



BritishAmerican Business Inc:  
Response to the European Commission  
and US Government's Consultation Paper  
on the Future Direction of EU-US  
Economic and Trade Relations

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# BritishAmerican Business Inc: Response to the European Commission and US Government's Consultation Paper on the Future Direction of EU-US Economic and Trade Relations

## Introduction

BritishAmerican Business Inc of New York and London (BABI) is the product of a merger in September 2000 between the American Chamber of Commerce of the UK and the British American Chamber of Commerce of London and New York. This merger created a truly transatlantic business organisation and recognised and reinforced the special relationship between the US and the UK that derives from the fact they are each other's largest trading partners.

- Investment between the UK and US is worth \$396 billion. Trade is valued at \$81.9 billion
- Both trade and investment are equally split between the UK and the US, despite the differences in their size and consumer base. The relationship represents approximately one million jobs in each country.
- The US and the UK enjoy similarities not shared with other countries of the EU, perhaps explaining why nearly 40% of all US investment stops in the UK.
- The UK continues to be a gateway to Europe for many US companies. It is also used as a springboard for European companies looking to build a presence in the US.

Thus, BABi represents those who provide the lion's share of the EU-US trade relationship and is a unique voice for transatlantic business. The organisation consists of more than 700 member companies in both London and NY, and is supported by the wider network of over 30 American Chambers of Commerce in Europe through the European Council of American Chambers in Europe (ECACC); along with the British American Business Council (BABC) which has 30 chapters throughout the US and UK.

BABI, with a significant presence on both sides of the Atlantic, is particularly well-placed to understand the transatlantic 'features' that are critical to both US and European companies, and is able to offer pragmatic approaches to dealing with issues that cause difficulty. As a voice of transatlantic business, BABi believes it is essential to respond to the EU Commission and the US Government.

## Concerns about the Consultation

As the leading transatlantic business organisation we felt that we should give one response to both consultations. However, BABi believes that if the two bodies could have offered unified questions and timing, the process could have demonstrated common resolve and been more effective.

It is BABi's belief that the transatlantic relationship, and the wider EU/US relationship, is key not only to the prosperity of the countries directly involved, but is equally crucial to the growth and sustainability of the global economy. Further, the liberalisation of trade is a critical part of raising living standards around the world, as is a commitment to a rules-based multilateral trading system – although it is recognised that different countries will need to move at different speeds towards these aims.

## National Interest in Trade

Perceptions of 'National Interest' on the part of both the US and the Member States of the EU have hindered progress in many areas.

The slowness of EU Member States to harmonise to the highest common point (as distinct from pursuing their national agendas) is harming progress of the Lisbon Agenda, and thus the overall ability of the EU to deal with the US effectively. Meanwhile, the extraterritoriality of US legislation – unilateralist and protectionist measures, including legislation that effectively attempts to regulate EU trade with third countries by companies outside the US, and slowness to implement WTO decisions – is becoming a concern.

This is paralleled by significant and dangerous perception differences between the EU and US. For example, according to the survey conducted by The Pew Research Center in their Global Attitudes Report of March 2004, significant majorities in several nations believe that America pays little or no attention to their country's interests when making foreign policy decisions. This opinion is most prevalent in France (84%), Turkey (79%) and Jordan (77%), but even in Great Britain 61% say the US pays little or no attention to British interests.

By contrast, 70% of Americans think the US takes other nations' interests into account a great deal (34%) or a fair amount (36%); just 27% think the US is mostly unconcerned with other nations.

Public opinion in issues of foreign policy, including trade, has become more important, but also dangerously divergent between these two trading blocs.

Trade and investment can be key to alleviating these differences in policy and perception. Therefore, this consultation is an important step in strengthening relations between the two regions.

