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**Comments of the American National Standards Institute Regarding the Proposed Transatlantic Trade Investment Partnership  
May 10, 2013**

Thank you for the opportunity to comment on the proposed Transatlantic Trade Investment Partnership (TTIP). The American National Standards Institute (ANSI) and its members recognize the vital role of the transatlantic trading relationship, and the significant impact that standards and technical barriers to trade can have on companies' ability to do business in the U.S. and EU markets. For this reason, we applaud the objective of promoting greater transatlantic regulatory compatibility.

ANSI supports the transatlantic initiative as a means to overcome existing barriers to trade in goods and services between U.S. and EU markets. The Institute believes that work in this area should complement and build upon the progress already taking place under the U.S.-EU High Level Regulatory Cooperation Forum (HLRCF), the Transatlantic Economic Council (TEC), and other fora. Given the structural differences in the legislative, legal, and regulatory regimes of the United States and the European Union, it is critical that cooperative work begin in areas where mutually beneficial change can be accomplished quickly to build momentum. It is essential that adequate resources be devoted to ensuring that any new tools or governing processes established under the initiative will be supported, and that a mechanism is established to facilitate regular engagement with the private sector.

A private not-for-profit organization, ANSI serves as coordinator of the U.S. voluntary standards and conformity assessment system. The Institute is not itself a standards developing organization (SDO). Rather, ANSI oversees the creation, promulgation, and use of thousands of standards and guidelines that directly impact businesses and consumers in nearly every industry and product line. In addition to our national role, we promote the use of U.S. standards internationally, advocate U.S. policy and technical positions in international and regional standards organizations, and encourage the use of international standards and their national adoption where they meet the needs of the user community.

ANSI's advocacy and leadership at the international table have a direct impact on the acceptance of U.S. technologies in the marketplace. The Institute is the sole U.S. representative and dues-paying member of the International Organization for Standardization (ISO), and, via the U.S. National Committee (USNC), the International Electrotechnical Commission (IEC), as well as a member of non-treaty regional organizations such as the Pacific Area Standards Congress (PASC) and the Pan American Standards Commission (COPANT), as well as the International Accreditation Forum (IAF) and the Pacific Accreditation Cooperation (PAC).

Recognizing that the U.S. and EU will soon begin negotiations on a TTIP, we respectfully submit the following as critical components of such an agreement. ANSI believes that without these components, the shared goals of facilitating trade and supporting greater transatlantic regulatory compatibility cannot be reached.

### **Stronger Technical Barriers to Trade (TBT) commitments**

The U.S. and EU have different views on the use of international standards for regulatory purposes, which complicates opportunities for greater regulatory and standards convergence. ANSI led a successful effort in developing, through an open process, a U.S. standards strategy that took into account the views of all interested stakeholders and industries. The U.S. strategy promotes a multiple-path approach to international standards, and encourages the public and private sectors alike to use the internationally recognized principles established by the World Trade Organization (WTO) Technical Barriers to Trade (TBT) G/TBT/1/REV. 10, "*Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement*" as guidance in their decisions on the use of international standards. This commitment to WTO TBT principles is embedded in the U.S. regulatory system, and is a benchmark provision of all of its recent free trade agreements.

As reaffirmed under the new European Regulation on Standardization (EU) No 1025/2012, the EU takes a narrower view and officially designates international standards bodies as "the International Organisation for Standardisation (ISO), the International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU)." As part of the TTIP, the EU and U.S. should ensure that regulatory convergence mechanisms allow companies and consumers the ability to choose international standards from multiple sources based on adherence to WTO TBT principles and the actual technical qualities and relevance of the standards. And any future trade agreement between the U.S. and EU should have a TBT chapter containing overarching commitments that are **at least** as robust as the recently enacted Korea-U.S. Free Trade Agreement (KORUS)<sup>1</sup>, whose overall goal is to reduce barriers to trade and investment between the U.S. and South Korea.

One example of how a commitment to these principles would support deeper regulatory compatibility is the consideration of public comments in response to WTO TBT notifications. ANSI supports provisions that enable **all potentially affected stakeholders** to provide comments in the development of technical regulations, and provide accountability to ensure regulators consider these comments when finalizing a measure. This works to ensure that legitimate objectives are met as efficiently and with as little trade disruption as possible.

The United States takes into account TBT notification comments from all stakeholders, including WTO Members (159 members as of 2 March 2013)<sup>2</sup> and interested parties of WTO Members. The EU, on the other hand, does not generally consider comments received from non-EU interested parties and the private sector. This significantly limits the trade-enhancing benefit of the recommended 60-day comment period for WTO notifications. ANSI encourages the EU to provide as much advance notice as possible (more than is required by the TBT Agreement) of future regulations, directives, and other decisions that may impact trade between our two markets.

