

TACD

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CONSUMER DIALOGUE DES CONSOMMATEURS

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**Comments of the Transatlantic Consumers Dialogue
on
Draft OMB-EC Report,
“Review of the Application of EU and U.S.
Regulatory Impact Assessment Guidelines on
the Analysis of Impacts on International Trade and Investment”**

The Transatlantic Consumers Dialogue (TACD) welcomes this opportunity to comment on the draft report from the OMB-EC High Level Regulatory Forum on regulatory impact assessment (IA) and the analysis of impacts on international trade and investment.¹

I. IMPACT ASSESSMENT METHODOLOGY IS AN IMPORTANT ISSUE FOR CONSUMERS.

TACD approaches this report with a core principle in mind: that it is the responsibility of government to protect consumers. In nationwide and global marketplaces, health, safety, environmental, financial, and other problems can emerge which far exceed the capacity of individual consumers to remedy. Accordingly, citizens create and use government programs² to pool our collective resources into structures that are strong enough to counter the powerful concentrations of business resources that can be otherwise impossible to surmount.

TACD's concern about the role of government programs has led us repeatedly not just to substantive policy issues but also to the procedural and methodological issues that affect government capacity to protect the public. Specifically, for purposes of these comments, we have a concrete stake in IA methodology. IA methodology has a significant effect on the assessments themselves, which in turn have a significant effect on policies to protect consumers. Consumers therefore have a keen interest in any dialogue about IA methodologies.

II. THE DRAFT REPORT LISTS UNNECESSARY CHANGES TO BOTH IMPACT ASSESSMENT AND AGENDA-SETTING.

The Draft Report concludes with recommendations for policy changes that are broader even than forcing more analysis of international impacts. Although the narrative portions of the Draft Report primarily emphasize IA methodologies, the conclusions on the last page of the report are not limited to assessments of proposed or final policy initiatives but also address

“planned legislative and regulatory initiatives,” or what might be called the agenda of upcoming policy initiatives. The EC and OMB are apparently contemplating the following:

1. Developing processes for early identification of planned policy initiatives that “*might have* an impact on international trade or investment” or “*might otherwise be of interest*” to transatlantic trading partners or “third countries.”³ Although this conclusion does not further elaborate upon what such processes might be, the fourth recommendation further down the page suggests that, in furtherance of this recommendation, OMB and EC are contemplating requiring “preliminary analysis” of potential impacts on trade or investment whenever policy issues are added to government agendas.
2. Furthering the objective of having “transparent rules or guidelines” for IA “accompanied by a rigorous system of quality control” by creating public consultation and comment mechanisms for both IA and agenda development.
3. Making both policy agendas and IAs available to the public, along with underlying data and technical analysis, to allow for transatlantic trading partners and third countries to respond if they foresee significant trade or investment impacts.
4. Expanding their respective IA guidelines with respect to impacts on international trade and investment.
 - a. Although the EC’s IA guidelines already call for rigorous assessment of potential impacts on international trade, the EC-specific section of the Draft Report hints at a possible expanded focus on international investment.⁴
 - b. OMB, meanwhile, presents Appendix B1, titled a “Draft Discussion on Incorporating Trade Impacts into Benefit-Cost Analysis,” which appears to presage a new government-wide pronouncement for U.S. agencies to follow when conducting their own IAs.⁵
 - c. The joint conclusion of the report identifies three additional potential policy edicts to apply whenever “preliminary analysis suggests that a proposal *might* significantly affect international trade or investment”:⁶
 - i. an analysis “demonstrating the need for any proposed regulation”;
 - ii. an analysis of the distributive impacts of the proposal; and
 - iii. a “recommendation” that the program consider adopting any “existing international standards or regulatory approaches.”

TACD offers its positions on these recommendations in section III of these comments, below. First, however, we have a more global observation: there is insufficient evidence from the narrative of the Draft Report that there is any need whatsoever to pursue these regulatory process changes. In short, the Draft Report and its conclusions proffer solutions in search of a problem.

A. The Draft Report’s discussion of research on the relationship of regulation and trade and investment is misleading and irrelevant.