BABi is particularly well placed to reflect and reinforce the positive aspects of this transatlantic relationship because of the transatlantic nature of its membership. BABi's recent Membership Survey indicated that 45% of member companies are headquartered in the US and 45% are headquartered in the UK, with the rest being headquartered in other countries; and that this character is also reflected in roughly equivalent measure in the nationality of the executives at member companies. No other single organisation has such an extensive and balanced network of companies with a real presence on both sides of the Atlantic. From amongst BABi's member Forums and its wider membership, BABi has identified **five areas of particular concern**:

### Five Areas of Concern

1. Lack of **standardisation of regulation** within trading entities makes it complicated to enter markets from outside or even to operate within the entities
2. **Harmonisation of international frameworks** affects all businesses but tends to overburden them with bureaucracy
3. **Protection/Innovation**, in the context of realistic **Risk Assessment**

4. **Subsidies**
5. **Labour Market Flexibility**

## 1. Standardisation of Regulation

One of the most common themes in relation to barriers to trade is regulation. The lack of uniformity *within* each entity has been compounded by the fact that regulatory standards between the US and the EU have been diverging. This lack of coherence causes concern for businesses on both sides of the Atlantic, and, as the reduction of non-tariff barriers decrease, it seems to be gaining in significance.

There has been progress within the EU, but problems still remain. These include:

- Delays in the development of EU standards
- Delays in the drafting of harmonised legislation, inconsistent application and interpretation of legislation by EU Member States
- Overlap among Directives dealing with specific product areas
- Grey areas between the scope of various Directives
- Reliance, in some cases, on design-based, rather than performance-based, standards

In addition, there are concerns related to the respective procedures, responsibilities (e.g., accountability, redress) and transparency in both the Commission and the European standards bodies that require careful monitoring and more frequent advocacy efforts. This problem is echoed directly within the US where the lack of standardisation between US states is also problematic. Issues such as registration, licensing and a variety of other areas, mean that companies cannot compete or must spend extraordinary amounts of money to ensure compliance.

### 1.1 Certification and Technical Standards

Both the US and EU governments should make deregulation a priority. Further, they should agree international standards wherever possible. The agreement from 2002 on "Guidelines for Regulatory Cooperation and Transparency" is a good start and should be put into practice as soon as possible. Following the WTO agreement on "Technical Barriers to Trade," the US should follow the lead of Europe and its European standardisation institutions and work to adopt international norms on product security. A harmonisation of standards is particularly important for the areas of pharmaceuticals and mechanical engineering, as well as measuring and weighing technology.

It has been observed that it is sometimes more difficult to move across and over a US state line than over an international border; thus this recommendation is not only applicable to international trade but also to internal trade. Therefore, standardisation of regulation would be helpful not only for US/EU trade, but also within the trading entities themselves.

## 2. Harmonisation of International Frameworks

Harmonisation in this context is the application of the process of de-regulation to the international arena. The services sector is crucial to the UK and to the entire EU; thus harmonisation in this area is a cornerstone for the development of both EU and international trade. For Europe this means the

**speedy implementation of the Services Directive** to ensure that services can move more freely around the EU, thus reducing costs and administration associated with establishing cross-border service provision.

Two areas particularly affected within services are **tax structures** and **accounting standards**. Tax laws on both sides of the Atlantic need to be simplified as the cost and time consumed is overwhelming for businesses operating on either side. US bi-lateral treaties with EU Member States are inconsistent and often open to interpretation.

Similarly, accounting practices are complicated and often do not achieve the desired result but burden business with extra costs. For example, The Sarbanes-Oxley Act introduced in 2002 as a means to prevent accounting scandals, has had a serious impact on non-US companies listed on US stock markets. Research following its introduction suggests that additional compliance costs are over 60% higher than previously estimated. It is likely that a large majority of companies did not fulfil the complicated and expensive Section 404 internal control reporting requirements by the November 2004 deadline. Further, companies operating in the US and Europe face the problem of conflicting requirements when corporate governance regulations in the US differ from those in their home countries.

The fact that the US has resisted attempts to create or accept an **International Accounting Standard (IAS)** is also costly to business. That the EU moved forward with its proposals for its own, non-compliant system for European business only compounded the problem. BABi would welcome progress on this issue, as there is an urgent need for an agreed set of IAS if business is to be confident operating on a transatlantic or global basis.

