to continue procurement of ten additional GMD interceptors that could be deployed to the European site or for expanded inventory at the GMD site in Alaska (as noted in MDA budget documents). Also, the Committee expressed concern over the testing plan and risk

reduction strategy for the proposed two-stage GMD interceptor for Europe. The Committee further directed that two studies be done: (1) the Secretary of Defense and the Secretary of State are to submit a report to Congress by January 31, 2008, to include how the Administration will obtain NATO's support for the European GMD proposal, and how other missile defense capabilities such as Aegis and THAAD (Terminal High Altitude Area Defense) could contribute to the missile defense protection of Europe; and (2) an independent assessment of European missile defense options should be done in a timely manner.

In the Senate defense authorization bill, the Armed Services Committee recommended limiting the availability of funding for the European GMD site until two conditions were met: (1) completion of bilateral agreements with Poland and the Czech Republic; and (2) 45 days have elapsed following the receipt by Congress of a report from an FFRDC (federally funded research and development center) to conduct an independent assessment of options for missile defense of Europe.96 The Committee recommended a reduction of $85 million for site activation and construction activities for the proposed European GMD deployment. The Committee also limited FY2008 funding for acquisition or deployment of operational interceptor missiles for the European system until the Secretary of Defense certified to Congress that the proposed interceptor to be deployed had demonstrated, through successful, operationally realistic flight testing, that it had a high probability of working in an operationally effective manner. The Committee noted that the proposed 2-stage version of the interceptor has not been developed and was not scheduled to be tested until 2010.97 Therefore, the Committee noted, it could be several years before it is known if the proposed interceptor will work in an operationally effective manner. The Committee indicated that it would not limit site surveys, studies, analysis, planning and design for the proposed European GMD site, but that construction and deployment could not take place prior to ratification of formal bilateral agreements, which MDA estimates would not take place before 2009. Finally, the Committee notes there were a number of near-term missile defense options to provide defense of Europe against short-range, medium-range and future intermediate-range ballistic missiles, such as the Patriot PAC-3, the Aegis BMD system, and THAAD.

In floor debate, the Senate approved an amendment by Senator Sessions (90-5) to the defense authorization bill stating that the policy of the United States is to develop and deploy an effective defense system against the threat of an Iranian nuclear missile attack against the United States and its European

allies. Further debate and passage of the defense authorization bill was postponed at the time by the Majority Leader until after debate over Iraq war funding.

On November 13, 2007, President Bush signed into law the FY2008 Defense Appropriations Bill (H.R. 3222; P.L. 110-116). This bill eliminated the proposed $85 million for FY2008 for the European missile defense site construction, but permitted $225 million for studies, analyses, etc. of the proposed European GMD element.

The House passed the FY2008 National Defense Authorization bill (H.R. 1585) on May 17, 2007. The Senate passed its version on October 1, 2007. House and Senate negotiators filed the defense authorization report on December 6, 2007. The House adopted the report on December 12, 2007. The Conference Report contained a number of provisions pertaining to the proposed European GMD element. First, it cut the $85 million requested for site activation and construction activities. This left about $225 million to fund surveys, studies, analysis, etc. related to the European GMD element in FY2008. Second, the Conference Report required an independent assessment of the proposed deployment of long-range missile defense interceptors and associated radar in Europe and a second independent analysis of missile defense options in Europe before site construction and activation could begin. The conferees noted that if the Polish and Czech governments gave final approval to any successfully completed agreements during FY2008, the Department of Defense had the option of submitting a reprogramming request for those funds ($85 million) to begin site construction in Europe. Third, the conferees strongly supported the need to work closely and in coordination with NATO on missile defense issues. Finally, the defense authorization bill required that the Secretary of Defense certify that the proposed two- stage interceptor "has demonstrated, through successful, operationally realistic flight testing, a high probability of working in an operationally effective manner" before funds could be authorized for the acquisition or deployment of operational missiles for the European site.

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TRANSATLANTIC REGULATORY COOPERATION: A POSSIBLE ROLE FOR CONGRESS*

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ABSTRACT

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

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

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transatlantic regulatory cooperation by becoming part of the advisory group. The Transatlantic Legislators' Dialogue (TLD) was appointed to represent the legislatures in the TEC advisory group.

