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United States Council for International Business Submission to the U.S. Trade Representative on the Transatlantic Trade and Investment Partnership

The United States Council for International Business (USCIB) applauds the decision to launch negotiations on a Transatlantic Trade and Investment Partnership (TTIP) following the High Level Working Group's final report released on February 11, 2013. USCIB strongly supports elimination of remaining tariff and non-tariff barriers on goods and services trade between the U.S. and EU. We also see these negotiations as an opportunity to address regulatory differences that hinder trade or add unnecessary costs through duplicative or burdensome requirements. Agreeing on ambitious regulatory policy initiatives to deepen the U.S.-EU economic partnership will have a lasting and positive effect on growth, competitiveness and job creation on both sides of the Atlantic.

USCIB welcomes the opportunity to respond to the April 1, 2013 Federal Register Notice requesting comments from stakeholders to assist in developing strong negotiating objectives in the TTIP that will significantly benefit transatlantic trade and investment. Our members, which include most of the leading U.S. multinational companies, have significant operations in both the U.S. and EU and have provided input for our submission on the areas that should be addressed that would drive further economic growth. While elimination of remaining tariffs in certain product areas remains an important objective for some companies, many others are focused on regulatory differences between the U.S. and EU. Our submission identifies some areas where regulatory issues cut across sectors such as investment, innovation, and customs, but also includes more sector specific concerns in areas such as chemicals, information and communication technology, and financial reporting and audit.

USCIB members see the value of common approaches toward establishing a more integrated and barrier-free transatlantic marketplace through cooperation in international standards and regulatory bodies and support closer coordination among regulators in the oversight of entities regulated in both markets to enhance oversight, but avoid overlap and duplication. Regulatory discrimination and differentiation across the Atlantic is an increasingly frustrating obstacle to trade, investment and the ability to conduct business.

A recent study by the World Economic Forum, done in conjunction with the World Bank and Bain & Company, determined that reducing trade barriers in global supply chains could result in an increase of nearly 5% in global GDP. Moreover, the study also found that supply chain barriers make it particularly difficult for smaller businesses to enter foreign markets and that overcoming supply chain barriers often requires significant upfront investment to understand the regulatory requirements of the different countries. Reducing barriers, harmonizing customs procedures and providing clear regulations would significantly improve trade between the U.S. and the EU.

USCIB supports an ambitious, comprehensive, and forward-looking U.S.-EU agreement with no sectoral carve-outs or exclusions. Efforts to carve out or provide “safe harbors” in insulated, sensitive or politically-favored sectors from the market access, regulatory or other disciplines of the agreement inevitably spark a downward ratcheting in the overall levels of coverage and ambition and should be resisted.

While cooperation between the U.S. and EU is extremely important, USCIB members would like to stress that regulatory decision making should be based on scientifically sound and technically rigorous risk assessments. Under this approach, regulatory actions are justified where there are legitimate, scientifically ascertainable risks to human health, safety, or the environment. In contrast, adoption of the precautionary principle as a basis for regulatory decision making would be detrimental to many of our industries, is essentially a policy of risk avoidance and opens the door to politicization of the regulatory process.

This submission provides a preliminary overview of issues USCIB believes should be undertaken in the TTIP. As the negotiations move forward, we look to an ongoing dialogue with U.S. and EU negotiators concerning the issues to be addressed and the possible approaches to finding common ground on them. We would be pleased to answer any questions, and discuss any of these issues in greater detail.

Cross-Cutting Issues

Customs and Trade Facilitation

The final report of the U.S. -EU High Level Working Group on Jobs and Growth recognized the increasing complexity of global supply chains, and framed customs and trade facilitation as both a shared global trade challenge and opportunity. USCIB agrees that although there are a number of hurdles to overcome in the realm of customs and trade facilitation, this is certainly a key area in which the TTIP has the potential to deliver positive results, which will have a long-term impact on transatlantic and in turn global trade flows.

Positive steps have already been taken to further transatlantic inter-agency and regulatory cooperation in the areas of customs and trade facilitation. The recent mutual recognition agreements on our trusted trader programs (C-TPAT and AEO) and air cargo security are positive strides toward greater efficiency and facilitation, and the business community has welcomed such efforts. But the establishment of these agreements is just the first step towards improving transatlantic regulatory compatibility. USCIB recommends that steps be taken toward improved regulatory cohesion in the following areas:

De Minimis Import Values

USCIB members support a commercially meaningful de minimis value threshold for the imposition of duties and customs requirements for both markets. Currently, the EU de minimis value is significantly below that of the U.S., leading to significant barriers for exporters, especially small and medium exporters. USCIB recommends that the U.S. and EU raise and harmonize their de minimis thresholds to \$800 or an equivalent Euro value.

