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ALLIANCE FOR CLEAN TECHNOLOGY INNOVATION (ACTI)

Response to the Request of the Office of the United States Trade Representative (USTR) for Comments Concerning Proposed Transatlantic Trade and Investment Agreement

Relevant Trade-Related Intellectual Property Rights (IPR) Issues that Should be Raised with the EU

ACTI appreciates the opportunity to respond to the Request of the Office of the United States Trade Representative (USTR) for Comments Concerning a Proposed Transatlantic Trade and Investment Partnership (TTIP). Below, we respectfully submit comments with respect to Item 2(q) in the Federal Register Notice of April 1, 2013 in particular: "relevant trade-related intellectual property rights issues that should be raised with the EU." We would welcome an opportunity to discuss these with you in further detail.

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Key Advanced Manufacturing IPR Recommendations

Patents, trade secrets, and other forms of Intellectual Property Rights (IPR) are critically important for U.S. and European advanced manufacturing and technology industries alike. The value of such IPR assets is hard to overstate, as is the shared interest between the U.S. and EU in ensuring an effective and well-functioning domestic IPR system in both economies, and around the world. IP-intensive industries are linked to 35% of U.S. GDP and nearly 30% of all U.S. employment. The EU is no less reliant on innovative, advanced manufacturing and technology industries, including in the healthcare, transportation, aerospace, and green technology sectors, as well as many others.

We believe that strong provisions on key areas of IPR including patents, trade secrets protection and third country coordination mechanisms are key and must be an integral part of any future Transatlantic Trade and Investment Agreement (TTIP). We say so without regard to other IPR issues such as copyright or trademark protection, and without regard, at this stage, to other trade barriers and possible additional focus areas for a Transatlantic Trade and Investment Agreement.

With respect to advanced manufacturing and technology-related IPR, our key recommendations include:

1. A Transatlantic Trade & Investment Agreement should reflect a shared commitment to robust IPR protection.

2. A Transatlantic Trade & Investment Agreement should contain a commitment by both sides to further harmonize and improve domestic and global trade secrets protections and to combat all forms of harmful economic espionage and conventional and cyber-based trade secret misappropriation and theft.

3. A Transatlantic Trade & Investment Agreement should formalize the existing U.S.-EU IPR Working Group and reflect shared commitments to align U.S. and EU positions in multilateral dialogues, and to encourage robust third country protection of IPR.

4. A Transatlantic Trade & Investment Agreement should contain mechanisms and commitments aimed at improving the quality and effectiveness of the U.S., EU, and global patent protection and enforcement systems.

I. Introduction

Advanced manufacturing technology and related Intellectual Property Rights (IPR) play a key role in the competitiveness of both the U.S. and EU economies. Advanced manufacturing and internet-enabled industrial and manufacturing technology increasingly drives productivity on both sides of the Atlantic and, as such, the importance of Intellectual Property to economic growth, creating new jobs, and growing high value-add exports will only further increase. A future U.S.-EU Trade & Investment Agreement should reflect this and memorialize the U.S. and EU commitment to robust IPR protection; contain strong provisions on trade secrets; lay out a framework for effective Transatlantic patent protection and enforcement; and reflect and further formalize and codify successful existing mechanisms for U.S.-EU cooperation on global IPR dialogues, protection, and enforcement.

Intellectual Property Rights are exhaustively regulated in the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS), as well as a range of other existing international IPR agreements which impose a carefully negotiated and well-balanced Intellectual Property regime. In the advanced manufacturing and clean technology context, the UN, UNFCCC, World Bank, OECD, and others have found that effective IPR protection: (1) plays a key role in enabling and encouraging innovation and the development of critical new technologies; and (2) helps countries achieve such goals at a reasonable and affordable cost, and in ways that are inclusive of the poorest and most vulnerable developing countries alike.[1] Intellectual Property Rights are also key to maintaining or building a country's competitive and commercial advantage in an increasingly technology-driven global economy. For the U.S. and EU in particular, industrial and advanced manufacturing IPR are the backbone of our manufacturing and technological competitiveness around the world and for our ability to remain competitive for many more years to come.

