

**National Association of Manufacturers
Washington, DC**

**Public Comments
Concerning the Proposed
Transatlantic Trade and Investment Partnership**

May 10, 2013

On behalf of the National Association of Manufacturers (NAM), we welcome this opportunity to provide comments on the proposed Transatlantic Trade and Investment Partnership (TTIP). The NAM is the oldest and largest industrial trade association in the United States, representing 12,000 small and large manufacturers in every industrial sector and in all 50 states.

The NAM has been a leading business advocate in urging the United States and European Union (EU) to launch comprehensive free trade agreement negotiations aimed at fostering mutual economic benefits and job creation on both sides of the Atlantic, as well as the elimination of barriers to transatlantic trade and investment. Since 2008, the NAM has been urging the U.S. and European governments to consider a comprehensive agreement that would eliminate tariffs and non-tariff barriers (NTBs), and foster greater regulatory coherence and convergence.

The NAM agrees with the recommendation of the final report issued by the High Level Working Group (HLWG) on Jobs and Growth, which calls for “a comprehensive agreement that addresses a broad range of bilateral trade and investment issues.” The United States and the EU already have the world’s largest commercial relationship but major opportunities for increased trade, investment and cooperation remain. A trade-liberalizing TTIP could demonstrate the strong leadership of the United States and the EU to the rest of the world, put both our economies in a stronger position in the global marketplace, and provide an opportunity for the United States and EU to work closely in setting high standards for third countries.

The NAM welcomes the March announcement that the United States and the EU will launch formal trade talks this year, and urges that the outcomes of this agreement enhance competitiveness, tear down barriers to economic growth and jobs, and ultimately reduce costs for manufacturers on both sides of the Atlantic. The NAM will continue to emphasize that a successful TTIP will remove unnecessary impediments to manufacturing growth and not create new ones.

Specifically, the NAM supports the negotiation of an agreement that achieves the following objectives:

- Stimulates economic growth and creates jobs;
- Addresses regulatory differences and barriers;

- Provides strong protections for innovations and intellectual property, including identifying new ways to cooperate in effectively addressing localization barriers to trade, illicit trade, piracy, trade secret theft, and counterfeiting;
- Eliminates all tariffs immediately;
- Opens further services trade that supports manufacturing, including distribution, finance, and conformity assessment;
- Enhances the protection of investment and opens the transatlantic market further to U.S. and European investors;
- Addresses the emerging issues raised by expanding digital trade and e-commerce, including issues surrounding privacy, data protection and cross-border data and information flows;
- Reduces costs of business operations and processing both for companies and governments through improved and coordinated customs facilitation and encourages the development of efficient, cost-effective and secure supply chains that reflect modern business practices;
- Facilitates businesses' ability to meet market demands and enhance rather than impede trade and promotes cooperation on border security, especially the facilitation of legitimate business travel and the consistent and intelligent monitoring of cargo facilities and ports;
- Provides strong and effective dispute settlement mechanisms; and
- Promotes coordination on key issues in third countries.

Regulatory Cooperation & Standards

Any regulatory outcomes in the TTIP must be designed to favor markets and adhere to sound principles of science, risk assessment, and cost-benefit analysis. Regulatory measures must also create consistent standards for risk assessment and ensure that the benefits of regulations justify their costs, and that they actually achieve the underlying objective of the regulators. Ultimately, an objective of any regulatory provisions negotiated in the agreement must be to enhance economic competitiveness and commercial opportunities, and not impose rules or regulations that would impede innovation and undermine competitiveness. Manufacturers strongly urge that regulatory frameworks and outcomes not be based on the EU's so-called Precautionary Principle, which leads to regulatory outcomes that are contrary to basic science, risk assessment and cost-benefit principles.

A key objective for manufacturers in the TTIP negotiations is promoting regulatory cooperation and coordination between the United States and EU in order to remove regulatory barriers to trade and reduce unnecessary divergence between EU and U.S. regulations and directives. Such barriers and divergences not only restrict market access on both sides of the Atlantic and limit consumer choice, they substantially increase costs for U.S. and EU manufacturers, undermining their global competitiveness. To address these barriers, it is vital that U.S. and EU negotiators seek to address both existing regulatory differences and the processes for developing new regulations.