Raising the de minimis threshold would reduce regulatory and financial burdens for small and medium sized enterprises and would allow host country border authorities to focus the often minimal resources on real risks. The cost-benefit in the short and medium term would be shared by all parties. USCIB encourages all legislative and regulatory efforts to increase the de minimis threshold in the U.S. and urges the EU to coordinate in a parallel effort to benefit both markets.

Cultivating Modern Transatlantic Customs

USCIB urges U.S. and EU leaders to work towards coordinating and streamlining their respective customs processes. Businesses of all sizes stand to benefit from the establishment of an electronic pre-clearance, a “single window” for the processing of customs related documentation in the EU, and immediate release provisions for time-sensitive shipments.

Single Window: Business of all sizes stand to benefit from the establishment of a “single window” in the U.S. and EU respectively, through which traders can electronically submit all customs and related documentation. It is of critical importance for the U.S. to urge its EU counterparts to ensure a single window for customs related documentation in the EU, particularly as the EU finalizes its own Union Customs Code. At present, those exporting to the EU are confronted with nationally based customs clearance agencies in every EU Member State. The use of national clearance agents with different computerized systems provides an extremely inefficient and administratively burdensome business landscape, which is particularly damaging for smaller companies wishing to trade across borders. USCIB urges for the establishment of “one government at the border” for the clearance of goods, which would allow traders to complete customs clearances for the import of shipments destined for any number of EU Member States in one facility and one EU Member State. One government at the border should be horizontally integrated such that traders can submit information required by other authorities, e.g. for transportation, sanitary and veterinary purposes, via truly national single windows.

Electronic Pre-Clearance: USCIB believes that the TTIP should promote a better understanding of the unique needs of time-sensitive shipments and Express Delivery Services in general. We would therefore encourage the inclusion of provisions for electronic pre-clearance based on advanced data for goods moving in either direction across the transatlantic border. In particular, allowing the electronic submission of customs clearance documentation, before time-sensitive shipments arrive at the U.S. or EU border would significantly speed up the movement of such goods.

Immediate Release: USCIB urges U.S. and EU leaders to build on existing World Customs Organization (WCO) guidelines for the immediate release of consignments by customs, in the aim of adopting a common position. For goods moving between the U.S. and EU, Customs authorities should grant immediate release to all consignments, provided that the conditions laid down by Customs are met and that the necessary information required by national legislation is communicated at a stipulated time before the consignments arrive as recommended by the WCO. Using the existing principles established by the WCO as a basis for transatlantic cooperation will also limit divergence on a global scale¹.

¹ [WCO Guidelines for the Immediate Release of Consignments by Customs, 03/2006.](#)

Enhancing Mutual Recognition of Trusted Trader Programs

USCIB applauds the May 2012 signing of the U.S. - EU Mutual Recognition Agreement between the U.S. Customs – Trade Partnership Against Terrorism (C-TPAT) and the EU’s Authorized Economic Operator (AEO) program. Nevertheless, since the signing of the agreement, a number of divergences and areas for further development have emerged. In order to build on the foundational efforts of the C-TPAT-AEO Mutual Recognition Agreement, USCIB urges the U.S. and EU to develop a more effective Mutual Recognition program for Trusted Traders. This can be achieved through legislative and operational changes, as well as by developing a coherent incentive structure.

First and foremost, full harmonization and implementation of mutual recognition should be established, overcoming recent challenges of different interpretations of the scope of the agreement. Since August 1, 2012, U.S. CBP has recognized all EU traders with AEO status, irrespective of these AEOs’ role and function in the international supply chain. However, the EU mutually recognizes only C-TPAT members identified as “consignors” in the advance manifest submissions (so-called entry summary declarations or ENSs) to national customs administrations in the EU. This means that the parties legally responsible for the submission of such ENSs – ocean carriers – are not mutually recognized by the EU when these ocean carriers are C-TPAT members.

The current EU approach represents a significant difference from how the U.S. has already implemented its obligations under the agreement regarding European AEOs. Admittedly, the European Commission has indicated that it will be considering, in “a second phase,” how C-TPAT members other than those identified as “consignors” in the ENSs might be recognized by the EU. But the European Commission has not provided a firm timeline for the implementation of such a “second phase,” nor provided assurances that the “second phase” will encompass all C-TPAT members. USCIB believes that the U.S. and EU should cooperate to resolve this problem and fully implement mutual recognition for Trusted Trader Programs.