The only rationale for pursuing the regulatory process burdens of the Draft Report’s conclusions is stated in a very condensed — and very misleading — discussion of research on

page 13. The research discussion, which occupies less than a complete page of text, misstates the findings of the research it cites and ultimately fails to provide any rationale at all for the regulatory process burdens proposed in the conclusion of the report.

The report misleadingly implies that “better regulation” initiatives are correlated with economic growth and improved social welfare. There are two key points in the text:

1. “Recent studies demonstrate the correlation between better business regulations and economic growth. They suggest that a regulatory regime that offers transparent rules based on technical requirements speeds investment. This leads to economic growth and an increase in consumer well-being.”⁷
2. “Regulations that correct market failures or government failures (including trade barriers) have the potential to improve market performance, both by generating social benefits and lowering or avoiding trade barriers. In addition to increasing productivity and flexibility in the labor and products markets, flexible, performance and market-based regulatory systems that preserve liberal trade lead to higher employment, improvement in social indicators and innovation.”⁸

Both of these claims seriously distort the research findings they cite as authorities. Each assertion cites World Bank studies to make broad claims about regulation writ large, but the World Bank studies in question are too limited to support such broad-brush claims. Instead, the World Bank studies analyze only very specific kinds of regulation: those pertaining to creating businesses, entering and enforcing contracts, and getting ships into foreign ports. These studies have no bearing at all on the kinds of regulations covered in the case examples found elsewhere in the Draft Report, much less consumer protections or regulations to protect the environment, public health, safety, civil rights, privacy, or other public interest concerns.

A particular flaw of claim #1 above is its use of the phrase “better business regulations.” As the authors of the Draft Report are no doubt aware, “better regulation” is the buzzword of choice to describe efforts in Europe to impose impact assessment regimes and increased use of quantitative metrics to reduce regulatory compliance costs for business. That connotation is reinforced by the subsequent reference in claim #2 to “flexible, performance and market-based regulatory systems,” which are routinely touted by proponents of regulatory process burdens as preferable to technology-based, design, or specification standards (derided as “command-and-control” regulation). Additionally, that claim characterizes the research on *business creation, contract, and port access regulations* so broadly (as “suggest[ing] a regulatory regime that offers transparent rules based on technical requirements”) that it could easily be misconstrued as support for the kinds of “technical requirements” proposed in the Draft Report’s “better regulation”-themed conclusion, even though the research provides no such support whatsoever.

A particular flaw of claim #2 above is its emphasis on “flexible, performance and market-based regulatory systems that preserve liberal trade.” The World Bank research cited as support for that claim provides zero support that the choice of regulatory model in consumer or other public interest regulations has any such effect on employment, social indicators, or innovation. In fact, there is theoretical and empirical evidence from the U.S. experience that technology-based regulation can in fact be superior to market-based regulation in stimulating innovation⁹ and increasing jobs and business opportunities.¹⁰

In the interaction of these two flawed claims, the authors of the Draft Report evince a definite bias in favor of particular modes of regulation (“flexible, performance and market-

based”) and regulatory process requirements that focus on trade (“regulatory systems that preserve liberal trade”) but offer no research in support of those biases. There may well be a place, in the right context, for policy makers to opt for flexibilities, performance standards, or market-styled regimes over design and specification standards, or for consideration of trade impacts to have some appropriate role at some appropriate stage in regulatory impact assessment. Just the same, there is also a place for technology-based standards that demand the best level of protection, design and specification standards that put an end to the question of whether a protection, such as seat belts or air bags, will be offered, and the consideration of consumer wellbeing and the environment as paramount factors that override impacts on businesses in policies to meet urgent needs. For such sweeping changes as are proposed in the Draft Report’s conclusions, we expect a much more compelling case, based on reliable and relevant data, and a balanced presentation of the issues. This section of the Draft Report provides neither.

B. There is no basis to consider consumer or other public interest protections as analogous to barriers to trade and investment.

The strategically understated assumption implicit in the Draft Report’s macroeconomic justification on page 13 is that most social and economic regulation, including regulatory protections for consumers, public health, safety, civil rights, privacy, and the environment, is directly analogous to the regulations studied by the World Bank pertaining to creating businesses, entering and enforcing contracts, and getting ships into foreign ports — and that stringent consumer protection has the same economic consequences as business, contract, and port access regulations that block foreign trade and investment.

