



Prepared Statement on Behalf of

**THE COALITION OF SERVICES INDUSTRIES AND
THE BUSINESS COALITION FOR TRANSATLANTIC TRADE**

Before the

**HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE**

On

“U.S.-EU Trade and Investment Partnership Negotiations”

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I. Introduction

We appreciate the opportunity to participate in the House Ways and Means Subcommittee on Trade's hearing on negotiations of a U.S./EU Transatlantic Trade and Investment Partnership (TTIP) agreement. I am Greg Slater, Director of Trade and Competition Policy at Intel Corporation, and submit this written statement on behalf of the Coalition of Services Industries (CSI) and the Business Coalition for Transatlantic Trade (BCTT).

CSI is the primary policy advocacy association that works on behalf of U.S. based global service industries. Our members include a vast array of companies that provide services domestically and internationally, including accounting, banking, computer-related services, energy, express delivery and logistics, insurance, media and entertainment, retail and wholesale services, technology services, and telecommunications. CSI works to obtain international rules and market access commitments and fair conditions of competition for service industries.¹

The Business Coalition for Transatlantic Trade (BCTT), established in the fall of 2012, has been assembled to promote growth, jobs, and competitiveness on both sides of the Atlantic through an ambitious, comprehensive and high-standard trade and investment agreement between the United States and the European Union. The BCTT's Steering Committee is co-chaired by major companies, including Intel, with significant equities in the transatlantic economy, as well as many of the major multi-sectoral industry organizations. In addition, several dozen other companies and sector-specific industry associations are active participants in coalition working groups. The U.S. Chamber of Commerce serves as the Secretariat of the BCTT.²

CSI and BCTT members fully support the participation of the United States in the Transatlantic Trade and Investment Partnership (TTIP) negotiations. A comprehensive TTIP will benefit the economic prosperity of the United States and the European Union and further strengthen their economic partnership across all sectors and regulatory regimes. In particular, we agree that "*new and innovative approaches* to reducing the adverse impact on transatlantic commerce of non-tariff barriers must be a significant focus of the negotiation" and that, given their impact on world trade, the United States and European Union should "*develop rules and principles on emerging issues of global concerns*, thus strengthening the rules-based trading system from which all economies benefit."³ We cover a few of those rules in this submission.

While this written statement is focused on certain issues related to goods and services that should be addressed in the TTIP, CSI and the BCTT and their diverse memberships have many other priorities. Some of these priorities include: addressing market access and regulatory concerns specific to trade in agriculture; removal of investment barriers and protection of investment, including investor-State dispute settlement (ISDS); and developing meaningful disciplines for state-owned enterprises.

¹ For more detail on CSI, see <http://servicescoalition.org/>.

² For more detail on BCTT, see <http://www.transatlantictrade.org/about/>.

³ Letter from Acting United States Trade Representative Demetrios Marantis to Hon. John Boehner, March 20, 2013 [hereinafter "Letter from Acting USTR Marantis to Hon. Boehner"].

A. Importance of U.S./EU Trade Relationship

The U.S. and the EU maintain a very strong and beneficial commercial relationship, which is the backbone of the world economy. Together, the United States and the European Union generate over \$16 trillion or nearly half of global gross domestic product (GDP), and over one-third of global trade and investment flows.⁴

Foreign direct investment (FDI) contributes significantly to jobs and economic growth in the U.S. and EU. Together, the transatlantic partners own \$3.7 trillion in direct investment in each other's economy.⁵ The approximately \$2.1 trillion that U.S. firms invest in the EU is about half of all U.S. direct investment abroad and 40 times what they have invested in China. These U.S. investments in the EU generate \$3 trillion in sales for American companies annually. For their part, the \$1.6 trillion that European companies have invested in the U.S. has led to direct employment of more than 3.5 million Americans.

Trade in services accounted for 36 percent of total trade between the U.S. and the EU in 2012. Overall, the services sector generates three-quarters of GDP and employs three-quarters of the working population in both the U.S. and the EU.⁶ The services sector has been the most important sector in creating new jobs in the U.S. and EU. Trade and investment in services sectors such as banking, securities, insurance, education, computer services, management, express delivery and logistics, architecture, legal, and engineering services contribute to the continued growth of both economies and remain a vital resource for the continued prosperity between the transatlantic partners. In 2012, the European Union exported roughly 25 percent, or \$149 billion, of its services to the United States. In the same year, the United States exported roughly 30 percent, or \$193 billion, of its services to the European Union.⁷

With regard to trade in goods, U.S. merchandise exports to the EU topped \$265 billion in 2012, while merchandise imports reached \$381 billion. Each day, goods and services worth \$2.7 billion are traded bilaterally, promoting economic growth in both economies.⁸ Trade in goods between the U.S. and EU exceeded \$649 billion in 2012, representing the largest international exchange of goods in the world economy.