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

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

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

INTRODUCTION

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

Although hard hit by the current global economic downturn, the transatlantic economy has dominated the world economy by its sheer size and prosperity. The combined population of the United States and EU now approaches 800 million people who generate a combined gross domestic product (GDP) of $26.8 trillion ($13.6 trillion in the EU and $13.2 trillion in the United States) [3] Transatlantic markets are among the most open in the world and are deeply integrated through investment flows, affiliate sales and related-party trade [4] The transatlantic economy generates an estimated $4 trillion in commercial activity per year and accounts for close to 60% of global gross domestic product (GDP) and roughly 40% of world trade [5]. The United States and EU are each other's largest overall markets for a host of goods and services, ranging from agricultural products to high tech goods and services. Large values of goods such as chemicals, transportation equipment, computers, and processed food as well as transportation and financial services are traded in record amounts.

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

The fact that each side has a major ownership stake in the other's market may be the most distinctive aspect of the transatlantic economy. At the end of 2007, the total stock of two-way direct investment reached $2.7 trillion (composed of $1.4 trillion of U.S. direct investment in EU countries and $1.3 trillion of EU direct investments in the United States), making U.S. and European companies the largest investors in each other's market. Roughly 47% of all U.S. foreign direct investment is located in Europe, while EU member states supply 42% of global FDI in the United States. European affiliate income in the U.S. reached $82 billion in 2007 while U.S. affiliate income in Europe increased to $147 billion during that same period [8] However, the global economic down-turn has resulted in U.S. foreign affiliate income earned in Europe peaking in 2007 and actually declining by 2% by mid-2008. European affiliate earnings in the United States are reported to be flat in 2008 [9]

This massive amount of ownership of companies in each other's markets translates into billions of dollars of sales, profits, production, and expenditures on research and development. In addition, an estimated 6-7 million Americans are employed by European affiliates operating in the United States, and almost an equal number of EU citizens work for American companies in Europe [10]

In the current global economic crisis, these figures are likely to decline somewhat but will still constitute significant transatlantic economic and financial activity.

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

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

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

TRANSATLANTIC REGULATORY BARRIERS

Because many U.S. and European industries are already deeply integrated with each other and most tariffs are low, non-tariff and regulatory barriers are increasingly recognized as the most significant trade and investment

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

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

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

CREATION OF THE TRANSATLANTIC ECONOMIC COUNCIL

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

The creation of the TEC was predicated on the premise that past efforts to achieve regulatory cooperation or convergence had been inadequate due to the technical nature of the work, the caseby-case, ad hoc approach, often assumed by regulatory agencies, and a lack of political leadership committed to having the regulators cooperate. The TEC is headed on both sides by ministerial- level appointees with cabinet rank [17]. Given that the two TEC leaders are cabinet-level appointees, the TEC was intended to have the high-level political support that previous efforts at economic integration may have lacked. Many observers believed the TEC, with its requirement to report annually to the U.S.-EU Summit, would receive that support. Such clout, it is argued, is needed to persuade domestic regulators to yield some of their authorities or to better cooperate with their counterparts across the Atlantic in harmonizing regulatory approaches [18]. The TEC, in theory, is designed to enable U.S. and European regulators to anticipate and discuss potential differences in thinking about new regulations before they become actual obstacles to transatlantic commerce. These efforts include a wide range of alternatives including dialogues and information exchanges among regulators, mutual recognition agreements, cost-benefit analysis, recommendations for voluntary principles, and proposals for binding agreements.

The mandate of the TEC is to accelerate ongoing efforts to reduce or harmonize regulatory barriers. The TEC was directed to accomplish this mandate, in part, by including broader participation of stakeholders, including for the first time, legislators, in the discussions and meetings. In particular, the framework document instructed the TEC to establish an “advisory group” that draws upon the heads of the “existing transatlantic dialogues” to provide input

and guidance on priorities for pursuing transatlantic economic integration. The existing transatlantic dialogues include the Transatlantic Legislators' Dialogue TLD, (the U.S. Congress-European Parliament exchange), the Transatlantic Business Dialogue (TABD), and the Transatlantic Consumers Dialogue (TACD). The TEC meets twice annually and reports to the annual U.S.-EU Summit on both achievements and areas where more progress is needed. To date, the advisory group has met with the TEC at each of the three TEC meetings held as of December 2008. The fourth meeting of the TEC is scheduled for October 26, 2009 in Washington, D.C. However, the two sides are discussing possible changes in the structure of the TEC process, and a new slate of EU Commissioners are scheduled to be appointed this fall, creating some uncertainty about the timing of the next meeting.