The empirical evidence does not support that assumption. Most of the literature addresses environmental rather than consumer protections, but the overall theme is clear: the horror stories of regulation run amok and destroying jobs, foreign investment, and the global competitiveness of domestic businesses simply are not proven in the real world. Moreover, there is growing evidence of the enormously beneficial effects — *for regulated industry* — of stringent public interest regulation, consistent with the Porter hypothesis.¹¹

The attempt at a macroeconomic justification for the Draft Report’s policy proposals, in short, does not suffice. It misstates inapposite World Bank research while ignoring the reams of evidence that stringent consumer and environmental protections fail to have any demonstrably harmful effect at all on foreign trade or investment. This section should be completely revised, and the public should be given a subsequent opportunity to comment on a revised Draft Report before any final document is officially published.

C. The Draft Report proposes treating regulatory protections as a more grave threat than unregulated hazards.

With no real empirical justification for the regulatory process burdens proposed in the conclusion, the only cohering force of the Draft Report is an unproven and highly contestable assumption: the authors of the Draft Report apparently believe that regulations impose real or potential costs so great that they must be prophylactically controlled, whereas regulatory process burdens are presumed comparatively costless and entirely beneficial. The Draft Report assiduously avoids all discussion of the potential consequences of regulatory delay and inaction, problems that elsewhere have been dubbed “regulatory underkill.”¹² The policy proposals of the Draft Report would be aggressive policy transformations inflicted on an unwilling public without the benefit of any real assessment of the tradeoffs involved — in

precisely the opposite approach to public policy that the proponents of the Draft Report (and the entire suite of regulatory process burdens that pass under the banner of so-called “better” regulation) insist should govern regulatory protections.

The Draft Report presumes (and fails to prove) opportunity costs of domestic regulations that demand more process and more analysis, while it utterly ignores the opportunity costs of these regulatory process distortions. Increasing the time it takes government programs to develop needed regulatory protections means increasing the numbers of lives lost, injuries sustained, and pocketbooks strained. Increasing the amount and stringency of analysis required to justify needed protections means reducing resources available to government programs for actually enforcing those protections or identifying the public’s unmet needs. With no clear benefit to consumers of the policy changes proposed in the Draft Report, there is simply no reason at all to impose such costs.

The U.S. and EC are proposing these sweeping policy changes — and the concomitant increased risks to the public — without any of the procedural or analytical constraints demanded of regulations themselves. The effect is that unregulated hazards that threaten consumers’ lives, health, safety, pocketbooks, and general wellbeing are treated with more caution than policies to burden the very process of developing protective policies. When it comes to policies that threaten the government’s ability to protect the public, all the clamor for cost-benefit analysis, risk assessment, and procedural constraint disappears.

III. TACD SUPPORTS IMPROVED TRANSPARENCY BUT CANNOT ENDORSE UNNECESSARY ANALYTICAL BURDENS.

TACD has reviewed the Draft Report’s conclusions, and we offer the following specific comments.

A. The Draft Report’s recommendations would improperly politicize impact assessment.

Overall, the recommendations of the Draft Report share a common flaw: the Draft Report confuses methodology and policy and thereby tends to politicize the impact assessment process. The title of the report would suggest that it is simply a discussion or analysis of methodologies of impact assessment. The report itself, however:

- Seeks to reach agreement on the relative weight to be attached to the impact on trade and investment of any given regulatory proposal;
- Tends to give a privileged place to the impact on trade and investment relative to other impacts on other factors; and
- Seems to envisage a preliminary analysis or pre-assessment of the impact on trade and investment, and even preliminary negotiations between EU and U.S., before proceeding to a full impact assessment of all relevant factors.

The basic flaw in this approach is that the Draft Report blurs what must be treated distinctly: questions of *methodology* and questions of *policy*.

Deciding the weight of impacts on trade and investment relative to other impacts (in particular impacts on health, safety, the environment, civil rights, and consumer welfare) and then privileging those impacts by forcing consideration of them at stages of the regulatory process where they have never before been prominent: these are not questions of methodology but, instead, questions of policy (and, for that matter, *politics*). The proper place for debating and deciding these questions must be in the legislative arena, where democratically-elected and accountable policymakers should discuss these questions openly and on the record. Decisions with such widespread consequences for all manner of protective policies cannot be imposed unilaterally under the guise of methodological choice.