Secondly, the TTIP should provide for operational facilitation of the U.S.-EU Mutual Recognition Agreement. This can be achieved by establishing a single online application process, which would be recognized by both the U.S. and all EU Member States, and by harmonizing information requirements, particularly in cases where an export declaration on one side is matched by an import declaration on the other. In addition, permitting single validation and revalidation visits for AEOs, the results of which would be accepted by both the U.S. and EU would save unnecessary cost and duplicative efforts.

Thirdly, going forward, it is also important to ensure that the agreement is implemented in a manner that provides concrete benefits and incentives to certified entities, such as automatic known consignor status in terms of air cargo, fast track processing through customs, and an incentive structure of fewer inspections for fully compliant traders. In addition, the U.S. and EU should work together to establish account-based customs processing for Trusted Traders, as opposed to transaction-based collection of customs duties.

Air Cargo Security

The U.S. and EU are currently taking different approaches to improve the security of the international operations of air cargo carriers bringing shipments in from third countries. The U.S. approach is based on Emergency Amendments and specific measures for cargo identified as high threat. The EU has adopted the ACC3 (Air Cargo or Mail Carrier operating into the Union from a 3rd country airport) program which is based on airport, operator specific designation and validation, and verification of screening entities and other players in the supply chain. It also includes specific measures for high risk cargo. Notably, however, the EU and U.S. have not adopted the same definitions of “high risk” cargo.

USCIB welcomes the June 1, 2012 air cargo security agreement between the U.S. and EU as a useful model for recognizing air cargo security regimes for shipments originating within the U.S. and EU, but the provisions in this agreement must be strengthened in order to withstand any future threats. The agreement recognizes the validity of each jurisdiction’s program, but it does not harmonize the regulations or establish harmonized definitions across the board. Therefore, the relevant U.S. and EU agencies should enter into a regulatory dialogue to strengthen the mutual recognition agreement and to develop a harmonized approach to air cargo security regulations and procedures that include, inter alia, a common definition for high risk cargo, common standards for accepted security equipment and screening methods, common requirements for staff training, and improved intelligence sharing.

Advance Air Cargo Information for Security Risk Assessment

There are currently numerous advance cargo information pilot programs regarding air cargo underway in the EU in Belgium, France, Germany, and in the UK. The U.S. has the ACAS (Air Cargo Advance Screening) pilot program. USCIB strongly urges a common U.S.-EU advance air cargo information approach going forward, and believes that the ACAS program would serve as a good basis for such cooperation. It is essential to prevent diverging transatlantic regulations, by developing common requirements for data on each shipment, common protocols in communication with carriers/forwarders, and common risk criteria.

Commitment for Future Cooperation

In the spirit of ensuring longevity of the TTIP, USCIB recommends the inclusion of a commitment from both the U.S. and EU to continue and enhance their cooperation on customs and trade facilitation related issues. Future customs, supply chain, and security measures should be developed jointly where possible, and at the very least with a high level of dialogue and cooperation from the earliest stages.

Cross Border Data Flows

With advances in technology and the rapid growth in the use of the Internet, more and more businesses rely on the cross border flow of data as part of their day-to-day operations. However, at the same time, our members have seen more and more countries seeking to restrict the flow of data across their borders for a wide range of reasons. In many instances, these restrictions represent protectionist policies intended to favor domestic businesses. Where the restrictions are based on legitimate public policy concerns, they could often be designed in ways that have a less negative impact on trade in services. The TTIP should include commitments that data can flow unimpeded across borders except for limited and well-defined public policy exceptions. The agreement should seek to circumscribe exceptions, such as security and privacy, to ensure they are not used as disguised barriers to trade.

Forced Localization

In recent years there has been an increase globally in the number of government requirements that foreign companies localize investments, production, services, procurements or other activities as a condition of doing business in that country. While some of these are similar to long-standing local content requirements, others present newer and more complex requirements that leave companies little option but to perform activities in a specific country. To the extent that the U.S. and EU have such localization requirements, they should negotiate commitments that eliminate or restrict these types of forced localization laws and regulations.

Green Economy and Growth

Both the U.S. and EU have assigned a high priority to pursuing greener growth, most recently at the U.N. Conference for Sustainable Development (“Rio+20”). USCIB believes that trade is a powerful vehicle for the broad deployment of the greener technologies, energy, products and know-how on which green growth will depend. Clearly, U.S.-EU cooperation in this area, both through bi-lateral initiatives and vis à vis third countries, holds tremendous promise.

In this connection, we encourage the U.S. and EU to consider possibilities to cooperate for green growth across the entire economy. The potential for greening will not be realized by focusing on just a few sectors. Traditional industries and all sectors can and should help deliver green growth.

