



Information Technology Industry Council

Submitted via www.regulations.gov

May 10, 2013

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

Re: Request for Comments on the Transatlantic Trade and Investment Partnership

Dear Mr. Bell:

The Information Technology Industry Council (ITI) welcomes the opportunity to provide comments on the Transatlantic Trade and Investment Partnership (TTIP), as announced in the Federal Register on April 1, 2013 (FR Doc. 2013-07430). ITI represents the leading providers of information technology products and services. ITI's member companies are global innovation leaders spanning the information and communications technology (ICT) industry: infrastructure, computer hardware, software, IT services, consumer electronics, e-commerce, and Internet services.

ITI advocates global policies that advance technology and innovation, open markets, promote free and open competition, rely on market-based solutions, protect intellectual property, eliminate non-tariff barriers to trade, and develop and advance the use of global, voluntary standards. International trade and investment initiatives, particularly those aimed at opening foreign markets and expanding trade in ICT goods and services, as well as e-commerce, are high priorities for ITI. We commend the Administration for launching the TTIP negotiations to deepen the transatlantic economic relationship through liberalized trade and investment opportunities. The TTIP also presents an important opportunity for the world's two major economies to address global trade issues of common concern.

We encourage the U.S. government (USG) and the European Commission (EC) to strive for solutions to trade and investment issues that will create jobs and enhance competitiveness and growth on both sides of the Atlantic. Minimizing regulatory differences and unnecessary costs will increase trade, investment, and innovation -- the keys to economic growth for both economies. ITI looks forward to working with the USG on finding solutions for next-generation trade issues impacting the high-tech sector.

TARIFF LIBERALIZATION

ITI applauds the TTIP's goal of eliminating all duties on bilateral trade, including in ICT products. The USG and the EC are pursuing an ambitious conclusion to expansion of product coverage in the World Trade Organization (WTO) Information Technology Agreement (ITA). Expansion of product coverage in the ITA will eliminate tariffs on most ICT products, as well as parts and components. We recommend that the TTIP pursue tariff liberalization in the same spirit as the ITA. We also urge the USG and EC to ensure that flat-panel displays, set-top boxes, and multi-function printers enjoy full tariff-free treatment, as specified by the panel in the recent WTO dispute-settlement case on these important product categories.

TRANSATLANTIC REGULATORY COMPATIBILITY

ITI urges the USG and EC to strive toward a framework for continued regulatory cooperation, both with immediate deliverables and by identifying long-term areas of potential cooperation. Creating a framework for alignment of regulations and standards setting should be a key negotiating objective in the TTIP. This framework can serve as the basis for improved market access for companies in both markets.

Transparency undergirds the ease of doing business and the facilitation of trade across borders. ITI supports provisions in the TTIP that expand on current WTO language to improve the notification of measures that affect trade. Communication between regulators and businesses on objectives and explanation of new regulatory requirements are central to eliminating regulatory uncertainty. To this end, notification should be made and industry input should be considered as soon as possible, even when changes are made to national requirements that are based on international standards. Governments should seek ways to make global stakeholder comments, as well as explanations of how stakeholder comments were addressed, more available publicly. Moreover, voluntary measures endorsed by governments should also be notified, as they often become *de facto* market requirements. In this regard, the Code of Good Practice that is part of the WTO Agreement on Technical Barriers to Trade (TBT) should be more closely followed.

Conformity assessment provisions in the TTIP should ensure the greatest degree of compliance at the lowest level of government intervention, as justified by risk assessment. This encourages the establishment of effective and open markets that will, in turn, provide economic benefits and stability to businesses and consumers alike. Redundant and/or unnecessary testing and certification requirements should be avoided, as they may result in delays and barriers to entry and may prevent the uptake of new, innovative, and more efficient technologies.

When possible, reliance upon a declaration of conformity by suppliers and effective post-market regimes (including surveillance and enforcement) offers a more flexible, trade-friendly method to meet regulatory objectives. Regulators should also not mandate government-conducted on-site audits or factory inspections, as these are often redundant and/or unnecessary and can best be carried out by those with the necessary technical expertise within the private sector and from third-party certification bodies.