To ensure the continuing competitiveness and compatibility of U.S. and European manufacturers, it is essential that there be greater coordination between the United States and EU on new regulations and that such regulatory work proceed where appropriate in international forums given that future regulatory changes will impact exports and sales in third country markets as well.

With respect to existing technical regulations and standards, there are a number of different mechanisms that the TTIP can and should use to reduce barriers as quickly as possible, promote efficiencies and maintain appropriate regulatory frameworks. Different tools – such as harmonization, functional equivalence and mutual recognition– have been attempted in prior negotiations with the EU and should be considered going forward. The appropriateness of particular tools should be evaluated based on the timeliness, efficiency and effectiveness of the approach in achieving actual market access and reducing differences and costs. In evaluating effectiveness, it is important to consider product certifications, testing procedures and marketing approval results. The NAM urges that the agreement use the inclusive definition of “international standards” by building upon the international standards principles established by the WTO TBT Agreement. The United States recognizes standards from ISO, IEC, ASTM, UL, OECD, and many other high-quality international standards bodies that meet the WTO TBT principles.

In order to prevent redundancies and duplication in regulations, the NAM also strongly urges negotiators to establish a coherent, cooperative U.S.-EU process for the development of new regulations going forward, especially for emerging technologies and new innovations. Any new cooperative processes resulting from the TTIP should be characterized by the utmost transparency and openness. We urge U.S. negotiators to work closely with individual sectors in striving to simplify regulatory processes and promote greater efficiency wherever possible.

The NAM continues to be very concerned by the proclivity of the European Commission (EC), EU governments and their regulatory authorities to introduce non-scientific, quasi-scientific or even political factors into regulatory policy-making and implementation and the development of regulations and directions through procedures that are not transparent to all stakeholders, including trading partners. The NAM also remains troubled by the establishment of EU regulations that lack technical justification and whose burdens of implementation are not proportionate to intended consumer or environmental benefits. We urge that regulatory policy on both sides of the Atlantic be based solely on the principles of sound science, risk management and assessment, and transparency. Standards, technical regulations and conformity assessment procedures should be developed by processes that are transparent and allow reasonable opportunities for public access to all stakeholders.

Conformity Assessment and Harmonization

The NAM believes that the TTIP agreement should also enable conformity assessment bodies in one country to provide testing and certification to another

country's requirements by being recognized or accredited through the same process that is used for domestic bodies. An agreement must ensure that the EU allows multiple accreditation paths for certification bodies in order to eliminate burdensome accreditation requirements across EU member states, which represents a costly and unnecessary barrier to further economic growth between our economies. The absence of a single market for accreditation services in the EU and the substantial variation in consistency between the accreditation bodies in EU member states further impact the conformity assessment bodies that have established operations in multiple member states, as a result of the lack of National Treatment required under previous U.S.-EU mutual recognition agreements.

Currently, all avenues for obtaining required third-party certification for EU market access exclude U.S. testing laboratories from the final stage of product certification – the evaluation or so-called judgment of test results and the approval of the product. U.S. laboratories are not permitted by EU regulators to exercise "engineering judgment" and must therefore perform redundant, additional tests that European laboratories are not required to perform. This is much different than the treatment of EU certification bodies that are permitted to continue to use best engineering practice in their testing protocols to ensure product safety. This lack of national treatment of U.S. certification bodies contributes to significantly higher testing costs for U.S. manufacturers, adds substantial time before market introduction, and has effectively required U.S. certification firms to establish operations in the EU in order to remain competitive. Accordingly, the United States and EU should provide full national treatment to U.S. and EU conformity assessment bodies that conduct testing and certifications.

The NAM also urges U.S. and EU negotiators to work with specific industry sectors to identify areas where greater harmonization is possible. Some cross-cutting issues to be addressed are labeling and product-safety requirements, and cost-benefit-risk assessment methods. Improving harmonization will not only improve efficiency and innovation in the development of products and technologies, but will also expedite consumers' access to these goods and services.

