



Before the United States Trade Representative

Re: Docket USTR-2013-07430

Re: Public Comments for the proposed Transatlantic Trade and Investment Partnership (TTIP)

Date: May 10, 2013

Comments of TechAmerica

VIA EMAIL

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By Federal Register notice dated April 1, 2013, the United States Trade Representative (USTR) solicited comments from stakeholders regarding ways the Transatlantic Trade and Investment Partnership (TTIP) could expand bilateral free trade and investment with the EU. USTR is seeking input from stakeholders on ways to enhance transatlantic trade in goods through the reduction of tariff and non-tariff barriers, as well as through enhancing regulatory cooperation and standards coordination between the EU and the US. USTR is also seeking ways to develop rules and principles on global issues of common concern. TechAmerica is pleased to respond to this notice and to offer our industry's perspective on several ways the United States could ensure stronger trade ties with the EU, and minimize the disruption and costs of regulatory differences.

TechAmerica is the leading voice of the technology industry in Washington, D.C. and throughout the US. In addition, we have a strong voice through TechAmerica Europe on technology regulatory issues in the EU. In the US we represent premiere technology companies from small to large enterprises who serve both the public and private customer base of the economy. Our members comprise the industry's largest advocacy organization, and have worked to ensure our voice is heard at both the grassroots as well as the global level. We have offices in five major technology regions in the US, a shared-office in China (USITO), as well as Brussels where our TechAmerica Europe office is located.

The high-tech industry, while a significant sector in size and employment in both the US (5.7 Million jobs¹) and EU (2.4 million jobs²) it is also critical in terms of its competitive leadership role. It invests more heavily in R&D than all other industry sectors³ spurring innovations that help to boost productivity, lower consumer costs, and increase employment across all industries. At the same time, trade is the lifeblood of the high-tech industry, as most technology companies depend on exports for the majority of their revenues.

Tariff & Trade Barriers

Most tariffs on information and communication technology (ICT) goods were eliminated through the Information Technology Agreement (ITA) that was concluded in 1996. The US and EU were strong drivers of this seminal agreement that now has 74 signatories and has helped to spur ICT trade globally with a subsequent impact on innovation and economic growth which now encompasses 97% of world trade in ICT products. From 1996 to 2008, both exports and imports of ICT products nearly tripled at an average rate of 10 percent annually, from \$1.2 trillion to \$4.0 trillion.⁴ Now, with the ITA agreement over 15 years old, there is a need to expand the agreement's product coverage to incorporate new ICT products that have evolved since its inception.

¹ [Cyberstates 2011](#), TechAmerica Foundation, Yearly High-tech Sector Analysis

² European Commission High Tech Employment Statistics, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/High-tech_statistics#Employment_in_high-tech

³ The 2010 EU Industrial R&D Investment Scoreboard European Commission JRC/DG RTD

⁴ 15 Years of the Information Technology Agreement, WTO, p. 50 - 63
http://www.wto.org/english/res_e/publications_e/ita15years_2012full_e.pdf

In conjunction with the High Tech Trade Coalition, TechAmerica submitted comments to USTR on June 13, 2011, containing a proposed list of products for expanding ITA coverage.⁵ We are continuing to discuss this product list with representatives of USTR in an effort to refine this list further. The US and the EU should work together to expand the product coverage of the ITA. We hope this initiative can be finalized through a new agreement in 2013. Additionally, the US and EU should lead in seeking to expand the list of signatories to the ITA.

TechAmerica strongly supports continuing the moratorium on electronic transmissions duties as noted in comments we submitted to USTR in October 2011.⁶ The US and the EU supported the extension of the World Trade Organization (“WTO”) moratorium on duties on electronic transmissions which was recently extended until 2013 in the December 2011 WTO Ministerial. Our industry believes duty-free treatment of electronic transmissions is an important contributor to the growth of trade in information technology products and services at low cost.

The US and the EU lead the world in the export of services. Additionally, our two economies are each other’s most important trading partners for knowledge-based services exports in areas such as business consulting, telecommunications, computer and information services. Given the “deep transatlantic connections” of EU-US services trade, which has fueled our competitiveness in this sector, it would make sense for the EU and the US to focus bilateral trade liberalization efforts in this area. A 75% reduction of services tariffs would yield almost \$13.9 billion annually for the EU and \$5.6 billion annually for the US, according to a recent transatlantic study done by Johns Hopkins.⁷

These services are often delivered around the world through advanced communication networks. Therefore, growth opportunities for the US and EU services exports may be hindered by the growing specter of restrictions on cross-border data flows. Restrictions on storage and processing for various types of data are beginning to proliferate and the US and EU must work together to avoid such restrictions internally and address these restrictions externally, which are often put forward under the auspices of regulations to protect national security, privacy, financial security, as well as other safeguards, and thereby fall beyond the bounds of existing trade agreements.

Since the signing of the first set of the ICT principles⁸ between the US and the EU in April of 2011, both economies continue to lead the world in promoting modern guidelines that address the roadblocks to innovation. Therefore, we urge negotiators to use these principles to incorporate language into the TTIP that would prevent the localization of infrastructure, promote the free flow of information, and increase regulatory transparency.

It is in the interest of both the US and the EU to modernize the approach to service trade agreements to address cross-border data issues by making commitments on a “negative list” basis, such that any service not specifically excluded is covered, therefore furthering innovation. These issues need

⁵ Letter submitted by TechAmerica and other High Tech Trade Coalition members to USTR on June 13, 2011: <http://image.techamerica.us/lib/fec3167273600275/m/2/USTechIndustrySubmissiontoUSTRonITAEExpansion061311.pdf>

⁶ Letter submitted by TechAmerica and other High Tech Trade Coalition members to USTR on October 25, 2011: <http://image.techamerica.us/lib/fec3167273600275/m/3/HTTCGlobaleCommerceDeclarationLetter102511.pdf>

⁷ *The Transatlantic Economy 2011*, Daniel S. Hamilton and Joseph P. Quinlan, Center for Transatlantic Relations, Johns Hopkins University, Paul S. Nitze School of Advanced International Studies.