Cybersecurity

ITI commends the USG and EC for undertaking the challenging task of developing policies and strategies for cybersecurity. In January 2011, ITI published a comprehensive set of cybersecurity principles for industry and government.¹ ITI believes that to be effective, efforts to enhance cybersecurity must:

- Leverage public-private partnerships and build upon existing initiatives and resource commitments;
- Reflect the borderless, interconnected, and global nature of today's cyber environment;
- Be able to adapt rapidly to emerging threats, technologies, and business models;
- Be based on effective risk management;
- Focus on raising public awareness; and
- More directly focus on bad actors and their threats.

Subsequently, in June 2012, ITI, DIGITAL EUROPE, and the Japan Electronics & Information Technology Industries Association (JEITA) issued a "Global ICT Industry Statement: Recommended Government Approaches to Cybersecurity."² The statement provides governments worldwide with a common foundation for policymaking in the area of cybersecurity. The 12 recommendations represent a cooperative approach between government and industry that meets security needs, including preserving interoperability, openness, and a global market, while permitting industry to innovate and compete. We urge the USG and EC to promote the use of such approaches to governments globally.

We also urge both the USG and EC to ensure commitments in TTIP are consistent with the approaches set forth in both of these documents into their own cybersecurity policies to ensure compatible policies across the Atlantic that will promote security while also enabling innovation and trade. In particular, in the realm of government advocacy or promotion of the use of cybersecurity standards and best practices in the commercial sector, the USG and EC should commit to continue to rely on globally accepted and voluntary standards, best practices, and international assurance programs developed via standard-setting processes that are consensus-based, transparent, and industry-led, with participation open to interested parties.

This approach will improve security, because nationally focused efforts may not have the benefit of the best peer review processes traditionally found in global standards bodies, because proven and effective security measures must be deployed across the entire global digital infrastructure, and because the need to meet multiple, conflicting security requirements in multiple jurisdictions raises enterprises' costs, demanding valuable security resources. This approach will also: 1) improve interoperability of the digital infrastructure, because security practices and technologies can be better aligned across borders; 2) permit more private sector resources to be used for investment and innovation to address future security challenges; 3) increase international trade in cybersecurity products and services that can be sold in multiple markets; and 4) allow countries to comply with their international commitments, such as the WTO TBT.

¹ The IT Industry's Cybersecurity Principles for Industry and Government, found at <http://www.itic.org/clientuploads/ITI - Cybersecurity Principles for Industry and Government - Final1.31.11.pdf>

² <http://www.itic.org/dotAsset/51ad6069-9f1b-4505-b2ff-b03140484586.pdf>

Finally, in developing cybersecurity-related policies, we urge the USG and EC to avoid Europe- or U.S.-specific approaches to cybersecurity that fail to reflect cyberspace's borderless nature, and also avoid static, "check-the-box" compliance regimes that would encourage some firms to invest only in meeting requirements that are outmoded before they can even be published.

Forced Localization

The trend towards policies that mandate localization is a growing concern for governments globally, including the USG and the EC (and EU Member States). Governments around the world are turning to investments and policy incentives to promote the growth of local ICT industries. Some governments have begun implementing a number of "forced localization" policies designed to boost their domestic manufacturing, high-technology and R&D capabilities, and services by discriminating against foreign companies.

Some of these policies include troubling provisions, including mandatory technology transfer requirements, local sourcing requirements in government and private sector procurements, the escrow of source code and other sensitive design elements, import restrictions, and restrictions on the flow of data. Not only do such policies conflict with international norms, but they also jeopardize growth of the global ICT and other industries, reversing decades of growth and innovation and threatening quality jobs tied to the global technology industry. The ability to access foreign markets and compete on equal terms has been critical to the health of the ICT and other sectors. As the global economy recovers from a recession, it is critical that global ICT companies be able to access the consumers in both developing and developed markets.

