

**Coalition of Service Industries**  
**Statement on US-EU High Level Working Group on Jobs and Growth**

In response to Federal Register notice USTR-2012-0001

**February 3<sup>rd</sup>, 2012**

The Coalition of Service Industries welcomes the opportunity to offer comments on the US-EU High Level Working Group on Jobs and Growth.

Services are at the core of the economic relationship between the US and the EU, and the US-EU relationship remains the largest source of global services trade. The European Union and the United States are the world's two largest exporters of services, accounting for about 43% of world commercial services exports in 2010 (excluding intra-EU services trade). Furthermore, services represent well over 70 percent of GDP for both the U.S. and the EU and provide the foundation for global competitiveness and job growth across all segments of the economy – in manufacturing, agriculture as well as services.

Increased cooperation and communication between the US and EU could both increase opportunities for services trade between the two economies, and also improve the position of the economies in relation to third parties. The US and the EU share a common outlook and a similar determination to maintain remarkably open services markets and both enjoy the benefits of liberalized services trade regimes. Both have cooperated in the WTO and other forums to expand their open approach to trade in services to other markets. The Working Group can go a long way to increasing bilateral cooperation that will improve the position of both economies relative to third markets.

Given the vital role of services in both economies, services should be a central part of the bilateral agenda.

### **Regulatory Facilitation**

CSI supports removing traditional market access barriers, but more significant economic gains may lie in regulatory facilitation. Regulators in both economies may take different approaches to

fulfill their goals. Finding ways to bridge regulatory difference to meet common objectives would be a significant achievement. To that end, a high-level regulatory dialogue should set achievable outcomes and have regular reporting milestones that will encourage private-sector participation and comment.

Both markets have put a renewed emphasis on modifying their respective financial services regulatory regimes, particularly since the international financial crisis of 2008. In the US, many regulatory changes came about as a result of the Dodd–Frank Wall Street Reform and Consumer Protection Act, which was signed into law in July 2010. Europe has sought its own regulatory reforms, for instance, through Solvency II.

Unfortunately, there are areas where regulatory differences threaten to become a significant hindrance to trade in services. While each market has the right to regulate itself according to its own laws and traditions, regulatory reform should be sought in ways that do not limit or prohibit services trade and investment. Furthermore, regulatory cooperation should not mean that one market’s regulations are adopted by the other. Rather, regulatory dialogue should focus on identifying shared values and promoting equivalency between regulatory systems.

A benefit of such an approach would be to establish a model for other WTO Members. The EU and US should consider how approaches they develop bilaterally can be folded into other initiatives.

By focusing on regulatory issues through an established, transparent process of dialogue, both parties should be able to improve their services markets, and establish a model for addressing regulatory barriers around the world.

## **SOEs**

Foreign government policy measures favoring state-owned enterprises (SOEs) and state-supported enterprises (SSEs) sponsored as national champions create major competitive distortions in markets around the world. No international disciplines now exist to deal with this phenomenon effectively. The US-EU High Level Working Group presents an opportunity to set a high-level standard for ensuring equal treatment of private enterprise vis-à-vis SOEs and SSEs.

Market distortions posed by SOEs and SSEs take many different forms. Regulatory favoritism takes place when government uses policy instruments (such as favorable regulations and subsidies) to change market results, and confer advantages on SOEs because they are state-owned, or otherwise confer advantages on SSEs to create state-sponsored and supported national champions. Governments should ensure that there is a level playing field for all businesses, irrespective of ownership, and not confer competitive advantages on SOEs and SSEs at the expense of private capital, including foreign or foreign-invested competitors.

Other forms of market distortions exist, such as preferential purchasing and sales, and provision of financial support on terms not available in the commercial market. SOEs or SSEs are often steered by explicit or implicit government mandates, incentives or informal guidance in their

purchasing, sales, technology licensing or other business decisions. Non-market financing or guarantees provided by government policy enable these firms to operate on a noncommercial basis, with an unfair competitive advantage. Preferential market access accorded by and to government enterprises also distorts markets. These measures adversely affect foreign companies selling to, purchasing from, or competing with these favored businesses.

The rise of SOEs and SSEs and their potential for distorting trade and investment make it imperative that the US-EU dialogue consider ways to govern their behavior. These new rules should be based on the fundamental principle of national treatment reinforced by rules ensuring competitive neutrality.