For sectors with equivalent technical standards that are accepted in both markets, and where technical requirements and the conformity pathway are equivalent, negotiators should consider additional discussions between technical experts to determine whether functional equivalence of U.S. and EU standards would be beneficial. In certain sectors, functional equivalency could help to significantly reduce or eliminate the NTBs that have arisen as a result of numerous divergent safety regulations. To the extent possible, the NAM strongly urges negotiators to allow for the market-driven development of product standards and conformity assessments, including the use of self-declarations of conformity where risk assessments justify them. Finally, U.S. and EU negotiators should work to ensure consistency of and non-discrimination in enforcement approaches.

Intellectual Property

Intellectual Property (IP) rights are the lifeblood of our economy, and the protection of those rights assures manufacturers that their inventions will be secure as they create jobs and build industries around them. Manufacturers in every U.S. state rely on IP rights, which are an integral part of business both domestically and globally. As the U.S. Department of Commerce found in its April 2012 report, IP-intensive industries accounted for \$775 billion, or 60.7 percent, of total U.S. merchandise exports in 2010.¹

IP rights – such as patents, copyrights, trademarks, test data and trade secrets – drive innovation and economic growth. Manufacturers rely heavily on robust protection and vigorous enforcement of IP rights, both domestically and internationally. While both the United States and EU recognize the importance of these rights and already provide strong IP protections in general, it is critical that the TTIP include a robust IP chapter that advances IP protections through strong provisions and the development of a framework that includes coordination of work in third countries and multinational institutions. This includes the need to address those current challenges that undermine intellectual property in Europe, such as the need to ensure that confidential commercial information submitted to government regulatory agencies in marketing applications is protected from indiscriminate disclosure, as well as in third countries.

It is important that the IP outcomes in the TTIP reflect the strongest possible standards on the wide range of IP rights that are necessary for manufacturers throughout their entire production processes and that all forms of IP rights for all products receive high standards of protection. No IP should be subject to discriminatory treatment based on the nature of the goods or services to which it is attached.

One issue that has not yet been dealt with extensively in trade agreements is the protection of trade secrets. Trade secrets are a key form of intellectual property and are vital to the success of key industrial sectors. The strength and competitiveness of manufacturers increasingly depends upon the knowledge, processes, and expertise that comprise their intangible assets. For certain manufacturing sectors, trade secrets are in fact the only viable intellectual property option. While there are some protections for trade secrets under Article 39.2 of the WTO TRIPS Agreement, they are weak. Therefore, the NAM believes that the TTIP can and should seek to address this issue which is important to manufacturers on both side of the Atlantic. Through the TTIP, the United States and the EU should commit to sharing these best practices with other governments given the scant attention paid by many of them to the protection of trade secrets and the increasing incidences of cyber theft and other misappropriations.

Unlike patents or copyrights that have specific legal protections, trade secrets are protected by many governments only through a cause of action for breach of contract (if privity exists) or misappropriation through theft, bribery, espionage or misrepresentation. There is also increasing concern that some governments around the world are requiring the disclosure of trade secret information as a condition of licensing or doing business.

This reality increases the risk of misappropriation, and negotiators should seek to mitigate excessive disclosure requirements and ensuring that confidential commercial information submitted to government regulatory agencies in connection with conformity assessments and other product approval requirements is protected from indiscriminate disclosure.

Furthermore, the TTIP should include a blueprint for effective enforcement mechanisms that reinforce protection and deter bad actors in third countries from using illicitly-obtained information. Without effective and consistent enforcement, the laws are undermined, regardless of how well-written they are. This can be accomplished through adequate fines and civil damages that are large enough to outweigh any benefit that violators might perceive from selling stolen proprietary information.

Finally, the United States and the EU should commit in the TTIP to work cooperatively with each other and with other like-minded governments on incidences of cross-border trade secret theft.