In light of this, the U.S. and Europe share a fundamental interest in and a deep commitment to protecting intellectual property. Both markets recognize that strong intellectual property regimes are an indispensable element of successful economies, as well as creating and maintaining innovation and technology-driven exports, competitive opportunities, and jobs. This shared consensus and the high levels of existing IPR protection in both economies, should serve as the starting point for discussion on how to bridge the remaining gaps in the treatment of IP on both sides of the Atlantic, and to position the Transatlantic Trade & Investment negotiations as the benchmark and effective template for bilateral and multilateral IPR negotiations in years to come. The term "21st Century Trade Agreement" has been much overused; but this, clearly, is what the Transatlantic Trade & Investment Agreement must be.

The reverse, of course, is also true. Any Transatlantic Trade & Investment Agreement that does not include a set of strong IPR provisions, would set a negative precedent for other bilateral, regional

[1] A study by the UNFCCC – for example – identifies ten other dimensions of enabling the internal diffusion of environmentally sound technologies and the transfer of such technologies to industry and consumers. The list includes adequate "national systems of innovation" (e.g., technology development boards, research institutes, cooperation between domestic firms); "human and institutional capacity" (e.g., technical training and education, awareness raising, and demonstration projects); a "macro-economic policy framework" and "sustainable markets" (e.g., energy sector reforms, liberalization policies, preferential government procurement and subsidies to suppliers); and a variety of legal-institutional requirements such as transparency, regulation and *strengthened* Intellectual Property laws. UNFCCC, "Enabling Environments for Technology Transfer", 4 June 2003.

and plurilateral or multilateral agreements in the future. Failure of the U.S. and the EU to reflect their shared commitment to robust IPR protection and agree to a strong set of provisions on core IPR areas such as patents, trade secrets, and third country cooperation, would allow other countries, with lower levels of IPR protection, to argue that their agreements or negotiations should not include such issues either; or that the failure to agree to such provisions between the EU and the U.S. reflects their shared belief that multiple different approaches to patent and trade secrets protection are possible. Logically, the same would apply to them as well.

II. About ACTI

ACTI is a coalition of world leaders in advanced manufacturing, clean energy and lower emission products and services. Our members include 3M, AirLiquide, Dupont, ExxonMobil, General Electric, Philips, Siemens, and Vestas. As private companies, we have invested billions of dollars in innovation and long-term sustainable and more energy-efficient technologies and solutions, as well as a range of other products and services that are key to America's continued economic growth, competitiveness, and worldwide success. We employ hundreds of thousands of people in factories, R&D centers, and high-value technical and engineering jobs, and believe that innovation-driven manufacturing industries, as well as resource efficiency, green growth and sustainable development policies, if structured wisely, can offer win-win opportunities to improve economic growth, create jobs, boost exports, as well as achieving development, environmental and a range of other public policy objectives.

III. The U.S. and EU Have a Common Interest in Reinforcing the Protection of Advanced Manufacturing Technology and IPR

While areas of divergence exist, Intellectual Property Rights are a critical common interest for the U.S. and the EU and, in general, levels of protection are high in both economies. As such, and despite clear differences in approach in a number of specific areas, a strong agreement on core areas of IPR, such as patents, trade secrets, and third country cooperation should be vigorously pursued – both by the U.S., and by the EU. No U.S. or EU trade agreement can exist without strong and effective provisions on key areas of IPR protection and enforcement and indeed, having such provisions may well become key to passing a future Agreement through Congress when the time to do so is there. Inclusion of, and agreement on these IPR-related issues, moreover, does not raise the types of political or constituent concerns that certain other areas of IPR protection and enforcement might raise, on this or the other side of the Atlantic – *e.g.*, in the areas of Geographical Indications (GIs) or copyrights.