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

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

The difficulty of harmonizing regulatory activities or resolving disputes embedded in regulatory differences, however, was underscored at all three TEC meetings by the failure to resolve a longstanding dispute involving U.S. exports of poultry to the EU. The outcomes of the three meetings thus far, while not seen as resolving any of the regulatory issues before the TEC, have at least demonstrated that both sides remain committed to greater transatlantic economic integration and regulatory cooperation. In January 2009, the new Obama Administration came into office seeking to address both U.S. economic challenges as well as the global financial crisis. The new Administration appears to have acknowledged the importance of the transatlantic economic partnership and the potential role of the TEC when it relatively quickly designated Michael Froman, Deputy Director of the National Economic Council, as the Administration's point man for the TEC. In February, Mr. Froman met with the U.S. Director of the Transatlantic Business Dialogue, a major stakeholder in the TEC process, to discuss business issues and the future of the TEC [19]. President Obama also met with the EU leadership in Prague in early April 2009 and acknowledged the importance of energizing transatlantic ties and better coordinating policies to resolve the global economic downturn.

For those advocates of the concept of a transatlantic marketplace free of artificial barriers and impediments to increased commercial and investment activity, the creation of the TEC was seen as a necessary measure. The goals and responsibilities established for the TEC as outlined by the U.S. and EU leadership seem designed to achieve that objective. According to some, the TEC promises to break new ground by enabling regular communication and exchange of information at a higher level on a variety of issues [20]. The dilemma for the TEC, however, may continue to be the uncertainty over its role. Is the TEC to be a dispute settlement body putting out fires in transatlantic trade or is it primarily designed to promote regulatory convergence? The TEC also seems limited in its structure to deal with national interests or to overcome domestic political opposition to items on its agenda. Whether the TEC will prove a more successful entity for actually accomplishing a reduction in remaining transatlantic regulatory and non-tariff barriers to trade remains uncertain [21].

One question that is raised is why regulatory cooperation should be done just in the context of transatlantic relations. Some advocates point out that many of these regulatory issues, such as regulating financial services industries, are global in nature and apply to regions such as Asia and Latin America, as well as Europe. For many, this is a legitimate question and is

answered by some who point out that as highly developed economic systems, both the United States and the EU, could set the global standards for future regulation in broad economic categories.

THE ROLE OF THE LEGISLATURES

Since it began nearly two decades ago, transatlantic regulatory cooperation has been mostly limited to the executive branches and regulatory bodies on both sides of the Atlantic. However, the idea of legislators assuming a more proactive role in transatlantic economic and regulatory cooperation is not a new issue. At the 1995 launch of the New Transatlantic Agenda, the leaders of the United States and EU acknowledged that they "attached great importance to enhanced parliamentary links" and agreed to "consult with parliamentary leaders on both sides of the Atlantic regarding consultation mechanisms, including building on existing institutions, to discuss matters related to our transatlantic partnership" [22]. For those interested in the transatlantic economic relationship, this broad mandate to include the legislators has resulted in an increased interest in the role the U.S. Congress and the European Parliament can or should play in regulatory cooperation and convergence.

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

Rationale for Including the Legislatures

Despite the NTA declaration regarding participation of legislators, and past legislative initiatives approved by Congress and the Parliament, incorporating the legislatures into the regulatory process has been met with questions and mixed views. Advocates of the effort to achieve a more barrier-free transatlantic marketplace believe that ultimate success cannot be achieved

without the strong commitment and active engagement of the U.S. Congress and the European Parliament. Some of these advocates have decried the low level of engagement by Congress and the Parliament thus far in the overall economic integration and regulatory cooperation process and believe congressional committees need to be more active in the oversight process. These groups believe that, through more active oversight, Congress can articulate its support for, or concerns about, a particular regulatory direction before the regulators proceed too far down the negotiation path. They believe more enhanced oversight could serve to help Congress and the Parliament develop as stronger partners by understanding at an earlier stage, the rationale for traveling or not traveling down a certain regulatory path.