Tariff Elimination and Market Access

While tariffs between the United States and the EU are relatively low, negotiators should seek to eliminate all tariffs immediately upon implementation. Negotiators must also develop simple and efficient rules of origin that reflect business practices and enhance manufacturers' access and ability to reap the benefits of tariff elimination. Furthermore, consideration should be given to provisions that clarify that market access for goods should not be conditioned on requirements to use or invest in local technology or intellectual property.

The NAM also believes tariff elimination needs to be accompanied by the reduction or elimination of import-related fees or other charges that act like tariffs. The NAM recommends that the United States seek transatlantic elimination of border fees or charges in the context of TTIP, while ensuring that such taxes are not raised on international trade generally as a TTIP "pay for."

Investment

The NAM sees strong value in the inclusion of a high-standard investment chapter in the final TTIP that include all the core protections for investors abroad that are found in U.S. investment instruments, market opening provisions and the state-of-the-art enforcement provisions, including investor-state dispute settlement provisions.

The United States and EU already share a vibrant cross-border investment relationship. U.S. investment in EU member states equaled about \$2.1 trillion in 2011, with about \$242 billion in manufacturing. EU investment in the United States reached about \$1.6 trillion, with about \$613 billion in manufacturing. Such investment helps grow jobs, innovation, productivity and new markets on both sides of the Atlantic and should continue to be fostered through strong investment provisions in the TTIP. U.S.

investment overseas helps spur greater research and development, capital investment and job growth. EU investment in the United States also creates jobs, enhances export potential and increases research and development and capital investment. Enhancing and improving bilateral investment flows will be an important and concrete benefit from a strong TTIP.

As with other U.S. trade agreements and investment treaties, the NAM strongly supports high-standard provisions that open markets and protect investment with strong enforcement provisions. The NAM believes that a full and robust definition of investment is critical to cover the myriad of ways that our companies do business overseas, including in the EU.

In terms of the market access provisions of the investment chapter, particularly national treatment and most-favored nation treatment, the NAM seeks the same full coverage for both pre- and post-establishment of operations, with only limited exceptions on a negative-list basis. This will enhance the market-driven nature of U.S. investments in the EU, enhancing opportunities to grow business activity.

In terms of protections, the NAM strongly seeks the inclusion of high-standard protections in all the core areas covered by U.S. investment instruments, which have also been included in many EU member state Bilateral Investment Treaties (BITs) over the past several decades. In particular, the NAM seeks the strongest possible protections for investment agreements (between a foreign investor and a host state government), the minimum standard of treatment (including fair and equitable treatment and full protection and security), compensation for both direct and indirect expropriations, restrictions on performance requirements, provisions enhancing choice of senior management, transparency and publication of investment laws and regulations, and the free transfer of capital.

Regarding performance requirements, the NAM supports the provisions added in the 2012 Model BIT that restrict the ability of governments to condition investment on requirements to use or purchase local technology or to transfer technology. The United States and EU should also seek to strengthen such provisions to address fully growing problems around the world regarding the localization of technology and intellectual property, by clarifying that governments should not condition investment on requirements to use local R&D, intellectual property, ICT manufacturing or assembly capabilities; to transfer technology to another party involuntarily; or unnecessarily to disclose proprietary information.

Each of these core protections, including breaches of investment agreements, as well as the market-access provisions of the investment chapter should be subject to both investor-state and state-to-state dispute settlement. Unlike traditional exports of product across borders, investment requires the investor-state enforcement provisions to ensure that property and investment abroad can be assured of a neutral and fair hearing in the case of government action that harms such investment. Without the

investor-state provisions in particular, the provisions of the investment chapter would be effectively unenforceable.

The NAM strongly opposed proposals to limit investment protections lower than those contained in the 2012 Model BIT. Many such proposals were considered carefully and rejected by the United States in the Model BIT review leading to the 2012 Model BIT and should be rejected again. Indeed, many of the EU member state BITs have stronger provisions on the minimum standard of treatment and expropriation than found in the U.S. template that may better serve the objective of enhancing even stronger U.S.-EU investment.