President Obama could not have been more clear when he noted that "[w]e are going to aggressively protect our intellectual property. Our single greatest asset is the innovation and the ingenuity and creativity of the American people. It is essential to our prosperity and it will only become more so this century."[2] These same overall policy priorities with respect to IPR in general, are reflected in the EU's negotiating mandate for the Transatlantic Trade and Investment Agreement as well. The Agreement, says the European Commission, "shall cover issues related to intellectual property

[2] President Barack Obama, as quote in the Administration Strategy on Mitigating the Theft of U.S. Trade Secrets, p. 1.

rights. … Negotiations, should, in particular, address areas most relevant for fostering the exchange of goods and services with IP content, with a view to reducing costs and supporting innovation."

Agreeing yet again, the letter by the Office of the U.S. Trade Representative to Congress noted that the Transatlantic Trade & Investment negotiations should:

> "Seek to obtain, consistent with U.S. priorities and objectives, appropriate commitments that reflect the shared U.S.-EU objective of high-level IPR protection and enforcement, and to sustain and enhance joint leadership on IPR issues; [and]
>
> Seek new opportunities to advance and defend the interests of U.S. creators, innovators, businesses, farmers, and workers with respect to strong protection and effective enforcement of intellectual property rights, including their ability to compete in foreign markets".

As advanced manufacturing and technology-focused industrial businesses, we could not agree more. Patents, trade secrets, and other forms of IPR are critical to our U.S. competitive advantage, and our ability to create and maintain jobs, grow exports, and create revenue. A Transatlantic Trade and Investment Agreement offers a unique opportunity to anchor in the already high levels and sophisticated systems of IPR protection that exist in both the U.S. and EU; not just for our own economies, but for the full range of third party agreements and treaty negotiations that we are already engaged in or will be engaging in as well. It would also send a strong message to third countries about the importance of robust IPR protection and enforcement. The Transatlantic Trade & Investment Agreement should become the gold standard in IPR protection; and it should set the bar high.

IV. Third Country and Multilateral Threats Against U.S. and EU Advanced Manufacturing IPR

One core common interest for the U.S. and EU, and a critical part of the background against which U.S. – EU Trade and Investment Negotiations are taking place, are the constant threats against industrial and advanced manufacturing IPR that U.S. and EU companies and sectors continue to face in a range of international fora and negotiations. This includes the World Trade Organization (WTO), United Nations Framework Convention on Climate Change (UNFCCC), the World Health Organization (WHO), and the World Intellectual Property Organization (WIPO). In each of these fora, a small but influential set of large emerging economies, NGOs, and others, continue to demand or suggest that global patent and broader IPR protections should be weakened, and that additional "flexibilities" for compulsory licensing of key U.S. and EU technologies and products, or other forms of IPR misappropriation should be permitted or condoned. The same or similar threats and challenges against U.S. and EU patents, trade secrets and other forms of IPR, exist in numerous domestic markets and bilateral relations around the world as well.

Key examples include:

- **"Domestic innovation" and industrial "localization" policies.** These policies take many forms, such as procurement policies that discriminate against "foreign" IP or impose local content requirements; measures to force technology transfer, including through liberal use of

compulsory licenses targeted at foreign patent holders; restrictions on the use of trademarks; and preferences for products that implement domestic standards. While approaches differ, all of these measures serve as non-tariff trade barriers, reducing the ability to compete in foreign markets.

- **State-sponsored IP misappropriation and theft.** Evidence is building that some governments have supported and even sponsored the theft of proprietary information from innovators in third countries. This "state sponsored IP theft" is often focused on the highest value and most innovative sectors in a country's economy and includes cyber espionage and cyber-based trade secret theft.

- **Calls for greater IP "flexibilities" and IPR "erosion".** Emerging markets now routinely take the position in multilateral fora that intellectual property rights are a barrier to economic advancement and the "public interest". They do so despite overwhelming evidence to the contrary; in academic literature, in practice, as well as by the large multilateral institutions including the WTO itself, the UN, World Bank, and others. Claims that IPR constitute a barrier to technology transfer or otherwise impede economic advancement or "public interest" goals are made in the UNFCCC, WTO and WHO, and they generally reflect the claimants' short-term political and industrial policy aims only, or are used as negotiating tools, rather than for legitimate and evidence-based policy objectives. Nonetheless, calls from greater IPR "flexibilities" and other multilateral efforts to "erode" IPR protection continue to pose a constant and serious threat.

