

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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December 2, 2011

Paul Verkuil
Chairman
Administrative Conference of the United States
1120 20th Street NW, Ste. 706 South
Washington, DC 20036

Dear Mr. Verkuil:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, is deeply committed to promoting and advancing international regulatory cooperation to the benefit of regulators, consumers, and businesses. On April 28, 2011, the Chamber was pleased to partner with ACUS to host a program on the role and responsibility of regulatory agencies to engage in international regulatory cooperation, and, partly as a result of that collaboration, the Chamber is pleased ACUS agreed to update its 1991 recommendations regarding international regulatory cooperation. The Chamber was actively involved throughout the process leading to the Proposed Recommendation for Consideration at the Plenary Session and appreciates the opportunity to offer comments to achieve the optimal international regulatory cooperation recommendation.

The Chamber urges the Assembly to pass an updated recommendation to international regulatory cooperation at the December 8 Plenary session, preferably a final version incorporating the comments below, which would represent a robust, forward-thinking, and practical nudge toward increasing the breadth and efficiency of U.S. regulators' international regulatory cooperation activities. We thank the Assembly for their consideration.

GENERAL COMMENTS ON PROPOSED RECOMMENDATIONS

The Chamber would like to direct the Assembly to the excellent background report by ACUS Executive Director Michael McCarthy – drafted after extensive research and interviews with consumer groups, regulators, and business – detailing specific international regulatory cooperation activities and benefits.¹ The background report served as a foundation for both the Proposed Recommendation, and, as clearly and expertly articulated throughout both the background report and the Proposed Recommendation, ACUS's findings that international regulatory cooperation results in benefits for consumers, business, and regulators alike.

Updates to the 1991 ACUS recommendation and closer adherence by regulators to any new recommendation are fundamental to fulfilling regulatory missions related to health, safety, the environment, etc. Additionally, U.S. regulators engaged in international regulatory

¹ International Regulatory Cooperation, 20 Years Later: Updating ACUS Recommendation 91-1 (available at <http://www.acus.gov/wp-content/uploads/downloads/2011/10/COR-IRC-report-10-19-11.pdf>).

cooperation are in a position to aid in boosting U.S. trade and competitiveness. The Obama Administration has consistently indicated that international regulatory cooperation is beneficial because it helps U.S. agencies more efficiently accomplish their statutory missions domestically and because it promotes U.S. competitiveness, promoting trade and exports, and creating jobs.² The Proposed Recommendation states that “the benefits of international regulatory cooperation are not incompatible and can be pursued in unison.” One benefit should not be accomplished at the expense of the other, and the results are often inseparable.

Therefore, the Chamber was disheartened by the amendments to the Proposed Recommendation resulting from the October 25 Committee on Regulation meeting. In nearly every aspect, the amendments from October 25 would greatly weaken the effect of the Proposed Recommendation to an affirmation of the actions already undertaken by U.S. agencies, and provides reduced guidance to spur innovation and increase benefits to U.S. consumers, business, and regulators.

The Chamber shares many of the concerns expressed by Public Member Susan Dudley on November 23, 2011.³ While several of our comments may overlap with those of Ms. Dudley, the Chamber believes the following changes are necessary to achieve a final recommendation that provides the greatest benefit to consumers, business, and regulators.

SPECIFIC CHANGES TO PROPOSED RECOMMENDATION

Recommendation 1 (page 5, line 112): The Chamber suggests deleting the phrase “where consistent with advancing that mission.” This addition is confusing and weakens the previous version, as “when appropriate to further the agencies’ regulatory mission *and*” (emphasis added) clearly indicates agencies should consider strategies that achieve both goals.

Recommendation 2: The Chamber strongly supports removing all changes from the October 25 meeting and restoring recommendation 2 to the previous version. The earlier version of recommendation 2 provided the foundation necessary to nudge U.S. regulators in the direction of increased, varied, and innovative international regulatory cooperation activities. In greater detail, the Chamber suggests the following changes:

- Page 5, line 116: Remove “could” and reinsert “should.” When conducting the requested review of legal authority, U.S. regulators should seek to assure their authorities allow full compliance with all international agreements. The suggested change of “could” to “should” is necessary to provide a consistent review by all U.S. regulators.
- Page 5, line 120: After “agency missions” reinsert “and U.S. competitiveness,” which was present in the previous recommendation and is essential to properly achieve the goals

² OMB’s 2011 Report to Congress on the Costs and Benefits of Federal Regulations recommended that “in order to promote trade and exports, and thus increase job creation, agencies should promote regulatory cooperation initiatives with key trading partners.” (See http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf.) Further, at the November 28, 2011 U.S. – EU High Level Regulatory Cooperation Forum, high-level Administrative officials stated international regulatory cooperation should occur with an aim of promoting growth and job creation – or at least aim to remove factors preventing these goals.

³ Available at <http://www.acus.gov/wp-content/uploads/downloads/2011/11/Dudley-Comments-IRC.pdf>.

of ACUS and this Administration, as well as maximize potential benefits of international regulatory cooperation.

- Page 6, lines 121-122: Remove the amended text of “where in furtherance of their legal authority” and reinsert the original “absent clear conflict.” This change would enable U.S. regulators to participate in all possible regulatory and enforcement international regulatory cooperation activities while examining their authorities to determine if the scope of that authority should be increased.

Recommendation 3 (page 6, line 125): The Chamber suggests removing the phrase “and that cooperation would further their mission.” We believe the earlier text on line 124 “legal authority and the interest” should be sufficient to provide guidance to agencies to act in a manner that will best increase the well-being of U.S. citizens without detracting from the agency’s regulatory mission.

Recommendation 4 (page 6, line 146): We suggest removing “consider” as “where appropriate and practical” already would allow for U.S. regulators to exercise proper judgment while providing for stronger guidance.

Recommendation 6 (page 7, line 169): The Chamber suggests adding “evidence-based” or reinserting the previous descriptor “data-driven” to instruct the type of decision-making that should be required. Agency decisions should be made based on evidence, readily presentable and explainable, when appropriate.

CONCLUSION

The Chamber sincerely thanks ACUS for their exemplary professionalism and cooperation in the drafting of the updated recommendation on international regulatory cooperation. Again, we urge the Assembly to pass a recommendation during the December 8 Plenary session, and strongly prefer a robust version incorporating the above comments that would fully unlock the full potential benefits for regulators, consumers, and businesses alike.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" being the most prominent parts.

R. Bruce Josten