ITI recommends that the USG and EC work together to promote sound regulatory approaches that serve as a model for other nations that are looking to adopt policies to promote innovation and manufacturing free of trade-distorting discrimination. Specifically, the TTIP commitments should clarify that market access for ICT goods and services shall not be conditioned on requirements to: 1) transfer technology to another party involuntarily; and/or 2) invest in, develop, or use local R&D, intellectual property, ICT manufacturing or assembly capabilities. The USG and EC shall exercise best efforts, both individually and jointly, to encourage other governments to make similar commitments on market access.

Internet Governance

Free of encumbering regulation, the Internet is transforming the world in ways that benefit all nations, regardless of economic status or geographical region. Even so, it is important to bear in mind that, as a technology and platform, the Internet is still in its infancy. It continues to evolve in unexpected ways. It is widely acknowledged that the current approach to Internet governance has contributed significantly to this success, providing a stable, predictable environment that has helped facilitate innovation and investment, spreading economic benefits around the globe. Yet some argue that the current governance model is unfair, that it is concentrated in too few hands and too few countries and, therefore, should be revised and placed under "international" control in order to achieve a more equitable approach.

The USG and EC should continue to work together to resist calls for unfavorably altering current Internet governance, whether at the International Telecommunication Union or elsewhere. There simply is no economic justification for undermining the current approach, particularly for the sake of political expediency. The risks to innovation, job creation, and consumer freedom are simply far too high. Rather, the USG and EC should combine and expand their efforts to reach out to other countries around the world, to demonstrate how an unfettered Internet free of political interference has provided significant benefits to stakeholders around the globe.

ITI recommends that as TTIP negotiations get underway, the USG and EC should be mindful of unhelpful Internet governance trends and establish relevant disciplines that can act as a model for the world.

ICT Accessibility

The global ICT response to the accessibility needs of people with disabilities and age-related limitations has been accelerating in the past decade. This activity has been spurred in part by various ICT accessibility guidelines and by the World Wide Web Consortium's Web Content Accessibility Guidelines 2.0 -- the latter of which have been adopted by the International Standards Organization and the International Electrotechnical Commission as a global standard (ISO/IEC 40500:2012). As a result, numerous technical advancements to hardware and software have created improvements to video, data display, sound, voice, and touch technologies, resulting in improved access by individuals with accessibility needs.

Governments have also been paying greater attention to the issue of accessibility due to a variety of factors, including the increasing role of ICT in national economies, the rapid migration of government services and data to the Internet, and the expansion of entertainment and communication services via the Internet. Awareness has also been heightened by commitments to adhere to the UN Convention on the Rights of Persons with Disabilities. As both Europe and the United States proceed with efforts to identify and update ICT accessibility compliance criteria, ITI is encouraged by the commitment of both governments to work together to align their respective requirements. A common approach on accessibility will help streamline transatlantic trade in accessible ICT solutions, and create greater incentives for business to invest in new innovation. It is equally important, however, that both governments align conformity assessment requirements.

When the Section 508 standards were adopted by the USG for ICT public procurements, federal experts evaluated various approaches to helping agencies identify products and services that conform to the new standards. Ultimately, they decided to adopt the supplier's declaration of conformity (SDoC) model, which allows manufacturers to evaluate and report conformance through the use of such tools as the Voluntary Product Accessibility Template® (VPAT®). Under this approach, the market for accessible ICT has thrived in the United States. Given the EC's long-standing support for SDoC, we believe that adoption of a common approach on conformity assessment based on SDoC principles will magnify the benefits of US-EC alignment on accessibility, while reducing roadblocks to new accessibility technologies.

In addition to the SDoC approach, the U.S. government adopted the concept of “best meets.” Under Section 508, a strong procurement preference is given to ICT that “best meets” the accessibility technical requirements of a given acquisition. The United States intentionally avoided an “all-or-nothing” or “pass/fail” conformity assessment approach, as it would treat as equally failing an ICT offering that is completely inaccessible and an offering that may have one or perhaps a few minor shortcomings relative to Section 508.

