



## **Swedish interests in the transatlantic economic relationship between EU and USA regarding trade and investment**

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The Swedish consultation process on how to enhance the EU-US economic partnership included a public hearing in Stockholm on October 8, a broad survey of detailed questions as well as extensive phone interviews with targeted companies. A particular focus was placed on regulatory and standardization issues, as this area has particular potential to strengthen our economic relations. Other areas where we received comments and tried to form proposals include customs procedures, sanitary and phytosanitary measures as well as government procurement and intellectual property rights.

As for regulatory and standardization issues, the Swedish industry has mentioned the following sectors as prioritised for “enhanced” type of arrangements (i.e., based on equivalent requirements) with the US:

- Heavy-duty engines (emission regulation)
- Marine recreational petrol engines (emission regulations)
- ICT products (UNECE “Telecom Initiative”)
- Earth-moving machinery (UNECE “Earth-moving machinery Initiative”)
- Pressure equipment and lifts (for installation on vessels)
- Electrical safety
- Pharmaceuticals

In addition, an issue related to protection of the environment and international standardization is proposed for further consideration.

Four of these proposals seem more promising and should be given priority:

- **Heavy-duty engines:** According to the companies it is vitally important that the emission standards for Heavy-duty diesel vehicles in North America and the EU be harmonized, not only in terms of stringency of allowable emissions levels but also in terms of testing procedures and implementation time-tables. In a second step, there is an important opportunity to implement harmonized emission limit values in 2012 to synchronize with the US requirements.
- **Marine recreational petrol engines:** Achieving full alignment between EU and US requirements on engine categorisation and emission standards (as described).
- **Earth-moving machinery:** Establishing an arrangement in the form of an “enhanced” MRA based on equivalent regulatory requirements in this area.
- **Alignment to international standards in the field of environment:** Studying to what extent international standards in the field of the environmental protection developed in ISO and IEC have been adopted and implemented as national standards.

Among other issue areas for which comments were received and proposals formed, we would like to mention:

- **Customs Procedures and Security Measures:** The creation of standard criteria for authorization to operate in the transatlantic market would maintain the security while reducing the burden on particularly small firms.
- **Sanitary and Phytosanitary Measures:** Establishing recognition of common principles in cases of the outbreak of animal disease on the basis of work carried out in international bodies as well as within the EU and the US.
- **Government Procurement:** As the “Buy America Act” poses a multitude of problems to firms, genuine and joint efforts should be made to work out a broad solution.
- **Investments:** Adoption of simple procedures for de-registration of a company from the US Stock Exchange.
- **Intellectual Property Rights:** Adoption of “first-to-file” system in order to maintain a transparent and stable system as well as to reduce the burdens borne by users through the differing systems.

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## **1. Introduction**

Upon request of the Ministry for Foreign Affairs, the National Board of Trade has carried out an inventory of Swedish interests in the economic relations between the EU and the US such as in areas of trade and investment. In particular, we have attempted to identify what barriers remain and in which sectors. It has then been the goal to shape possible approaches and come up with concrete proposals.

A special focus was placed on regulatory and standardization issues. All of Section 2 is devoted to this area. Other areas for which we have collected information are presented in Section 3 and divided into three groups (recent problems actively filed with the National Board of Trade before the launch of this consultation period, problems actively brought to our attention throughout the consultation period and then, finally, problems that we learned about by reaching out and contacting companies in person).

In terms of method, it may be mentioned that some 400 companies have been involved in one way or another throughout the consultation process. Some 350 companies and industry organizations were invited to a hearing held on October 8 in Stockholm. Attendance was relatively weak, but a fruitful discussion developed. About the same number of firms were reached by a questionnaire. The response rate was rather low, but over the phone we have contacted approximately one hundred firms and more than thirty have been interviewed at length.

## **2. Regulatory and standardization issues**

### **2.1. Background**

There has in recent years been a pronounced interest in international cooperation in the areas of technical regulations, standards and conformity assessment procedures with the view of eliminating technical barriers to trade (TBT). The external TBT policy outlined within the EU has been developed in close collaboration between the European Commission and the EU Member States with an active engagement from the Swedish side. Hence, the general positions developed are in full harmony between Sweden, the Commission and other Member states.

Swedish industry has also been active in UNICE in elaborating proposals for EU trade policy on TBTs, which they consider to be a concern to industry worldwide. While many other barriers hampering trade and investment have been removed, technical barriers remain difficult to eliminate since they form part of a complex system of national/local standards and product approval schemes with varying ties to government regulations. Therefore, the Swedish/European industry would like to see a new push for global market access and the removal of technical barriers to trade globally.