This broad and deep trade and investment relationship has a substantial jobs impact. The United States and the European Union are the two largest trading partners in the world, who by nearly every metric are inextricably linked. Trade with Europe currently supports 2.4 million

⁴ "United States". *Trade-Countries and Regions*. European Commission: 2013
<http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>.

⁵ The Office of the United States Trade Representative. "European Union". Resource Center.
<http://www.ustr.gov/countries-regions/europe-middle-east/europe/european-union>.

⁶ Hamilton, Daniel S.; Quinlian, Joseph P. "Sleeping Giant: Awakening the Transatlantic Services Economy". *Paul H. Nitze School of Advanced International Studies, Centre for Transatlantic Relations*. John Hopkins University: 2007.

⁷ Cooper, William. "EU-U.S. Economic Ties: Framework, Scope, and Magnitude". *Congressional Research Service*. Washington, D.C: April 2, 2013.

⁸ Letter from Acting USTR Marantis to Hon. Boehner, *supra* note 3.

American jobs, and transatlantic investment supports roughly 7 million jobs in the United States and the European Union.⁹

Despite these impressive statistics, there are substantial additional benefits to be gleaned from still closer cooperation.

B. Benefits of a Comprehensive Transatlantic Bilateral Agreement

We share the Administration's goal of concluding an ambitious, comprehensive, and high-standard agreement for goods and services that reduces or eliminates both tariffs and non-tariff barriers (NTBs).

1. *Tariffs.* While the U.S. and the EU have generally low tariff rates, the volume of trade is so large that the overall tariff bill our companies face is in fact quite high: A recent Bloomberg study notes that U.S. firms pay approximately \$6.4 billion in tariffs to the EU, money that could otherwise be dedicated to investment and job creation. Moreover, since as much as 40% of transatlantic trade in goods is intra-company, firms often pay duties on both sides of the Atlantic as they ship components and products back and forth. This double taxation significantly affects the global competitiveness of both U.S. and EU-headquartered firms. Thus, eliminating tariffs alone would have an immense economic impact. According to a 2010 econometric study¹⁰ by the European Centre for International Political Economy (ECIPE), transatlantic trade would increase by \$120 billion within five years of tariff elimination, and U.S. and EU GDP would expand by a combined \$180 billion.

TTIP negotiators already have committed in the report of the High Level Working Group (HLWG) to “eliminate all duties on bilateral trade, with a substantial elimination of tariffs upon entry into force, and a phasing out of all but the most sensitive tariffs in a short time frame.” Tariff elimination should also include elimination of any other duplicative or wasteful charges on trade or commerce in goods and services, including for example copyright levies on digital goods that are so prevalent in Europe and that impose not just double taxation but also wasteful administrative costs.¹¹ In brief, TTIP should eliminate virtually all tariffs, duties and levies immediately upon entry into force. Negotiators should spell out clear rules of origin for products benefiting from tariff elimination and allow for accumulation of origin with other trade agreement partners. In cases where tariffs remain high, the agreement should specify phase-out periods that reflect scheduled tariff elimination under other U.S. and EU trade agreements with a view toward enhancing U.S. competitiveness.

⁹ USTR TTIP Fact Sheet (February 2013), available @ <http://www.ustr.gov/about-us/press-office/fact-sheets/2013/february/US-EU-TTIP>.

¹⁰ European Centre for International Political Economy, “A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods, Fredrik Erixon and Matthias Bauer, Occasional Papers 4/2010 (October 2010).

¹¹ For a detailed discussion on the costs of and other problems raised by the disparate copy right levy systems in various EU member states, see comments filed by the Information Technology Industry Council to USTR on May 10, 2013 regarding the TTIP Agreement.