These advocates also believe Congress, through its authorization and appropriation roles, can prod the regulators to move the cooperative efforts forward and can provide the funds necessary to carry out that mandate. Some within this group have even suggested going further and inviting legislators to actively participate in high-level regulatory dialogues in addition to their role in the TEC advisory group [23]. Those in this general camp point to the "open skies" agreement laboriously negotiated between the United States and EU, which was intended to make airline travel to and from and within both Europe and the United States more competitive. One key provision, which would have allowed 49% foreign ownership of U.S. airlines, was drastically scaled back at the eleventh hour by congressional action. Supporters of this agreement felt this outcome might have been avoided had Congress been included in the process at an earlier stage.

On the other hand, there are many in the business and regulatory communities who are concerned about the autonomy of the U.S. regulatory process even though that process is sometimes influenced by legislative direction. Others worry that the TEC process will undermine the sovereignty of both the U.S. and European regulatory processes. These groups accept the congressional and Parliament responsibility to conduct oversight. However, some in this group seem reluctant to encourage more active engagement of legislators in the regulatory reform process beyond oversight hearings. This group does not believe Congress or the Parliament is at the point politically where they can discuss proposed regulatory changes in the context of the impact on the transatlantic relationship.

Some believe that involving the legislators as advisors alongside the business and consumer communities is not an appropriate role for legislators who will frequently need to be called upon to make changes to legislation, such as the 100% cargo screening requirement, in order to accomplish the

TEC agenda [24]. These skeptics also point to the recent expressions of concern over free trade and globalization, "buy America" provisions in U.S. legislation, and the recent negative reaction to European participation in the Air Force air refueling acquisition program as indications that further transatlantic economic integration may not yet be a concept that is fully accepted by a majority of the Congress. This group also raises concerns of what happens when the legislatures decide to take, what for some would be regulatory matters, into their own hands without close consultation with transatlantic regulatory bodies or the outside stakeholders that may be impacted. This group has referred to the Sarbanes-Oxley legislation passed by Congress or the Registration, Evaluation, and Authorization of Chemicals (REACH) directive adopted by the European Parliament, as examples of well intentioned initiatives that have ultimately caused some regulatory problems that affected the transatlantic relationship. Many doubt, however, that the TEC process could have prevented such legislative actions no matter how engaged the regulators were with the legislatures at the time these issues arose.

Concerns with the Legislatures

Not every regulatory proposal on the U.S.-EU agenda would need legislative action by Congress. But, the ability of Congress or the Parliament to disapprove of, reverse through legislation, or prohibit the expenditure of funds to implement a regulatory change is a power that has been recognized and which must be considered. The debate between the two competing groups seems to have shifted recently to a matter of how and when to engage the legislators, not if they should be included.

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

Another concern that is raised is the question of whether the legislators, themselves, are prepared to take on a more substantive partnership in the transatlantic regulatory process. Given the nature of regulatory cooperation,

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

Whether the attempt from these outside organizations to increase the level of awareness and interest among at least a portion of the Congress, including within congressional committees that have jurisdiction over the issues involved, will have a significant impact on both regulatory cooperation or transatlantic relations, is unclear. Most observers understand that the transatlantic impact of legislation is not often a central consideration during the legislative process. Nor do many believe Congress would submit its own legislative initiatives to any form of a transatlantic impact statement or cede its authority to react to a national crisis, such as a terrorist attack, banking or corporate failure, without first consulting the EU. Some in Congress are not sure what their role in the transatlantic regulatory process should be. Even those Members of Congress initially contacted and asked to participate in the TEC advisory group expressed uncertainty over their role and continue to seek more clarity on exactly what they are expected to provide to the TEC [25].

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

The TEC was created by those who supported the importance of a structured, institutionalized dialogue between the transatlantic business and consumer communities, the European Parliament, and the U.S. Congress.

Supporters anticipate that under this structure, legislators can become more aware of the potential impact on transatlantic trade and investment stemming from their legislative work and may be more sensitive to initiatives that might strengthen or undermine further transatlantic economic integration efforts [26]

THE TRANSATLANTIC LEGISLATORS' DIALOGUE

History

According to the Transatlantic Legislators' Dialogue (TLD) website [27] (found only on the European Parliament's website), formal exchanges between the U.S. House of Representatives and the European Parliament can be traced back to 1972, when the first group of Members of the House traveled to Brussels for the express purpose of meeting and exchanging views with the Parliament. This parliamentary exchange, which only involved the House, became known as the US-EU Community Inter-parliamentary Group. Since 1972, with few exceptions, the parliamentary exchange has met twice annually, once in the United States and once in Europe.