Sweden's/EU's trade objectives can be summarised accordingly: first, to reduce technical barriers in external markets and to prevent the emergence of new ones; and second, to encourage the trading partners to adopt standards and regulatory approaches based on, or compatible with, international and European practice. Achievement of both objectives will mutually facilitate trade and market access.

## **2.2. Public consultations**

The public consultation on EU-US trade and economic relations launched by the EC Commission services invites comments and proposals on further development of the EU-US economic partnership. In the questionnaire circulated by the Commission<sup>1</sup> the TBT and regulatory and standardization issues are especially covered by Q4 (progress in EU-US bilateral trade and economic agenda, e.g. with regard to the Guidelines for Regulatory Cooperation and Transparency and the Mutual Recognition Agreement on marine equipment) and Q7 (possible proposals on how to protect the environment, consumer interests and health and safety as well as labour standards, while simultaneously promoting further economic integration).

## **2.3. Proposals on further development of the EU-US economic partnership**

In the national consultations held, Swedish industry has mentioned the following sectors as prioritised for "enhanced" type of arrangements (i.e. based on equivalent requirements) with the US:

- Heavy duty engines (emission regulation)
- Marine recreational petrol engines (emission regulations)
- ICT products (UNECE "Telecom Initiative")
- Earth-Moving Machinery (UNECE "Earth-Moving Machinery Initiative")
- Pressure equipment and lifts (for installation on vessels)
- Electrical safety

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<sup>1</sup> MD 336/04

- Pharmaceuticals

In addition an issue related to protection of the environment and international standardization is proposed for further consideration.

Of the above sectors, some could be considered as less promising as proposals for cooperation with the US in the near future. This is the case with ICT products (UNECE “Telecom Initiative”). Since the US industry (Motorola etc.) has shown no interest in this initiative it would be difficult to convince the responsible regulatory agency in the US (FCC) to participate in the initiative. The proposal on pressure equipment and lifts (for installation on vessels) should be brought forward to the US side for inclusion in the EU-US marine equipment agreement as soon as there are international instruments under development in (IMO International Maritime Organisation) for these sub-sectors. For electrical safety and pharmaceuticals the responsible US regulatory agencies (OSHA and FDA) have not been interested to make these sectors operational under the existing, “traditional” MRA. The likelihood that a constructive cooperation for an “enhanced” type of MRA could be established within the near future seems small.

With regard to the above considerations the four other proposals mentioned seem more promising and should therefore be pursued as a first wave of proposals for strengthening the EU-US economic partnership relations in the area of Technical Barriers to Trade – regulatory and standardization issues. These proposals are further detailed below.

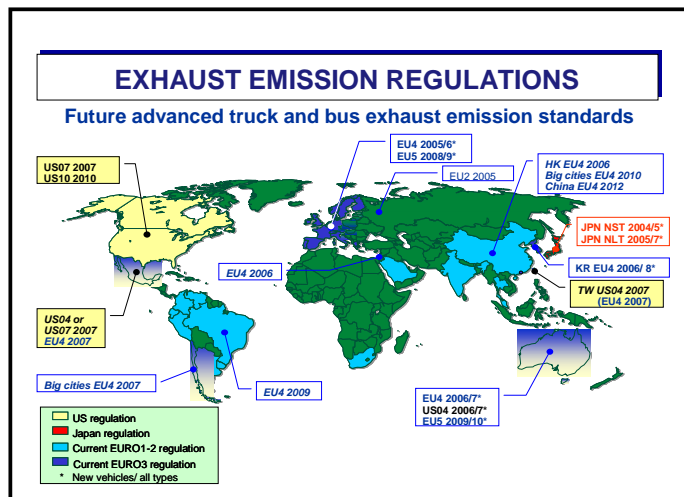
### 2.3.1. Heavy-duty engines (emission regulation)

#### 2.3.1.1. Background

Since the 1970's, in order to better control ambient air quality, the most developed countries/regions of the world have gradually introduced increasingly stringent exhaust emission and fuel quality regulations for on-road diesel and non-road mobile machinery applications.

During this same time period, the Heavy Duty Diesel engine industry became globalised and a need to harmonize product standards emerged. Consequently, the need to harmonize the more and more constraining regulations has also increasingly emerged as a priority.

