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December 12, 2013

The Honorable Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: *Recommendations for Negotiating Priorities in the US-EU Transatlantic Trade and Investment Partnership*

Dear Ambassador Froman:

The Telecommunications Industry Association (TIA) represents manufacturers and suppliers of global communications networks through standards development, policy, and advocacy. With support from hundreds of participating companies, TIA enhances the business environment for companies involved in telecommunications, broadband, mobile wireless, information technology, networks, cable, satellite, unified communications, emergency communications, and the greening of technology. TIA is accredited by the American National Standards Institute (ANSI) as an international standards development organization.

TIA appreciates the efforts of the Administration, and in particular, the Office of the U.S. Trade Representative, to pursue trade liberalization around the world for the benefit of American workers and businesses through greater economic growth and job creation. We are pleased to see that the negotiations for the US-EU Transatlantic Trade and Investment Partnership (TTIP) have commenced and are well-underway. TIA and its member companies see great value in growing and strengthening the transatlantic commercial relationship as it represents two significantly important economies for the telecommunications sector.

The TTIP represents a trade agreement between two of the largest markets for telecommunications equipment. When taken together, the US and European markets made up nearly half of the global telecommunications equipment spending in 2012, totaling over \$2.4 trillion¹. Given the significant telecommunications market size of the United States and Europe, a comprehensive, high standard transatlantic agreement should also have positive and far reaching trade liberalizing impacts to telecommunications markets in other regions, including the fast growing Asia-Pacific and Latin American regions.

¹ Gruen and Norman, [TIA's 2013 ICT Market Review and Forecast](#), Telecommunications Industry Association, 2013

We wish to take this opportunity to build on the TIA submission to the Federal Register for the USTR “Request for Comments for the US-EU Transatlantic Trade and Investment Partnership”² by expanding on the comments and providing further detail on suggested objectives for the TTIP that are critical for the telecommunications equipment sector and the ICT industry, more broadly. We look forward to working constructively with USTR, with the goal of contributing to a TTIP that positively impacts the telecommunications sector through job creation and greater transatlantic trade and investment. For more information, please contact Danielle Coffey at (703) 907-7734 or at dcoffey@tiaonline.org, or Eric Holloway at (703) 907-7712 or by email at eholloway@tiaonline.org.

Sincerely,



Grant Seiffert
President

cc: Secretary Penny Pritzker
Chairman Tom Wheeler

Attachment

Opportunities for Advancing the Transatlantic Trade and Investment Partnership

² FRN USTR-2013-0019-0001, Telecommunications Industry Association, [Federal Register Comments for the US-EU Transatlantic Trade and Investment Partnership](#), May 10, 2013



Opportunities for Advancing the Transatlantic Trade and Investment Partnership

Reducing Tariffs

While applied tariffs for the US and the EU are generally low, there is additional action that can be taken to further eliminate tariffs on ICT products. The US and the EU are signatories to the original WTO Information Technology Agreement (ITA) that was concluded in 1996, which eliminates tariffs on a wide variety of ICT products and sub-components. In addition, both economies are active participants in the current negotiations to expand and update the product coverage of the original ITA, which is now in its 17th year. The ICT sector has proven to be a highly innovative sector, providing new technologies and associated services. Critical to the economic success of the sector and its contribution to US and EU economic growth has been the elimination of tariffs on ICT products through the ITA, and we expect to see similar benefits with a commercially significant expansion of the ITA that is concluded as swiftly as possible.

- **Recommendation:** Continue to work closely with the EU to ensure the broadest level of inclusion of US product priorities provided to USTR through the multi-association submission to USTR for the “Possible Negotiation in the World Trade Organization to Expand the Information Technology Agreement, Including Product Coverage”³.
- **Recommendation:** Commitment to ensure that all future trade agreements entered into by either party will require other parties to join the ITA and the expanded ITA, when the current negotiations are concluded.
- **Recommendation:** Consistent with the *Final Report of the High Level Working Group on Jobs and Growth*⁴, the elimination of substantially all tariffs on ICT products, including those products submitted as US industry product priorities for the expansion of the ITA.

Reducing Non-Tariff Barriers

Trade Secrets: As ICT manufacturers, vendors, and supplier are progressively facing more compelled disclosures of trade secrets as well as greater risk of their theft, the need for common approaches across jurisdictions to protect this form of intellectual property has continued to heighten. Without sufficient protection for trade secrets from jurisdiction to jurisdiction, transmission of the same both within and between organizations is hindered, negatively impacting trade and investment. While the US government largely affords trade secrets similar protections and associated legal remedies to other forms of traditional intellectual property, TIA notes the wide disparity among EU Member States in the treatment of, and remedies available to protect, trade secrets.