Policies intended to advance climate or environmental objectives which lead to discrimination or higher costs for industry not only hamper trade but also undermine the trade/environmental synergy that greener growth depends on. For example, the conflict arising from the EU Emissions Trading System (ETS) coverage of the air transport sector has shown the preferability of collaborative efforts and less trade restrictive alternatives. USCIB members strongly encourage the U.S. and the EU to work together and maintain efforts to avoid unilateral measures that are counter-productive to both trade and environment objectives.

Innovation

Higher economic and jobs growth across the Atlantic will be best served by a relentless focus on ensuring a common and pro-innovation approach to regulation in emerging new areas. Regulation should be based on 'light touch' principles capable of implementation in a similar or mutually compatible way in the EU and U.S. These core principles (such as between the EU and U.S., and U.S. and Japan, on ICT policies and ICT regulatory principles) would obviate the need for long term major harmonization or Treaty-based efforts. There may also be scope for combined efforts in pre-competitive R&D between Government led or funded programs; and in shared best practice on funding models. All this could act to reinforce a joint EU/U.S. effort with third markets e.g. BRICS, Japan. The innovation areas which appear most suitable for such a mutual effort are:

- nanotechnology and related areas;
- cloud computing norms and transborder data flows;
- smart grid and e-mobility norms and;
- cyber security

The EU and U.S. should also try to address material existing problems of regulatory or standards divergence, particularly in the high tech area, which are causing substantial competitive imbalances between EU and U.S. businesses.

Intellectual Property

IP intensive industries, from pharmaceutical drug development to advanced manufacturing to software, create jobs and grow exports in both the EU and the U.S. Therefore, USCIB members believe that intellectual property (IP) protections remain essential to economic expansion, business and societal innovation and national competitiveness for both the U.S. and EU. USCIB members also recognize that both the EU and United States have high levels of IP protection that already exist in law and enforcement.

USCIB members see the transatlantic trade agreement as a unique opportunity for both the U.S. and EU to demonstrate global leadership on intellectual property and to combat the erosion of intellectual property rights in other areas of the world. We call upon both parties to expand and enhance the existing successful cooperation at the transatlantic level.

Investment

USCIB strongly supports greater U.S.-EU joint efforts on international investment policy, both bilaterally and cooperation on third-country and international policy aspects of international investment. We welcome the “Joint Statement of the European Union and the United States on Shared Principles for International Investment” announced in April 2012. We look forward to seeing the U.S. and EU move forward to implement and operationalize those general principles. We suggest the following areas for U.S.-EU action:

- In the context of a U.S.-EU effort to negotiate a comprehensive, high-standard economic agreement, we urge both sides to reduce barriers to Foreign Direct Investment (FDI)

from the other partner so as to facilitate increased FDI flows, deepening transatlantic economic integration and bolstering competition, growth and jobs. Transatlantic restrictions on FDI should be reduced on both sides to the absolute minimum necessary to, as cited in the Joint Principles document, ensure “genuine national security risks.” Reducing our respective bilateral investment barriers also provide clear demonstrations of U.S. and EU leadership as we cooperate to drive investment liberalization globally.

- We would urge that in the current global environment, bilateral U.S.-EU investment liberalization should not be extended on an MFN basis to other major economies unless they afford both U.S. and EU investors comparable access. We should avoid “free riding” by major economies unwilling to match our ambition in investment liberalization.
- The U.S. and EU should accelerate and deepen their cooperation on key third country investment issues, especially regarding large, fast-growing emerging economies which still have far too many counterproductive barriers to FDI.
- U.S. and EU experts in the investment field and beyond need to work much more closely together on the issue of State-Owned Enterprises (SOEs) where our private companies are increasingly competing with SOEs around the world. When private companies and SOEs are competing for investment projects, there needs to be a level playing field.
- As noted in the Joint Statement, “Fair and Binding dispute settlement..., including Investor-to-State arbitration” is essential. Strong Investor State Dispute Settlement (ISDS) disciplines are under assault from some governments and other critics around the world. We urge the U.S. and EU to take the lead in standing up for strong and effective dispute settlement procedures around the world.
- We urge the U.S. and EU to work together to ensure that both in bilateral and broader investment policy efforts, definitions of covered Investments are comprehensive and reflect the full range of investment vehicles and practices we see in today’s global markets. We are very concerned that some governments and anti-business critics are trying to limit the scope of investments to narrow, traditional forms of investment, inconsistent with today and tomorrow’s investment practices.

Regulations and Certifications

Challenges exist relating to the harmony between EU and U.S. certifications. For example, self-contained breathing apparatus in the U.S. must meet the standards and testing of NIOSH, a U.S. government agency, and if used in the fire service must meet testing and standards of NFPA, a user and industry organization. These standards are not recognized in the EU, and the EN standards applicable to a product in the EU are not recognized in the U.S. The same can be said for gas detection devices, as an example, would not be marketable if they did not meet Underwriters Laboratory (UL) standards. Meeting the UL standard is of no value in the EU, which requires ATEX certification for a product to bear the CE mark.