2. Non-Tariff Barriers

The greatest gains from a US/EU bilateral agreement will be made by eliminating current non-tariff barriers (NTBs) in the transatlantic economy¹² known as “behind-the-border” measures, and by setting a gold standard for other governments -- increasingly reliant on NTBs as a way to promote domestic industries – to follow. One study shows that eighty percent of the potential gains from TTIP would come from ensuring efficient, cost-effective and more compatible regulations for goods and services.¹³

We agree with the Administration that “*new and innovative approaches* to reducing the adverse impact on transatlantic commerce of non-tariff barriers must be a significant focus of the negotiation” and that, given their impact on world trade, the U.S. and EU should “*develop rules and principles on emerging issues of global concerns*, thus strengthening the rules-based trading system from which all economies benefit.”¹⁴ The Dutch think tank ECORYS estimated in 2009 that just a 50 percent reduction in NTBs in the transatlantic economy would increase both EU and U.S. GDP by 3 percent, generating annual gains of \$450 billion for the U.S. and \$495 billion for Europe.

There are two types of NTBs: (i) “cost-creating” NTBs that are not in themselves discriminatory, but produce efficiency losses for both domestic and foreign firms; and (ii) “rent-creating” NTBs that explicitly discriminate against foreign firms and generate “rents” for domestic firms or regulators. It has been estimated that 40-45% of the NTBs affecting U.S.-EU trade are rent-creating, with the remainder being cost-creating.¹⁵

NTBs exist in most U.S./EU industrial sectors and apply to both goods and services, in large part because of differences in regulatory systems, standards and conformity assessments. Although these disparate rules usually have the same legitimate objectives -- such as protecting health, the environment, or consumers – intended outcomes from different regulatory frameworks often afford equivalent levels of protection. Where this is the case, mutual recognition is appropriate. Where differences in levels of protection remain, the focus should be on establishing interoperability by finding the least burdensome way to bridge those gaps while providing credit for any similarities. For instance, the U.S. and EU differences in the qualifications for a variety of professionals (e.g., lawyers, doctors, engineers, architects, etc.) could be resolved by first examining whether the differences with a particular profession were substantive. Where they are not, a mutual recognition system would solve the discrepancies; and where there are substantive differences, use of the least burdensome way to fill them and providing credit for the similarities would help open up these service sectors.

¹² See “Potential Effects from an EU-US Free Trade Agreement – Sweden in Focus,” Swedish National Board of Trade, p. 1 (2012) [hereinafter, “Potential TTIP Effects - Sweden in Focus”]. See also Letter from Acting USTR Marantis to Hon. Boehner, *supra* note 3.

¹³ Francois, Joseph, “Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment,” Centre for Economic Policy Research, London (March 2013) [hereinafter “An Economic Assessment”].

¹⁴ Letter from Acting DUSTR Marantis to Hon. Boehner, *supra* note 3.

¹⁵ Stephen Ezell, “Estimating the Potential Benefits of an EU-US Free Trade Agreement,” p. 1 (The Information Technology & Innovation Foundation, March 14, 2013) [hereinafter “ITIF Paper on TTIP Benefits”] (quoting from “Potential TTIP Effects - Sweden in Focus”).

It is important that all sectors facing regulatory divergences be included in the TTIP negotiations. The parties will not be able to achieve the same degree of regulatory cooperation commitments during the course of the negotiations, but the TTIP is also about charting a path for greater regulatory cooperation in the future. Temptations to prematurely carve out sectors, including financial service, entirely from the regulatory cooperation component should be resisted. Doing so only undermines the pledged mutual commitment to develop a comprehensive and ambitious agreement.

3. Estimated Economic Benefits from a Comprehensive TTIP

More broadly, the TTIP Agreement has the potential to dramatically improve U.S. economic growth, increase American jobs, and strengthen U.S. competitiveness in the global marketplace. There are various estimates on the economic benefits that will result from a robust TTIP, and all of them are impressive.

For example, the German Marshall Fund predicts that a trade pact would boost U.S. GDP by \$130 billion annually. Likewise, new research released in March by the European Commission and performed by the Center for Economic Policy Research in London estimates that a transatlantic trade and investment pact would generate economic gains for the EU of \$155 billion per year and for the U.S. \$124 billion per year, while increasing GDP across the rest of the world by \$130 billion annually.¹⁶ Opening the European market further could grow the U.S. GDP by \$123 billion a year, and raise total U.S. exports by 8 percent.¹⁷ Another estimate notes that as a result of the TTIP, new trade opportunities for the United States and the European Union with the rest of the world could increase by over \$50 billion and could increase world GDP by \$152 billion.¹⁸

II. By Using a Holistic Approach to Liberalize the Goods and Services Markets, TTIP Can Significantly Increase Transatlantic Innovation and Economic Growth

The TTIP should fully liberalize trade in goods and services by creating stronger trade and investment rules to further open up the transatlantic market; promote effective regulatory cooperation for the development of efficient, cost-effective, and compatible regulations for goods and services; and, where regulation is not necessary, establish and promote international standards and principles to address issues of common concern outside of the transatlantic market to pre-empt more intrusive requirements. A comprehensive, high-quality and binding trade agreement will, in effect, establish a global standard that other trading partners will be measured against, and possibly could even facilitate a new round of WTO commitments.

