



TELECOMMUNICATIONS
INDUSTRY ASSOCIATION

1320 N. Courthouse Rd., Suite 200
Arlington, VA 22201 USA
www.tiaonline.org

Tel: +1.703.907.7700
Fax: +1.703.907.7727

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Douglas M. Bell
Chair, Trade Policy Staff Committee
1724 F Street NW
Washington, DC 20508

RE: Docket Number USTR-2013-0019, Request for Comments for the U.S.-EU Transatlantic Trade and Investment Partnership

Dear Mr. Bell:

The Telecommunications Industry Association (TIA) appreciates the opportunity to submit comments regarding the intent of the Administration to enter into negotiations with the European Union (EU) for a Transatlantic Trade and Investment Partnership (TTIP).

TIA represents the global information and communications technology (ICT) manufacturer, supplier, and vendor industry through standards development, policy initiatives, business opportunities, market intelligence, and networking events. With support from approximately 500 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.

Overview

TIA supports the objective of entering into negotiations with the EU to conclude a comprehensive, high-standard agreement that will address a broad range of trade and investment liberalization goals that will result in greater transatlantic trade and contribute to job growth here in the United States and the EU. In particular, we reference the *Final Report of the High Level*

*Working Group on Jobs and Growth*¹, as a hallmark for providing an appropriate level of ambition that will contribute to the shared objective of enhancing growth in transatlantic trade through a TTIP by addressing areas including (1) the elimination or reduction of substantially all tariffs; (2) the elimination or reduction of barriers to trade to trade in goods, services, and investment; (3) significant improvement in the compatibility of regulations and standards; and (4) the elimination or reduction of unnecessary “behind the border” non-tariff barriers.

While the elimination or reduction of tariffs will provide a significant economic impact for transatlantic trade, comprehensively address non-tariff barriers in a TTIP will likely provide a greater long term benefit in comparison to the elimination of tariffs. This point was underscored in the *Final Report of the High Level Working Group on Jobs and Growth*, which included in its recommendations of potential options for expanding trade and investment through a TTIP, the “elimination, reduction, or prevention of unnecessary “behind the border” non-tariff barriers to trade *in all categories* [emphasis added]”.

TIA also notes that the *European Union-United States Trade Principles for Information and Communication Technology Services*² (EU-U.S. ICT Principles) will provide another practical starting point for a TTIP. By utilizing existing, mutually agreed-to principles as a baseline and looking for creative approaches to enhance trade liberalization in the ICT sector, a TTIP will be well-positioned to look for areas where additional progress can be made to address behind the border barriers affecting the sector.

The economic benefits of addressing behind the border barriers for ICT products will accrue not just to the ICT sector, but also the broader transatlantic commercial environment. This multiplier effect of the ICT sector is well documented; for example, in 2009, the ICT industry contributed \$1 trillion to U.S. gross domestic product (GDP), or 7.1 percent of GDP, including \$600 billion from the sector itself and \$400 billion in benefits to other sectors that rely on ICT.³ Due to the importance of the ICT sector as an economic multiplier, we would urge the

¹ See Office of the U.S. Trade Representative, [Final Report of the U.S.-EU High Level Group on Jobs and Growth](#), February 11, 2013

² See Office of the U.S Trade Representative, [European Union-United States Trade Principles for Information and Communication Technology Services](#), April 4, 2011

³ See Shapiro & Mathur, [The Contribution of ICT to American Growth, Productivity, Jobs and Prosperity](#), September 2011

United States and EU to look for creative approaches to addressing existing behind the border barriers affecting the ICT sector.

For example, the complex and arcane system of copyright levies applied across member states seriously harms consumers. With the publication of the Vitorino report⁴, there should be some discussion on how to eliminate levies across the EU to encourage a true digital single market. Additionally, there is a growing realization that the free flow of data across borders is a critical element to the transatlantic commercial environment. A TTIP should address the need to ensure that cross-border data flows are not unnecessarily impeded with minimal allowances for exceptions. Given the vast amount of data that is exchanged between the United States and EU as well as the objective of a TTIP to raise global standards for the trade environment, the free flow of cross-border data should be a key objective of a TTIP.

In addition to the important bilateral trade liberalization efforts in a TTIP, we support the aim of the United States and the EU to establish higher standards for rules and principles that could be applied in future trade agreements around the world and to the multilateral trading system through a TTIP. This goal would expand upon existing cooperative actions between the United States and the EU; for example, the efforts to successfully conclude a commercially significant expansion of the WTO Information Technology Agreement product list.

Impact of a TTIP on the Telecommunications Sector

We see significant potential for a TTIP to increase transatlantic trade of telecommunications goods and services. As the two largest telecommunications markets in the world, the benefits of a comprehensive agreement will likely have a significant commercial benefit to the United States and Europe. In 2012, telecommunications spending in the United States reached \$1.17 trillion and \$1.24 trillion in Europe, making up almost half of the \$4.90 trillion global telecommunications market.⁵ Given the significant telecommunications market size of the United States and Europe, a comprehensive, high standard transatlantic agreement

⁴ António Vitorino, [Recommendations resulting from the Mediation on Private Copying and Reprography Levies](#), January 31, 2013

⁵ Gruen and Norman, [TIA's 2013 ICT Market Review and Forecast](#), Telecommunications Industry Association, 2013

could have positive and far reaching trade liberalizing impacts to telecommunications markets in other regions, including the fast growing Asia-Pacific and Latin American regions.