But in addition to the challenges faced with transatlantic commerce, it is also important to understand the difference between the U.S.'s more unified market and the fragmented European market.

The increased use of EU Regulation rather than Directive as it precludes national differences would help. Furthermore, limiting use of the term "Minimum Requirements" will reduce additional national requirements on a Member State by Member State basis. At this time, much more needs to be done to remove barriers between EU Member States, so that market access experienced by U.S. and European companies can be of similar value.

Furthermore, manufactured products must also obtain various national certifications to trade across Europe. These certificates are required for both products that have a CE mark, which fall under a harmonized legislative framework (EU Directive/Regulation) and those that don't.

The problem is that national notified bodies do not equally apply harmonized testing procedures for CE marked products. This leads to varying quality levels of the test results. Therefore the CE mark is not perceived by the "market" as a uniform European quality mark. Therefore, privately run national voluntary marks remain a de facto market requirement. Under these conditions and in addition to the CE-marking requirement, industry is still obliged to support multiple testing in order to obtain national certification. This is the same for non-CE marked products.

A possible solution to improve the value of the CE mark could be a stricter implementation of the technical assessment of the national notified bodies. Also, European support for a single certification scheme for products that do not fall under a specific EU Directive or Regulation (i.e. security products).

Sector Specific Issues

Chemicals

The U.S. and EU have widely differing approaches to chemical regulation that reflect legal, economic, social and cultural differences. Cooperation in developing and agreeing on key principles in priority chemical management areas should be constructive, foster improvements in and alignment of chemical regulatory processes in the U.S. and EU, and form a solid basis for regulatory cooperation globally. A cooperative approach has the potential to reduce and streamline the regulatory burdens imposed upon the transatlantic market, and establish a high standard for cooperative engagement with other countries and regions.

USCIB members recognize the sovereignty of the U.S. and EU to legislate. Therefore we suggest working on goals that will promote regulatory efficiencies and reduce burdens on both governments and industries. For example:

- information sharing between the EU and U.S. government bodies to the extent possible, while ensuring protection of confidential commercial information held by each government;

- joint, risk-based prioritization of chemical substances for further review and assessment;
- alignment in chemical assessment processes, and enhanced understanding of risk management measures based on sound science;
- alignment in classification and labeling systems and other regulatory requirements;
- a public, mandatory consultation process (including procedural safeguards so that all government and stakeholder comments can be taken into account) for drafting new chemical regulations.

The aforementioned are only several examples of topics that should be addressed in the negotiations as a start. As the discussion develops, USCIB members will be highlighting other opportunities to improve and align chemical regulatory processes. For example, several EU Member States are interpreting the EU REACH regulation differently than the European Chemical Agency (ECHA). This adversely impacts USCIB Members.

Given the tough policy areas and issues ahead, the two-year time frame to start and end negotiations is ambitious. Therefore we suggest that the EU and U.S. maintain an ongoing, public regulatory dialogue where government and industry can address emerging regulatory compliance and convergence issues to help ensure proper implementation of the regulatory component of the agreement in the future.

Regulatory Cooperation

USCIB members call for a more open and efficient regulatory environment through the removal of unnecessary barriers and inefficiencies where possible. Simplifying the regulatory processes, improving transparency and promoting efficiencies, such as common data and definitions in regulatory processes as well as mutual recognition of notifications to avoid duplicative efforts should be key objectives in any future U.S.-EU trade initiative. Key emerging technologies should also be identified and a coordinated path developed for a common approach to regulations.

Tariff Liberalization

USCIB supports eliminating all chemical tariffs and non-tariff barriers. Chemical trade between the U.S. and EU is significant with import duties on both sides on average about 3%, eliminating these duties would result in considerable savings and also facilitate manufacturing flexibility by removing economic barriers when shipping chemical intermediates and components via “Transport Orders” between company sites in the U.S. and EU. Chemicals are at the start of the value chain and elimination of import duties would give an important boost to both economies.