Impact assessment should be a purely analytic tool that measures impact on a range of factors. It is a matter then for policy makers to decide how much relative weight to attach to the different factors. An impact assessment may measure the impact of a proposal on trade and investment and on the environment, for example, but the underlying process of the assessment should not determine which is the more important or which should have the greater weight in policy making in any given instance.

The additional comments which follow express our concerns with specific recommendations of the Draft Report. Whether the governments call them methodological choices or the *policy* decisions that they truly are, we fully expect that consumers and other stakeholders will have every opportunity to comment on those recommendations if they are developed further.

B. The OMB and EC should exhaust transparency alternatives such as listservs and RSS feeds rather than impose new analytical burdens.

TACD starts with the concern that government programs are already significantly burdened by analytical and impact assessment requirements. We have no objection to government programs knowing what they are doing, but we do object to analytical and procedural burdens that unnecessarily prevent programs from getting things done to protect the public. As we have already explained, we are concerned that many of the initiatives undertaken in the name of “smarter regulation,” “better regulation,” “paperwork reduction,” and “administrative cost reduction” operate as though better regulation must mean less regulation and reduced cost must mean reduced information.¹³

Accordingly, we recommend that, before either government considers any new mandate for further analysis that programs must conduct at the agenda-setting or policy-making stages, it should first develop means to make existing information about policy initiatives more accessible to the public in electronic formats that allow for continuous, real-time alerts. Both the EC and U.S. have, for example, agendas of upcoming policy initiatives: the EC has a Web-accessible “Legislative and Work Programme,”¹⁴ while the U.S. publishes a semiannual “Unified Agenda” and an annual “Regulatory Plan” in the *Federal Register* and, now, on the Web.¹⁵ Neither government, however, makes these agendas available for electronic subscription, as a whole or by program, through email lists or RSS feeds.¹⁶ Such a service could also ensure that interested parties receive early notice when programs initiate work on a policy activity not previously announced in the agenda. E-mail lists and RSS feeds would enable the public to quickly and easily identify on its own whether planned initiatives will have significant international impacts of concern to them, without government programs taking on additional analytical burdens of dubious utility.

While neither government has taken sufficient steps to ensure the continuous electronic updating which could obviate the perceived need for further analyses, we must note that the EC has implemented some transparency measures that should be adopted by the U.S.:

- The EC has an online catalogue of IAs of major policy initiatives, which has no parallel in the U.S. Although U.S. agencies do routinely post IAs in their rulemaking dockets, there is no single catalogue of the assessments themselves. OMB could easily generate such a catalogue on the Web, given that it has begun publishing a table of such assessments in its annual regulatory accounting report.
- Further, the EC requires that its Impact Assessment Board's review of an IA be included in the final IA. OMB, by contrast, operates in a black box. Its recommendations to agencies on draft rules are not made available on the Web and, instead, must be requested in an antiquated process that takes months, assuming that a request for information is ever acknowledged by a difficult-to-reach staff. Although the executive order governing OMB's review of regulations requires agencies to include summary notes of OMB's changes in the rulemaking dockets, most agencies fail to do so. Additionally, now that OMB has asserted power to review what it calls "guidance documents"¹⁷ (including, in some cases, risk assessments¹⁸), it is unclear how the public will ever learn of "guidance" or risk assessments under OMB review or the changes ordered by that office. In this regard, OMB falls far short of the transparency achieved by the IAB, and we call on OMB to bridge that gap.

The EC has not been the perfect model of regulatory transparency, however. Unlike the U.S. use of regulatory dockets, which contain all submissions by the public, including comments, slideshows from presentations, and even notes made by agency staff of meetings with outside parties for which no materials were otherwise available, the EC lacks transparency about public submissions. We call upon the EC to publish all submissions on matters of public policy, subject only to very narrowly-drawn exceptions for personal and genuine commercial confidentiality.