- **WIPO Policy Discussions and Negotiations.** Discussions at the World Intellectual Property Organization (WIPO) have moved in an increasingly IPR-unfriendly direction as well. Initiatives are underway, in particular, to expand the use of so-called "Limitations & Exceptions" in the copyright space – in many instances without the underlying copyright issues even being addressed; as well as policy discussions on "rebalancing" or additional "flexibilities" on patents. Many of the same governments and NGOs active in the UNFCCC, and at the WTO and WHO, are active in these WIPO debates as well and have polarized the discussions to an ever greater extent.

- **Compulsory licensing policies.** Some countries around the world continue to see straightforward compulsory licensing as a tool that can be applied relatively broadly and indiscriminately whenever access to a particular technology is beneficial from an economic, commercial or industrial policy perspective. India's National Manufacturing Policy, for example, specifically calls for a policy of compulsory licensing of clean technology products, and it hints at similar measures in the medical devices and technology industry.

- **Fundamental lack of trade secrets and undisclosed business information protections.** Currently, the World Trade Organization ("WTO") mandates protection of proprietary information by means of Article 39 of the Agreement on Trade-Related Intellectual Property Rights ("TRIPS"). Despite the clear wording of Article 39 TRIPS, trade secrets protection remains relatively weak in a range of countries around the world and trade secrets are often not recognized as Intellectual Property Rights at all. National laws, moreover, form a patchwork of

measures with different degree of protection. This is a core concern for U.S. companies in general and advanced manufacturing, technology-focused companies such as ours in particular.

- **Discriminatory patentability, patent protection, enforcement, or subsidy policies.** Many countries around the world also continue to implement and impose discriminatory patentability, patent protection, enforcement and/or patent and IPR subsidy policies. Some of these, for example, were highlighted in USTR's Special 301 Report that was recently published.

The overview above contains only a small selection of the discriminatory, TRIPS-inconsistent, and generally harmful and counterproductive IPR-detracting measures and policies that we continue to see in a range of countries and negotiating fora and negotiations around the world. A Transatlantic Trade & Investment Agreement provides a unique opportunity for combined U.S. and EU leadership in combatting such practices and policies, and to set a broad and strong IPR framework that can serve as a worldwide model, for years and decades to come.

V. Roadmap for an Advanced Manufacturing IPR Chapter

In light of the strong mutuality of interests identified above and in a range of U.S. and EU documents and practices, it will be critical that a U.S.-EU Trade and Investment Agreement reflect strong and comprehensive mechanisms and provisions for the protection of patents and patentability issues; relating to trade secrets protection, in the U.S., EU, and around the world; and in terms of bilateral and global patent, trade secrets, and broader IPR coordination and enforcement. A Transatlantic Trade and Investment Agreement that does not deal with these fundamental issues, would be seized upon immediately by a range of third countries and others, as a valuable precedent in broader efforts to weaken or otherwise undermine existing Intellectual Property protections in industrial areas and sectors that are of key concern to the U.S. and EU economy alike. Indeed, it will make it almost prohibitively difficult to get other countries to agree to a strong set of IPR-related provisions in their bilateral, regional, plurilateral, or multilateral agreements in the future.

In light of the critical importance of the advanced manufacturing and industrial sectors for the U.S. and EU economies alike, we note four (4) areas in particular, that we believe a Transatlantic Trade and Investment Agreement should address:

1. A transatlantic agreement should reflect a shared commitment to robust IPR protection

The contribution of IP to economic growth has been recognized, both at the WTO level, as well as in bilateral agreements negotiated by both the U.S. and the EU to date. Recent agreements concluded by U.S. and EU with South Korea, Colombia and Peru, to name only few, addressed the IP-related issues in a comprehensive manner, including the substance of IPR, as well as procedural rules ensuring adequate levels of protection. In general, moreover, levels of protection in both the U.S. and EU are already high. Both economies, moreover, have mature and comprehensive IPR laws and regulations in place in most, if not all, of the key areas of IPR law. The U.S. and EU, moreover, cooperate actively on a range of third country and multilateral IPR protection and enforcement issues.