³ USTR-2011-0033, [Possible Negotiations in the World Trade Organization to Expand the Information Technology Agreement, Including Its Product Coverage](#), Submitted June 13, 2011

⁴ See Office of the US Trade Representative, [Final Report of the US-EU High Level Group on Jobs and Growth](#), February 11, 2013

- **Recommendation:** In the context of TTIP negotiations, the US and EU should memorialize an agreement that trade secrets be afforded adequate protections as a form of intellectual property, consistent with Section 7, Article 39 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which affords protections to undisclosed information as a form of intellectual property.

Copyright Levy System: The complex and arcane system of copyright levies applied across EU Member States seriously harms consumers through the inexact and sometimes duplicative collection of remuneration through the copyright levy systems in Member States. In addition, the current patchwork approach to copyright levies within the EU appears to be in conflict with the EU Single Market principles for the free movement of goods and services.

- **Recommendation:** With the publication of the Vitorino report⁵, the TTIP negotiations provide an opportunity to engage the EU on the elimination of copyright levies across the Member States to encourage a true digital single market.

Cross-Border Data Flows: The ability to transfer data across borders without unnecessary impediments has grown in importance for businesses and consumers as telecommunications networks have become more sophisticated and robust. Indeed, the Internet has become a vital element in many business models and has improved the lives of consumers globally. These data flows comprise intra-company data transfers, e-commerce transactions, email, as well as a host of other commercial and consumer purposes. The ability to transmit commercial data between the US and EU is critical to the transatlantic commercial relationship and unnecessary impediments to this ability will likely have detrimental effects on the continued economic growth of both parties.

- **Recommendation:** Consistent with the EU-US Trade Principles for Information and Communication Technology Services⁶ (EU-US ICT Principles), TTIP should incorporate a commitment that “[g]overnments should not prevent service suppliers of other countries, or customers of those suppliers, from electronically transferring information internally or across borders, accessing publicly available information, or accessing their own information stored in other countries”.

Local Presence Requirements for Data Centers: Just like global supply chains that are critical for the cost effective and efficient manufacture of ICT products, data centers and the information stored in these facilities rely on global supply chains for similar flexibility and cost efficiencies. Requirements to locate data centers in specific locations can lead to higher costs for businesses that operate data centers by preventing businesses the flexibility to locate data centers based on operational, cost, and security requirements. In addition, we are concerned with cloud data storage requirements in the EU that would necessitate local data processing, which when combined with the potential limitations to the cross-border flow of information, could result in significant barriers to trade for the delivery of cloud computing services. These types of requirements also create the potential for less consumer choice by preventing

⁵ António Vitorino, [Recommendations resulting from the Mediation on Private Copying and Reprography Levies](#), January 31, 2013

⁶ Office of the U.S Trade Representative, [European Union-United States Trade Principles for Information and Communication Technology Services](#), April 4, 2011

global access to cloud-based services, hinder the growth of cloud-based businesses in the US and EU, and increase the possibility of similar types of localization requirements proliferating globally.

- **Recommendation:** The US and EU should provide a clear signal to its trade partners on the importance of allowing flexibility in where data centers are located, by adapting the commitments in the EU-US ICT Principles on local infrastructure into TTIP. In particular, we note the statement in the EU-US ICT Principles that “[g]overnments should not require ICT service suppliers to use local infrastructure, or establish a local presence, as a condition of supplying services”.

Enhancing Regulatory Compatibility and Cooperation

EU-Common Export Licensing: The EU does not have a unified export licensing regime in place for commercial products that contain encryption technologies. Instead, there are separate licensing requirements for these products and technologies within each EU Member State that has a licensing regime in place. The patchwork approach creates an additional layer of regulation that also appears to be contrary to the EU Single Market principles.

- **Recommendation:** The TTIP should provide a point of engagement with the EU on establishing a single EU export license regime for commercial products with encryption technologies, thereby increasing regulatory clarity and certainty for manufacturers and suppliers of encrypted products and related technologies, while still providing an adequate level of oversight on national security issues by EU Member States.