It may be inevitable that such systems are complex. However, this is not helped by the variety of certification and licensing procedures for a range of professionals – in particular lawyers and accountants. Work should be undertaken to create a more consistent 'conversion' from one jurisdiction to another and the language of all regulation should strive to be as straightforward as possible.

### 3. Protection, Innovation and Realistic Risk Assessment

Service industries – the increasingly dominant area of operations for both the US and the EU – rely heavily on their business climate. Three factors have a particularly important impact on that climate. They are:

- The ability to protect intellectual property and copyright
- The encouragement of research and development
- Assessments of risk that encourage innovation and development

#### 3.1 Intellectual Copyright

The EU supports strong protection for Intellectual Property Rights (IPR) and regularly joins with the US to encourage other countries to adhere to, and fully enforce, such IPR standards as those covered by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

However, there are a few Member States with whom the US has raised concerns and this lack of effective EU-wide copyright law represents a significant and growing barrier for trade and investment. Businesses are hurt by loss of revenue through counterfeit sales. Furthermore, new investment is jeopardised when entrepreneurs lose confidence in the protection of their IPR, and consumers are

deprived of certainty in the authenticity of products. Both the US and the EU need to ensure consistent implementation in this area, provide more proactive outreach to third countries and encourage dialogue.

### 3.2 Research and Development (R&D)

R&D has been identified as a cornerstone of development within this same framework. The EU is striving to support efforts in this area through a variety of mechanisms, which is to be welcomed. However, these efforts are hampered by the lack of protection as identified above and by the apparent inability to encourage essential infrastructure. This is an area of strength on the US side with incentives in place to encourage highly-skilled migrant workers and discourage the 'brain drain' that other countries have experienced in recent years. The EU should learn by the US example in this area.

### 3.3 Assessment of Risk/Environmental Concerns

A particular example of the connection between these areas is to be found in environmental regulation. Member States of the EU are creating their own regulation, but without due consideration to areas that may be mutually exclusive in other Member States. Therefore, EU officials should work to create a comprehensive guide to EU environmental regulation (thereby enabling EU businesses to deal more effectively with the system found in the US), and aspire to a more consistent form of environmental protection.

However, for this to be effective, the wider debate regarding the assessment of risk is key on both sides of the Atlantic. R&D investment and IPR protection will not be enough to stimulate growth and facilitate international trade if the assessment of risk continues to diverge.

A recent example of this problem can be found in the **REACH (Registration, Evaluation, and Authorization of Chemicals) Directive** both in terms of unrealistic assessment of risk and weaknesses in its development.

The importance of considering the health and safety of downstream users of any chemical product is not disputed, but the threshold for risk has been set so unrealistically low that this Directive will potentially affect thousands of products. The lack of transparency in the EU regulatory process compounded the problem and stunted not only the chemicals industry, but all business, as this issue worked its way through the system. This impedes innovation and competition, and acts to deter transatlantic business.

## 4. Export Subsidies

BABi strives to focus on those issues that have a particular impact on transatlantic business and has identified **aviation** as an area of concern on both sides of the Atlantic. BABi's Aviation Forum has worked hard in this area; it has participated in both of the UK Government's recent relevant consultations, and has hosted conferences and events with senior figures from both sides of the Atlantic who are active within the aviation industry.

We highlight two important public cases which we believe demonstrate why the EU/US dialogue is so crucial.

#### Example 1

Post 9/11, the US Government felt the need to support the domestic aviation industry and to create new security regulations that put a direct onus on airlines and travel agents which incurred serious cost to the industry. US carriers were assisted through this process – even those who were already in financial difficulty – while other carriers were not.

### Example 2

On the European side, Government subsidy is also of concern. The case of Airbus demonstrates why. Historically, various Member States of the EU have provided direct subsidies to their respective Airbus member companies to aid in the development, production and marketing of Airbus civil aircraft. However, as the company is now the second largest aerospace company in the world, it would seem clear that Airbus is no longer in need of such support and should be open to competition and any Government subsidies should be transparent.