The United States already has in force BITs with eight EU member states – Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Poland Romania, and Slovakia. From the NAM's perspective, it is important to keep strong standards with these countries, although we recognize that all of these instruments were concluded before the changes to the U.S. model negotiating text in 2004 and 2012. The NAM is looking carefully at each of these instruments, but would note as an initial matter that it is important not to lower the terms of protections for investors already in the market, particularly those investors that have investment agreements with any of those countries.

Transparency and Anti-Corruption

Manufacturers also support the inclusion of provisions promoting transparency of government policy and rulemaking, as well as provisions to improve consistency in the application of anti-corruption frameworks. Both the United States and EU Member states have generally strong transparency provisions in their own legal systems, which should be emphasized in the final agreement. In that regard, it is vital to emphasize that timely public participation is essential in both rulemaking and non-regulatory processes.

Both the United States and EU are also parties to the OECD Convention on Combating Bribery of Foreign Public Officials and have their own domestic anti-corruption frameworks. It is important that enforcement of such anti-corruption provisions is consistent across the Atlantic and in third countries. Manufacturers look forward to working with the Administration to ensure that the TTIP negotiations advance this important goal.

Cross-Border Data Flows

The rapid growth in the development and use of information and communications technologies (ICT) has been a key driver of economic growth, job creation, productivity, and competitiveness for industries across all sectors of the global economy particularly manufacturing. As a result, manufacturers are increasingly using digital platforms to reach new customers and to produce more efficiently around the world. Manufacturers rely heavily on digital data and information flows, global communication networks and cross-border flows of data and information to manage their businesses, from tracking

sales, sourcing and pricing options, and imports and exports, to managing human relations and customers.

Countries around the world are increasingly employing a host of measures to exclude or discriminate against foreign information flows and technology and some governments have blocked access to information services that are critical for data flows.

In order to compete effectively in the global market, manufacturers must be confident in their ability to maintain and move data and information securely across borders and to be able to store data outside the country. We urge TTIP negotiators to ensure that cross border data flows are permitted while ensuring that IP rights are adequately protected, and to prohibit localization requirements to use local information infrastructure to do business.

As part of these discussions, it is also important to address outstanding concerns over privacy regulation in the EU. Manufacturers continue to express concerns with the EU's General Data Privacy Regulation (GDPR), which prohibits the transfer of data to non-EU nations that fail to meet the EU's standard for privacy protection. Currently, the EU only recognizes the standards in a few countries as wholly adequate, which does not include the United States. Although the U.S.-EU Safe Harbor Framework and a few other specific agreements are important advances in addressing some U.S. concerns, they do not fully resolve the difficulties and burdensome compliance requirements that manufacturers face in moving data across borders for the efficient operation of their businesses. It is important for manufacturers that a final TTIP agreement does not add to existing burdens in this area, and rather seeks to reduce them.

Services

NAM members recognize the importance of efforts to promote and liberalize trade in services internationally given the high degree to which manufacturers rely on a wide range of services, including transportation, information and communications technology (ICT) services, testing and certification services, and energy and engineering services. We urge negotiators to achieve liberalization of services across all modes of supply, both to spur trade and investment between our two markets and to set high standards for the International Services Agreement (ISA) and other future negotiations.

Customs and Trade Facilitation

The NAM believes that a trade agreement with the EU should prioritize trade facilitation; improve coordination between customs agencies and other entities; favor importers with strong compliance records; increase government and industry collaboration; reduce differing paperwork requirements and strengthen intellectual property protections relating to imports, trade enforcement and import-safety programs.

Government and non-government organizations ranging from the WTO to the United Nations have emphasized that overly complex customs and trade procedures, requirements and practices can hugely disrupt supply chain logistics, creating costly obstacles that harm companies, consumers and, by extension, global economies. Major burdens, delays, and costs can emanate from slow customs clearance procedures; excessive requirements for customs entry documents and data; non-automated processes for the import/export/transit of goods; vague or inconsistently applied customs requirements; and rules that do not take account of risk management or reasonable penalty mitigation procedures. By disrupting global supply chains, these impediments and expenses can stifle easy market access and increase the cost of goods.