A Common Approach to Standardization Policy: The development of voluntary, consensus-based standards remains a critically important element for innovation and the continued commercial success of the ICT sector in the US and EU. The TTIP provides an opportunity to develop an effective, common approach to conforming standardization policies that should be globally influential in promoting market-driven standards that are based on transparency, technical merit, and openness to all interested stakeholders. This alternative model is preferable to the proliferation of technical regulations that rely on indigenously developed standards that create market access barriers, undermine interoperability, and impose additional costs for US and EU businesses.

Recognizing “International Standards”: The international standards system has not remained static; particularly, the US and EU standards systems have experienced tremendous growth and development over the last 50 years as both dynamically evolved to address more and more complicated and increasingly global ICT industry needs.

TIA broadly supports the “multiple path” approach to the development of international standards. While some express the view that only certain standards bodies can produce “international standards” because they largely adhere to a national framework, TIA believes that any standard that is developed through an open, transparent process and is widely implemented on a global basis should be considered to be an international standard.⁷

⁷ Based on lengthy experience in developing standards and knowledge of standards and patent policies globally, TIA has concluded that successful international standardization policies are marked by certain general characteristics. While this is not an exhaustive list, these patent policies: (1) apply to those directly participating in the technical standardization, (2) balance the interests of all stakeholders, (3) permit patent holders to obtain a

While many of TIA developed standards are internationally accepted and used, there are a number of different standards bodies, from the most formal to the least formal, that also produce successful international standards. The success of the standards TIA and others produce is not based upon geography nor a defined process or procedure, but rather is a result of a number of factors (such as responsiveness to customer need) that impact ultimate acceptance by the broader industry. This competition and diversity among standards bodies has resulted in a dynamic ecosystem that is very valuable to the similarly dynamic ICT industry sector. Through this dynamic system, many ICT standards that have been widely used around the world reflect US-based technology solutions, and in turn have supported US competitiveness in the global marketplace. TIA is proud to be a successful developer of international standards in this ever-changing environment.

- **Recommendation:** TTIP should include recognition of the international status of standards developed by a broad range of standards development organizations.
- **Recommendation:** TTIP should include agreement that international standards should be voluntarily adopted and developed in an open, consensus-based, and transparent process with clearly defined appeal mechanisms.
- **Recommendation:** TTIP should include agreement that voluntary, consensus-based, international standards should be given appropriate preference over regional or national standards.
- **Recommendation:** TTIP should include agreement to prioritize that technical regulations be based on voluntary, consensus-based international standards that are technology neutral and developed in an open process with participation from global industry.
- **Recommendation:** TTIP should include agreement to prioritize conformity assessment procedures that are based on transparency, transatlantic cooperation, non-discrimination, and impact assessments, as well as participation of relevant stakeholders, including global industry.

Recognizing “Open Standards”: Many globally recognized standards bodies like TIA, the International Organization for Standardization (ISO); the International Electrotechnical Commission (IEC); the International Telecommunication Union (ITU); the European Telecommunications Standards Institute (ETSI); and the Institute of Electrical and Electronics Engineers (IEEE), *etc.* produce “open standards” that address many important ICT challenges in the marketplace while preserving incentives for further innovation and improvements over time. This widely accepted definition of an “open standard” is reflected by the ITU’s Telecommunications Sector⁸ (“ITU-T”) as well as the Global Standards Collaboration’s (“GSC”) Resolution GSC-12/05⁹, both of which reflect the following elements:

- The standard is developed and/or approved, and maintained by a collaborative consensus-based process;
- Such process is transparent;

RAND return on their innovation, (4) encourage bilateral negotiation of licensing terms between licensor and licensee outside of the standardization process; and, (5) provides for reciprocity when a license is offered to a licensee.

⁸ See <http://www.itu.int/en/ITU-T/ipr/Pages/open.aspx>.

⁹ See www.gsc.etsi.org.

- Materially affected and interested parties are not excluded from such process;
- The standard is subject to reasonable and non-discriminatory (“RAND”) intellectual property rights (“IPR”) policies which do not mandate, but may permit, at the option of the IPR holder, the licensing of essential intellectual property without compensation; and
- The standard is published and made available to the general public under reasonable terms (including for reasonable fee or for free).

At times, there have been attempts to redefine “open standards” in a way that would disrupt the virtuous processes noted above and the resulting balance of interests in that process. The concept of “open” has sometimes been equated with patented technology that is “free” (as in without payment) or “free to use freely” (as in without payment and without any restrictions). TIA submits that these proposed redefinitions are being used to advocate policy changes that would undermine the rights of those who have invested in the development of standardized technologies that enable the functioning of countless sectors of the US and EU economies.