The USG and EC should adopt a common approach on conformity assessment that takes into account the degree to which a product or service meets the technical requirements, and not merely rely on “pass/fail” determinations. The risk of adhering to the latter approach is that it may produce an outcome where no product or service qualify, leaving people with disabilities with no options whatsoever. When known shortcomings do exist, as well may be the case, for example, with complex enterprise-class applications, suppliers should be required to report any shortcomings in detail, such as via a VPAT, so that purchasers can make informed decisions about whether this will impact the intended use of the product or service by people with disabilities.

In the TTIP context, ITI recommends that the USG and EC work together to achieve a harmonized approach to ICT accessibility, including alignment on the timing of implementation of the forthcoming requirements. This will help expand consumer access to the latest technology while avoiding unnecessary costs due to redundant or contradictory administrative requirements. A common approach on ICT accessibility will serve as a model for other nations that are looking to adopt similar policies to advance opportunities for citizens with disabilities.

Standardization

During the past several years, ITI has invested considerable effort into advocating government acceptance of global, private sector-led, voluntary, consensus standards to advance ICT innovation and competition. The motivation was to encourage a broader view on what constitutes a global ICT standard and promote greater transparency and openness in the methodology employed for identifying relevant standards. ITI believes the TTIP negotiations provide an excellent opportunity to develop a common approach on global standards and corresponding conformity assessment schemes in a manner that could serve as a model for other countries seeking to leverage ICT investments to enhance economic growth and job creation.

To eliminate discriminatory practices and thereby ensure the broadest possible benefits of ICT innovation and trade via TTIP, ITI recommends the USG and EC develop a joint approach that maximizes reliance on global, private sector-led, voluntary, consensus standards. The goal of such an approach would be to ensure ICT goods and services offered by European and U.S. businesses can be marketed freely in both markets, and thereby improve the competitiveness of the transatlantic market, especially with regard to new technologies.

A key element of a common approach should be agreement on a definition of what constitutes global standards developing organizations. In addition, both the USG and EC should recognize the important role of those global standards-setting organizations by defining appropriate preferences for global standards over other types of standards.

For their part, global standards development organizations and conformity assessment providers should meet certain criteria: global relevance, transparency, consensus and participation open to any interested party, non-discrimination, respect for intellectual property rights, and right of appeal and redress. By establishing mutual policies for advancing non-discrimination and transparency, the common approach would serve as a model to help both governments better address many of the emerging practices of concern to the transatlantic ICT community. These include: opaque standardization practices, inadequate participation rights and comments periods, and the creation of unique national technical specifications that deviate from global standards.

By developing a common transatlantic approach to standardization that adheres to the above criteria, this model could serve as an effective tool to discourage certain standards-setting approaches in emerging markets that deviate significantly from relevant global standards and that favor domestic technologies. Often prescriptive in nature, these standards become *de facto* requirements that often impair market access. Working together, the USG and EC could create incentives for other jurisdictions to adopt the U.S.-EU common approach, thereby expanding opportunities for transatlantic businesses beyond our respective markets.

Regulatory Product Marks & Labeling

ITI recommends that the USG and EC strive toward greater regulatory alignment on product marks and labeling for ICT products. Countries around the world are increasingly requiring regulatory marks and labels on ICT products, with more labels for energy and environmental requirements expected in the near future. Manufacturers are struggling to find the necessary space to accommodate these labels on devices that are manufactured for a global market. The problem is exacerbated for small products with limited surface areas for product marks and labels. As ICT products become overcrowded with marks and other information, customers are more likely to ignore what they perceive as clutter, and government surveillance for regulatory compliance is not well served.

Without a global body to govern or coordinate these national requirements, industry and regulators will have to work together to find a solution. ITI believes the USG and EC should take this opportunity to address the issue. There should be a joint regulatory effort to eliminate requirements for product marks and labels to display nonessential information. Manufacturers should be allowed greater flexibility to place information deemed essential on the product, in the product manual, on packaging, or on the manufacturer's website.