Consumer Pesticides and Biocides

To sell non-agricultural pesticides, including antimicrobials and other biocides, in the U.S. and EU, government authorities require submission by the company seeking to market the product of substantial amounts of data to ensure the pesticides meet national safety standards to protect human health and the environment. Currently, manufacturers of non-agricultural pesticides (biocides) must separately submit information to U.S. and EU authorities, as well as EU member states. There is a real potential for efficiencies and minimization of unnecessary burdens for both government and industry through harmonization of dossier format, data

requirements and data reviews between U.S. and EU authorities. Specific approaches to accomplish these efficiencies that can easily be included in the U.S./EU Agreement include:

1. Creation of a common dossier. Currently, manufacturers of agricultural pesticides and microbial pesticides can submit information to several countries using an OECD dossier template. However, there is no dossier template for other pesticides, *i.e.*, non-agricultural or non-crop pesticides. This lack of a dossier template for non-agricultural pesticides (both active substances and formulated products) creates an opportunity to promote greater transatlantic regulatory compatibility. A common transatlantic dossier would be beneficial, although an OECD dossier offers a greater impact for much the same effort in the following ways:
 - Facilitates work sharing (cost effective for government, offers speed for industry)
 - Enables review sharing (cost effective for government, offers speed for industry)
 - Creates the possibility of a harmonized electronic dossier (cost effective for government and industry)

Therefore we suggest that the U.S. and EU work on the development of a new OECD dossier template for non-agricultural pesticides. Use of the proposed new template would be beneficial to companies seeking registrations in multiple OECD countries; if multiple registrations in OECD countries are not being sought, the applicant could (and should be able to) use the local national template.

2. Share or assign lead country (U.S. or EU) for data evaluations. Accept the review of test data by the country. This is not a proposal for mutual recognition of risk assessments, but rather creates the possibility of governments relying on each other's reviews of the scientific studies supporting risk assessments. The review of an acute toxicity study assures the laboratory followed an accepted method and was conducted in a way that ensures the result is accurate and reliable, there is no good reason that each government needs to review acute toxicology studies when sharing of reviews would free up specialized and increasingly limited resources.
3. Prohibit subsidiary political units from imposing approval requirements or restrictions. Approval by the EU or U.S. federal authorities should be adequate to ensure safety across the entire U.S. or the European Union. Subsidiary political units, such as EU Member States or U.S. States should be prohibited from seeking to impose separate requirements for approval or local restrictions on sale or use.
4. Acceptance of non-animal testing. EU authorities place a high value on avoiding testing pesticides on vertebrate animals. U.S. EPA FIFRA often requires new and additional vertebrate animal tests, and does not accept many non-animal test methods approved by ECVAM (http://ihcp.jrc.ec.europa.eu/our_activities/alt-animal-testing). The need for valid alternatives to animal testing is vitally important. The U.S. should recognize the EU work and adopt the same or similar measures allowing acceptance of non-animal testing.

Electronic Security Services

The EU adopted the Services Directive in order to create a single market for services. However, as only 15% of all services in the EU occur between member states, more needs to be done before a true single market exists.

We encourage USTR to include market commitments for electronic security services. This would allow for the deployment of innovative technology and professional response in order to protect life and property. Products are only as good as the quality of the design, installation, service, and monitoring of the electronic security system. Moreover, the benefits of commercial and residential electronic security services should not be restricted under the banner of national security.

Legitimate commerce, such as electronic security services where the customer is likely a business or household does not threaten national security and should not be regulated as such. Although this isn't an issue in either the U.S. or EU, member states have used the "security services" exemption in the Services Directive to place barriers to trade in electronic security services. This exemption is only meant for guarding and cash-in-transit. With U.S.-EU commitments for free trade in electronic security services, the EU should require member states to correctly define the exemption and implement the Services Directive correctly and remove internal barriers for this sector.

In regard to licensing, there should be rules to ensure transparency and non-discrimination in the issuance of licenses and certifications. In cases where denial is due to cross-border issues, including ability to obtain insurance and local public safety restrictions, companies should have recourse via the European Commission. Finally, regulations that are found to be barriers to legitimate cross-border activity should be eliminated or amended.

Financial Reporting and Audit

Further liberalizing trade across the Atlantic to address long-standing barriers as well as to take full advantage of new market opportunities is a key goal of the TTIP. The services sector is a big piece of this comprehensive goal. One important element of the services component includes the financial reporting and audit environment. Strong financial reporting and high quality audits promote trust in the capital markets, which in turn allows businesses to access the capital that is needed for them to grow and to compete, and consequently for their end-users to enjoy the benefits. However, there are a number of behind-the-border regulations, divergent regulatory approaches, and overlapping regulatory and oversight practices that do not add to the quality and effectiveness required for today's financial reporting and audit needs, but do add costly friction and complexity. This has implications for the overall vibrancy of the transatlantic commercial space and financial services in particular which underpins much of U.S.-EU economic activity.