Because technological capabilities and innovations most often result from substantial investments in research and development (“R&D”), if patent holders in standards-setting activities are expected to give away or waive their patent rights there are likely to be significant adverse results, including that technology leaders will reduce or cease participation in voluntary standards-related activities; or that individuals and organizations will not invest in the development of next-generation technology in the technical areas subject to standardization, creating innovation “dead zones” in those areas.

These types of adverse results would cause the standardization system, its open, voluntary and consensus-based process, and ultimately, the resulting open standards, to be less effective or successful than they are today. Moreover, TIA believes that these results would have a negative impact on global respect for intellectual property that helps stimulate innovation and develops local economies around the world.

- **Recommendation:** TTIP should include agreement that “open standards” are developed and maintained using collaborative, consensus-based, transparent processes; and that such standards are subject to RAND conditions that do not mandate licensing without compensation and are available to the public at a reasonable cost.

Common Approaches and Cooperation on Cybersecurity: The TTIP should ensure that cybersecurity policies allow for continued success of innovative technologies in the global marketplace, enabled through (1) participation in public-private partnerships to improve coordination and risk management and (2) the development of internationally-used standards and best practices, assurance programs, and conformity assessment regimes. The TTIP should recognize that the global nature of the ICT industry requires a global approach to address cybersecurity concerns, and that a global supply chain can only be secured through industry-driven adoption of best practices and global standards. Furthermore, many countries look to the US and EU to set an example for effective cybersecurity policies. Due caution should be used in any development of cybersecurity-related policies in the TTIP, as these policies should effectively serve as a global approach.

- **Recommendation:** For both public and private organizations, the TTIP should encourage the development of and reliance on international, voluntary, open, and consensus-based standards, best practices, assurance programs, and conformity assessment regimes.

- **Recommendation:** To avoid unnecessary impediments to transatlantic trade, any approach taken in TTIP related to cybersecurity should involve: international cooperation; significant engagement with global industry; reliance on voluntary, open, and consensus-based standards; and, avoidance of policies that would put governments in a position to determine the future design and development of technology.
- **Recommendation:** Transatlantic and broader global cooperation should be a priority in cybersecurity matters in order to prevent the possibility of geographic-specific standards, technical regulations, or requirements, which would put at risk the global competitiveness and innovation of the ICT sector.

Electronic Labeling: The US and EU are home to some of the largest and most competitive global ICT equipment manufacturers whose products are sold around the world. This presents unique challenges to ensuring governments, consumers, and other stakeholders in a diverse marketplace have the ability to readily determine whether a device has been properly certified, and to obtain additional information about a device as efficiently as possible. Historically, the use of physical markings or labels have played a key role in providing this important information, but the continuous evolution of industrial design (*e.g.* smaller smartphones) and multiple regulatory environments has led to increased costs and difficulty in ensuring all relevant markings or labels are affixed in an efficient and convenient manner for the user of the device. An effective solution to this problem is the non-exclusive use of electronic labeling, which allows consumers and other users access to easily readable and prominently displayed information about each device. This information should include required regulatory markings and other important information including proper device care, electronic recycling programs, and warranties.

Within the US, the Federal Communications Commission (FCC) is already examining a proposal to allow for the optional use of electronic labeling for ICT equipment manufacturers initiated by TIA¹⁰. In addition, the EU Parliament is considering the inclusion of an electronic labeling allowance in its revision of the radio and telecommunication terminal attachment equipment (R&TTE) Directive. Furthermore, in addition to other existing efforts in the allowance of electronic labeling internationally¹¹, 3GPP¹² has recently completed a revision of standard interfaces which provide a means of displaying electronic labels.¹³

¹⁰ TIA's Petition for Rulemaking requesting the optional allowance of electronic labeling for ICT equipment, along with supportive statements from other stakeholders, can be viewed on the FCC's webpage for the relevant open rulemaking docket. See <http://apps.fcc.gov/ecfs/proceeding/view?name=RM-11673>.

¹¹ For example, The Australian Communications and Media Authority's four device and equipment labelling notices have been amended to allow suppliers the option of using electronic labelling as an alternative to the traditional labelling of the surface of the device. See <http://www.acma.gov.au/Industry/Suppliers/Supplier-resources/Record-keeping/electronic-labelling-equipment-types-i-acma>.

¹² 3GPP is an alliance of telecommunications standard development organizations that provides members with an environment to produce reports and specifications that define 3GPP technologies. See <http://3gpp.org/About-3GPP>.