BABi would support a constructive compromise which seems to have been suggested by the incoming European Commission President Barroso. In his words “we are from the beginning looking for a compromise solution”.

## 5. Labour Flexibility

As important as the issues of regulation and harmonisation are, ultimately business rests on its employees and thus the labour market.

Currently, the labour market within the EU is complex and inflexible. The many proposals currently under discussion in the EU could threaten competitiveness and deter investment. The UK has led the way in this area and BABi urges the UK to continue resisting any labour regulation that inhibits the free movement of staff within the EU. BABi regards issues such as **pension portability, access to higher education, research programmes** and funding in **support of high-tech industry** as key to a flexible labour market and any measures in these areas should be encouraged and enhanced.

The issues within the EU are often repeated or compounded between the US and the EU; from expat tax regimes through to basic issues for individuals such as the lack of transferability of drivers' licences as well as mutual non-recognition of qualifications, for example, all of which create barriers, as do restrictions on employment between sectors.

As Wim Kok recently argued, “Labour flexibility is about agility, adaptability and employability for which the key is the ability for workers constantly to acquire and renew skills, and for a combination of active labour market policies, training and social support to make moving from job to job as easy as possible.”

BABi supports calls for common procedures and systems for residence permits and visas; the implementation of the proposal on intra-corporate transfers; and the establishment of a European Institution for Occupational Retirement to deal with pensions.

## 6. New border & transport security measures – BABi membership survey results

Immigration and visa issues are a crucial element of facilitating transatlantic relations. In April 2004, BABi surveyed its 700 member companies in New York and London. The results make disconcerting reading:

- 87% of respondents agreed that the introduction of a mandatory visa by the US would make conduct of their business between the US and the UK more difficult
- 57% said they did not understand details of the proposed changes in US immigration procedure and 60% did not know where to go to find up-to-date information on this issue

- 19% were not aware that entry requirements to the US were scheduled to change on 26 October 2004
- 76% rely heavily on their employees travelling regularly to the US
- 72% indicated that they would use UK or foreign nationals less for business travel to the US if it became difficult for them to enter the country.

It is clear that there is potential for unreasonable restrictions on the free flow of executives – in either direction – which in turn will harm the future flow of business development.

## 7. Summary of BABi Recommendations

### Standardisation of Regulation

- Monitoring transparency in both the Commission and the European standards bodies
- Increase efforts on standardisation between US States
- Make deregulation a priority and:
  - implement “Guidelines for Regulatory Co-operation and Transparency” agreement of 2002
  - work to adopt international norms on product security.

### Harmonisation of International Frameworks

- Agree speedy implementation of the Services Directive, particularly tax structures and accounting standards
- Agree IAS as a matter of urgency.

### Protection, Innovation and Realistic Risk Assessment

- Ensure consistent implementation on issues of IPR within the EU
- Undertake more proactive outreach to third countries and encourage dialogue
- Implement mutual recognition of professional qualifications.

### Labour Flexibility

- Implement common procedures and systems for residence permits and visas
- Undertake more effective communications/awareness campaigns on issues such as changes in immigration policy
- Implement intra-corporate transfer proposal and establishment of a European Institution for Occupational Retirement to deal with pensions
- Encourage pension portability, access to higher education, research programmes and funding in support of high-tech industry.

## 8. Conclusion

Transatlantic trade, whether between the US and the UK, or the US and the EU, has changed significantly for the better over the course of the past 40 years – to the benefit of all. As tariffs are lowered, other forms of trade barriers become more visible and burdensome, as they are often very complicated to resolve and require action at many levels on both sides. It has not been an easy period in EU/US relations, not helped by the economic climate of the past few years.

But, as the BABi member survey conducted in November 2004 highlights, there are encouraging signs on both sides of the Atlantic for this dialogue and for trade in general. In their responses to this survey, about three-quarters of members on both sides of the Atlantic reported that they expect their UK/US business to increase in the next 18 months; and a similar proportion – 64.5% in New York and 84.1% in London – reported that they expect their company's EU business to increase over the next 18 months.

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