A holistic and creative approach to the liberalization of trade and investment in goods and services would help satisfy the HLWG's mandate that the TTIP break new ground, seek innovative approaches, establish trade rules that are globally relevant, and be flexible enough to

¹⁶ ITIF Paper on TTIP Benefits, *supra* note 15, p. 1.

¹⁷ *Ibid.*

¹⁸ An Economic Assessment, *supra* note 13.

evolve over time.¹⁹ Importantly, the benefits of a creative and comprehensive U.S./EU bilateral trade agreement will encompass much more than static equilibrium gains. More impactful are the innovation gains that will occur by removing road blocks to the commercialization of new products and services, and by reducing regulatory burdens that waste precious time and resources better spent increasing the competitiveness of U.S. and EU businesses.

A. Address Trade Policy Implications From the Servicification Trend

In both the U.S. and the European Union, services account for about three-quarters of all economic activity and employment. The U.S. and the EU are by far the world's largest exporters of services. Together, these two economies account for 70% of global services trade, much of which takes place within the transatlantic relationship.²⁰

Yet, policy makers should not prioritize services at the expense of goods or vice-versa. The liberalization of goods and services can be mutually reinforcing, as the increased use and sale of services by manufacturing companies also “seems to promote the manufacturing sector’s exports of goods.”²¹

Manufacturing companies use and produce more services than ever before due to increasing global competition, fragmentation of production, wiser use of global supply chains, the expansion of the global digital infrastructure (GDI) and the impacts of the information economy. As U.S. companies expand operations in Europe, they will increase their use of internal logistics, telecommunications and other services to manage their business. And, increasingly, manufacturing companies use various repair, maintenance and other services to customize, differentiate and upgrade their products, as well as prolong their business offerings to satisfy consumers, improve client loyalty, and by extension, strengthen competitiveness. Moreover, many U.S. and European manufacturing companies also are increasing their use of knowledge intensive services to help them move up the value chain and sell services along with their products. One can thus understand the importance of liberalizing trade in ICT goods and services (see Section III *infra*), which more easily allows manufacturing companies to integrate services forwards and backwards in the value chain and capture additional profit.

As a result of the foregoing commercial developments, the distinction between manufacturing and service companies is becoming blurred. The “servicification” of the economy is accelerating and trade policy needs to catch up.²²

¹⁹ See Office of the U.S. Trade Representative, [*Final Report of the U.S.-EU High Level Group on Jobs and Growth*](#), February 11, 2013 [hereinafter “Final HLWG Report”].

²⁰ The U.S. exported \$210 billion in services to the EU and imported \$150 billion in services from the EU in 2012. The relative importance of services trade is growing for both the U.S. and the EU. Cross-border trade in services between the U.S. and the EU has increased from about 30% of total transatlantic trade in 2000 to 36% in 2012.

²¹ See generally *Everybody is in Services – The Impact of Servicification in Manufacturing on Trade and Trade Policy*, p. 16, Swedish National Board of Trade (2012) [hereinafter “Everybody is in Services”].

²² *Ibid.*

Rather than negotiating on services and goods in separate silos, it is important for TTIP to take into account and support the business models of servicified manufacturers. As explained further below, U.S. and EU trade authorities should consider negotiating goods and services in clusters – i.e., liberalizing all of the services links in supply chains for the relevant manufactured or agriculture goods. Negotiations also should use all available data to (i) tackle sensitive issues to more fully understand the overall benefits of specific liberalization proposals (e.g., impact to production of goods from liberalizing the temporary movement of highly skilled workers across the Atlantic); and (ii) effectively address new issues such as cross-border data flows with a full understanding of the benefits to both the goods and service industries.²³