Given the transatlantic nature of the exchange, the U.S.-EU group came under the jurisdiction of the House Foreign Affairs Committee. Its annual meetings initially focused more on a foreign policy agenda dedicated to the issues involving the cold war and the evolving nature of the European Union. In response to the launch of the New Transatlantic Agenda in 1995, the delegations of the U.S. House and the European Parliament, at their 50th meeting in January 1999 agreed to change the group's name to the 'Transatlantic Legislators' Dialogue. In announcing the formation of the TLD, the two delegations stated that the Dialogue "will constitute the formal response of the European Parliament and the U.S. Congress to the commitment in the New Transatlantic Agenda to enhance parliamentary ties between the European Union and the United States" [28] In response to the decision to change the group's name to the Transatlantic Legislators' Dialogue, the U.S. House in November 1999, during consideration of the Consolidated Appropriations Act for Fiscal Year 2000 (H.R. 31 94/P.L. 106-113), amended Section 109(c) of the Department of State Authorization Act for Fiscal Years 1984/1985 (22U.S.C. 276) to officially change the name of the group. Since then the TLD's agenda for each meeting has included a broader discussion of economic and trade issues.

Although formal engagement between the U.S. House and the European Parliament has occurred regularly for some 36 years, some observers believe the TLD remains little known both within and outside the House. This has been disappointing to some because over the past years many delegations have traveled to Europe and several senior Members of the House have participated in exchange activities or knew of the exchange sessions. For instance, in 1987, then-Speaker Jim Wright attended the exchange meetings in Madrid. Between 1994 and 2000, the Chairman of the House International Relations Committee also served as the U.S. Chairman of the TLD. In 2007, the visiting EU TLD delegation was received by House Speaker Pelosi and Senate Majority Leader Reid [29]

The lack of knowledge of the TLD seemed to contribute to the surprise of many in the transatlantic community when the TEC leadership invited the TLD to be a key member of its Advisory Group. In fact, there has been little evidence that anyone at the White House at the time of the 2007 U.S.-EU Summit thought to inform the House leadership that the Administration was about to unilaterally assign a new role to the legislative branch. Nor did it appear prior to the announcement in the summer of 2007 that anyone had informed the USTLD Chair that the group was to be handed a new, rather far-reaching responsibility—that of formally representing the views of Congress in the transatlantic economic integration and regulatory cooperation process [30]

According to some, the lack of familiarity with the TLD, its membership, its function, and its understanding of the TEC process, may be due to the fact that unlike several other parliamentary exchanges that operate in the Congress, such as the NATO Parliamentary Assembly and the British-American Parliamentary Group, the TLD has never been statutorily authorized. Apparently, this circumstance has caused some concern within the transatlantic community with respect to the TLD's ability to carry out its new role as advisor to the TEC.

The TLD Structure

One question which has risen is the issue of what Members actually belong to the TLD. In the European Parliament there is a formal group of 32 members that constitute the Delegation for Relations with the United States. Participants to the TLD meetings are drawn from this delegation. In the U.S. Congress, other than the appointment of the Chair and Vice-Chair by the

Chairman and Ranking Member of the House Foreign Affairs Committee, there is no formal nomination of any other USTLD member. While many Members have participated in past meetings, participation in the USTLD often seems to be on an ad hoc basis, involving little continuity of participants and, in some instances, largely dependent on the ability of the Chairman to convince Members to attend the annual meetings [31]. Observers believe this has led to an inability on the part of the TLD to attract and maintain a broad group of Members willing to participate on a permanent basis. This is an important issue for many because frank and open exchanges of views often come more easily through long-term relationships that rely on personal interactions developed between legislators over time and through familiarity. Often it seems that regular communication only takes place between the U.S. and EU Chairs or their staff. Some EU participants have observed that if they had a particular issue that was of interest to them they might not know any other member of the U.S. delegation that they could contact for discussion. There have also been attempts to promote on-going dialogues between U.S. and EU TLD members through the use of video conferences so that TLD members can keep in touch between regular meetings. For the transatlantic business and consumer community this also presents a problem in that there is no permanently established group of TLD members with whom these outside interest groups can meet to discuss issues on the regulatory agenda on a regular basis [32]. There have been several ideas put forward to help restructure the TLD. One such suggestion involves creating a political committee and an economic committee within the TLD. Members from both the U.S. and Europe would be assigned as Chairs and Vice-Chairs of each. Rapporteurs might also be assigned to report on specific issues. This structure would at least offer Members/MEPs of the TLD the opportunity to focus some of their attention on issues for which they may have a particular interest or expertise. The committee Chairs would report to the entire body at some point during the TLD meetings on the issues discussed in the committees. Assigning Members/MEPs as Chairs, Vice-Chairs, and rapporteurs would also convey a sense of responsibility within the TLD and could guarantee a more consistent group of attendees.