⁸ European Union – United States Trade Principles for Information and Communication Technology Services, April 4, 2011; http://www.ustr.gov/webfm_send/2780

to be included in future trade agreements whether at the bilateral, multilateral or WTO level. If the US and the EU can cooperate to forge a trade agreement in this area, it would set a standard that could serve as a model for the rest of the world.

Outlined below are TechAmerica's recommended general negotiating objectives for market access and customs related provisions in all bilateral and regional FTAs. Each provision includes a general description, an example (where possible), and specific recommendations. In efforts to further liberalize trade and create a simplified trading environment for both government and industry, we strongly urge US trade negotiators to adopt the recommendations below and secure them as objectives in ongoing and future FTA negotiations.

I- TARIFF BARRIERS TO TRADE

I. A Tariff Reduction/Elimination

Many countries continue to assess duties on, for example: information and communications technology (ICT) products, consumer electronics, medical equipment, and industrial safety equipment. The elimination of duties on, among others: all ICT products, infrastructure equipment, scientific instruments, medical equipment, and industrial safety equipment designed to provide a safe working environment for machine operators, is important to TechAmerica members.

Recommendations:

- Require all potential FTA partners to become participants in and duly notify their acceptance of the WTO ITA and seek immediate staging of benefits.
- In addition to expanding the number of participants to the agreement, agree to reduce / eliminate existing tariffs on ICT products not currently covered by the WTO ITA.
- In the event that not all potential FTA partners are willing to become participants in and duly notify their acceptance of the WTO ITA, secure – at minimum – a commitment to the immediate staging of duty elimination on all ICT products, consumer electronics, medical equipment, electrical and scientific instrument products, and industrial safety equipment. See Section V below, which provides a complete list of Harmonized System (HS) classification codes for immediate reduction/elimination as well as a list of products that should be afforded duty free treatment wherever classified.

I. B Tariff Treatment for Goods Entered for Repair or Alteration

Not all potential FTA partners may permit the duty-free re-entry of goods for repair or alteration.

Recommendations:

- Secure a binding commitment with all FTA partners to allow the duty-free entry of goods (1) re-entered into a territory once they have been exported for repair or alteration; or (2) imported temporarily from the territory of another partner for repair or alteration. This duty suspension applies irrespective of the origin of the goods, or whether or not such repair or alteration could be performed in the country of export, so long as the repair or alteration does not (1) destroy the essential characteristic of the good; (2) create a new or distinct commercial good; or (3) result in the transformation of an unfinished good to a finished good.

II- CUSTOMS BARRIERS TO TRADE

II. A Tariff Current Version of the Harmonized System Nomenclature

The report from the 51st Session of the World Customs Organization (WCO) – Harmonized System Committee (HSC) states that there are 146 Contracting Parties to the HS Convention. 95 Contracting Parties have notified the Secretariat of their implementation of HS 2012 as of March 2013. Full and timely implementation of the current version of the HS is important. A consistent and up-to-date means to classify goods is important to TechAmerica member companies.

Recommendations:

- Seek accession of non-Contracting Parties to the International Convention on Harmonized Commodity Description and Coding, commonly referred to as the HS Convention;
- Urge implementation and application of current HS. At present the HS2012 is in force.
- Mandate the use of the current HS in force at the time the FTA enters into force (i.e. Implementation of an agreement in 2013 would necessitate the use of the HS2012).
- Provide a mechanism to ensure that market access benefits achieved under any negotiation are not negatively impacted by the conversion from one iteration of the HS to the next. The next version of the HS will go into force in January 2017.

II. B Tariff Customs Fees (i.e., Merchandise Processing Fees)

Governments around the world continue to assess charges other than Customs duties on imports at international borders.

Example: All imports entering the US are assessed a Merchandise Processing Fee (MPF). However, under certain FTAs, such as the US - Singapore FTA, MPF is waived for qualifying goods.

Recommendation:

- Seek elimination of charges other than Customs duties that are assessed at international borders, for example MPF. For the United States, this can be achieved by seeking an expansion of current benefits for existing preferential programs (e.g., US-Singapore FTA) to all FTAs.

II. C Global Security Standards

Security of the international supply chain is a priority for Customs administrations and companies doing business internationally. Since 2001, respective Customs administrations, the WCO, and other organizations have undertaken the development of a wide array of security initiatives geared towards securing the supply chain and facilitating the flow of goods across borders. For industry, the proliferation of country specific requirements makes compliance difficult and costly.

In 2004 the WCO was tasked with developing an international standard to secure and facilitate trade. The WCO International Framework of Standards to Secure and Facilitate Global Trade (herein referred to as the “Framework”), adopted by the WCO Council in July 2005, is built on

four core elements, rests upon the Customs-to-Customs and Customs-to-Business network pillars, and is closely tied to a number of trade, security and facilitation measures including the WCO Revised Kyoto Convention and Customs Data-Model (formerly the G-7 initiative).

Recommendations:

- The FTA negotiations should: (1) seek to promote the adoption and uniform implementation of the Framework by all partners; and (2) should encourage participants to address the issue of mutual recognition of existing country security programs such as C-TPAT and Authorized Economic Operator programs.

II.D Origin

II.D.1 Documentary Proof of Origin

Many countries maintain burdensome proof-of-origin requirements. Such requirements increase costs, administrative burden, time-to-market, and documentation requirements for industry.

Example: Many countries require that certificates of origin be certified by a specified body (e.g., local Chamber of Commerce).