C. The goal of "rigorous quality control" must not be used to centralize power over regulatory policy.

One gap remains that we recommend *not* be closed. With regard to the Draft Report's call for a "rigorous system of quality control" of IA, we reiterate our position that the EC should not centralize authority in the manner of OMB.¹⁹ While the governmental structures of the U.S. and EC are quite different, EC leaders have contemplated the possibility of giving the IAB power to stall policies until an IA reaches the level of quality it deems appropriate.²⁰ Even if these are merely throw-away statements not yet under serious consideration, we must take the opportunity to register our objections to that prospect. We object particularly to the idea that a board with no representation by DG-SANCO could exert such power over consumer protection policies. In keeping with our recent resolution on regulatory methodologies, we state our position that the EC's IAB should not be given the power to be a roadblock to consumer protections. "Quality control" must not go that far.

D. International impacts should not distort the agenda-setting process for consumer protection.

We object to the prospect of forcing government programs to spend their resources at the earliest stages of agenda development assessing potential impacts on trade or investment. Government programs should develop their policy agendas based on public need, without concern for the potential impacts a policy initiative might have once a policy proposal has eventually been developed, proposed, assessed, and implemented months or years in the future. The prospect that adding a policy priority to a government agenda *could* result in a policy proposal that *might* hypothetically result in *some* sort of impact on international trade or investment should have no bearing at all on the decision to add a consumer protection issue to the agenda. We are skeptical that any assessment is needed at the *agenda*-development stage other than an assessment of the public's unmet needs, and we see no justification in the Draft Report to persuade us otherwise.

E. Stakeholder input in impact assessment should not be one-sided or biased.

With regard to the recommendation that “public consultation and notice-and-comment mechanisms” should enable U.S., EU, and third country stakeholders to “voice . . . comments on planned initiatives” and see their input reflected in impact assessment reports, TACD agrees that stakeholder participation can be quite valuable in effective policymaking for consumers, provided that consumers themselves are included equally in all opportunities for stakeholder participation.

Public policy decisions should not be biased by one-sided participation of industry at the expense of consumers. In particular, industry cost estimates (of international trade or investment impacts, or otherwise) must be considered with real caution by government programs, given that *ex ante* compliance cost estimates are notoriously overstated²¹ and that stringent regulation often forces industries to discover innovative solutions that result in more efficient and more profitable ways of doing business which often more than compensate for anticipated regulatory compliance costs.²² Moreover, we object to the draft U.S. policy guidance which would use assessment of international trade and investment impacts as an excuse to add to the cost side of the cost-benefit comparison, without any comparable assessment of the benefits to foreign consumers who would enjoy trade in safer products.²³

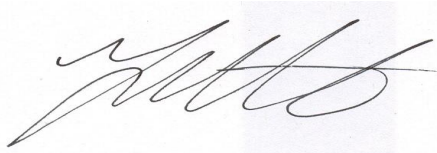
F. There is no basis to pursue any policy pushing international standards.

One proposal in particular sticks out like a sore thumb. The Draft Report lists what it calls “guidance . . . on the type of analysis that would be useful to make decision makers aware of international impacts” whenever a “preliminary analysis suggests that a proposal *might* significantly affect international trade or investment.” One of the three bullets for such “guidance” on “analysis” is a “recommendation that existing international standards . . . be analyzed as an explicit regulatory alternative.” International standards cannot be a basis for good policy making so long as the international standard-setting fora are undemocratic institutions that all too often fail to incorporate meaningful consumer participation, are dominated by industry interests, and cannot be held accountable by the public.

IV. THE DRAFT REPORT FAILS TO JUSTIFY THE RISK TO CONSUMERS.

There is no justification at all for the sweeping regulatory process changes proposed in the Draft Report. We are deeply troubled by the headlong rush to impose yet more burdens on the regulatory process without any prospective assessment of the very real tradeoffs involved — the very kind of prospective assessment that backers of such burdens insist are essential prerequisites of policies to protect the public. At stake is nothing less than the capacity of government programs to get things done to protect the public from health, safety, environmental, financial, and other harms that individuals cannot surmount on their own. “Paralysis by analysis” is not merely a rhyme: it is a real threat, which will have real consequences in the lives of real people.