A second question that has been raised involves the capacity of the TLD, as currently structured, to dedicate more time and effort to addressing those economic and regulatory issues that will appear on the TEC agenda and how the TLD will interface with standing committees of jurisdiction. While the TLD, at its past annual meetings, has engaged in a broad discussion of issues, foreign policy matters often seemed to dominate the agenda. However, the

Chairs of the TLD did include the more specific TEC process as a regular agenda item, including at the most recent April 2009 meeting held in Prague. The elections for the European Parliament held in June 2009 means that the EU leadership and representatives for the next TLD meeting, which is scheduled for December 2009 in New York City, will be considerably different from the most recent meetings.

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

Role of the Committees [33]

With respect to the committees of jurisdiction, until the beginning of the 111th Congress the current USTLD Chair and Vice Chair sat on the Trade Subcommittees of the House Committee on Ways and Means and the Committee on Energy and Commerce, respectively, positions from which they both can speak on trade and regulatory issues. Neither, however, sat on the Foreign Affairs Committee which has jurisdiction over the TLD. This situation changed with the new Congress when the U.S. Chair was appointed to the Committee on Foreign Affairs and its Europe Subcommittee. From the position of this new assignment, the U.S. Chair should be able to address the broader issue of transatlantic relations and the specific issues of regulatory cooperation with the EU. Despite the greater connection between the USTLD Chair and the Foreign Affairs Committee, it still remains unclear whether other committees, such as the House Committee on Financial Services, the Committee on the Judiciary, or the Committee on Homeland Security that have jurisdiction over issues such as financial services, technology innovation, intellectual property and homeland security will defer to the TLD to provide advice and guidance to the TEC on behalf of those committees or how an information sharing process between the TLD and the committees would be accomplished. When the TEC meets and issues its recommendations on how the U.S. and EU might deal with issues such as the mutual recognition of

accounting standards, poultry, consumer product safety or port security functions, they will likely do so with what they believe will have been the best guidance, not from two or three individual Members of Congress or EU Parliament who happen to be the TLD Chairs and Vice- Chairs, but from the House of Representatives and the Parliament as a whole. The challenge then, for the TLD is how to develop a relationship with the appropriate House and Senate standing committees, and the House and Senate Leadership for that matter, that would provide for a useful exchange of views on what the Committees are thinking on the issues under consideration by the TEC and how the TLD can present those views formally to the U.S. executive branch and European Commission with some degree of authority without at the same time diminishing the traditional and rightful authority of the Committees.

Staffing the TLD

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

For the transatlantic business and consumer community it is unclear how they are to work with the staff of the committees of jurisdiction on the specific technicalities of a TEC agenda while at the same time working with the Foreign Affairs Committee staff assigned to the TLD. A way may have to be

found that would allow the Members and staff of the TLD to tap into the expertise of the professional staff of the committees that exercise jurisdiction over these issues. This may be difficult currently as it appears many committee staff outside of the Foreign Affairs committee are unfamiliar with the TLD, the TEC, or the new congressional responsibility as an advisor to the transatlantic regulatory process and may be less inclined to share the work they are doing for their committees with the staff of the TLD [34].

Role of the Senate

Finally, some observers have raised the question of what role the Senate will play in this process. The fact that the Senate has a co-equal role in regulatory oversight, but is not included as part of the TLD, seems to have been missed by the decision makers who agreed to include the TLD in the TEC Advisory Group. As of January, 2009, the TEC has met for three sessions with the Advisory Group yet there does not seem to be a formal mechanism within the TLD to include the Senate in its activities nor within the TEC Advisory Group to solicit Senate opinion. Thus, while the TLD over time could develop some level of authority to represent the views of the House on issues addressed in the Advisory Group's meetings with the TEC, the TLD, as currently structured, could not claim to speak on behalf of the Senate. This oversight will have to be addressed if the TEC intends to receive the advice of the whole Congress.