Recommendations:

In efforts to reduce the impact to industry and facilitate cross-border trade, US negotiators should work to ensure that the Preferential Rules of Origin (PRoO) in the FTA:

- ***Eliminate Requirements for Certifying Bodies:*** A certificate of origin, prepared by the manufacturing and/or shipping entity provides sufficient evidence of the stated country of origin for the specific product. This certificate attests to the country of origin of a particular product and the fact that the particular product meets the country of origin requirements of the specific preferential agreement being utilized. As a result, the use of certifying bodies (e.g., local Chamber of Commerce) to authenticate the certificate of origin should be eliminated.
- ***Eliminate Certificates of Origin:*** Certificates of origin should be eliminated in favor of a simple statement of origin on existing documents (e.g., invoices). An additional piece of paperwork has no probative value.

II.D.2 Preferential Rules of Origin

PRoO are a key component of preferential trade agreements today. Rules of origin are used to obtain/secure preferential treatment by the importing company or country. The global environment in which the ICT industry operates, the proliferation of FTAs, and the development of agreement specific rules make the administration of PRoO a complex, burdensome and costly process for industry.

Recommendations:

In efforts to reduce the compliance costs and associated administrative burden to industry, US trade negotiators should work to ensure that the PRoO in the FTA:

- 1) **Promote the Idea of Uniform Preferential Rules of Origin:** Support, to the greatest extent possible, a uniform set of PRO based on a qualifying change in tariff classification (the approach under the NAFTA). Doing so will promote uniformity in the PRO of the different bilateral and regional FTAs to which the US is party.
- 2) **Allow for Flexibility:** PRO should allow for flexibility by providing companies the opportunity to propose changes to specific PRO based on their experience since the NAFTA was implemented.
- 3) **Avoid Value Content Thresholds:** Rules based on “value-add” percentages compel ICT companies to conduct comparisons of labor, material, overhead and other costs with the total value of a good on a product-by-product basis. Value-add thresholds greatly complicate origin determinations in the ICT industry because they require tracking of components and their relative values through ever-changing global operations; indeed the origin content of a product can vary by unit produced. Currency exchange or other fluctuations affecting the cost of product inputs add to this complexity.
- 4) **Avoid Process-Based Rules:** Rules based on prescribed levels of processing are burdensome given their highly technical nature (i.e., justifying origin with detailed descriptions of production processes), their propensity for obsolescence, and the need to obtain new legal requirements or interpretation when changes to processes occur.

II. E Trade Facilitation and Customs Modernization

II.E.1 Revised Kyoto Convention

Some countries continue to maintain outdated, inefficient, country specific and manual Customs processes and procedures. The International Convention on Simplification and Harmonization of Customs Procedures (Revised), commonly referred to as the Revised Kyoto Convention or RKC, encompasses all Customs processes and procedures that constitute a modern Customs administration. The WCO Council adopted the revised Kyoto Convention in June 1999 as the blueprint for modern and efficient Customs procedures in the 21st century. The RKC entered into force on February 3, 2006. Once implemented widely, it will provide international commerce with the predictability and efficiency that modern trade requires. As of June 30, 2012, there were 81 contracting parties to the RKC, including the United States.

Recommendations:

- Continue to promote adherence and accession to the Convention by non-Contracting Parties.
- Seek inclusion of Revised Kyoto Convention provisions in the FTA including, among others:
 - **Codes of Conduct for Customs Officials:** Customs administrations should work with one another, particularly in the case of border offices, to coordinate hours of operation, examinations, and clearance processing responsibilities.
 - **Compatible Electronic Data Interchange (EDI) Systems and Common Data Elements:** Under the Convention, Customs: will establish automated systems, including EDI systems, that will allow for electronic data submission prior to arrival of goods and have the capacity for risk management procedures; should exchange electronic information with other agencies, other customs administrations, and the trade community for compatibility purposes; should establish consultative mechanisms with the trade community in planning and design of automated

processes; and will adhere to minimum data requirements and a certain format for goods declarations.

- **Customs Information Dissemination:** Ensure that high-quality, clear Customs information (regulations, rulings, decisions) is available to all interested parties (trade and industry groups, forwarders and brokers, and other agents who transact customs business) – preferably via the Internet. Establish consultative mechanism with trade as effective means of communication.
- **Express Shipments:** Implement procedures to expedite the clearance of *all* goods and use risk management to maintain appropriate control and customs selection for express shipments.
- **Risk Analysis/Targeting Methodology:** The Convention requires Customs to establish a comprehensive risk management system to focus on the high-risk trade elements and simultaneously provide facilitation to compliant traders.
- **Simplified Procedures for Low Value Shipments:** Establish and specify minimum amounts, below which duties and taxes will not be collected, and allow oral declarations in some cases. Develop procedures for submission of electronic documentation.
- **Temporary Admission:** Establish temporary admission procedures with total conditional relief from import duties and taxes. Goods are to include trade exhibition/fair goods, professional equipment, containers and similar items imported in connection with a commercial operation, and other goods as determined by customs.

II.E.2 Tariff Classification

The World Customs Organization reviews the HS nomenclature on an ongoing basis. The 3rd review cycle for the HS focused on the technology chapters of the HS, which were significantly revised to take into account advances in technology and the development of new products. These changes and other changes resulting from the 3rd review cycle became effective January 1, 2007. The nomenclature is currently undergoing the 5th review cycle and amendments will go into force in January 2017.

Emerging technologies mean that tariff classification can be and will continue to be difficult, ambiguous, time consuming, and country specific. In particular, for emerging ICT products, comparative functional analysis is required to assign sustainable tariff classification under principal function, or principal use analysis. These techniques require discipline in the application or the results can be unpredictable for industry.

Recommendations:

- Consistent with General Agreement on Tariff and Trade (GATT) Article X on Publications and Administration, urge publication of any ruling or Customs direction of general applicability with sufficient detail, and available so as to enable a knowledgeable trader to understand the conflicting pieces of data or evidence that were weighed to arrive at the justified decision.
- Encourage FTA partners to work with their respective Customs administrations to provide, on a continuous basis, training to Customs officers on HS classification.