The U.S. Federal Communications Commission has recently begun to explore options for electronic labeling (e-labeling). Allowing products to have electronic user manuals that replace or supplement paper versions is already helping to reduce the cost and impact on the environment. Displaying regulatory information via a product's electronic display (screen) is just one option we believe the USG and EC should further explore. Other e-labeling options (e.g. via use of RFID tag, QR Code or Smart Tags) may also deliver enhanced product regulatory content without the need to power on the device and read the display. The development of standards for such options would lead to more consistent and effective adoption.

ITI recommends greater regulatory alignment between the USG and EC on product marks and labeling, which will provide needed global leadership on this issue of importance to the ICT industry.

ENABLING THE FLOW OF WORKERS WITH STEM DEGREES

High-value innovation is increasingly collaborative and cross-border, involving multiple sites, corporate affiliates or other parties. U.S. and European Union (EU) workers with science, technology, engineering and mathematics (STEM) degrees often are involved in transatlantic R&D projects that require regular in-person interaction with employees at other sites. Moreover, U.S. employers should be able to easily hire highly skilled workers from the EU and vice-versa.

Too often, however, visa applications take an unreasonable amount of time to process and these delays restrict important business activities. TTIP provides an opportunity to modernize the rules guiding workforce mobility for employees with STEM degrees and their employers who are based in the United States and European Union. Simpler and more streamlined immigration policies for employees with STEM degrees will strengthen the US-EU relationship and enhance innovation and cooperation between U.S. and European companies.

Accordingly, for employees with STEM degrees, TTIP negotiators should include an expansion of permissible business activities, a new treaty visa similar to the one created for Canada and Mexico in the NAFTA agreement, streamlined procedures for intra-company transfers, improved treatment for family members relocating with a worker, and an adjustment to the J-1 home residency requirement.

DIGITAL TRADE

As the digital economy and digital trade become fundamental elements of the global economy, provisions to support the development and growth of ICT services, cloud computing, and e-commerce are critical elements of trade. In the TTIP context, the USG and EC should build upon commitments made in previous trade agreements that promote the growth of these key aspects of the 21st century digital economy.

ICT Services

The ICT sector provides the infrastructure and devices that enable cross-border delivery of services. Growth in transatlantic services trade will not only benefit ICT service companies, but will also benefit the manufacturers of the ICT infrastructure and platforms that allow for the fast and efficient delivery of services. Increased market access across all sectors, should allow services providers freedom of choice to offer services either through cross-border delivery or a commercial presence. National treatment for computer and related services, telecommunication services, as well as for all other sectors, especially in ICT-enabled services sectors (including services that can be delivered electronically using ICT infrastructure) should be a key component of the TTIP. The TTIP should also specifically prevent the requirement to locate servers or data

in-country as a condition for market access, as this undermines the very definition of cross-border services.

As the TTIP seeks to expand trade in computer and related services, the rapid pace of innovation in IT services should be considered. While IT services such as Web-based IT services and cloud computing are already covered in part by the WTO GATS agreement, provisions should be negotiated that will ensure innovation is not penalized. Market access and national treatment commitments should be made in a way that will not become obsolete as the technology for delivering services evolves. The TTIP should seek to ensure that current services, including cloud computing, Web hosting, software as a service, audio visual services, and others, are all covered, and that commitments in computer and related services also cover emerging and evolving services as technology advances.

In addition to the above issues that directly impact ICT sector companies, ICT hardware, software, and services companies are interested in the increased market access the TTIP can create for our customers, many of which are in highly regulated industries facing significant trade barriers. Companies in financial services, express delivery services, retail distribution services and many other sectors depend on ICT products, workforce, and services to manage and operate their global businesses. As these customers gain greater market access, U.S. high-tech companies will benefit by growing with them to support their transatlantic operations.

