

On behalf of the National Foreign Trade Council, a U.S. business association whose mission is to promote an open, rules-based trading system, I write to submit comments on the U.S.-EU High Level Working Group on Jobs and Growth in response to the notice by the Office of the U.S. Trade Representative in the Federal Register, Vol. 77 No. 7 of January 11, 2012.

The Council supports an aggressive agenda that will deepen transatlantic trade relations and reduce tariffs, non-tariff barriers and regulatory impediments between the United States and European Union. We also support enhanced transatlantic cooperation to address critical global issues and with respect to third countries. While NFTC welcomes a robust work program, these comments will concentrate on two areas of focus for the Council where the United States and EU can build on joint leadership to advance critical economic interests, promote innovation and address pressing global challenges.

Advancing transatlantic leadership on cross-border information flows

The Working Group has an opportunity to advance transatlantic cooperation and global leadership to promote open and secure flows of digital information across borders. NFTC has noted that the global trading system does not spell out a consistent, transparent framework for the treatment of cross-border flows of digital goods, services or information. Instead, businesses and individuals must deal with a patchwork of national, bilateral and global arrangements covering significant issues such as the storage, transfer, disclosure, retention and protection of personal, commercial and financial data.

Prioritizing issues related to the treatment of digital information flows would address two pressing concerns for business. First, work is needed to improve understanding and coherence between regulatory regimes in the United States and EU. In particular, divergent or incompatible policies related to privacy and security can adversely impact the ability of companies and individuals to transfer information and conduct business between the United States and Europe. Advancing common approaches to security and privacy, and improving understanding, communication and legal certainty where regulatory regimes diverge, will be critical to creating jobs and promoting innovation and growth of the transatlantic digital economy. This is particularly important given how interconnected Europe and the United States are when it comes to trade and investment. The EU and United States are each other's largest source and destination for foreign investment, a relationship that sustains millions of jobs across the Atlantic and requires the exchange of massive flows of information.

The United States and EU also have an opportunity to advance global leadership to promote open and secure flows of information around the world. Leaders should modernize global trade rules to account for the critical importance of digital information flows. The United States and the EU should work to develop a 21st Century framework of rules to support the digital economy and vigorously promote the adoption of rules in third country markets.

Efforts to improve the cross-border flows of information should build on existing government efforts, including the EU-U.S. Trade Principles for ICT Services, the OECD Internet Policy Principles, the two parties' ongoing work on e-commerce, and services trade in their respective bilateral and regional free trade agreements. They should also reflect private sector priorities, including those outlined in a recent paper, "Promoting Cross-Border Data Flows: Priorities for the Business Community," developed by NFTC and other leading American businesses and associations.

Such efforts are critical to short- and long-term job prospects and economic growth in the United States and Europe, which are the world's two largest exporters of services, accounting for about 43 percent of

world commercial services exports in 2010. Growth opportunities for the United States and the EU in cross-border trade in ICT-enabled services are threatened by the potential for restrictions on data flows. For instance, many countries are considering restrictions on the location of storage and processing for various types of data.

Businesses, entrepreneurs and educators rely on networked technologies and reliable access to information flows to improve their productivity, extend their reach across the globe, and manage international networks of customers, suppliers, and researchers. For example, financial institutions rely heavily on gathering, processing, and analyzing customer information and will often process data in regional centers, which requires reliable and secure access both to networked technologies and cross-border data flows. According to McKinsey, more than three-quarters of the value created by the Internet accrues to traditional industries that would exist without the Internet. For all of these reasons, transatlantic leadership in this area is critical.

Promoting innovation and addressing IP erosion efforts

Effective protection of Intellectual Property Rights (IPRs) is a critical driver of private sector jobs and economic growth in Europe and the United States. IP rights create value, permit companies to commercialize the fruits of their research and innovation, and have enabled U.S. and EU companies to lead the world in areas such as advanced manufacturing. Innovation and R&D are also instrumental in addressing critical global challenges, including developing and deploying advanced clean technologies to mitigate and adapt to climate changes and improving effective and affordable outcomes to global health challenges.

The United States and European Union have common interests in ensuring proper protection of IP rights, at a minimum in line with the international framework established under the World Trade Organization (WTO), and have a history of valuable joint leadership on these issues in forums including the WTO, the TEC, and the UN Framework Convention on Climate Change (UNFCCC).

Transatlantic leadership to highlight the importance of IP protection, and to draw the link between innovation and appropriate enforcement of global trade rules, is increasingly necessary to counter an effort by a small group of countries who are aggressively advocating that IP rights be severely weakened and compulsory licensing or other forms of misappropriation of technologies and innovation be permitted. These concepts have been introduced in forums including the World Health Organization, UNFCC and WTO. If pursued, they would pose great risks to the U.S. and European economies. The Working Group should exercise global leadership to support effective protection of IPRs in third countries and to explain the detrimental effects to innovation and the willingness of companies to invest and deploy advanced technologies in markets with substandard protections or enforcement.

Efforts in both of these areas – encouraging open and secure flows of digital information and promoting innovation through effective IP protection – are feasible and would build on already-established areas of cooperation between the United States and EU. Thank you for your consideration of these comments.

Sincerely,

William A. Reinsch
President