## **Data Flows**

Global cross-border trade in services has grown strongly in recent years, reaching \$3.3 trillion in 2009, bringing with it new jobs and wealth-creation across markets. This has been made possible by the internet, which has allowed worldwide electronic delivery of previously untraded services. In the current global economic climate it is more essential than ever for this growth to be sustained.

Most services are delivered electronically. Knowledge-based services, including business services, financial services, computer and information services, insurance services, audio-visual services and telecommunication services, can readily be delivered around the world via advanced communication networks. In fact, in 2006 UNCTAD estimated that ICT-enabled services constituted nearly half of services exports, and trade in these services has continued to grow at a rapid pace.

However, growth opportunities for the U.S. and the EU in cross-border trade in ICT-enabled services are threatened by the potential for restrictions on cross-border data flows. Many countries are considering restrictions on the location of storage and processing for various types of data, and existing trade agreements do not address these issues. For example, exceptions in the WTO GATS give countries the right to regulate for national security, privacy, compliance with regulations, protection of public safety, prevention of fraudulent practices and to ensure the integrity of the financial system, among other reasons. Any of these reasons might be used to as an excuse to block data flows and effectively create barriers to services trade.

While governments have the right to regulate, they should rely on market forces, voluntary best practices and public-private partnerships whenever possible. When regulation is necessary, it should be done in the most narrowly tailored, least-trade-restrictive way possible to redress the specific and demonstrable policy concern. Additionally, our concerns about regulation of data flows should not be viewed as support for allowing electronic communications that infringe upon intellectual property rights.

It is in the interest of both the U.S. and the EU to modernize the approach to services trade agreements to address these cross-border data issues. All appropriate measures should be taken to incorporate these issues in all future bilateral, regional and intergovernmental negotiations and

organizations. Given their strengths as exporters of ICT-enabled services, the U.S. and the EU should cooperate to establish a new agreement that can set the standard and serve as a model for the rest of the world.

This initiative could build on work completed last year on the EU-U.S. Trade Principles for ICT Services and the OECD Internet Policy Principles, and on the two parties' ongoing work on e-commerce and services trade in their respective bilateral and regional free trade agreements. The U.S. and the EU are very well positioned to lead the world in the development of a 21<sup>st</sup> Century trade agreement to address these critical services trade issues.

Existing outdated laws also threaten the free flow of data. Current data protection and privacy laws lack uniformity and have not kept up with the developments in the business and technological environment. Today, in multinational organizations including corporations, data no longer flows in a point-to-point manner but in a global networked environment. Thus, in order for global businesses to meet customer needs and provide efficient services, governments must refrain from unduly restricting the global flow of data.

The 1995 EU Data Protection Directive, new proposed regulations for which were recently released by the EC, represents some of the world's most detailed rules regulating transborder data flows. The 2004 APEC Privacy Framework, which member countries may implement voluntarily, provides protection for personal data transferred internationally based on the principle of accountability. Over 60 countries have adopted data protection or privacy laws that regulate transborder data flows, most of which are largely based on these instruments.

Since regulation of data flows derives from a number of distinct legal traditions and cultures, there are significant differences in the mechanisms required under the various data protection and privacy laws providing a legal basis for transborder data flows. There has been a massive growth in the complexity and volume of global data flows and a change in the nature of such transfers. These flows largely no longer constitute point-to-point transmissions but occur as part of a networked series of processes to deliver a business result. Companies with locations all over the world need to be able to move personal information across national borders in order to efficiently and cost effectively deliver services to their individual customers. Because of the current divergent nature of privacy laws in the various regions of the world (and even within the regions), significant work still needs to be done before a truly global approach for transborder data flows is possible. Quite simply, unnecessary data flow restrictions are an impediment that has adverse implications for consumers, businesses, and economies.

## **Forced Localization**

Forced localization, in which a country constrains business to require that it be supported and conducted domestically rather than internationally, is a growing impediment to economic efficiency and commerce globally.

Many of the newest localization regulations have been enacted in developing economies. Asia and Africa account for more than half of the recently proposed or implemented instances of

forced localization policies globally. Developed economies are not immune from the domestic political pressure to enact forced localization rules, however. France, Australia, and the United States have implemented or proposed local content measures, for example.

The Coalition of Service Industries has engaged with the US government and other governments to oppose local content measures. As is the case with other forms of protectionism, forced localization in one country encourages the spread of forced localization to other countries to the detriment of global commerce and domestic economies alike. The US-EU dialogue should take account of this growing trend and consider ways to prohibit it.