A transatlantic agreement should reflect this shared commitment to robust IPR protection and enforcement. Indeed, the Transatlantic Trade and Investment negotiations offer a unique

opportunity for the U.S. and EU – given their already high standards of protection – to create a template and set a high bar for other countries and future agreements to meet.

Recommendations:

- In light of the already high levels of protection in the U.S. and the EU alike, the TTIP should reflect the shared commitment, of the U.S. and EU to robust protection and enforcement of IPR.

- Sufficient detail should be provided and key principles and standards laid down wherever possible. In areas where the agreement is silent, it should be made very clear, in the agreement, that the absence of more detailed provisions is a reflection not of an inability to agree, but only of the high levels of protection that both economies have already achieved. The agreement should describe how such "high levels of protection" are defined; so as not to create confusion in the future, and a precedent for other treaties and future negotiations.

- In addition to the more specific provisions referenced above, the Agreement should include clear and strong preambular language setting out the common understanding between both parties as to the importance of strong IPR protection in general, including, in particular, with respect to patents, trade secrets and other forms of industrial and advanced manufacturing IPR.

- The TTIP should meaningfully address measures that hinder IP protection and enforcement, such as those driven by industrial policy priorities or that otherwise impede market access and trade, such as preferences based on the domestic origin of IP and compulsory licensing. We highlighted some, but not necessarily all of these policies and measures in Section IV above.

- Finally, the TTIP should underscore the common goal of the United States and the EU to promote robust standards of IPR protection and enforcement in third countries, in particular emerging economies, to level the playing field for U.S. and EU businesses and enhance the level of global innovation.

2. A transatlantic agreement should contain a commitment to further harmonize and improve domestic and global trade secrets protections and to combat all forms of harmful economic espionage and conventional and cyber-based trade secret misappropriation and theft

For U.S. advanced manufacturing and other innovation and technology-driven companies, our global competitiveness, ability to export, and to grow and sustain American and European jobs depend heavily on the ability to protect commercially valuable, confidential information. We are also increasingly dependent on internet-based manufacturing processes and services, whether domestically, or to support our global technology and value chains. As such, the theft of trade secrets, whether through electronic or conventional means, has become a substantial economic and commercial concern. Cyber espionage is critical, but so is conventional economic espionage, trade

secret misappropriation, and the weakening of trade secrets and other IPR-related protections by governments around the world.

"Trade secret theft", said the U.S. Administration Strategy on Mitigating the Theft of U.S. Trade Secrets earlier this year, "threatens American businesses, undermines national security, and places the security of the U.S. economy in jeopardy. These acts also diminish U.S. export prospects around the globe and put American jobs at risk."[3] The Strategy, moreover, set out a range of possible action items, including diplomatic efforts to protect trade secrets overseas. A strong trade secrets focus in the Transatlantic Trade and Investment negotiations would be consistent with and a core part of such a strategy.[4]

Many EU countries have at least some form of trade secrets protection in place; but most of them do not specifically recognize trade secrets as a form of IPR; and in most instances, protective mechanisms are reflected in a broad range of non-uniform, disparate laws, statutes and regulations. Within the EU, the status of trade secrets is often unclear and protection and enforcement involves a patchwork of measures which make it harder, and more expensive, for businesses and entrepreneurs to defend their IP and knowhow in an effective, and cost-efficient manner. In this regard, the EU's IPR Enforcement Directive is particularly worth mentioning and it is noteworthy that the Directive itself does not refer to trade secrets and does not appear to treat them as a form of IPR.[5]

The failure to formally recognize trade secrets as a form of IPR and the general lack of a coherent and uniform trade secrets enforcement framework, is a problem for all businesses in Europe, but is likely to hurt smaller and mid-sized companies even more. Both U.S. and EU industry favor and would strongly support a more comprehensive, uniform framework of trade secrets protection within the EU. In addition, cyber security threats, and cyber espionage, are an equally significant problem for the EU and EU companies, as they are for the U.S. Both the United States and the EU have recently begun creating policy positions internally on how to stem the flow of trade secrets and protect businesses that rely on upon them. The TTIP offers an opportunity to create a joint standard. Such a joint standard would reflect global best practices for the protection of know-how, which could serve as a model for third countries to upgrade their own trade secret regimes.