¹³ See Samsung, NEC, Nokia, RIM, Motorola Mobility, "Adding to the presentation of e-marking", S 1-122440, 3GPP TSG-SA WG I Meeting #59, Chicago, USA, 30 July-3 August 2012. 3GPP has specified the use of MMI Command *#07# within 3GPP TS 22.030 for the purposes of displaying this regulatory information.

Transatlantic regulatory cooperation in the development of optional electronic labeling for ICT equipment would help to ensure that regulatory policies are compatible and avoid unnecessary regulatory requirements through divergent regulations for electronic labeling.

- **Recommendation:** Under the theme of regulatory cooperation, the TTIP should provide a mechanism for discussions between the US and EU governments on allowing the optional use of electronic labeling regulations for ICT radio and terminal equipment.
- **Recommendation:** The TTIP should utilize this opportunity to leverage transatlantic cooperation on electronic labeling and memorialize its agreements that such an allowance would contribute to compatible regulations and avoid unnecessary regulation as the US, EU, and other countries continue the process of examining the implementation of optional electronic labeling for ICT equipment.

Health ICT and Realizing the Potential of Patient-Generated Health Data: The digitization of health care is a major growth area for “machine-to-machine” (M2M) communications that enable the timely sharing of “patient-generated health data” (PGHD). There are direct societal benefits to enhanced health ICT M2M communications, such as providing hospitals with the location of critical mobile equipment, reducing the time it takes health care workers to access that equipment in an emergency, increasing the efficiency of emergency services, and remote monitoring in home settings, among other direct benefits. All of these described benefits are effects that directly correlate with the inclusion of PGHD, particularly via mobile medical applications, when integrated into and allowed by health care systems.

Transatlantic cooperation in the areas of eHealth and health ICT are already taking place under the auspices of the Transatlantic Economic Council.¹⁴ While current areas of cooperation focus primarily on “electronic health records” (EHRs) interoperability and workforce development, there is an opportunity to expand this regulatory cooperation to address the full potential of eCare, including remote monitoring and PGHD. Based on the potential benefits that remote monitoring and PGHD can provide to the hundreds of millions living in both the US and EU, TIA believes that expanding beyond simply the interoperability of EHRs to realize the potential benefits of the fully-supported health ICT ecosystem – translating to a broadening of focus to the full eCare concept in both governments and their collaborative efforts. This broader focus would be a noteworthy step towards encouraging innovation and investment into new technologies throughout and between the US and EU that will improve care, reduce hospital visits, and save lives. TIA believes that there are various specific steps under the broader TTIP concept of regulatory compatibility and cooperation that should also be addressed to streamline regulatory compliance, particularly for next generation medical applications.

- **Recommendation:** Under the theme of regulatory cooperation, the TTIP should provide a mechanism for discussions between the US and EU governments to further align priorities and regulatory approaches in the healthcare space to encourage the use of PGHD.
- **Recommendation:** Under the theme of regulatory compatibility and cooperation, the TTIP should prioritize compatibility of approval and registrations processes, and post-market tracking of medical devices. This should specifically include well-developed concepts of risk-management

¹⁴ [Transatlantic eHealth/health IT Cooperation Roadmap](#), February 2013

that distinguishes between non-medical/low-risk medical uses for which enforcement is not necessary and those uses which present real potential for patient harm.

- **Recommendation:** Under the theme of regulatory compatibility and cooperation, the TTIP should prioritize analogous regulatory compliance guidance for emerging innovative medical applications, specifically for mobile medical applications and the management of cybersecurity in medical devices.¹⁵

Energy Efficiency: The ICT industry is facing numerous and often disparate regulatory and voluntary approaches in the EU, the US, and in individual US states to address and improve the energy efficiency of ICT equipment. In addition to negatively impacting the global nature of the ICT market, a patchwork, regulatory-driven approach to the energy efficiency of ICT products hampers the ability of ICT companies to innovate and bring to market next generation and increasingly energy efficient technologies. Industry has made and continues to make significant investment and progress in improving the energy efficiency of ICT equipment. Continued gains in energy efficiency will be best achieved through the utilization and reliance on voluntary, consensus-based industry standards. Reference to common definitions and common standards, such as those developed by the international ENERGY STAR program will help enable global commerce.

- **Recommendation:** TIA recommends that under the theme of regulatory compatibility the TTIP should recognize energy efficiency efforts that utilize and rely on existing international voluntary, consensus-based industry standards, definitions, and test procedures rather than develop new unique standards or procedures.

¹⁵ The US Food and Drug Administration has already issued such guidance.