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Mr. Douglas Bell
Chairman, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

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Submitted electronically via <http://www.regulations.gov>

RE: Request for Comments Concerning the Proposed Transatlantic Trade and Investment Agreement, Docket Number USTR-2013-0019

Dear Mr. Bell:

The Consumer Electronics Association (“CEA”) commends the Office of the United States Trade Representative (“USTR”) for entering into negotiations with the European Union on the proposed Transatlantic Trade and Investment Treaty (“TTIP”). CEA supports this important initiative and welcomes the opportunity to provide comments on the development of U.S. negotiating objectives. The TTIP has the potential to significantly promote and enhance trade in the important consumer electronics industry sector to the benefit of businesses and consumers in the United States and Europe.

I. Background on CEA

CEA is the preeminent trade association promoting growth in the consumer electronics (“CE”) industry through technology policy, events, research, promotion and the fostering of business and strategic relationships. CEA represents more than 2,000 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, mobile electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services.

CEA’s members account for more than \$165 billion in annual sales in the United States. The CE industry directly employs nearly 2 million workers in the United States. Many of these jobs are on the cutting-edge of technology, including jobs related to the research and development of new technologies, as well as the marketing and design of new products. The CE sector directly generates \$1.4 trillion in output, \$325 billion in labor compensation, \$145 billion in tax payments, and 4.4 million jobs in the United States. This economic activity translates into a

direct contribution of \$585 billion by the CE sector to U.S. gross domestic product – approximately 4.6 percent of the entire national economy.

This robust industry picture has occurred despite the fact that CE markets around the world are not as open as they should be. Many CE products are still subject to significant tariffs and non-tariff barriers around the world and the persistence of these trade barriers informs CEA's position with respect to trade negotiations. CEA views bilateral and regional trade agreements, and in this instance, the Transatlantic Trade and Investment Treaty, as vital steps in reaching the larger goal of multilateral trade liberalization. The CE industry is a highly competitive, efficient, and globally integrated industry. These factors, coupled with the large investment needed to manufacture CE products, result in CE products often having narrow profit margins. Thus, lowering barriers on a reciprocal basis will have a positive effect in terms of maximizing areas in which the U.S. CE industry has competitive edges, such as in high technology parts, research and development, design, and the launching of new products.

The last two decades have largely been defined by two trends – globalization and technological change. The CE sector, which includes companies that manufacture and distribute electronic products to consumers and that supply content and services for use with these products, has been profoundly affected by both trends. Increasing use of the Internet, computers, and mobile telephones has revolutionized the way people communicate, shop, learn, and live, in addition to changing the types of products that consumers purchase. While manufacturing of some consumer electronics products has moved abroad, domestic employment in industries supplying content and services for these products has risen. International trade and technological advances have improved the quality and variety of consumer electronics products available and lowered prices.

II. Information Technology Agreement Expansion

CEA member companies manufacture, import and export millions of information technology and consumer electronics products every year and are constantly innovating because consumers want the latest and greatest in their products. CEA has long been involved in the Information Technology Agreement (“ITA”), and we strongly support the Office of the U.S. Trade Representative in its negotiations to update and expand the ITA, first negotiated in 1996. In the nearly 17 years since the ITA was established, the scale and scope of IT products have grown beyond expectations, and the ITA must be updated to reflect the rapid changes in technology.

Products that currently fall outside of the ITA – such as connected devices like video games and their consoles, televisions with internet connectivity, and the audio and video systems that support them – are hugely popular with consumers and often essential to their daily lives. Therefore, by updating the ITA to include these products, and thereby eliminating associated tariffs, will benefit consumers by making them more affordable, encourage competition, and promote manufacturing of these devices which will create new jobs.

In its support of the TTIP negotiations, CEA requests that these negotiations complement the efforts in expanding the Information Technology Agreement. CEA has urged that the ITA Expansion negotiations be concluded by mid-2013. In that regard, we request that the TTIP

negotiations do not in any way narrow the products currently being discussed to be covered under the ITA Expansion, or delay successful completion of the ITA Expansion negotiations.

III. Development of U.S. Negotiating Objectives

As negotiations on the TTIP proceed, CEA will continue to offer concrete input on product coverage and timing of tariff elimination in order to achieve a TTIP that is beneficial for the CE sector. As a preliminary matter, we offer the following comments on specific issues of concern to CEA members:

National Treatment and Market Access for Goods

Because the current ITA and the upcoming ITA Expansion do not include most CE products, there are a number of U.S. CE exports that still face significant tariffs among EU member nations. The TTIP should therefore help level the playing field for U.S. consumer electronics companies and their workers by expanding market access opportunities and harmonizing regulatory standards. This includes ensuring immediate duty-free treatment for all technology goods, and disciplining non-tariff barriers that can be imposed on technology and other goods, such as provisions that require mutual recognition of product standards and certification.