A study by the World Economic Forum released on January 22 concluded that reducing trade barriers in global supply chains could result in a nearly 5 percent increase in global GDP. The study also found that supply chain barriers make it particularly difficult for smaller businesses to enter markets abroad. Overcoming supply chain barriers often requires significant upfront investment – for example, understanding varying country regulatory requirements – and SMEs may find it difficult to generate enough revenue to compensate for these fixed costs. Reducing barriers, harmonizing customs procedures and providing clear regulations would greatly facilitate trade between the U.S. and EU.

Manufacturers often depend on imported parts, components and finished products to compete in the global market. NAM members have a strong track record of working with U.S. and foreign governments to improve supply chain security and compliance practices.

In the past decade, supply chain security programs have proliferated. Manufacturers continue to dedicate considerable resources to complying with the specific programs promulgated by the United States and EU. We encourage TTIP negotiators to ensure that companies who invest in supply chain security programs are granted mutual recognition and receive the benefits of “trusted trader” status. The immediate recognition of trusted trader status, and the concomitant extension of trusted trader benefits, offers an important, tangible facilitation benefit for the many U.S. companies that have demonstrated their strong commitment to supply chain security.

Manufacturers in the United States have global supply chains, and they source inputs from around the world – importing raw materials, parts and components on a daily basis. Regulations that create new import obligations without full consideration, in some instances, of the economic implications will have a detrimental impact on both security and competitiveness.

While customs and trade officials within the U.S. and EU have made trade facilitation a priority in the past, numerous TTIP commitments could be undertaken to further improve customs and security procedures. In particular, the NAM recommends the TTIP include commitments to advance the concept of a “single window” for

electronic transmission of customs data, harmonize clearance procedures and pre-clearance of goods prior to entry, efficiently deploy automated systems and procedures, identify common import-related data elements to avoid redundancy in processes, and streamline criteria and procedures for trusted trader programs. We also urge that the TTIP establish an enduring transatlantic trade facilitation forum involving government and business stakeholders to ensure that progress is made on ongoing trade facilitation measures and that new efforts are pursued as needed.

Strong and Effective Dispute Settlement Provisions

The NAM strongly believes that that TTIP must include state-of-the art, modern dispute settlement systems to resolve disputes between the parties. Such provisions should be binding and be comprehensively applied to all goods. It is also important that the TTIP include provisions to create an expedited dispute settlement system to ensure that disputes are resolved in commercially relevant manner.

Third Country Coordination

The High Level Working Group Report emphasized the importance of additional work that the United States and EU could do together in coordination with third country markets. There are many areas where such work is critically important, including the following:

- Promoting best regulatory practices that rely on risk- and science-based assessments, a concrete cost-benefit analysis and recognize the importance of international standards designed based on such principles. In so doing, it will also be important agreement that efforts to create a competitive advantage through having third countries adopt one standard over another is not consistent with the broad partnership that the United States and EU have agreed to undertake.
- Promoting strong protections for and enforcement of all types of IP rights in a manner that is effective and protective of innovation.
- Promoting recognition of the importance of strong market-opening, protections and fair dispute resolution for foreign investment.
- Promoting the ability of manufacturers to move data across borders consistent with strong intellectual property protections and working to oppose requirements that seek to require the use of local information technology infrastructure as a condition of doing business.
- Promoting transparency in government policy and regulatory actions and consistent and effective anti-corruption frameworks.

Manufacturers urge that such work be undertaken in consultation with the private sector, which can provide important input into priorities that will promote economic opportunities, trade and investment.

Conclusion

The above-mentioned issues are vital to address in the TTIP negotiations.

The benefits of ambitious, commercially meaningful, and successful negotiations would be substantial for both our economies, our manufacturing companies and our citizens. The NAM is committed to working with the U.S. and EU governments to achieve these crucial outcomes.

Thank you for this opportunity to present the NAM's comments.

ⁱ U.S. Department of Commerce, **Intellectual Property and the U.S. Economy: Industries in Focus** (April 2012).