ANSI strongly asserts that the future trade agreement should build upon the WTO TBT principles, including preserving regulators' decision-making authority. The chapter that focuses on promoting

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<sup>1</sup> [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset\\_upload\\_file604\\_12708.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file604_12708.pdf)

<sup>2</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)

greater transatlantic regulatory coherence should embrace the WTO TBT Agreement that states that public safety is paramount. The agreement recognizes that no country “should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life, or health of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate...” Regulators in both the U.S. and EU should retain this authority.

While the U.S. and EU should seek to minimize regulatory differences wherever possible, the TTIP negotiations should not hold the U.S. and EU to regulatory coherence objectives that are not viable. There are legitimate philosophical, structural, and legal differences that result in different risk models and, by extension, different approaches to regulation. For example, different regulatory dimensions include pre-market versus post-market oversight philosophies, differences in liability burdens, differences in electrical systems and in common construction materials, and differences in government oversight infrastructure and resource allocations. None of these differences are aimed at creating barriers to trade. However, in areas where U.S. and EU regulators do choose to cooperate, it is imperative that the regulatory impact assessment consider the full cost to society, and not just focus on the immediate cost of compliance.

### **Flexibility on standards used in regulations**

Standards are a key component of U.S.–EU trade relations. Europe’s New Approach Directives define “essential requirements” that products in the EU market must meet, and extend the presumption of compliance to these essential requirements to selected standards developed or adopted by the three European Standards Organizations (CEN, CENELEC, and ETSI). ANSI recommends that the EU empower and encourage its regulators to additionally grant the presumption of compliance to international standards as defined in G/TBT/ 1/REV. 10, “*Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement.*” These principles include transparency, openness, due process, balance, etc.

U.S. law<sup>3</sup> and policy<sup>4</sup> call for federal government agencies to base technical regulations on voluntary consensus standards developed by the private sector (in particular, relevant international standards)<sup>5</sup> wherever possible rather than creating government-unique standards. U.S. regulators are given flexibility to select the standards that best meet their regulatory objectives. Allowing EU regulators the same flexibility would enable them to select the standard(s) that best meet their regulatory objectives, and would provide an important mechanism for greater regulatory alignment between the U.S. and EU. In the information and communication technologies (ICT) services area, for example, notable progress has been made in this regard since the EU regulations relating to ICT were announced in October 2012.

In addition, allowing conformity assessment providers the ability to provide services on a national treatment basis will be an important tool to facilitate trade for manufacturers. It will provide a boost to global competitiveness and economic growth in the United States and the European Union and beyond.

U.S. and EU authorities and the stakeholders must work together and adhere to processes that are transparent on both sides of the Atlantic. ANSI is strongly committed to supporting cooperative efforts in areas where expedient, mutually beneficial change is most promising. By reviewing the

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<sup>3</sup> U.S. Public Law 104-113 (1995), [http://standards.gov/standards\\_gov/nttaa.cfm](http://standards.gov/standards_gov/nttaa.cfm)

<sup>4</sup> White House Office of Management and Budget (1998), <http://www.whitehouse.gov/omb/circulars/a119/a119.html>

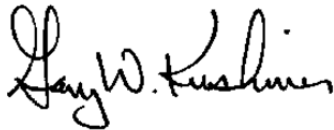
<sup>5</sup> Trade Agreements Act of 1979 (19 U.S.C. 2531-2573), P.L. 96-39

progress made on regulatory cooperation efforts for new and emerging technologies in the US-EU High-Level Regulatory Cooperation Forum (HLRCF), and by expanding the HLRCF and/or using the TTIP to tackle additional sectors such as health IT and cybersecurity, we believe that significant progress can occur in more and more industry areas.

Since 1989 ANSI has met regularly with the European Standards Organizations (ESOs) and representatives of the European Commission – nearly 25 times – with an evolving format and agenda to reflect the evolving conditions. At the most recent meeting in Dublin in February of this year, ANSI and the ESOs agreed to draft a cooperation agreement that we hope will support the upcoming negotiations. ANSI is now working with its members and the ESOs on the beginning stages, and we anticipate finalizing an agreement by the end of 2013. As the U.S. and EU move towards the goal of increased alignment and greater compatibility, ANSI looks forward to the opportunity to discuss these recommendations further.

Thank you for your consideration and the opportunity to comment. We would be happy to provide clarification or further engage with you in any way deemed useful as you work toward a strong and effective trade partnership.

Sincerely,

A handwritten signature in black ink that reads "Gary W. Kushnier". The signature is written in a cursive style with a large initial "G" and "K".

Gary Kushnier  
Vice President – International Policy