II. F Valuation

II.F.1 Agreement on the Implementation of Article VII of the GATT

The Agreement on the Implementation of Article VII of the GATT, commonly referred to as the “Valuation Agreement,” specifically authorizes the use of transaction value as the primary method for determining the Customs value for imports (**Note:** transaction value is defined as the price paid or payable from the buyer to the seller when the product is sold for export). Where the transaction value method cannot be used, the Agreement specifically authorizes additional methods to be applied in a hierarchical manner. Today, there are a number of countries which do not accept the principles of the Agreement and continue to use inconsistent and unpredictable means of valuing goods for Customs purposes.

Example: TechAmerica research indicates that some countries base Customs value on reference price lists. However, price lists reflect historical data and do not accurately reflect the transaction value for the imported merchandise. The adherence to price lists does not align with GATT Customs Valuation principles and can cause significant issues for industries (e.g., ICT) that experience price fluctuations caused by market conditions, including significant import delays, burdensome documentation requirements, and the maintenance of price lists that are not practical.

Recommendations:

- Secure a commitment for full and appropriate implementation and formal deposit of the Valuation Agreement by all FTA partners.

II.F.2 Valuation of Digital Goods Delivered on Carrier Medium

The appraisal of discs, tapes, and other recorded media bearing data or instructions has been considered by the WTO (formerly GATT). GATT Decision 4.1 (herein referred to as Decision 4.1) on the Valuation of Carrier Medium Bearing Software for Data Processing Equipment specifically applies to data or instructions (software) recorded on carrier media for data processing equipment. Under Decision 4.1, countries may elect to appraise the carrier media inclusive or exclusive of the data or instructions. It should be noted that Decision 4.1 does not apply to “sound, cinematic or video recordings.”

Today, many countries have notified the WTO that they will appraise recordings of data or instructions on the basis of the carrier media, exclusive of the intellectual property (IP). However, due to a number of countries that have not elected to base appraisal on the carrier media, importers are experiencing non-uniform treatment, and therefore are exposed to increased Customs duties.

Decision 4.1 was issued in 1984. Since that time, the distinction between software for data processing equipment and recorded entertainment has become increasingly difficult to maintain. Software that is played on data processing machines increasingly relies on sounds and images. For example, application software routinely incorporates sound and video clips. Entertainment content, such as movies and music, is becoming increasingly interactive. For example, music and video discs are designed to be played on computers and frequently include interactive elements to select scenes, tracks and to permit the user to access commentary. Games for computers or consoles can legitimately be regarded as either software or

entertainment. In view of the foregoing, industry believes that any bilateral or regional trade agreement should go beyond Decision 4.1 and secure a commitment to use the value of the carrier media as the basis of appraisal for all digitally recorded products.

Recommendation (s):

- Seek additional signatories to Decision 4.1 and deposit of the Decision
- Secure commitment by all FTA partners that for Customs purposes, the valuation of digital goods delivered on physical media (i.e., CDs, DVDs) be based on the cost/value of the physical media and not the cost/value of the IP embedded on the media.
- Seek, to the greatest extent possible, a commitment that for the purpose of Customs valuation, the valuation of digital goods (e.g., movies, software) delivered on carrier media (i.e., CDs, DVDs) be based solely on the value of the media and not the embedded digital content.

III. OTHER NON-TARIFF BARRIERS TO TRADE

III. A Standards & Technical Barriers to Trade

Over the past decade, many foreign governments have increased their use of regulations that govern ICT products. Industry is concerned that as tariff barriers are eliminated, governments will create regulatory non-tariff barriers (NTBs).

Recommendation (s):

Ensure that standards, conformity assessment, and technical regulations **do not** become barriers to trade. The FTA should enforce and promote the WTO Agreement on Technical Barriers to Trade (TBT) and build upon these commitments by:

- Requiring scientific justification for regulatory action;
- Adopting procedures that result in increased transparency and access by the public throughout the regulatory development and implementation process;
- Ensuring that there is an opportunity to comment on proposed regulations;
- Ensuring that there is an opportunity to challenge regulations through prompt, independent judicial and/or administrative review; and
- Establishing rules for risk assessment by independent technical experts on a pre or post importation basis.

Additionally, the FTA should eliminate redundant testing and certification requirements for ICT products. To that end, negotiators are urged to adopt the “One-Standard One-Test, Supplier’s Declaration of Conformity” (1-1 SDoC) approach to clearing the import of ICT products. Under this approach:

- **“One Standard”** means acceptance of an international standard (e.g. IEC 60950 for safety of ICT equipment or CISPR 22 for electromagnetic emissions), or national standard with stated equivalency.

- **“One Test”** means acceptance of test results conducted in any competent test facility (e.g., conforming to ISO/IEC 17025, accredited to ISO/IEC Guide 58, member of MRA, and/or IECEE CB Scheme member) regardless of the facility’s geographic location.
- **“Supplier’s Declaration of Conformity”** means that products may be marketed on the basis of an SDoC that complies with ISO/IEC 17050 Part 1 and 2. The supplier shall retain compliance documentation (i.e., description of product, test reports, etc.) providing the basis for the supplier's declaration and make it readily available to the regulator upon request. Enforcement of regulatory requirements will be by means of post-market surveillance and noncompliance penalties.

III. B Treatment for Remanufactured, Refurbished, Like-New Goods

Many countries maintain goods restrictions on used or second-hand goods. In recent years, similar restrictive trade barriers have been applied to remanufactured, refurbished, and like-new goods.

Example: TechAmerica research indicates that some countries apply restrictions to the import of remanufactured, refurbished, or like-new goods. These restrictions range from additional certification requirements to additional tariffs, and in some cases outright import bans.