We call on proponents of these regulatory process changes to be consistent: before putting the public at risk of harm from a decreasingly responsive government, subject the policy changes proposed in the Draft Report to a full cost-benefit analysis and risk assessment of the threat to consumers of resulting regulatory delay and inaction. We also insist that the misleading attempt at a justification for pursuing these changes be substantially revised; if no adequate rationale can be proffered, then the governments should abandon this project entirely.



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Summary of Comments on Draft Report Recommendations

<p>Developing processes for early identification of planned policy initiatives that “<i>might have</i> an impact on international trade or investment” or “<i>might otherwise be of interest</i>” to transatlantic trading partners or “third countries.” Possibly to include requiring “preliminary analysis” of potential impacts on trade or investment whenever policy issues are added to government agendas.</p>	<ul style="list-style-type: none">○ Instead of adding analytical burdens to government programs, the governments should pursue electronic tools for allowing an interested public to learn of new policies under development and identify any such international impacts they anticipate.○ TACD rejects the proposal of “preliminary analysis” at the agenda-setting stage, when the real concern must be the public’s needs.
<p>Furthering the objective of having “transparent rules or guidelines” for IA “accompanied by a rigorous system of quality control” by creating public consultation and comment mechanisms for both IA and agenda development.</p>	<ul style="list-style-type: none">○ IA “quality control” must not be translated in the EC as further consolidation of power in the IAB.○ Public consultation and comment mechanisms must provide equal opportunities for consumers.
<p>Making both policy agendas and IAs available to the public, along with underlying data and technical analysis, to allow for transatlantic trading partners and third countries to respond if they foresee significant trade or investment impacts.</p>	<ul style="list-style-type: none">○ OMB should adopt some of the transparency approaches of the IAB.○ The EC should make all public submissions on matters of public policy available to the public, subject to narrowly drawn confidentiality exceptions.○ Governments should pursue RSS feeds, email subscription lists, and similar tools for transparency.
<p>Expanding their respective IA guidelines with respect to impacts on international trade and investment:</p>	<ul style="list-style-type: none">○ There is no justification in the report for any further expansion of IA burdens to incorporate impacts on trade and investment; there is, instead, ample evidence that trade and investment concerns are overblown.○ OMB should not use concerns about international trade and investment to add to the cost side of cost-benefit analyses, without any comparable addition to the benefits side.○ Absent any proof of a significant problem on international trade and investment from social regulation such as consumer protections, there is no justification for imposing additional analytical burdens on regulations or items proposed to be added to government agendas.
<ul style="list-style-type: none">• Although the EC’s IA guidelines already call for rigorous assessment of potential impacts on international trade, the EC-specific section of the Draft Report hints at a possible expanded focus on international investment.• OMB, meanwhile, presents Appendix B1, titled a “Draft Discussion on Incorporating Trade Impacts into Benefit-Cost Analysis,” which appears to presage a new government-wide pronouncement for U.S. agencies to follow when conducting their own IAs.	

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- The joint conclusion of the report identifies three additional potential policy edicts to apply whenever “preliminary analysis suggests that a proposal *might* significantly affect international trade or investment”.²⁴
 - an analysis “demonstrating the need for any proposed regulation”;
 - an analysis of the distributive impacts of the proposal; and
 - a “recommendation” that the program consider adopting any “existing international standards or regulatory approaches.”
 - In particular, there is no justification at all for any proposal that would, directly or indirectly, instruct government programs to give any preference to international standards, which are typically set by undemocratic panels biased by overrepresentation of industry interests.
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NOTES

¹ Office of Management & Budget & Secretariat General, European Commission, *Review of the Application of EU and U.S. Regulatory Impact Assessment Guidelines on the Analysis of Impacts on International Trade and Investment* (Nov. 2007), available at <http://www.whitehouse.gov/omb/inforeg/reports/draft_sg-omb.pdf> [hereinafter “Draft Report”].

² In these comments, we use the term “government program” or “program” as a generic term to refer to units and sub-units of government that are called “services” in the EC and “agencies” in the U.S.

³ Draft Report at 25 (emphasis added).