Cross-Border Data Flows

ITI urges both governments to strive for strong, binding provisions to support the cross-border flow of data. Service suppliers across all industry sectors and their customers should be able to freely transfer, access, process, store, and manage information across borders.

The TTIP should include innovation-friendly balanced approaches to privacy and data protection that will limit barriers to cross-border data flows. Service suppliers rely on the free-flow of information, and the TTIP should include workable mechanisms that allow for greater interoperability, thereby facilitating cross-border data flows.

The TTIP should set the global standard for the free flow of information across borders without requirements to locate data in-country.

Cloud/Internet Computing

We urge both governments to commit to not regulating cloud computing, also known as Internet computing, under the guise of promoting security or protecting privacy. By centralizing data storage and governance, clouds can actually provide better security at a lower cost than can traditional computing environments. Cloud environments can also provide differentiated levels of security, reflecting the fact that certain types of data warrant a higher level of protection.

Fundamentally, the growth of cloud computing, and the cloud's value to nations' businesses, citizens, and economies, will continue only if its development is guided by the same open

approach to an international policy framework that has long enabled the dynamic growth of the Internet and ICT generally.

ITI recommends that negotiators, instead of enacting cloud-specific regulations, embrace the promotion of interoperability and mutual recognition of privacy, data protection and cybersecurity frameworks; avoid discriminatory market access practices and policies that restrict the transfer of information and data across borders; and make commitments to continue to rely on global ICT standards developed via standard-setting processes that are consensus-based, transparent, and industry-led, with participation open to interested parties.

Privacy

While privacy and data protection legal frameworks strive to protect the privacy of individuals and secure their data, the ability for industry to innovate and develop new products and services should not be impeded. Individuals, as well as businesses of all sizes, have benefited tremendously from the growth of e-commerce and in order for such growth to continue, legal frameworks must allow for innovation. Legal frameworks in the areas of privacy and data protection should be pro-innovation, technology neutral, and should focus on preventing identifiable harms to individuals, such as identity theft. The European Union Agency for Fundamental Rights has stated that “the right to data protection is not an absolute one but needs to be balanced with other freedoms and benefits, e.g. freedom of expression and communication, the right to protect intellectual and other property, the rights to pursue scientific and social progress, and the right to run a business.” (See <http://fra.europa.eu/en/theme/data-protection-privacy>). In balancing these considerations, legal frameworks should encourage innovation and permit the free flow of information across borders.

ITI recommends that negotiators promote a transatlantic -- and also international, privacy, data protection framework -- that facilitates cross-border data transfers. While full harmonization of legal frameworks may not be practical, inter-operability can be achieved if there is continued mutual recognition and acceptance of different legal structures. Such interoperability is critical in fostering the growth of cross-border trade in services.

Additionally, the TTIP should consider existing accountability mechanisms, such as contracts, binding corporate rules, and other commitments that are enforceable by governments, as acceptable methods of cross-border data flows. The TTIP should also allow for the use of codes of conduct as an accountability mechanism for cross-border transfers.

Digital Commerce

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 services, applications, and devices of their choice. Further, the TTIP should make permanent and strengthen and broaden the 1998 WTO e-commerce moratorium in which WTO members committed to the practice of not imposing customs duties on electronic transmissions. In order to further encourage innovation in the development of new cross-border services, industry recommends the inclusion of Internet intermediary liability protections for providers of online platforms, designed

to ensure that intermediaries are not treated as the producers of content, taking into consideration such liability protections in criminal, communications privacy, and IP frameworks. The TTIP should also mandate technology neutrality, in that all technologies are given the chance to compete in the marketplace.