Recommendations:

Promote that goods restrictions on used goods (e.g., prohibition of imports, licensing requirements, special tariffs etc.) are not imposed on remanufactured, refurbished, and like-new goods; and seek no less favorable treatment for remanufactured, refurbished, and like new goods, than new goods.

IV. HS Codes That TechAmerica Seeks Total Duty Elimination In Free Trade Agreements

3215	3705	3707	3818	7017	7020	8414	8419	8421	8422
8423	8428	8431	8443	8456	8462	8464	8465	8466	8469
8470	8471	8472	8473	8477	8479	8481	8482	8483	8486
8501	8502	8503	8504	8505	8506	8507	8514	8515	8516
8517	8518	8519	8522	8523	8525	8528	8529	8530	8531
8533	8534	8535	8536	8537	8538	8539	8540	8541	8542
8543	8544	8545	8546	8547	8548	9001	9002	9005	9006
9007	9008	9009	9010	9011	9012	9013	9014	9015	9016
9017	9018	9021	9022	9023	9024	9025	9026	9027	9028
9029	9030	9031	9032	9033	9207	9403	9405	9504	9612

V. Government Procurement

The United States should strive for substantial commitments to create and expand government procurement opportunities for United States firms under the terms of an FTA. Given the continuing likelihood of government intervention in procurement of software products and services, the FTA should also include a government working group on procurement to address specific issues related to information technology procurements, national security, hardware integrity and software assurance.

VI. Intellectual Property

We believe improvements to intellectual property and antipiracy protections should be included in the TTIP negotiations. Additionally, owners of intellectual property and intermediaries should be encouraged to cooperate in combating piracy. The safe harbors from liability for online intermediaries set forth in Section 512 of the Digital Millennium Copyright Act exemplify how limitations can provide such incentives, and this approach has been included in all recent US Free Trade Agreements (FTAs). Such safe harbors limiting copyright liability ensure the proper balance is struck between protecting intellectual property and not unnecessarily restricting the free flow of goods and services.

Indeed, ICT companies rely on the protections of intellectual property law to foster their success. For example, a single smartphone could have approximately 200 different patents involved in the blueprint with a supply chain that includes countries on every habitable continent. Therefore, it is essential to ensure that any outcome of this agreement does not undermine the ability of the United States to achieve the proper levels of IP protection in other negotiations and other foreign markets.

Expanding Trade and Technology Growth through Regulatory Coordination

TechAmerica firmly believes that transatlantic mutual recognition of standards and regulation is a key objective, which the High-Level Working Group on Jobs and Growth should focus on. We believe negotiators should agree on concrete processes to foster mutual recognition, and other forms of convergence and cooperation for regulations and standard setting. For example, the bridges principle as agreed at the November 2012 TEC meeting should be further developed and ultimately made mandatory. Other ideas to better coordinate US-EU standard setting should be explored. Karel De Gucht's suggestion to include a transatlantic element in EU regulatory impact assessment should be pursued. Herewith, the reference to the cooperation principles agreed at the last EU-US Transatlantic Economic Council (TEC) should be made compulsory [<Link>](#).

As noted by the EU and the US in their recent announcement of an agreement to promote common non-binding trade principles for ICT Services, the growth of trade in ICT products and ecommerce is critical to the economic development of both regions.⁹ The development of new technologies is creating a world without borders that enables many opportunities for business to grow and expand its services to citizens in the US and EU. However, given the close trans-Atlantic trading relationship and the fact that the EU is our largest trading partner, there is still great divergence in our regulatory practices which pose a significant burden for our industry. In the future, the US and EU should work to enhance coordination and interoperability on areas such as cybersecurity, data protection, and environmental controls to enable a more effective and efficient response to the challenges we face in these areas.

Cybersecurity:

Cybersecurity should be viewed through a global lens. The global and interconnected nature of the Internet demands that policies affecting it must be considered with a world view. The global

⁹ See US EU Trade Principles for Information and Communication Technology Services, http://www.ustr.gov/webfm_send/2780

marketplace the internet has created, provides ample opportunities to leverage current and emerging markets and spur economic development.

Partnership engagement is vital to cybersecurity. The US and the EU must work together AND IN PUBLIC-PRIVATE PARTNERSHIP to ensure we continue to enhance the use of ICTs and the free flow of information ACROSS BORDERS, while at the same time ENABLING a sufficient level of protection of citizens. The US and EU must collaborate to bolster global cybersecurity and cooperate to investigate and prosecute cybercrime. Cyberspace is borderless, and cyber-attacks can circle the globe at network speed. In order to defend against the global threat, the US and EU need to collaborate to build capacity, share analysis and information, and respond to attacks. Cyber criminals themselves are increasingly sophisticated and coordinate their activities across national borders.

We will not benefit from emerging technologies and developments such as cloud computing, that will yield productivity gains, new industries and new jobs, if the US and EU do not undertake an interoperable approach to regulation of data protection and use a risk-based approach to cybersecurity fostered by a strong public-private partnership[1]. It is vital that efforts to secure information systems are risk-based to ensure that limited resources are wisely directed to achieve optimum and appropriate security to meet current and future challenges. Techniques used to secure one critical system might not be as effective for others. Even within a single system, the threats and, therefore, the necessary security responses, will vary over time to reflect rapid changes in technology and circumstances.

On this matter, our industry is encouraged by the US and EU cooperation on cybersecurity launched at the EU/US summit [2] in Lisbon in November 2010 as well as occasional discussions within the TEC. We hope that this dialogue will lead to clear cooperation across the Atlantic and engagement with industry in both strategic and operational cybersecurity objectives. We need to work together to ensure trust and confidence in the Internet, build capacity around the globe, and build interactive and collaborative preparedness and response mechanisms that enable effective risk mitigation and timely incident response when necessary.