Rules of Origin

In recent U.S. FTAs, there has been an effort to simplify the complex rules of origin found in the North American Free Trade Agreement (“NAFTA”), which impose unnecessary burdens on companies and raise the cost of doing business internationally. CEA hopes that the approach to the rules of origin negotiations will be a flexible one and will provide the high-tech sector an opportunity to propose changes to specific rules of origin as necessary, based on the sector’s experience since the implementation of the NAFTA and other FTAs.

Customs Administration and Trade Facilitation

A transparent, efficient and non-discriminatory customs administration regime is beneficial to all businesses engaged in international trade, but especially to CE companies that rely on just-in-time inventory and global supply chain methods of delivery. Accordingly, CEA supports streamlined release and clearance of goods; timely publication and availability of customs information and decisions; greater transparency with respect to rulings; and greater discipline on fees and charges associated with import/export regimes.

Cross-Border Information Flows

CEA advocates for the inclusion of strong provisions supporting cross-border information flows, and strong prohibitions against governments forcing businesses to localize data storage and infrastructure. The EU and U.S. have been leaders on information and communication technology (“ICT”) issues. As such, the TTIP should build upon the great work that the two governments have already done in signing the first set of ICT principles in 2011 that recognize

that all future trade negotiations should address 21st Century issues such as cross-border information flows, regulatory transparency, and no forced localization of data and infrastructure.

To the extent that privacy is a legitimate concern when considering cross-border information flow issues, CEA supports provisions in the TTIP that would ensure that privacy protection is done carefully so as to avoid unintended consequences on innovation and economic growth.

A related issue is that of the data storage tax. CEA supports inclusion of provisions that would specifically prohibit the establishment and maintenance of problematic data storage taxes.

Open, Transparent and Usable Government Data

CEA also advocates for provisions in the TTIP that promote transparency, as well as open data formats in government information.

Non-Tariff Barriers

As has been noted in recent USTR annual reports, technical barriers to trade in general are major deterrents to open markets and we hope to see significant progress in this area in the TTIP. Restrictive compliance regimes for product importation and the trend toward explicitly favoring “indigenous intellectual property” are examples of an emerging class of non-tariff barriers that should be addressed.

Services

CEA supports broad coverage of online services and related products. We would request that the agreement provide protection against discrimination and other trade restrictions for the full range of such online services and products. For instance, the EU and the United States should make their cross-border commitments on a “negative list” basis, such that any service not specifically excluded is covered, thus allowing for greater innovation. Moreover, the agreement should not carve-out audio-visual services, which would undermine Internet protections.

In a similar vein, we support the inclusion of a strong e-commerce chapter that protects all digital products against discrimination and other trade restrictions regardless of classification.

Finally, we support the inclusion of Internet intermediary liability protections, in order to further encourage economic growth and innovation in cross-border services. Such protections for providers of online platforms should be designed to ensure that intermediaries are not treated as the producers of content, mindful of appropriate criminal, communication privacy and IP accords.

Investment

CEA strongly supports the negotiation of an investment chapter with strong protections for investors, as well as transparent and investor-friendly investor-state dispute settlement procedures.

Intellectual Property Rights

To the extent that both sides agree to include an intellectual property chapter, it should be a modern chapter that includes strong language that will allow the digital economy to thrive (including mandatory limitations and exceptions, fair use, strong online service provider safe harbors, mandatory trademark exceptions, and assurance of proportionate penalties).

In addition, CEA members support provisions in FTAs that give copyright holders the protection necessary to exercise and enforce their intellectual property rights. At the same time, however, we have advocated a balance between copyright holders' exclusive rights and the rights of consumers to use lawfully acquired content as they are entitled to under the U.S. legal principle of "fair use." Such a balance of interests is crucial not only to the rights of consumers and copyright holders, but also to the notion of fostering innovation. Per se standards that create ambiguity about "fair use" diminish consumer demand, chill innovation, and reduce sales of technology products.

Finally, we note that there is a clear conflict between the EU-wide obligation under the Berne Convention to permit quotations, including by search engines, and Germany's new ancillary rights law, which effectively prohibits such quotation. CEA hopes that this conflict will be addressed and remedied as part of the TTIP negotiations.

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Thank you for this opportunity to comment on the upcoming TTIP negotiations. CEA looks forward to working with USTR to achieve an agreement that will forge even closer relations with Europe and will enhance prospects for greater multilateral trade liberalization, leading to growth in the consumer electronics industry to the benefit of consumers worldwide.

Sincerely,

/ s /

E. Sage Chandler
Senior Director, International Trade
Consumer Electronics Association