B. Ensure Broad Market Access and National Treatment

1. *Liberalize All Services.* The TTIP must liberalize all forms of services to achieve its full potential. Services are delivered in four basic ways – i) across borders, including via digital networks; ii) by providing the service in the firm’s home country to a service consumer who is visiting the country; iii) by providing the service directly within the consuming country through the firm’s subsidiary or branch; or iv) by temporarily sending an employee overseas. Companies will rely on all four “modes of delivery” in a seamless manner because they are not interchangeable. For example, a U.S.-based software company may export its products to Europe via the Internet (“cross-border trade,” known as mode 1), provide training to its staff at a facility in Spain (“consumption abroad,” mode 2), sell service contracts through a French affiliate (“commercial presence,” mode 3), and employ a Dutch national at its headquarters on an H-1B visa (“movement of natural persons,” mode 4). Moreover, due to technological advances firms regularly reconsider their traditional delivery modes of choice. Therefore, it is important that all modes of delivery be included across each party’s schedule of market access commitments.

For example, stringent worker mobility rules can impair both the delivery of other services and the production of goods. High value innovation is increasingly collaborative and cross-border, involving multiple sites, corporate affiliates or other parties. Due to the large investments multi-national U.S. and EU companies have made in each others’ economies, their employees with science, technology, engineering and mathematics (STEM) degrees often are involved in transatlantic R&D projects that require regular in person interaction with employees at other sites. Too often, however, visa applications take an unreasonable amount of time to process and these delays restrict important manufacturing and other business activities. With global competition and the rapid pace of innovation, employers in dynamic industries must be able to quickly and regularly deploy key employees to their sites in the United States and Europe. TTIP can simplify and streamline worker mobility rules for employees with STEM degrees to enhance collaboration and innovation within affiliates as well as between US and European companies.²⁴

²³ *Ibid.*

²⁴ Specifically, the TTIP should include an expansion of permissible business activities, a new treaty visa similar to the one created for Canada and Mexico in the NAFTA agreement, streamlined procedures for intra-company transfers, improved treatment for family members relocating with a worker, and an adjustment to the J-1 home residency requirement.

Market access commitments also should provide access throughout the *entire* supply chain by taking into account inter-related services -- i.e., services that may fall in different categories but are complementary to each other in providing an integrated services package to consumers. Trade barriers for any one link can undermine a service as a whole and render companies in the transatlantic region less competitive globally. Clustering (or integrating) services is especially important for computer-related services, telecommunications, and express delivery services.

Moreover, the TTIP coverage's of negotiated commitments should apply to all types of entities that supply services, including when they integrate additional services not in existence at the conclusion of the agreement (such as software, e-commerce, and telecommunications). At a minimum, market access commitments should ensure that any new services that become possible to trade as a result of technological innovation are in a covered category and can be provided without further negotiation.

In brief, market access commitments for services should be recorded on a negative list basis, with only a minimal number of non-conforming measures that should be subject to timetables for full liberalization. U.S. suppliers of services should receive treatment no less favourable than that accorded to domestic and other foreign providers of services in European Union Member States.

2. *Minimize Barriers from Product Regulations and Licensing / Conformity Assessment Requirements.* Regulations and licensing regimes designed to ensure and approve the safety, security or quality of goods and services are increasing globally, and can seriously impede trade flows and impact market access without justification if they are discriminatory or unnecessarily restrictive. The TTIP should minimize these negative regulatory impacts through comprehensive commitments that would exceed those found in WTO law²⁵ and that the U.S. and EU could then promote globally.

In particular, governments should have the burden to show that new technical regulations and licensing requirements will treat services and goods suppliers of any country on both a *de jure* and *de facto* basis in a manner no less favourable than that accorded suppliers based in the member's own territory. Technology mandates, especially prescriptive ones that require specific design characteristics or the use of specific technologies, are especially problematic and should require significant government justification. Licensing requirements should be subject to increased transparency requirements, a specific timeframe for approval or denial of a licensing application, and no cap on the number of licenses (and thus suppliers) allowed in the market. Any supplier meeting the regulatory requirements should receive approval of their application for a license or certification. Effective and prompt appeal procedures to an independent regulator should exist in cases of denial.

²⁵ The non-discrimination clauses in the WTO Agreement on Technical Barriers to Trade apply to technical regulations and conformity assessments (e.g., TBT Articles 2 and 5) . For regulations that are not technical (i.e., applicable to product characteristics and production methods), the General Agreement on Tariffs and Trade would apply (e.g., Article III). For services, the General Agreement on Trade in Services would apply (e.g., Article VII).