With regard to data breach specifically, we are urging a national approach here in the US that includes: (1) a harmonized approach to definitions of a breach and personally identifiable information as well as pre-emption of state laws; (2) recognition of preventative measures with a safe harbor from notification requirements should data be rendered unusable, unreadable, and undecipherable through best practices such as encryption, redaction, and other methods; (3) technology neutrality; and (4) no private right of action. We would encourage the European Union to move forward with a similar approach across the EU to provide a more harmonized approach for both business and government.

With regard to cybercrime, we applaud the efforts of the Budapest Convention on Cybercrime and are pleased the US is a signatory. We encourage the US and the EU to collaborate to the fullest extent possible to define “cybercrime” and the requisite penalties for committing those crimes as well as engender cooperation and collaboration of our law enforcement officials in pursuing cybercriminals and prosecuting them.

Data Protection and Privacy Regulation:

Data privacy is another area where US and EU cooperation and coordination would be beneficial to economic growth and competitiveness. As USTR is well aware, there are a variety of foreign laws governing how companies collect, use, and disseminate consumer data.

TechAmerica believes a strong, interoperable and consistent global framework is needed in order for the digital economy to truly flourish. Without such a framework, technology could be faced with differing legal systems, raising the costs and burdens associated with compliance. In addition, companies could face liability concerns. Such uncertainty could diminish European and American companies' competitiveness in the global market. In addition, a strong, consistent data protection framework would enhance users' trust in digital products and services. This is especially important to support market acceptance of new technologies and services such as cloud computing.

As cloud computing continues to grow, so too will the amount of data crossing national borders. If divergent claims to jurisdiction over user content remain, then it becomes quite difficult for providers to manage their legal obligations and their global technology operations while at the same time protecting their consumers.

To the extent the US and EU can provide clarity on such matters, it will certainly facilitate the growth of such revolutionary technologies.

As we work together on these and other trans-Atlantic coordination efforts, we are cognizant that the rest of the world looks to the US and to Europe for our examples and experience. We should take the opportunity to strengthen our alliance and broaden it to other international partners as well. We offer any further assistance from available TechAmerica's Cybersecurity CxO Council, Cybersecurity Committee, Privacy Committee, EU security & privacy working group, and, our International offices in DC and Brussels for further efforts in these and other areas.

Environmental Regulation:

The EU has created a strong environmental regulatory regime on e-waste, energy use, and the restriction of hazardous substances that in some instances, diverges from US regulatory initiatives in these areas at the federal and state level. Nonetheless there are signs that the US states as well as the federal government are expanding the regulation of e-waste and chemicals and hazardous substances. As the US proceeds to develop stronger regulations in these areas, we would hope that the existing EU regime affecting US companies be taken into account, and that the best practices that have been learned through experience in the EU be carried forward and harmonized where feasible, to assist global companies active in both the US and EU to comply and meet the new requirements.

TechAmerica strongly suggests the elimination of tariffs and non-tariff-barriers on clean technologies to encourage further investment of research and development in green technology. In order to ensure ease for exporters on both sides of the Atlantic, a mutual recognition agreement on standards and regulations governing this sector should be negotiated as a matter of priority.

Cooperation on Energy Efficiency Regulatory Policy:

US and EU cooperation on energy efficiency regulation under the EPA-DOE Energy Star program has been a success story for both regions. Since its inception 18 years ago, the EPA's Energy Star voluntary regulatory program in partnership with industry has become an internationally accepted consumer brand and has helped to ensure stronger energy efficiency in a range of electronics and office imaging products. In fact, the brand is so strong with consumers that, despite the fact that Energy Star registration and labeling is a voluntary program in partnership with industry, it has become a "de facto"

requirement for producers selling not only in the Trans-Atlantic market but around the world enhancing the competitive advantage of those participating companies.

In 2010, the US EPA moved forward unilaterally to institute mandatory third-party verification and testing requirement within the Energy Star program, even though there was strong opposition from the EU and multinational and SME technology companies. This new requirement has now been implemented and has added to the cost and complexity of the Energy Star registration process in the US. At the same time, the EU has reserved the right to adhere to the original voluntary self-certification process for Energy Star. The US and the EU now have distinct registration requirements for Energy Star that will add to the costs of trade in Energy Star products between the two regions.

The EU has not conformed to the US regarding the third-party testing verification requirement for good reasons. According to data gathered from audits of the program by the EU, compliance with the current Energy Star requirements by industry has been very strong, under the voluntary self-certification process. The EU opposes changing this process to one of third-party testing and verification when they believe this is unwarranted for a non-safety regulatory program. Also EU prior experience with third party testing and verification programs for other products has resulted in adding a cumbersome and costly layer to the program, hindering compliance, especially for small manufacturers.

While the EPA is seeking to enhance existing Energy Star partnership with other nations, they are resigned to the fact that the US and EU, now have two distinct product qualification systems. In industry we view this as a defeat for regulatory cooperation and harmonization, and a hindrance to free and open trade. Whatever inconsistencies or concerns were raised in the US regarding compliance with Energy Star, these could have been addressed without resorting to a large-scale third-party testing and verification system and without undermining multilateral cooperation in this important trade segment.

Cooperation on Regulation Compliance Time Frames:

TechAmerica joined with other associations to provide input on this goal at the HLRCF meeting in December 2010 and we have pressed in Europe for a “minimum, non-erodible compliance window” timeframe, to enable companies to manage the complex logistics of supply chain change ahead of regulatory deadlines. We believe that if the US and EU adhere to clear guidelines for a minimum time frame for compliance, it will encourage industry commitment, ensure stronger compliance and most importantly for trade and economic growth, ensure greater market transparency and accessibility for companies seeking to grow their business in each market.

The transition periods enabling high tech equipment producers to achieve product compliance with new EU legislation are typically set within Regulations/Directives/Decisions. These transition periods are normally derived through consultation with industry. However, where such legislative instruments lack legal clarity, are ambiguous, require implementation by EU member states or publication of subsequent ‘Decisions’, etc., the details necessary to assure product compliance may not be made clear until much closer to the date of enforcement, and in some cases after this date. As a result compliance periods set by legislation have been eroded, providing producers with insufficient

time to ensure legal compliance (Reference 'Section 3' of the Annex for a number of examples in our paper¹⁰).