The Transatlantic Trade and Investment Negotiations provide a unique opportunity to harmonize trade secrets protection within the EU, and to enable EU Member States to formally recognize trade secrets and industrial knowhow as a core form of IPR. They also provide an ideal forum for the U.S. and EU to cooperate in the creation of effective cyber security and anti-cyber theft mechanisms and (voluntary) industry frameworks. For U.S. advanced manufacturing and other innovation and technology-driven companies, our global competitiveness, ability to export, and to grow and sustain American jobs depend heavily on the ability to protect commercially valuable, confidential information. To combat trade secret misappropriation and theft, however, a clear and workable set of laws and regulations must be in place.

[3] Administration Strategy on Mitigating the Theft of U.S. Trade Secrets, p. 1.
[4] See also ACTI's Response to the Request for Public Comments of the U.S. IPR Enforcement Coordinator, which can be found here
[5] In particular, the lack of recognition makes it difficult for victims of trade secret theft to access certain evidentiary tools.

Recommendations:

- The TTIP should reiterate the IP nature of trade secrets. This is in line with the position taken by the U.S. at the international level and with Article 39 (Section 7) of TRIPS. The EU, for its part, has already recognized the IP nature of trade secrets in its previous trade agreements with Korea (Article 10.2), as well as with Colombia and Peru (Article 196 (5) and (6));

- The TTIP should include firm commitments towards uniform, statutory and cost-efficient protection of trade secrets in the EU, as well as the United States. To achieve this, a specific trade secrets-focused sub-chapter or section should be created that contains positive obligations and minimum standards for the protection and enforcement of trade secrets as an Intellectual Property Right. The U.S. and EU should similarly work together in the OECD and other global fora and discussions;

- The TTIP should reflect a shared commitment to combatting online as well as physical trade secret misappropriation, espionage, and theft. Effective and comprehensive trade secrets protection, including uniform, effective, and strong enforcement mechanisms, are core instruments to this effect. The Agreement should also reflect a commitment for both sides to work closely together to share information and trade secret theft reporting and intelligence[6];

- Negotiators should consider expanding EU IPR-related border measures to more formally include import restrictions on products or services created through or on the basis of trade secrets misappropriation and theft. (In the U.S., existing case law already allows the application of Section 337 of the U.S. Trade Act of 1974 to products that are based on or are the fruits of trade secret law violations; in practice, no equivalent measure appears to exist in Europe.)

- U.S. negotiators should keep a close eye on other issues that may arise as the EU reviews its own trade secrets protection policies and legal framework in the coming month.

3. A transatlantic agreement should formalize the existing U.S.-EU IPR Working Group and reflect shared commitments to align U.S. and EU positions in multilateral dialogues, and to encourage robust third country protection of IPR

The U.S. and EU are already collaborating towards a range of multilateral and third country IPR objectives. In this regard, the Transatlantic IPR Working Group's Action Strategy, and the Transatlantic Economic Council's IPR Working Group are particularly worth mentioning. We

[6] One concrete action to be considered is cooperation towards the publication of annual U.S. and EU cyber-theft, economic espionage, and trade secrets protection reports. Such reports could identify governments engaged in or actively condoning various forms of cyber theft and trade secrets misappropriation, as well as private parties that are actively involved. The report could also describe domestic and global efforts and progress in ensuring appropriate trade secrets protection; identify specific improvements in countries' trade secrets and anti-cyber theft and espionage laws; and address broader trade secrets-related technology transfer and IPR misappropriation practices. In this regard, and more generally, ACTI also refers to its recent response to the Request for Public Comments of the U.S. IPR Enforcement Coordinator, which can be found here.