The applicable legislative context:



The three regions leading the development of regulations that aim to limit the exhaust emissions of combustion engines are Japan, the EU and the US. Outside of these three regions, the most commonly referenced regulations are those elaborated by the Economic Commission for Europe of the United Nations (UNECE).

UNECE 1958 agreement introduced a system of mutual recognition of compliance certificates, whereby the certificates issued by one government are recognized by the other "contracting parties". There has been a slow but steadily increasing number of signatory countries to this agreement. For a variety of political and national sovereignty reasons, the US has not yet signed the 1958 agreement, nor is it expected to anytime in the near future.

In 2000, a new agreement signed by the EU, US, Japan and several other countries, was established within the UNECE. Under this new agreement, a series of Global Technical Regulations (GTRs) addressing harmonization issues have been, and continue to be, developed. Unlike the 1958 agreement, these GTRs have no enforcement criteria or mechanisms. As such, the contracting parties commit themselves to introduce the GTRs in their own rule-making processes, but other parties to the agreement have no recourse should they not follow through with their commitments. Ultimately, it is expected that the harmonized GTRs will become part of each region/country's regulatory framework.

#### **2.3.1.2. Consensus within the European heavy-duty vehicle industry through ACEA**

The costs and methods of reducing emissions are an important issue for the heavy-duty truck and engine industry worldwide. As far as regulatory limit values are concerned, individual countries are moving independently to tighten regulations. Unfortunately, they are doing so in a completely independent, incongruent manner; this underscores the need to establish a shared global view on the environmental impact of stricter regulations. The goal should be to harmonize emission regulations and, therefore, to reduce development and production costs. Ultimately, this will reduce costs for the end customer and for society as a whole. All the participating companies in ACEA agreed to encourage the exchange of views and information among their companies in order to strengthen the international efforts on these issues.

#### **2.3.1.3. The way forward**

According to the companies it is vitally important that the emission standards for heavy-duty diesel vehicles in North America and the EU be harmonized, not only in terms of stringency of allowable emissions levels, but also in terms of testing procedures and implementation timetables. The sooner this transpires, the better off the environment and the industry will be, saving resources.

Work is going on since some time within the UNECE WP 29 in finding common test procedures for On-Board Diagnostic (OBD), test/duty cycles and for off cycle emissions from heavy duty engines. This work could be finalized in 2006/07 but progress is failing. There is a need for an expression of political will to move forward. This could come from the EU. The European heavy-duty vehicle industry is in agreement on the need to move forward as soon as possible to achieve harmonised test procedures as a first step towards a total harmonisation of emission legislations between the EU and US.

1. The Duty Cycle will specify the emission test-cycles and test procedures for certifying the engine.



2. The Off-Cycle Emissions will specify the requirements to be met and to be demonstrated in addition to the duty cycle test;
3. The On-Board Diagnostic will specify the diagnosis and recording requirements in the event of a failure of the emission control system.

In a second step, there is an important opportunity to implement harmonized emission limit values in 2012. US will introduce the US 10 standards in 2010 and the EU will introduce the Euro VI standards in 2012. As the US 10 is to be introduced before the Euro VI and is already preliminary developed, the most practical solution, also saving resources, would be that the Euro VI requirements are synchronized with the US 10 requirements.

### **2.3.2. Marine recreational petrol engines (emission regulations)**

#### **2.3.2.1. Identified problem**

Proposed future (time frame 2010) exhaust emission regulation for recreational marine petrol engines in the US categorize engines into two groups. One for outboards and one for inboard/stern drive engines. The proposed NO<sub>x</sub> standards are 16 g/kWh for outboards and 5 g/kWh for inboard/stern drive engines. Thus, the standards are much more stringent for inboard/stern drive engines.