USCIB recommends transatlantic leaders use the opportunity the TTIP negotiations present, and:

- Promote the use of International Financial Reporting Standards (IFRS) as the global standard for financial reporting and encourage countries to adopt IFRS without modification; its adoption on both sides of the Atlantic, and elsewhere, would bring

significant benefits in terms of transparency and confidence in capital markets as well as lower financial reporting costs, all important steps towards the eventual goal of a barrier-free transatlantic market;

- support the adoption and implementation of International Standards on Auditing (ISAs) as the global standards for auditing;
- encourage adherence to strong professional independence standards by audit firms and individual auditors as set out in the IESBA Code of Ethics;
- promote the establishment of appropriate collaborative arrangements between national audit oversight bodies and develop a clear roadmap towards mutual reliance; and
- work to eliminate barriers that unnecessarily restrict the mobility of professional services providers and ownership of audit firms.

By engaging constructively to move forward the above, the U.S. and the EU will improve the environment for supporting high quality financial reporting and audits across both sides of the Atlantic. The U.S. and the EU will also create a platform for greater regulatory alignment and integration, and enhance the efficiency and cost of operations of the EU's and the U.S.'s respective capital markets. This will greatly contribute to the growth of transatlantic business, trade, and investment, and better position EU and U.S. companies to compete in the global economy.

Information and Communications Technology (ICT)

The ICT sector serves as a powerful enabler of international trade, economic development, and jobs creation. Studies by the World Bank and other organizations have found a positive correlation between economic growth and investment in the Internet and other ICTs. In the notification to Congress of its intention to enter into trade negotiations with the EU, the U.S. Trade Representative (USTR) specifically identified the ICT sector as key to accelerating the growth of transatlantic electronic commerce. More specifically, USTR correctly points out the need to put in place appropriate provisions to enable the use of electronic commerce to support goods and services trade, and highlights the importance of including provisions that facilitate cross-border data and information flows.

This, indeed, echoes both the substance and spirit of the 2011 EU-U.S. Principles for ICT Trade. This initiative set forth 10 principles that governments seeking to enhance their national regulatory capacity and support the development of ICT networks and services are encouraged to integrate into trade agreements². The joint statement highlights the importance of ensuring cross-border data and information flows, transparency, open networks, network access, and use, among other issues that also are the focus of these comments.

The U.S. and the EU have done significant work over the years to foster growth of their respective ICT sectors by eliminating many regulatory and trade barriers and accelerating transatlantic trade. As a result, the liberalization measures for telecommunications and e-commerce typically covered in FTAs are already in place. Thus, the TTIP negotiations provide a

² European Union-United States Trade Principles for Information and Communication Technology Services -- http://www.ustr.gov/webfm_send/2780

unique opportunity for both parties to break new ground by focusing on innovative measures to promote unprecedented growth of transatlantic ICT goods, services, and the goods and services delivered over the Internet. In addition, a clear and forward-looking framework should be seen as a positive global model.

Cross-Border Data and Information Flows

Seamless flows of data and information across borders are essential to growth in legitimate ICT services within and between the U.S. and the EU. The TTIP should avoid and eliminate barriers to these flows. We have a promising foundation of work on cross-border data and information flows through the 2011 EU-U.S. Principles for ICT Trade, the OECD Internet Policy Principles, and the revised OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data. The TTIP therefore should be built upon the foundation provided by these three important related initiatives and establish a binding obligation to allow seamless cross-border data and information flows for the purpose of delivering permitted services by legitimate service providers and for the operations of a global services business including local investments. Specifically, this obligation should cover external data management, storage, and accessing – including, to the extent not already covered, the ability to use cloud-based technologies – both within a firm and in its operations with customers.

E-Commerce

As the digital economy and digital trade become fundamental elements of the global economy, provisions to support the development and growth of e-commerce should be critical elements of the TTIP. Negotiators should build upon commitments made in previous trade agreements that promote the growth of the 21st century digital economy.

The TTIP should ensure an open and competitive environment for e-commerce to thrive. To this end, the TTIP should include provisions that allow users to access and use legal services, applications, and devices of their choice. In regards to Internet intermediaries USCIB recommends that the TTIP include the following safeguards for matters other than criminal law, communications privacy, and intellectual property:

- liability protections for providers of online platforms; and
- assurances that intermediaries are not treated as the producers of content.

The TTIP should mandate technology neutrality, in that all technologies are given the chance to compete in the marketplace.

Internet Governance

By the end of 2011, an estimated one-third of the world's population was using the Internet; by 2016, some experts anticipate that figure could increase by 40 percent. But the power of the Internet to continue to fuel innovation and deliver economic benefits to businesses and consumers can only be realized through an approach to governance that is flexible, open and is based on meaningful participation from all stakeholders, government, industry and civil society. The United States and the European Union therefore should reaffirm their joint commitment to multi-stakeholder model for internet governance through organizations such as the Internet Corporation for Assigned Names and Numbers (ICANN) and the Internet Governance Forum

(IGF). They also should work together to ensure that Internet growth and flexibility are not compromised by proposals aimed at bringing the internet under the jurisdiction of the International Telecommunications Union (ITU), a treaty organization.