believe that the IPR Working Group within the Transatlantic Economic Council has already contributed towards the alignment of U.S. and EU positions on IP in general and is well-equipped to assume the role of coordinator of further convergence and coordination efforts. In addition, the working group's institutional links with the U.S. Trade Representative and the EU Directorate General for Trade will guarantee that its work will properly address international aspects of IPR protection. In fact, framing the dialogue on intellectual property within the Transatlantic Trade & Investment Agreement would be a major step forward, but not necessarily a challenging task for the negotiators. Similar bodies have been established in already existing U.S. and EU trade agreements. For instance, the U.S.-Peru FTA foresees cooperation with respect to competition policy; and the EU-Korea FTA incorporates a general cooperation mechanism for IP-related mechanisms. These and other existing structures form a good starting point for negotiations towards a more sophisticated collaboration model on IPR.

Recommendations:

- The TTIP should further institutionalize and codify collaboration that is currently taking place within the Transatlantic Economic Council's IPR Working Group, as well as on a more *ad hoc* basis; and it should provide a forum for discussions and consultations on the most pressing IPR issues in the transatlantic relationship.

- The TTIP should commit the U.S. and EU, within the framework of the IPR working group mentioned above, to regular exchange of views and information on multilateral discussions, and relations with third countries, which concern intellectual property. This includes threats of IPR erosion in such fora as the WTO, WIPO, WHO and UNFCCC, as well as more country-specific threats, in countries around the world;

- The TTIP should authorize the IPR Working Group to prepare draft positions and technical reports on IPR-related issues that arise bilaterally or in international negotiations and to issue non-binding recommendations to the U.S. Government and the European Commission in IPR-related matters. To this effect, officials from a range of U.S. and EU agencies, departments and directorates should be able to participate in the TTIP IPR Working Group meetings, so as to facilitate and ensure collaboration and coordination with respect to the full range of IPR-related negotiations and fora in which the U.S. and EU participate (this includes, e.g., the WTO, WIPO, UNFCCC, WHO, and OECD). Sub-groups could be established to this effect;

- The TTIP, more generally, should enable the IPR Working Group to oversee implementation of the IPR chapter of the agreement; and

- The IPR Working Group should provide a forum for private sector stakeholder participation and involvement; the private sector, after all, is responsible for the majority of innovation and commercialization of technology, advanced manufacturing products and services, and IPR.

4. A transatlantic agreement should contain mechanisms and commitments aimed at improving the quality and effectiveness of the U.S., EU, and global patent systems.

The Transatlantic Economic Council framework already highlights the importance of cooperation to enhance the effectiveness of the patent system. While important steps have already been taken towards this goal, even greater cooperation and harmonization is achievable, including through measures to expedite the patent examination and prosecution process. In particular, the U.S. and the EU should expand existing work sharing arrangements for patent searching and examination that maintain sovereignty of each jurisdiction. This should be of even more interest to U.S. and EU given the recently created EU patent system. The discussions should be undertaken soon enough to support the shaping of the patent system in the EU and avoid the need for later re-adjustment of previously established rules. In specific, the U.S. and EU should work closely within the framework provided by the TTIP to align the filing process, and thus reduce the costs for innovators of protecting their IP.

VI. Conclusion

Advanced manufacturing technology and related Intellectual Property Rights play a key role in the competitiveness of both the U.S. and EU economies. Advanced manufacturing and internet-enabled industrial and manufacturing technology increasingly drives productivity on both sides of the Atlantic and, as such, the importance of Intellectual Property to economic growth, creating new jobs, and growing high value-add exports will only further increase. A future U.S-EU Trade & Investment Agreement should reflect this and memorialize the U.S. and EU commitment to robust IPR protection; contain strong provisions on trade secrets; reflect and further formalize and codify successful existing mechanisms for U.S.-EU cooperation on global IPR dialogues, protection, and enforcement; and lay out a framework for effective Transatlantic patent protection and enforcement.