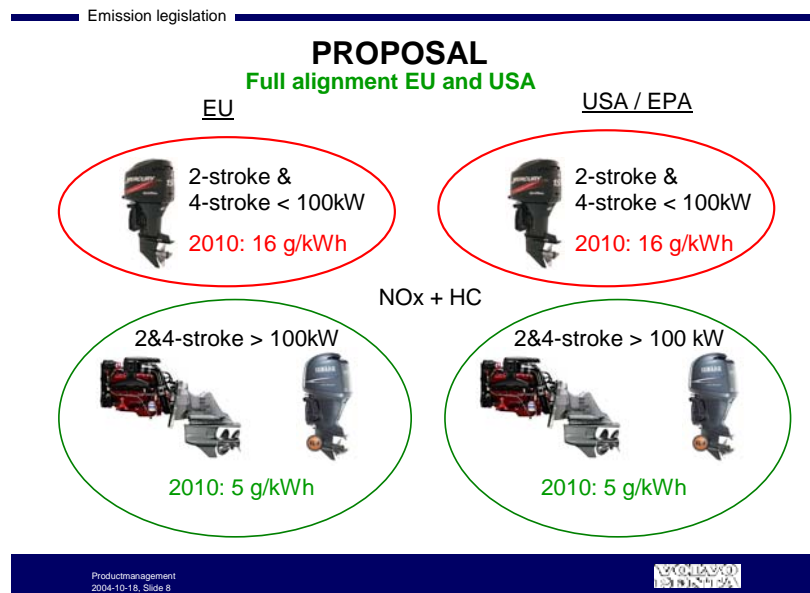
A modern marine petrol engine already today meets a NO<sub>x</sub> level of 16 g/kWh while 5 g/kWh for inboard/stern drive engines will require exhaust gas after treatment systems that increase the cost with approx 10 % and possible installation problems for the boat builders as well as increased maintenance for the user. Apart from the cost/price increase the more complicated installation and maintenance requirements will have a negative influence on the competitive situation for inboard stern drives engines compared with outboards. In Europe, petrol engines are divided in 2-stroke and 4-stroke categories.

#### **2.3.2.2. Proposal**

To achieve full alignment between EU and US requirements on engine categorisation and emission standards as described below.

#### **2.3.2.3. Justification**

The same emission requirement for both outboards and inboard/stern drive engines will be beneficial for the environment, result in a more fair competition between the two engine types and will meet engine manufacturers wish to develop engines against one emission standard.



### 2.3.3. Earth-Moving Machinery (UNECE “Earth-Moving Machinery Initiative”)

In order to work towards greater transatlantic economic integration EU and US regulatory agencies should consider contributing to the establishing of an arrangement in the form of an “enhanced” MRA based on equivalent regulatory requirements in the area of Earth-Moving Machinery.

The earth-moving machinery industry has been a global industry for many years and ISO standards have already been developed to address most of the regulatory issues. Since autumn 2003 representatives from this industry have agreed to lay the ground for improved global market access through the use of the regulatory and standardization technique embodied in the so called UNECE “International Model”. This initiative includes industries on both sides of the Atlantic: from U.S. (Caterpillar) and from Europe (Volvo Wheel Loaders, Sweden and VDMA, Germany) as well as from the Asian region (Komatsu, Japan). A good basis for this global initiative exist since many national and regional regulations already use the technical requirements in the ISO/TC 127 standards to address the safety risks for earth-moving machinery. Over 100 standards have been published and new standards are continually being developed to address new technology and new types of earth-moving machinery.

When the global industry has finalized its proposal, it will be for the regulators to show their understanding, willingness and ability to engage in a regulatory convergence dialogue in order to conclude the necessary arrangements to allow for facilitating transnational market access as requested by the industry. In this case both regulators from EU and the US will be called on in order to achieve practical results in this regard.

#### **2.3.4. Alignment to international standards in the field of environment**

##### **2.3.4.1. Background**

Representatives of regulatory bodies and private sector from EU Member states and US participate in international standards development through voluntary organizations (e.g. ISO and IEC) and treaty organizations (e.g. Codex Alimentarius Commission – CAC, International Maritime Organization – IMO and the International Bureau of Weights and Measures – BIPM).

The World Trade Organization's Technical to Trade (TBT) Agreement advocate the use of international standards by Governments as a basis for their technical regulations and by standardizing bodies within their territories for the standards they develop. In following these provisions the Members to the WTO TBT Agreement and their standardizing bodies will increase the convergence of their regulations and standards and thereby provide for improved market access.

##### **2.3.4.2. Proposals**

In order to work towards greater transatlantic economic integration in EU-US relations the following proposal for co-operation regarding alignment to international standards in the environmental field should be further considered:

To study to what extent international standards in the field of the environmental protection developed in ISO and IEC have been adopted and implemented as national standards. Such a study would provide increased transparency - to business, public authorities, NGOs and other potential users of relevant regulations and standards - concerning the degree of equivalence of the corresponding requirements in the partner country in order to facilitate business operations and the objectives pursued through these regulations and standards. An information exchange on implementation and use of international standards as well as the experience in the international standardization work (e.g. with regard to including environmental aspects in ISO and IEC standards) could serve as a first step. If found suitable – and provided that the necessary conditions prevail – the findings could in a second phase be followed up by specific arrangements also in other sectors/product areas chosen.