3. *Promote Investment Protections.* As noted earlier, investment rather than trade, is the foundation of the transatlantic economic relationship. The \$3.6 trillion dollars our firms have invested in each others' economies employ nearly 8 million workers directly, and many multiples of that in the supplier relationships they have. Combined, these investments – many in the services sector -- power enterprises with annual sales exceeding \$4 trillion, a number which dwarfs both bilateral trade flows and U.S. trade and investment relationships with other countries.

Despite this remarkable relationship, there is no formal investment agreement between the United States and the European Union, although the U.S. has ratified Bilateral Investment Treaties (BITs) or Treaties of Friendship, Commerce, and Navigation with nearly all EU member states.

The EU recently gained competence from its member states to negotiate investment agreements. The TTIP should build on this to conclude a full and ambitious investment promotion and protection chapter, less out of concern for the current state of investment protection in either the United States or the EU, but as a symbol of our joint commitment to strong investment protections globally. The investment chapter of the TTIP should serve as the “gold standard” for other investment agreements.

The TTIP investment chapter with the EU should provide at least the high-standard level of protections found within the 2012 U.S. model BIT, as well as the detailed principles set out by ten U.S. and European business associations in November 2011.²⁶ Specifically, the key provisions of a TTIP chapter on investment should include:

- A broad definition of investment;
- The right to establish and operate investments on a non-discriminatory basis, across the full range of economic sectors, including agriculture, mining, manufacturing and services; this should be done on a “negative list” basis, with only limited and tightly defined exceptions;
- The right to transfer monies related to an investment;
- The right to transfer, process, store and manage data related to an investment;
- Allowing expropriation only for a public purpose, on a non-discriminatory basis, with due process, and with prompt, adequate and effective compensation for the fair-market value of the investment;
- Provisions on competition with state-owned or state-controlled enterprises; and
- A robust investor-State dispute settlement (ISDS) mechanism.

With regard to market access and limits on ownership, challenges remain on both sides of the Atlantic. Despite well-known sensitivities, TTIP negotiators should avoid carve outs of any particular sector and put all investment barriers on the negotiating table.

²⁶ See <http://www.investmentpolicycentral.com/sites/investmentpolicycentral.drupalgardens.com/files/Multi-association%20TEC%20Investment%20Principles%283%29.pdf>.

C. Minimize Localization Barriers to Trade

The HLWG Report pointed out the opportunity that TTIP presents to address the increasing use of “localization barriers to trade” (LBTs) by other governments, which it defined as “measures designed to protect, favor, or stimulate domestic industries, services providers, or intellectual property at the expense of imported goods, services, or foreign-owned or foreign-developed intellectual property.” Many of these “local content” measures are traditional in nature – i.e., a specific form of old fashioned NTBs intended to attract and develop more domestic manufacturing in strategic industries. But more recently, some LBTs have been (i) extended upstream to include the value add of domestically developed intellectual property (IP) as part of preferential treatment initiatives for both domestic manufacturing and R&D;²⁷ (ii) broadened to include services by domestic workers;²⁸ and (iii) applied in novel ways, for example by connecting the purchase of assets that enable services with the purchase of domestic goods.²⁹

The increasing use of LBTs in emerging markets place U.S. and EU companies, both manufacturers and service providers, in a difficult position – i.e., either move business operations to places that are not ideal or forego some market access opportunities. The TTIP should take a strong position against such measures by making it clear in the agreement that market access for goods and services will not be conditioned on requirements to (i) invest in, develop, or use local R&D, intellectual property, ICT manufacturing or assembly capabilities; (ii) transfer technology to another party involuntarily; or (iii) disclose unnecessary proprietary information. The U.S. and EU should commit to exercise best efforts, both individually and jointly, to encourage other governments to make similar comprehensive commitments on market access.

D. Maximize Trade Facilitation Opportunities

In today’s global economy, businesses are linked together through a web of interconnected, predictable, and efficient supply chains. Inputs come from all over the world to create products with the greatest value for the consumer. As a result, more than half of all international trade today is in intermediate goods, according to the OECD. Limiting cross-border friction will boost the global competitiveness of U.S. and EU businesses and reduce costs across their highly-integrated transatlantic operations.

²⁷ For example, in February 2012, the Indian Ministry of Communications and Information Technology announced a Preferential Market Access (PMA) mandate for electronic goods that imposes local content requirements on procurement of electronic products by government and private sector entities with “security implications for the country.” A specified share of each product’s market, increasing from 30 up to 100 percent over a period of five years, would have to be filled by Indian-based manufacturers. At least one of the implementing measures issued under the PMA mandate would include domestically developed IP as part of the calculations of value ad to determine the local content in a product.