STRUCTURAL OPTIONS

Most observers of the TEC process thus far maintain that the Transatlantic Business Dialogue (TABD) and the Transatlantic Consumer Dialogue (TACD) can and will support the TEC process even as both organizations have been critical of certain aspects of transatlantic regulatory cooperation. There is, however, uncertainty about the role of Congress and its representative, the TLD. The TLD is an inter-parliamentary entity, and as such, does not have, at this point, a mandate to formally represent Congress as a whole or even the House separately. Until the TLD and Congress itself, have a better understanding of what is expected of it and how it will carry out its mandate as an advisor to the TEC, doubts will remain. Some engaged in the transatlantic regulatory process have suggested that the TLD as a whole, and the USTLD

specifically, be restructured in order to make it a more effective partner in the TEC advisory role. At the very least, this group believes the TLD should be formally authorized and given a status slightly different than the other parliamentary groups in the Congress [35]. There are several options which the TLD, itself, could explore in an attempt to make it more responsive.

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

A second option might involve the TLD reaching out to the members of groups with similar interests, such as the Transatlantic Policy Network (TPN) which includes members of both the House and Senate. The TPN, which is a mix of legislators and private sector representatives, already has a Task Force on the Bi-lateral Economic Partnership. The TLD could invite that TPN Task Force to serve as an informal advisor to the TLD. The co-chairs of the TPN Task Force are Members of Congress and the European Parliament and several of the TPN members have participated in past TLD meetings. Much of the work of the Bi-lateral Economic Task Force mirrors the work of the TEC with respect to regulatory reform. The TPN Task Force would continue with its own independent work which could be shared with the TEC, but periodically, the co-chairs and/or their staff could meet with the TLD co-chairs and/or their staff to share ideas, information and recommendations. A briefing for the TLD co-chairs by the TPN Task Force could be arranged in advance of each TEC meeting. The TPN Task Force could also be invited to make a formal presentation to the regular TLD meetings. Downsides of this option would again be the issue of a parliamentary group speaking for Congress, whether the

TPN would be willing to share its work with the TLD, and the fact that the TPN Task Force may not include key Committee Chairmen who would be omitted from the process.

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

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

CONCLUSION

As the TEC process attempts to move regulatory cooperation toward the ultimate goal of a well- functioning, unencumbered transatlantic marketplace, the role the Congress will or should actually play has raised several questions among those participating in that process. These issues have led many observers to believe that the TLD, although never intended to be anything more than a mechanism for exchanging views among parliamentarians, currently welds little influence or authority as a transatlantic policy resource

and in not a representative of Congress' views on economic integration. Nevertheless, the decision to include an advisory group with representation from the transatlantic legislative communities, through the Transatlantic Legislators' Dialogue, has been viewed by some as a real opportunity for the Congress and Parliament to assume a more direct role as a stakeholder in the long-term development and completion of the transatlantic marketplace. Despite some short-comings in the current structure of the USTLD, all indications are that the current Chair and Vice Chair, along with their counterpart EU Chair, are fully committed to making the TLD a more active partner in the TEC process [36]

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

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[3] International Monetary Fund, *Global Financial Stability*, September 2007.

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

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

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

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

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

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

[18] For more information on the TEC, see Section IV in the U.S.-EU Framework for Advancing Transatlantic Economic Integration, April 2007, available at http://www.whitehouse.gov/news/releases/2007/04/20070430-4.html, and CRS Report RL34717, Transatlantic

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[19] Conversation with the Executive Director of the Transatlantic Business Dialogue.

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

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

[23] See the American Chamber of Commerce to the EU(AMCHAMEU) position paper, "Advancing Transatlantic Economic Integration," October 2007.

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[25] CRS interviews with congressional staff.

[26] Transatlantic Economic Council, Report to the EU-U.S. Summit, April 2008.

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

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

[29] See the TLD website for additional information.

[30] CRS interviews with congressional staff.

[31] CRS interviews with congressional staff.

[32] CRS interviews with representatives of the business community.

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

[34] CRS staff discussions and interviews with Congressional staff.

[35] Some in the business community have discussed the option of promoting legislation that would formalize the TLD's role in the TEC process.

[36] CRS interviews with congressional staff.