### **3. Other areas**

As for other areas where comments were received, we have categorized them into three groups. The first group consists of those areas where firms have recently taken it upon themselves to file problems with the National Board of Trade (before the launch of this consultation process). A second category consists of issue areas where firms have actively brought problems to our attention during the consultation period (either at the hearing or through the questionnaire sent out). The last and third group is based on information that the National Board of Trade have received as we have actively reached out to targeted companies in person.

#### **3.1. Problems recently filed with that National Board of Trade (before the launch of the consultation period)**

##### **3.1.1. Customs Procedures and Security Measures**

###### **3.1.1.1. Background**

Even before the launch this consultation period, a number of companies had contacted the National Board of Trade as they have found the new security measures introduced by the USA after Sept 11<sup>th</sup> in 2001 problematic. There have been significant changes in the procedures while trading with the United States. In two cases involving Swedish firms, the forms that now have to be filled in are not only incredibly time-consuming but ask for information about the employees that Swedish firms neither have access to nor feel compelled to give out. Particularly, small companies have found this prohibitive.

As regards safety standards they must be agreed upon on a mutual EU-USA level. It should also be taken into consideration the ongoing work with security standards in international organisations such as the World Customs Organisation and the bilateral EU/USA Joint Committee meeting. The Swedish Customs has already today a system with Authorized Economic Operators. This system offers the companies simplified procedures. This is a contractual Agreement between the company and the National Board of Customs based upon the development of sustainable and secure trade supply chains and risk management systems as one of the main tools towards increased safety in global trade. This might be something to develop further.

###### **3.1.1.2. Proposal**

The creation of standard criteria for authorization to operate in the transatlantic market would maintain the security while reducing the burden on particularly small firms.

### **3.1.2. Sanitary and Phytosanitary Problems**

#### **3.1.2.1. Background**

Recently, a number of firms have asked the National Board of Trade for help with problems in connection to the areas of food safety as well as animal and plant health (regulations concerning additives, contaminants or toxins in food as well as measures concerning the control of animal or plant diseases or pests etc.). The most common complaint relate to US authorities having categorized Sweden among "countries that are considered to have a substantial risk associated with BSE". The United States does not abide by the risk evaluations carried out within the EU. However, there is an ongoing review of rules both internationally and within the EU as well as in the United States.

#### **3.1.2.2. Proposals**

Establishing recognition of common principles in cases of the outbreak of animal disease on the basis of work carried out in international bodies as well as within the EU and the US.

### **3.2. Problems actively brought to the attention of the National Board of Trade by firms throughout the consultation process**

#### **3.2.1. Government Procurement**

##### **3.2.1.1. Background**

The Buy America Act is the core domestic preference statute governing US procurement. It covers a number of discriminatory measures, generally termed Buy America restrictions, which apply to government-funded purchases. These take several forms: some prohibit public sector bodies from purchasing goods and services from foreign sources; some establish local content requirements, while others still extend preferential price terms to domestic suppliers. Buy America restrictions therefore not only directly reduce the opportunities for EU exports, but also discourage US bidders from using European products or services.

Large Swedish players have opted out of the entire American market for reasons of lost opportunities due to discriminatory restrictions in the field of government procurement.

##### **3.2.1.2. Proposals**

As the The Buy America Act poses a multitude of problems to firms, genuine and joint efforts should be made to work out a broad solution.

### **3.2.2. Investments**

#### **3.2.2.1. Background**

Several Swedish multinationals are of such a size that they are capable of going public on the US market and be listed on the Stock Exchange. However, the procedures for de-registration are known to be so incredibly cumbersome and involve having to provide information long afterwards that companies hesitate to even register in the first place. As one large Swedish operator put it, once you have registered “it is impossible to leave the US market”.

#### **3.2.2.2. Proposals**

Adopt simple procedures for de-registration of a company from the US Stock Exchange in order to not discourage companies from ever listing.

### **3.3. Problems mentioned by firms that were approached in person by the National Board of Trade**

#### **3.3.1. Intellectual Property Rights**

##### **3.3.1.1. Background**

The “first-to-invent principle” for patent registration, as well as the issue of the cost and length of patent infringements litigation are two major problems that have been found by Swedish and European companies. These regulations are major obstacles for the establishment and enforcement of your patent rights.

##### **3.3.1.2. Proposals**

Adoption of “first-to-file” system in order to maintain a transparent and stable system as well as to reduce the burdens borne by users through the differing systems.