²⁸ For example, India’s proposed 2010 amendment to its standard telecommunications license would have required that maintenance services performed on telecom networks be performed only by Indian workers.

²⁹ For example, last year Brazil imposed restrictions on the participation of foreign entities in the purchase of spectrum as part of the development of a 4G wireless telecommunications network, requiring that at least 60 percent of the telecom equipment be sourced locally.

Chokepoints at the border, such as costly customs procedures, inefficient security programs, and burdensome regulation, reduce the critical predictability of the supply chain, and as a result can have the same stifling impact on trade as tariffs. Indeed, a recent study by the World Economic Forum and Bain & Company entitled *Enabling Trade Valuing Growth Opportunities* found that reducing global supply chain barriers could increase world GDP by as much as 5% and international trade by 15% — figures that far surpass the potential impact of tariff elimination. Cutting red tape at the border through trade facilitation reforms could boost the world economy by as much as \$1 trillion and generate more than 20 million jobs, according to the Peterson Institute for International Economics.

The U.S. and the EU should modernize the customs architecture that governs the movement of goods across the Atlantic. Of most importance, each party should establish a “single window” through which importers and related parties can electronically submit all information to comply with customs’ and other agencies’ information requirements.³⁰ The single window on each side of the Atlantic would decrease the transaction cost of trade and open markets to small and medium-sized businesses. The U.S. and EU authorities should then agree to a common set of import and export data elements for customs, security and other government agency data requirements. Provision for electronic pre-clearance based on advanced data should also be included so that goods are cleared before their arrival at a port of entry.³¹

The United States and the EU should reaffirm their commitment to a multi-layered and risk-based approach to enforcement and security procedures. Risk management provides the greatest possible security while simultaneously facilitating legitimate trade. This approach should include the future development of supply chain, customs, and other government agencies’ border procedures and regulations.³²

³⁰ A “one government at the border” approach means that all government agencies with border and hold authority in the U.S. the EU would develop common border procedures and coordinate inspection activities. Currently exporters face national customs clearance processes in EU Member States that maintain separate procedures and computers systems. Companies on both sides of the Atlantic face dozens of agencies that lack enforcement and facilitation coordination. To reduce the high costs and unnecessary delays this can generate, all security, customs, product safety, and other requirements should be cleared with a single release, and released separate from payments of duties or import charges.

³¹ The TTIP can enhance mutual recognition on a number of fronts, including:

- One online application process accepted in the United States and EU Member States;
- Single validation and revalidation visits with the results accepted by both sides;
- Payment of customs duties on an account basis as opposed to per transaction;
- Permission to provide required documents and commercial information post-release; and
- Common information requirements where the export declaration of one side is accepted as the import declaration of the other side.

³² The Air Cargo Advance Screening (ACAS) initiative serves as an example of how programs should be developed, by coordinating, consulting, and piloting on both sides of the Atlantic. To prevent diverging transatlantic regulations, we should develop common requirements for data, common communications with carriers and forwarders, and risk criteria. Partnership between the private and public sectors on supply chain security has become a cornerstone for transatlantic commerce. The U.S.-EU C-TPAT/AEO mutual recognition agreement was a welcome step; nevertheless, potential for further alignment remains.

In addition, raising and harmonizing the *de minimis* value to a minimum of \$800 for the collection of customs duties and other taxes on low-value goods is critical to facilitate trade. It is also critical to reducing trade barriers for SMEs, allowing them access to international markets.

III. Liberalize ICT Goods and Services: A Cross-Sectoral Priority

Many sectors can benefit from the liberalization of tariff and non-tariff barriers in the TTIP, including finance, express delivery and logistics, banking and securities services, and insurance. However, one sector in particular has broad impact on the productivity, innovative capabilities and competitiveness of other industries and is worthy of specific attention – the Information and Communications Technology (ICT) goods and ICT-enabled services.