Copyright Levies

Collecting societies in a number of EU member states have been granted the right to charge levies on specific goods to provide compensation to the rights holders of certain copyrighted material that has been subject to private copying. Collecting societies determine which products to levy, how to levy and at what rate, which means that the collecting systems vary across member states that have them. Originally the levies were applied to analog products like cassette tapes, cassette recorders, and CDs that were used to make private copies of copyrighted content. Now, however, the application of copyright levies has expanded to include digital goods, such as smartphones, tablets, personal computers, data storage devices, and external hard drives. Levies are an outdated method of compensating content rights holders in light of highly effective digital rights management tools. Moreover, copyright levies on digital goods undermine the objectives of the Information Technology Agreement to reduce costs of and expand trade in information technology products.

In addition, the current fractured copyright levy system is inhibiting the European Digital Single Market from developing and benefiting consumers. The divergent application of the levy system across many member states in Europe creates significant legal uncertainty, financial exposure and unwarranted liability for any producer or importer of hardware in Europe.

To further facilitate digital commerce, copyright levies on digital devices should be removed entirely and replaced with a direct remuneration system through digital rights management technologies and innovative standards such as UltraViolet, where consumers' rights are clearly purchased at the point of sale. The proliferation of levies across new digital technologies creates an environment of double taxation, with content holders, technology companies, and consumers paying for digital rights management systems development, as well as for levies. This raises the cost of technology overall for citizens. Levies are a prime example of the type of tariffs or duties that should be eliminated through the TTIP, especially given their negative impact on demand for ICT products that is so critical to increasing the productivity and innovation capability of the transatlantic economy.

Intellectual Property

The TTIP should strive to sustain and enhance cooperation on the protection of intellectual property rights. It should provide effective protection and enforcement of intellectual property rights to create a climate in which innovators are encouraged to invest in the research, development, and commercialization of leading-edge technologies, and promote the dissemination of technologies and services. New and complementary approaches that enable the digital economy to function, balanced to include effective protection of intellectual property, should be encouraged, and should respect principles such as freedom of expression, fair process, and privacy.

Trade Secrets Protection

ITI urges both the USG and the EC to strive toward a uniform trade secrets protection regime. Through the TTIP, the USG and the EC have the opportunity to create a global model for the protection of trade secrets and increase cooperation on theft by third countries. Improving protections should build on the obligations of Article 39 of TRIPs that ensure minimum protection for trade secrets. Provisions should also ensure that the parties adhere to their obligations and effectively enforce IP rights through adequate and effective remedies (such as injunctions and criminal penalties) to stop misappropriation of trade secrets, and should prohibit parties from forcing disclosure of trade secrets as a condition of market access or from imposing compulsory licensing of trade secrets.

ITI also urges the USG and the EC to develop model TBT+ protections for trade secrets that are submitted to government authorities as a condition of market access (i.e., where the disclosure is linked to the importation and/or sale of goods). Our industry, as well as others, is concerned with the increasing number of overbroad testing or certification systems and other regulatory schemes being developed by foreign governments that require the disclosure of unnecessary proprietary information. The risk that the required sensitive information will leak to domestic competitors is compounded by the reality that many governments have inadequate procedures to protect such information and some of those governments are focused on increasing indigenous innovation.

Industry recognizes that in certain circumstances, some proprietary product information needs to be provided to governments, including ours, for legitimate health, safety, security and other reasons. In such cases, however, U.S. agencies have detailed procedures to protect confidential business information (*see, e.g.,* 40 CFR Part 2), which are enforceable against the officials that administer them (*e.g., id.* Section 2.211). TTIP could seek agreement from the EC and EU Member States to emulate the principles embedded in such procedures, and set a global standard for other governments to follow. The relevant TBT provisions on information submission requirements, articles 5.6.2 and 5.2.3, are far too weak to effectively protect U.S. trade secrets.

Thank you for this opportunity to provide comments on the Transatlantic Trade and Investment Partnership. We look forward to working with you on finding solutions for next-generation trade issues impacting the high-tech sector that create jobs, spur innovation, and enhance competitiveness and growth on both sides of the Atlantic. Please do not hesitate to contact me at jneuffer@itic.org or 202-626-5735 if you have further questions or require any additional information.

Sincerely,



John F. Neuffer
Senior Vice President for Global Policy