### **Temporary Entry of Business Personnel**

Services trade also depends on the movement of qualified people. The US-EU dialogue should consider methods for improving access for business personnel where problems exist. Perhaps the APEC business card program would be a model for US-EU business travel.

### **Investment**

The US-EU dialogue creates an exceptional opportunity to create a world standard investment agreement. The investment relationships which underpin the transatlantic economy are founded on an incomplete network of bilateral treaties between the U.S. and the EU member states. A high-standard Bilateral Investment Treaty (BIT) between the US and the EU would commit each not to discriminate against investors of the other in establishing and operating investments, allow capital to move freely, and provide full protections against expropriation. That the US “model BIT” is not complete should not prevent the Working Group from exploring the feasibility of a US-EU BIT.

A single, high-standard BIT between the US and the EU would inevitably become a global standard for investment negotiations with third countries.

### **Internet Governance**

CSI values the leadership that the U.S. government has taken to preserve the security and stability of the Internet through its actions related to ICANN, IGF and ITU (defending against calls by some for the ITU to become more involved in the Internet and to impose a telecom-style interconnection and charging regime). Particularly as we approach the WCIT in December 2012, we would encourage the U.S. to build a rapport with EU counterparts to reaffirm that these and other issues, often conflated under the rubric of ‘Internet governance’, must continue to remain the domain of voluntary multi-stakeholder processes.

## Sector-Specific Comments

### **EXPRESS DELIVERY SERVICES**

Express delivery service (EDS) companies and their logistics operations are enablers of economic growth, providing fast, reliable, secure, door-to-door delivery of packages and documents to manufacturers, service providers, small and medium-sized businesses (SME's) and consumers. EDS are crucial to fast-cycle logistics, e-commerce and the efficient functioning of international supply chains, enhancing the movement of goods across borders and providing increased access to international markets, especially for SME's. The competitiveness and efficiency of the EDS sector is critical to developing worldwide value chains and supporting key industry growth in: research and development, manufacturing, distribution, transportation, retail and after-sale services and repair. Therefore, encouraging investment in and parity for global EDS companies will enhance the competitiveness and productivity of the current TPP countries

CSI strongly urges harmonizing transportation security requirements between the US and the EU. The aim of harmonization should be to end up with "one-stop-security": if a package is screened in the EU, it should not need to be re-screened along its route as long as the supply chain remains secure. We applaud US and EU efforts to complete the preparatory work on mutual recognition of trade partnership programs, namely the U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) and the EU Authorized Economic Operator (AEO) programs. We support trusted-trader programs, but ask that regulatory authorities recognize the efforts and costs behind the requirements and accordingly, ascribe commercially useful benefits to carriers and shippers as an acknowledgement of such cooperation and increased network safety. Both markets have agreed on the need for pre-lading information for air cargo and to work towards making this principle an international standard through the World Customs Organization (WCO). However, CSI asks the parties to note that the most successful program to date is best evidenced in the US Department of Homeland Security's (DHS) Air Cargo Advance Screening (ACAS) program. It is our understanding that EU authorities are examining a very similar program and it is our hope that such a carrier-initiated, risk-based system is employed on both sides of the Atlantic.

CSI supports a common customs policy that adopts a reasonable de minimis value threshold for the imposition of duties and customs requirements. Currently, the EU de minimis value is significantly below that of the US, creating barriers for small exporters. CSI actively supports legislative and regulatory efforts to increase the de minimis threshold in the US. A collateral effort in Europe would benefit shippers in both markets.

CSI supports efforts of the US and EU to safeguard the transatlantic transportation network from chemical and radiological threats. We support the World Customs Organization's Global Shield program and the efforts of the International Atomic Energy Agency (IAEA) and US DHS on the development of technologies to address the Illicit Trafficking Radiation Assessment Program (ITRAP+10).

The US and EU should avoid unilateral actions that could harm trade in services. Currently, the EU and the US are at odds regarding the imposition of a European Emissions Trading Scheme (ETS) designed to affect direct air carriers serving the EU. This dispute has the potential to adversely affect trade in services, particularly global transportation of goods and passengers, and it is of significance to our EDS industry. CSI urges the negotiating parties on both sides of the Atlantic to continue useful dialogue regardless of fora, and move forward constructively to harmonize efforts to reduce greenhouse gases. In doing so, the US and EU must avoid any result that may serve to harm a transportation provider's ability to effectively and efficiently serve its customers in either market.

