



May 10, 2013

Via Electronic Submission

Mr. Douglas Bell,
Chair, Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, N.W.
Room 523
Washington, D.C. 20508

RE: Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement

Dear Mr. Bell:

On behalf of Advanced Drainage Systems, Inc. ("ADS"), this submission responds to the Office of the United States Trade Representative ("USTR") request for comments regarding the Transatlantic Trade and Investment Partnership Agreement ("TTIP") with the European Union. *See 78 Fed. Reg. 19566 (April 1, 2013)*. In order to encourage a high-quality, broad-based transatlantic agreement, ADS respectfully requests that the USTR work with the European Union to ensure that technical regulations, standards and certification processes are fair, utilize accepted international standards, and do not create unnecessary barriers to trade for U.S. companies operating in the European Union.

As the manufacturer of an innovative and highly-engineered product which is frequently used in municipal projects and home construction, ADS understands both the need for regulations to ensure the use of long lasting quality products, as well as the barriers ill conceived regulations may create. In order to ensure technical regulations are used to enforce the highest possible product standards, but not unfairly exclude products from the market, ADS supports the U.S. Government's efforts to seek greater compatibility and coherence of regulations and standards between the United States and the European Union. As described below, this effort should focus on reducing costs and facilitating trade in innovative products by ensuring the use of and reliance on international consensus based standards where available.

I. Technical Regulations and the Expansion of Advance Drainage Systems

Advanced Drainage Systems is an Ohio-based producer of state-of-the-art corrugated high-density polyethylene (“HDPE”) pipe products used in storm water management and sanitary sewer applications. Founded in 1966, ADS serves the storm water and sanitary sewer industry through a global network of 53 domestic and international manufacturing plants and more than 23 distribution centers. These products set industry-wide standards for quality, durability and performance. ADS has a significant presence in the North and South America.

ADS has also expanded sales in Europe through its first European location in Rotterdam, the Netherlands. ADS currently sells a range of sub terrain water detention and retention products in Europe. ADS is able to sell these products in Europe under existing international standards developed by ASTM International and CSA Group. It is ADS’s understanding that the European Committee for Standardization (“CEN”) is developing new standards for these products in Europe. ADS is concerned that the CEN process, which is limited to European experts working to reach a European consensus, may nullify use of valid ASTM International standards for these products in Europe. ADS, as a U.S. domicile company, will have little input into the technical requirements of the European standard and ADS’s retention products which use different design elements than their European counterparts may not be represented. Moreover, once the CEN standard is developed it will become the European norm for all countries that participate in the European Union and may also be adopted as the relevant ISO standard. In this manner, the standardization process, and the inability of industry participants to fairly and openly participate in the standardization process, may result in ADS’s business opportunities in Europe being limited.

In addition to storm water detention and retention products, ADS would like to expand sales in Europe to include ADS’s full range of drainage and sewerage piping. The technical regulations utilized in Europe create a significant barrier to expanding sales of innovative HDPE piping products in Europe. Specifically, ADS has found that because its innovative HDPE piping products are not traditionally sold in Europe, the International Organization for Standardization (“ISO”) standards typically used to regulate plastic piping are out of date or not sufficiently tailored to the highly engineered nature of the ADS pipe products. Despite producing a high quality product, ADS finds it impossible to comply with the ISO standards, and must receive an exception from the standards requirements on a case-by-case basis for most of its sales into Europe. Additionally, ADS struggles with the differentiation in standards and alternative methods of implementation that often occurs in individual member states.

II. Importance of International Standards

As the United States and the European Union are well aware, technical regulations, standards, testing, and certification procedures are crucial to promoting public health and safety, contributing to the reliability of materials, products, systems and services, and facilitating national and international trade. However, these standards may also be used to inhibit international trade. It is critical that any trade agreement undertaken by the United States ensure that such technical regulations do not create unnecessary obstacles to trade. Therefore, the United States’ trade negotiations should focus on legitimacy, consistency, and facilitating trade through regulatory coherence.

First, the U.S. Government should ensure that the TTIP Agreement enforces the reliance on “international standards” as adopted by international standards setting organizations and made available for public use. International standards organizations are organizations that formulate standards based on an impartial consensus based process, which includes transparency, openness, and coherence.¹ The USTR should emphasize that international standards organizations include not only traditionally European-based standards making organizations, but also U.S.-domiciled organizations such as ASTM International, SAE International, and the Institute of Electrical and Electronics Engineering. The consideration of all international standard setting bodies is particularly important for quickly developing or evolving products and new technology. Manufacturers should not be required to wait until a locally based standard setting body has reviewed the product to enter the market if a viable standard has already been developed by a similarly accredited organization. Rather, trade between the United States and European Union would benefit if manufacturers, and ultimately consumers, could choose international standards from multiple sources based on the qualities of the international standards.