In order to facilitate product compliance, TechAmerica Europe organized a workshop in May 2012 (Brussels) on the "NePCW" (Non-Erodible Producers Compliance Window), to discuss with EU officials the importance of incorporating this concept in the EU legislative framework. TechAmerica Europe also carries on promoting, along with growing numbers of other business organizations (such as TBC), the NePCW principle in high-level meetings with EU officials and the necessity to enshrine it within regulatory policy documents.

The US has made regulatory reform and adherence to best practices in its regulatory procedures a key goal. With this in mind, we would ask that the US and EU work together to achieve regulatory goals by ensuring there is commitment on both sides to reasonable time frames for review, comment and implementation of new regulations by industry. Moreover, as part of stakeholder consultation and/or ongoing internal deliberations, it is often the case that public authorities recognize material weaknesses in the legal text or absence of comprehensive technical guidance and thus commit to address these shortcomings within a given time. The non-erodible compliance timeframe would thus act as an incentive to ensure that these solutions would be consulted and then published within a reasonable time or risk postponing the compliance deadline with a net result of better implementation. In addition, if the regulation is complex to implement and will require broad changes in a company's overall supply chain as do many EU Directives and US regulations the time frame for transition and implementation should be achievable (18 to 24 months), to ensure companies can conform appropriately to the new rule.

Harmonized Technical Standards for Smart Grid:

TechAmerica believes that technical standards are a key enabler for the acceleration and adoption of emerging technologies like smart grid. Policymakers from both the United States (US) and European Union (EU) also recognize these benefits and have taken independent steps to support the accelerated development of smart grid technical standards. However, transatlantic cooperation is necessary in standards development. Such cooperation, improves market access, creates economies of scale for providers of technology, and ultimately accelerates the rollout of smart grid.

To this end, TechAmerica encourages increased EU participation in the US NIST Smart Grid Interoperability Panel (SGIP) Priority Action Plans (PAP). The PAPs assemble subject matter experts from relevant standards development organizations (SDOs) to address existing gaps where new standards are needed and coordinate between existing complementary standards for a given application.

We also support increased opportunities for SGIP representation on the EU Joint Working Group, established to advise the European Commission on European requirements related to the standardization of smart grids, including representation in the three European SDOs (CEN, CENELEC and ETSI) which make up the EU Joint Working Group.

¹⁰http://www.techamerica.org/Docs/fileManager.cfm?f=mcw_paper%20final%20tae-recharge-de-epba_2010-01-27_2_.pdf

It is our hope that the transatlantic coordination would ultimately designate a single set of testing and certification specifications for harmonized technical standards and provide consistency and clarity needed to support continued investment.

Translation Requirements for European Industrial Products:

It has long been a requirement that product safety information and instructions like manuals, warning signage and electronic information be translated into the official language(s) of the EU Member State, in order to meet the product safety requirements of the CE marking Directives. The requirement is based on the need to ensure safe use, operation, maintenance, and disposal of products within each Member State, where the general public operates in the local language(s).

This requirement can be problematic for US industrial product manufacturers when they are exporting products to European customers and are obliged to provide the related information in the local language(s) even when the European users do not need it. Product information translation is required by the Directives and there is no flexibility in this approach that permits manufacturers to contractually agree to a different language in lieu of providing the translation in the national Language(s). As a result, US industrial product manufacturers, including many SMEs, are often forced to spend millions of dollars to develop product translation materials that are not considered necessary by their customers.

TechAmerica recommends that the US consider working with the EU to explore the impact of product information translation on industrial products exported to the EU and whether this requirement is truly necessary. This could prompt the two nations to develop more flexibility in the interpretation of this requirement that would enable a Memorandum of Understanding to be developed regarding the expectations and options for industrial product language translation materials.

CE Marking Regulatory and Technical Transparency:

The EU established a “New Approach Framework” ten years ago that specified that regulatory and independent inspection agencies would be designated as “Notified Bodies,” subject to assessment and approval by the EU to interpret and guide US Manufacturers to meet the regulatory and technical requirements of each respective Directive. While US Manufacturers can also obtain advice from a trade association, access to these groups is less desirable than from a Notified Body, and trade association membership fees impose additional costs.

Based on this New Approach Framework, US Manufacturers are often dependent on the services of Notified Bodies to obtain the necessary technical support for regulatory compliance and certification to Directive requirements. However the service fees of Notified Bodies are escalating and their service and technical competence can be inconsistent. Overall, dependence on Notified Bodies has led to higher product costs and longer product realization lead times for US manufacturers exporting to the EU, hurting trade and US exports, especially for SMEs. The EU’s 2008 promulgation of a New Legal Framework (NLF) Regulation 765/2008 was intended to reform the New Approach Framework process for working with Notified Bodies and address some of these concerns by imposing competency requirements on Notified Bodies. However, the NLF did not address an underlying problem when there are discrepancies between Notified Bodies and Manufacturers have no means to address or obtain a transparent regulatory or technical resolution regarding such discrepancies.

TechAmerica recommends that the US government work with the EU to examine how the two can work in partnership to create a transparent method to inquire and obtain support for resolving regulatory and technical questions, where there are discrepancies between Notified Bodies. This process would need to provide assurance there would be no reprisal against the US Manufacturer or the Notified Body seeking clarification. We believe such a process would help to remove the lack of transparency in this area which impedes trade and also ensure consistent application of the regulations for all companies.