## **INSURANCE**

The European and US insurance markets are closely intertwined and interdependent. They share a common fundamental focus on protecting customers from risk and supporting their financial security, thus reducing the burden on state welfare and pension systems while working to mitigate the impacts of an ageing population on their economies. The transatlantic insurance and reinsurance relationship is far too important to allow any disruption or fracture, and CSI asks that insurance and reinsurance issues be recognized by the High Level Working Group as a priority a for political focus on solutions by our respective regulators and policy makers.

CSI proposes presidential level support for enhanced technical regulatory dialogues which seek holistic solutions which suit the needs of all parties, and do not cause any unfair competitive disadvantages. The huge importance of our bilateral insurance and reinsurance relationship to transatlantic trade and our mutual macro-economic stability cannot be overstated. We firmly believe that political leaders should direct our respective regulators to find a common path, and that failure is not an option.

Additionally, although US and European insurers are global competitors, the US and EU's insurance-related trade policy and international regulatory objectives are based on similar principles of fair trade, consumer protection, financial stability and supporting growth and prosperity in the real economy. CSI urges the Working Group to recognize the opportunity that exists for this initiative to both support bilateral growth, and work together to project our fundamentally common values on to the broader global trade and regulatory agenda. This will also set a precedent for what we hope will be enhanced global dialogue and agreement.

As the basis for our proposals, we offer the following principles. These include continuing and growing the largest bilateral insurance trade and investment relationship possible.

- That unless specifically identified and reserved in the respective non conforming measures of the General Agreement on Trade in Services, Financial Services Agreement, the intent of any legislative, regulatory or measure is based on prudential necessity and not to provide competitive advantage to any party.

- That the licensing, regulation and supervision of insurance and reinsurance is by necessity a sovereign authority, which unless specifically provided for by legislative authority can't be delegated, but that unilateral and mutual recognition can serve as useful tools for prudential supervisors.
- That the goal of both U.S. and EU insurance regulators and fiscal and economic policy makers is to protect customers and taxpayers, maintain financial stability, prevent negative impact on the real economy, by a failure or disruption of the protection provided by any individual insurer or industry segments.
- That nation states and economic/regulatory unions can and should have unique legal and regulatory systems which have special characteristics based on their legal and cultural needs and traditions.
- That these common EU and U.S. regulatory objectives can be reached in more than one way but can be objectively recognized and confirmed through an agreed upon outcomes based analysis.
- That mutual recognition of capital adequacy is at the end of the day the objective, and that where different accounting systems and other underpinning metrics make quantitative like-like analysis impossible, the establishment of an on-going process to assure confidence in continued mutual recognition is a more appropriate solution than a static one time snap shot or "solvency" standard.

CSI asks the Working Group to consider and recommend the establishment of a practical and results oriented methodology to implement the objectives we have outlined above. This will require political level expectations and accountability of our respective regulatory officials to fulfil the as yet unrealized 2008 TEC instruction to jointly identify and develop a road map to resolve perceptions of bilateral trade restrictive or discriminatory laws, regulations or practices. We have faith that the respective regulators comprised of U.S. state insurance prudential regulators, the Treasury Department's Federal Insurance Office and from the EU, the European Commission and the European Insurance and Occupational Pension Authority. A regular consultative mechanism with the private sector should also be established.

CSI believes that this work stream can be a model for the broader objectives of the High Level Working Group and can leverage the process which has already existed for over a decade but which has not resulted in any concrete resolutions to bilateral frictions. We believe that a political imperative to the above mentioned regulators and policy makers and clear instructions that the EU/US relationship justifies a firm commitment that we focus on identifying and confirming our insurance regulatory similarities and not compounding our difference.

CSI also hopes that the bilateral insurance dialogue will issue a confidential report to leaders on the implications of their progress or stagnation relevant to the joint formulation of international supervisory standards, specifically the IAIS Financial Stability Methodology and the Common Framework for Internationally Active Insurance Groups. This report should focus on the relative implications of progress on bilateral issues and how it is supportive of the common goals of



consumer protection, financial stability and fair trade, and how this supports our joint competitiveness relevant to G-20 members which have planned economies and lack transparency in implementing their G-20 commitments.