Second, because of the United States and European Union’s extensive reliance on standards and standard setting bodies, the TTIP should create mechanisms for resolving disputes between competing international standards. Specifically, ADS is concerned that standards on both sides of the Atlantic may at times fail to keep up with innovation rendering certain international standards out of date. The continuing and unquestioned reliance on these standards may create a barrier to market participation in some instances. ADS, therefore, believes that government facilitation or mechanisms to resolve disputes between competing standards may be helpful in facilitating long term trade between the United States and European Union. Moreover, this mechanism should ensure transparency and openness, including the ability of participants from all nations to comment on the technical merit and validity of conflicting standards.

Third, ADS notes that it is also concerned by substantial difference in interpretation and implementation of technical regulations by European Union Member State governments. Because of the vast differentiation of standards practices, ADS has been unable to operate efficiently in the European market.

Finally, as described above, ADS successfully sells certain water retention and detention products in Europe. To date ADS has utilized existing ASTM International standards for this product line. The European market is currently developing a standard for European products used in the retention and detention markets through CEN. ADS’ product will not meet this standard because the concept and design of the ADS product is vastly different from the European products used in this application. Once issued, this standard could supersede the ASTM standard currently utilized by ADS. While our product has been successfully marketed in Europe for ten years, this could create a barrier to market participation.

For the reasons described above, the USTR should focus on ensuring an inclusive, open, and transparent international standards regime which consider all standards and permits the use of the most innovative and effective standard available.

¹ WTO’s Decision of the Committee on Principles for the Development of International Standards, Guides, and Recommendations with Relation to Articles 2 and 5, and Annex 3, of the Agreement, G/TBT/1/Rev. 10 Annexes to Part 1.B.

III. ASTM and ISO Standards

ADS typically utilizes standards produced by ASTM International, an internationally recognized leader in standards consensus building. ASTM International is comprised of over 30,000 members, which includes 150 countries. In order to submit standards for voluntary international consensus, ASTM International employs an inclusive approach to standards adoption that provides industries of every member country an opportunity to take part in the process. ADS notes that other standards organizations (ISO, for example) only allow input via country representative, allowing major industries within one country to override the majority of industry professionals within the country.

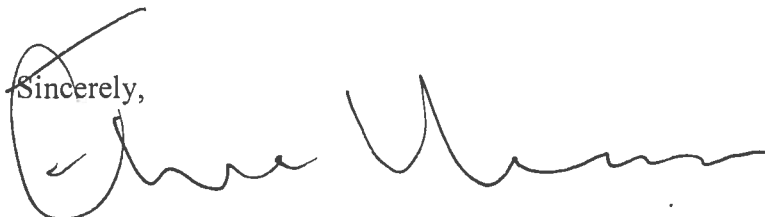
The ASTM International model inspires innovation with an efficient, inclusive submission process, allowing relevant updates in key industries as technology evolves with products. In pursuing the TTIP agreement, ADS would like to underscore the need for an inclusive approach developing international standards, one that would take into account industry-wide consensus, scientific evidence, and innovative techniques. Adhering to highly respected, international standards like those ASTM International promotes should be encouraged. ADS encourages the USTR to work with its European counterparts, as well as independent standard setting bodies, to review their commitment to an inclusive, open, and transparent standard development process that covers new and innovative product in a timely manner, and reflects the finding of other international standard setting bodies worldwide.

IV. Conclusion

ADS looks forward to the TTIP negotiations as an opportunity for the United States and European Union to ensure further regulatory coherence and develop strategies for efficiently resolving discrepancies between widely utilized international standards. In particular, the U.S. Government should take this opportunity to promote global implementation of WTO TBT Agreement principles for international standards. Further adherence to these principles will avoid costly obstacles such as policies that create discriminatory preferences for European or ISO-only standards.

ADS appreciates the U.S. Government's attention to this issue, and looks forward to a renewed commitment to use the best technical regulations, standards, and certification processes. This commitment will no doubt not only further protect domestic consumers of the respective members, but also ensure that the flow of international trade is not restricted by illegitimate standard setting practices.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ewout Leeuwenburg', written over the word 'Sincerely,'.

Ewout Leeuwenburg, Vice President, International
ADVANCED DRAINAGE SYSTEMS, INC.