2004/108/EC Electromagnetic Compatibility Directive Immunity Requirements:

TechAmerica would like the US to work with the EU to understand the impact of the 2004/108/EC Directive for Electromagnetic Compatibility on trade and testing costs for US exporters. Currently, US product manufacturers are required by the Federal Communications Commission (FCC), which oversees electromagnetic compatibility in the US, to assess their products for emissions. However the EU CE Marking Directive for electromagnetic compatibility requires testing for immunity and emissions. This testing can double or triple testing costs for exporters from the US to the EU, even though this testing is not required for US product safety standards.

TechAmerica recommends that the US work with the EU to develop a mutual recognition agreement regarding immunity requirements for general industry products to ease trade. Manufacturers in the US generally include a level of immunity within the product as part of the normal development cycle to ensure customer satisfaction. Only for specific industries and applications are immunity requirements specified, and this is to satisfy customer requirements, not legal regulations. Except for high hazard applications where risk assessment requires a level of testing for immunity, relaxing the immunity requirements for exports to the EU of general industry would not impair safety and would encourage trade.

In view of the ongoing alignment of the “Goods Package” with the NLF, where EMC is one of the nine Directives included in the package, TechAmerica Europe has been actively advocating that during the process of alignment with NLF no divergent labels, marks, language requirements, manufacturer/importer address requirements etc. should be imposed. Unless the requirements are fully consistent, and aligned, additional effort and cost will be incurred for all parties involved. Furthermore, different requirements may confuse manufacturers, consumers, as well as impair effective market surveillance.

Coordination on Intercompany Transfer Immigration Visas:

The ability to move skilled managers and specialists across borders is critical for the success of US and EU businesses. Both the US and the EU have made efforts to develop mechanisms that would make these transfers easier, but these efforts have gotten bogged down. A common approach to the temporary transfer of skilled workers would cut red tape and improve transatlantic business efficiency. The EU is seeking to streamline immigration visas for intra-company transfers through its current Intra-corporate Transfer Directive proposal. The US is also seeking to ease these rules. We would like to see these efforts move forward expeditiously. TechAmerica Europe has been active on this issue through a coalition with other organizations <[Link](#)>.

Space

America's space industrial base is essential to the quality of life Americans enjoy today. Perhaps unaware, most people rely on space assets and space commerce when they check a weather forecast, use a credit card, make a phone call, catch a flight and even when navigating by GPS, whether driving city streets or planting a seasonal crop.

In addition to our economy, our national defense is also heavily dependent upon space as a critical force multiplier when confronting threats around the globe. Our nation's warfighters rely on this country's technology leadership in space to be successful, utilizing geospatial intelligence, signal intelligence and imagery intelligence.

TechAmerica is committed to protecting and growing this country's space sector. Both the commerce of space and the US Government's ability to procure the world's best space assets rely on maintaining a strong national industrial base of space manufacturing companies.

Our member companies are strong supporters of free trade and invite competition when it is on a level playing field. However, as you begin negotiations with the EU (European Union) on the TTIP, we encourage you to consider an important barrier to US space companies: the European Space Agency (ESA) exclusion of US companies from their space procurements.

"Geographic Return" and the European Space Agency

ESA is a multinational organization responsible for most of Europe's space procurements. The EU does not represent the vast majority of spending by European countries on space programs, as most European space procurements (\$5.38 billion in 2012) are made by the ESA, which operates on funding provided by each of its 20 member countries. The EU has no authority to speak for ESA or negotiate trade agreements on behalf of all of ESA's member states, because their member countries are not the same. In addition, ESA's "geographic return" policy requires space system procurements to provide an advantage for member European countries commensurate with the annual financial contribution that country has made to the ESA.

Officially described as the "industrial return coefficient policy," it essentially precludes companies from non-ESA member countries from priming space contracts or receiving a significant work share of any ESA mission. This is due to the fact a ratio is determined of an ESA member state's share of contracts and the contribution paid within a certain period be a certain percentage.

Potential Remedies

TechAmerica supports your efforts to negotiate regulatory harmonization and eliminate tariff barriers between the United States and the EU provided concessions are mutual and not unilateral. Our member companies are not asking for a carve-out for space manufacturers from free trade but instead an ability to compete in Europe on an equal basis. Accordingly, we request that USTR consider addressing the inequity that America's space manufacturing companies face in Europe. While an exemption from procurement restrictions for national defense purposes is likely to be included in the final TTIP agreement, more and more space-bound products are being classified in the United States as commercial items instead of military, potentially exposing a larger number of components or systems to unequal treatment. It is critical that the TTIP not include provisions that provide government procurement benefits for European suppliers without reciprocal treatment for US exporters. To date,

there does not seem to be a plan to deal with the European Space Agency's "geographic return" policy or the inability of the EU to address all space procurements in the agreement.

Summary

Since the signing of the Information Technology Agreement in 1996, trade of ICT goods has increased more than 10% annually. Currently, the high-tech industry employs 5.7 million Americans and 2.4 million Europeans. Given the close trans-Atlantic trading relationship and the fact that the EU is our largest trading partner, further reduction of tariffs will ensure the continuation of growth in trade and spur employment. As we work together on these and other trans-Atlantic coordination efforts, we are cognizant that the rest of the world looks to the US and Europe for our examples and experience. We must take the opportunity to strengthen our alliance and broaden it to other international partners as well.

Thank you for the opportunity to comment on this important and timely initiative. We strongly support the efforts of the US and EU to work together through the High Level Working Group on Jobs and Growth to take actionable steps to expand transatlantic ICT trade and investment ties. Strengthening the US and EU partnership to address difficult and complex issues, such as cybersecurity, privacy, cross-border data flows, and environmental regulation, will set an example for our trading partners and stimulate innovation and job growth in our two economies. These policies are necessary if we are to sustain continued US and EU leadership in the development of competitive ICT services and products. We offer any further assistance from available TechAmerica's Cybersecurity CxO Council, Cybersecurity Committee, Privacy Committee, Smart Grid Committee, EU security & privacy group, and, our International offices in DC and Brussels for further efforts in these and other areas.