The telecommunications sector provides goods and services that often act as economic and commercial multipliers in developed and developing economies. The World Bank has estimated that, all else being equal, a high income economy can expect to see a 1.21 percent increase in per capita GDP growth for every one 10 percent increase in broadband penetration.⁶ From a commercial perspective, the United States and the EU have seen the continued development of business models that depend on a robust fixed and wireless broadband infrastructure – examples include the online sales of physical goods and digital goods, the increased use of cloud computing by enterprises and consumers, and the tremendous growth in the use of smartphones in the United States and the EU. Importantly, a TTIP would be well-positioned to enhance these and other benefits related to ICTs by eliminating or reducing tariffs and addressing non-tariff barriers affecting telecommunications sector, which will in turn contribute to reducing the cost of telecommunications infrastructure.

Addressing Non-Tariff Barriers

TIA also welcomes the stated goal to pursue new and innovative approaches to reducing the adverse impact of non-tariff barriers (NTBs) on trade and investment, and in particular, we would urge a focus on reducing unnecessary regulatory costs and delays with regard to the telecommunications sector. We would also note the potential global impact that a TTIP can make to help inform global norms through regulatory cooperation and the development of common regulatory approaches that have the potential to reduce unnecessary obstacles to trade in other markets.

One potential starting point in the area of developing more common regulatory approaches through a TTIP would be the 1998 Mutual Recognition Agreement (MRA) that covers a range of product categories, including telecommunications products.⁷ The MRA specifies the conditions for which the United States and the EU will accept or recognize the

⁶ World Bank, [Information and Communications for Development 2009: Extending Reach and Increasing Impact](#), 2009

⁷ See National Institute of Standards and Technology (NIST), [Agreement on Mutual Recognition Between the European Community and the United States of America](#), 1998

results of conformity assessment procedures produced by the other party's conformity assessment bodies or authorities in assessing conformity to the importing party's requirements and to provide for related cooperative activities. Existing regulatory cooperation mechanisms like the U.S.-EU MRA could be a useful foundation to enhance regulatory cooperation and to develop common regulatory approaches that will lower the trade transaction costs for the telecommunications sector.

An example of an NTB that could be address in a TTIP is the lack of a single EU-wide import and export license regime for encrypted products and cryptographic technologies that are commercially available. Instead, there are separate licensing requirements for these products and technologies within each EU member state that has a licensing regime in place. A common approach through a single EU import and export license process would increase regulatory clarity and certainty for manufacturers and suppliers of encrypted products and related technologies, while still providing an adequate level of oversight by EU member states. Security remains a significant concern to businesses and consumers alike, and by developing a common approach within the EU to import and export licensing requirements for these products and technologies, businesses and consumers in the EU and United States will benefit through potentially lower costs and increased availability of these critical products and technologies.

Of great benefit in reducing NTBs, a TTIP could set global principles identifying (i) the limited circumstances when technical regulations are needed in the ICT sector, and (ii) the even rarer occasions when such technical regulations need not be performance based, but can justifiably be prescriptive (*i.e.*, specific technology mandates). As with other strategic industries, the telecom sector has witnessed in the BRICs⁸ a recent increase in the use of prescriptive technical regulations (*e.g.*, requiring the use of specific encryption algorithms) that can create market access barriers, undermine necessary interoperability, and impose additional costs.

Areas of Potential U.S.-EU Cooperation

A TTIP provides an important opportunity to further enhance U.S.-EU cooperation to establish higher standards for rules and principles that could inform future efforts to improve the

⁸ The BRICs are Brazil, Russia, India, and China

global trading environment. Cooperation between the United States and the EU is needed to enhance trade secret protection globally, perhaps by establishing some best practices that could effectively address the rapid rise in cyber theft. These best practices also should address the increase in government demands for excessive confidential information that are being made in conjunction with product certification or approval schemes, which our industry also has experienced.

A TTIP should promote the principle that governments should adopt limited, market-based regulatory policies to encourage widespread adoption of affordable, high quality broadband, and where necessary, using only targeted, competitively neutral-subsidies. As a limited and increasingly scarce resource around the world, the United States and EU should promote commercial spectrum allocation policies that are objective, timely, transparent, and non-discriminatory, with the goal of fostering competition and innovation. Key principles to enable the open and innovative use of spectrum include:

- Expediently allocating and assigning all available spectrum using impartial, market-based mechanisms on service-flexible, technology-neutral terms;
- Regulating interference using reasonable, objective, output-oriented parameters;
- Eliminating regulatory and legal barriers to entry;
- Assigning large, long-term, aggregatable licenses;
- Freeing government-used spectrum for private commercial uses where possible;
- Giving existing licensees service and technology flexibility to create incentives to move spectrum to new, more highly valued uses;
- Avoiding undue limitations on applications and technologies that use spectrum, other than as necessary to mitigate harmful interference; and
- Refraining from imposing spectrum or other fees on private licensees.

Conclusion

TIA appreciates the opportunity to share its initial views regarding the intent of the United States and the EU to enter into negotiations for a TTIP. We look forward to further engagement throughout the consultative processes for this undertaking, and to future

opportunities to submit suggestions and ideas. If you have further questions, please contact Eric Holloway, Director for International and Government Affairs at eholloway@tiaonline.org.