Privacy

Privacy laws are important national imperatives that embody domestic legal and cultural priorities. These domestic legal and cultural priorities often result in divergent approaches to privacy. Almost all approaches to privacy embody the founding principles of privacy – the U.S. Fair Information Principles, the OECD Privacy Guidelines and the principles of the Council of Europe Treaty 108. The commonality of foundation principles means that basic interoperability exists across the global approaches to privacy at the principle level, but significant divergence can exist in the more detailed texts and implementation methodologies.

A shared objective of both the U.S. and the EU is to promote maximum interoperability across our approaches to enable the global data and information flows that support the digital economy and information society. That objective should not be misread as resulting in a lower common denominator approach that could weaken privacy, but rather a requirement for credible privacy enforcement that addresses all of the main components of privacy requirements in the totality of the circumstances, without a rigid requirement to see exact language duplication.

An example of such a beneficial and cooperative approach is the current work being undertaken in APEC to map Binding Corporate Rules (BCRs) and Cross Border Privacy Rules (CBPRs). This mapping is undertaken under the interoperability work-stream of APEC. It seeks to find the common elements between BCRs and CBPRs and further find a way to “give credit” for the valid work of complying with one standard when demonstrating compliance with the other standard. This mapping and interoperability will reduce much of the duplicative effort required to comply with a regulation without necessarily diminishing the standard upon which the regulation is founded.

Thus, USCIB recommends that TTIP negotiators pursue the following with respect to privacy:

1. Promote work on both sides of the Atlantic to minimize the potential burdens and unintended consequences of developing and implementing credible privacy policy frameworks and regulation.
2. Explore flexible and “totality of the circumstances” ways of recognizing credible approaches to privacy based on common principles to further the digital economy and information society.
3. Support and expand the mapping of new and existing regulations and policy frameworks to allow global organizations to leverage existing compliance procedures to satisfy some or all of the compliance requirements of other regulations.
4. Continue to honor existing international agreements related to data flows.
5. Recognize the benefit to the economy and individual prosperity of new technologies, business models, and data flows. Similarly recognize the essential role of privacy in supporting the trust in these data flows and commit best efforts on both sides of the Atlantic to optimize the combined benefits of both of these objectives.

Cybersecurity

The United States and the European Union have a joint interest in improving the security of critical infrastructure and network security more generally. Washington and Brussels should work closely to ensure that these approaches are developed along compatible lines to address criminal behaviour online and to ensure the security of information systems and critical infrastructures. While it is a complex task to develop effective cybersecurity policies, a path must be found to achieve this objective while also facilitating the seamless cross-border flow of information and not unduly hampering business operations.

Such approaches should be designed to achieve the shared objectives outlined above while enabling business to flexibly implement appropriate market-driven, consensus-based internationally recognized standards. A failure to achieve these objectives in a credible, flexible, and globally consistent manner could risk disrupting confidence and adoption of internet services by businesses and consumers. That, in turn, could limit jobs-producing investments in both regions, retard adoption of new technologies, and needlessly limit the innovative and economic potential of the U.S. and EU independently as well as in bilateral and global trade.

Facilitating Trade in ICT Goods and Services

Innovative ICT services evolve rapidly and tend to provide users offerings that combine services that might have been considered separate classifications in past trade agreements. The clustering or integration concept is especially important for computer, telecommunications, and related services. In addition, many such innovative services are derived through complex supply chains, such that trade barriers for any one link will undermine the service as a whole.

In developing a future-proof set of ICT trade measures, the TTIP should take into account these dimensions. For example, it should seek to minimize regulatory impediments to integrated services and complex supply chains and should recognize the trade-enhancing value of relying on competition wherever possible.

Market Access for ICTs

A successful TTIP also should create significant new market-opening and commercial opportunities for U.S. ICT and related companies. The U.S. and EU therefore should negotiate their trade commitments on a “negative list” basis, such that any service not specifically excluded is covered, allowing for innovation. In addition, the TTIP should ensure immediate duty-free treatment for all technology goods and services and require mutual recognition of product standards and certifications in the ICT sector.

ICT Government Procurement

Government services should be able to tap the most advanced ICT services, including from the other trading party’s providers. Thus, the TTIP should expand market access opportunities for U.S. ICT goods, services, and suppliers to the government procurement markets of the EU and its Member States. In addition, U.S. suppliers of goods and services should receive treatment as favorable as that accorded to domestic and other foreign goods, services, and suppliers in the EU and its Member States.

About USCIB

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