⁴ See *id.* at 6 (“Generally speaking, until now more attention has been paid to issues of international competitiveness and barriers to international trade than to the impacts on cross-border investment. However, as indicated below, an ongoing Impact Assessment concerning the insurance sector now also develops this issue more.”).

⁵ See *id.* at 14-15.

⁶ *Id.* at 25 (emphasis added).

⁷ *Id.* at 13, text accompanying note 5.

⁸ *Id.* text accompanying note 7.

⁹ See David M. Driesen, *Design, Trading, and Innovation*, in *MOVING TO MARKETS IN ENVIRONMENTAL REGULATIONS: LESSONS FROM TWENTY YEARS OF EXPERIENCE* 436 (Jody Freeman & Charles D. Kolstad eds., 2007).

¹⁰ See Michael E. Porter & Claas van der Linde, *Toward a New Conception of the Environment-Competitiveness Relationship*, 9 *J. ECON. PERSPECTIVES* 97 (1995)

¹¹ See Frank Ackerman, *The Unbearable Lightness of Regulatory Costs* (Global Dev. & Env't. Inst. Working Paper No. 06-02, Feb. 2006), available at <<http://ase.tufts.edu/gdae/Pubs/wp/06-02UnbearableLightnessReg.pdf>>; Genevieve Smith, OMB Watch, *Regulation and Competitiveness* (2005), available at <<http://www.ombwatch.org/reg/compete/regandcompetitiveness.pdf>>.

¹² See William W. Buzbee, *Regulatory Underkill*, available at <<http://www.progressiveregulation.org/perspectives/underkill.cfm>>.

¹³ See TACD, *Position Paper and Resolution on Horizontal Regulatory Initiatives in EU-U.S. Regulatory Cooperation* (Trade-15-07), available at <<http://tacd.org/cgi-bin/db.cgi?page=view&config=admin/docs.cfg&id=322>>.

¹⁴ Available at <http://ec.europa.eu/atwork/programmes/index_en.htm>.

¹⁵ Available at <<http://www.gpoaccess.gov/ua/index.html>>.

¹⁶ The U.S. government does make the daily editions of the *Federal Register* available by email subscription, although interim notices of changes to agency agendas (such as the monthly significant rulemaking calendar published by the Department of Transportation) are not.

¹⁷ See Exec. Order No. 13,422, 72 Fed. Reg. 2763 (Jan. 23, 2007); see also Public Citizen, *Executive Order 13,422 and Bulletin on Guidance*, available at <<http://www.citizen.org/autosafety/regs/whitehouse/guidance2007/>>.

¹⁸ See Public Citizen, *OMB Subjects Science to Politics, Continues to Push Agencies on Risk Assessment*, Sept. 19, 2007, available at <<http://www.citizen.org/autosafety/regs/whitehouse/articles.cfm?ID=17124>>.

¹⁹ See TACD, *supra* note 13.

²⁰ See Information Note from the President to the Commission, “Better Regulation and Enhanced Impact Assessment,” SEC(2007)926 (28 June 2007), available at <http://ec.europa.eu/governance/impact/docs/key_docs/sec_2007_0926_en.pdf> (“[The IAB’s] effectiveness will be assessed in its first annual report and further measures may be proposed, as foreseen in the information note (SEC(2006)1457/3) on the creation of the Board, such as granting the IAB the possibility to postpone decisions on proposals, until the impact assessment meets certain standards.”).

²¹ See Ackerman, *supra* note 11, at 9-14; RUTH RUTTENBERG & ASSOCS., PUBLIC CITIZEN, NOT TOO COSTLY, AFTER ALL: AN EXAMINATION OF THE INFLATED COST-ESTIMATES OF HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTIONS (Feb. 2004), available at <<http://www.citizen.org/documents/ACF187.pdf>>.

²² See Smith, *supra* note 11, at 6-7.

²³ See Draft Report at 14-15. Note that OMB is reportedly rejecting the U.S. EPA's desire to assess the global benefits of a developing proposal on reducing greenhouse gas emissions from motor vehicles. See Doug Obey, *EPA Struggles to Define Scope of Benefits from GHG Controls*, INSIDE EPA, Sept. 7, 2007, available on Westlaw at 2007 WLNR 17385186.

²⁴ *Id.* at 25 (emphasis added).