The economic multiplier effect of the ICT sector is well documented. “The McKinsey Global Institute estimates that the Internet alone accounted for 21 percent of the aggregate GDP growth across thirteen of the world’s largest economies from 2006 to 2011, while the World Bank estimates that ICTs accounted for one-quarter of GDP growth in many developing countries during the first decade of the 21st century.”³³ Moreover, “Finland’s Ministry of Employment and the Economy estimates that, by 2025, half of all value in the global economy will be created digitally.”³⁴ With regard to the U.S., one study estimates that in 2009, the American ICT industry contributed \$1 trillion to U.S. gross domestic product (GDP), or 7.1 percent of GDP, including \$600 billion from the sector itself *and* \$400 billion in benefits to other sectors that rely on ICT.³⁵

When the ICT sector grows through investment, innovation and wise government policies, the global economy grows even more. For example, The World Bank has estimated that, all else being equal, a high income economy can expect to see a 1.21 percent increase in per capita GDP growth for everyone 10 percent increase in broadband penetration.³⁶ Accordingly, full liberalization of ICT goods and ICT-enabled services has become vital to healthy national economies and is entirely consistent with the recommendation in the Final HLWG Report to identify “policies and measures to increase U.S.-EU trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness.”

A. *Enable Digital Goods and Services Over the Internet.* The U.S. and EU should maximize opportunities for ICT service suppliers to provide computer and related services, telecom services or other services over the Internet on a cross-border and technology-neutral basis. Consistent with our recommendations on LBTs in Section II.C, The TTIP should also specifically prohibit requirements to locate servers or data in-country, as they undermine the very

³³ ITIF Written Testimony to the U.S. International Trade Commission, Investigation No. 332-531, prepared by Stephen Ezell for the ITC Hearing on “Digital Trade in the U.S. and Global Economics” (March 14, 2013).

³⁴ *Ibid.*

³⁵ See Shapiro & Mathur, [The Contribution of ICT to American Growth, Productivity, Jobs and Prosperity](#) (September 2011).

³⁶ World Bank, [Information and Communications for Development 2009: Extending Reach and Increasing Impact](#), (2009).

definition of cross-border services. On a related note, the U.S. and EU should agree to increased cooperation to enable innovation in the interconnectivity of physical goods (the “Internet of Things”) while avoiding divergent policy approaches.

B. *Ensure Cross-border Data Flows and Transfers of Information.* One of the Administration’s objectives for the TTIP, cited in the May 20th letter notifying Congress of its intent to enter into negotiations, is to “seek to include provisions that facilitate the movement of cross-border data flows.”³⁷ We agree that this issue needs to be a top priority given that the transfer of information is increasingly important in all industry sectors that engage in transatlantic commerce.

In support of services through electronic channels, there must be a clear obligation to permit cross border data flows and external data storage, management, processing, and access (so, for example, users may benefit from the availability of cloud computing services), both within a firm, in its operations in other markets, and with its customers, wherever they may be located. This principle has been described in the EU-U.S.Trade Principles for ICT Services and in the OECD Internet policy principles.

Restricting international data flows as a means of protecting access to data or ensuring security is ineffective and inefficient. The primary effect of that approach is to slow the expansion of trade in all internet-dependent services, and cloud services in particular, at precisely the time when innovation in these services is growing exponentially and benefitting so many entities— particularly SMEs—in a variety of industries. Below we discuss how the U.S. and EU can use TTIP to effectively bridge differences in approaches to privacy and cyber security (see Sections III.D and E).

The Parties should thus establish a framework in the TTIP that establishes strong and binding provisions to support the cross-border flow of data, which enables service suppliers, or customers of those suppliers, to electronically transfer information internally or across borders, store or access publically available information, and/or access their own information stored in other countries. These TTIP provisions should set global principles for the free flow of information across borders without requirements to locate or store data in-country.

C. *Apply and Promote Interoperable Transatlantic Privacy Principles.* It is possible for the TTIP to accommodate both a robust privacy commitment and a strong commitment to safeguard cross-border data flows. Most privacy laws are based on the Fair Information Practices Principles, which have been developed over time in the US and the EU, and a version of which was ratified by the OECD as part of their Privacy Guidelines in 1980. This commonality means basic interoperability to privacy exists across the U.S., EU and other countries at the principle level, even if significant divergences exist in domestic laws and implementation methodologies due to local legal and cultural priorities.

Economic growth requires individuals to trust their use of digital devices and the services which rely upon them. The U.S. and the EU have the shared objective of maintaining high privacy principles to foster this trust, while also promoting maximum interoperability to enable the global information flows supporting the digital economy and information society.

³⁷ Letter from Acting USTR Marantis to Hon. Boehner, *supra* note 3.

An example of such a beneficial and cooperative approach is the current work being undertaken in APEC to map Binding Corporate Rules (BCRs) and Cross Border Privacy Rules (CBPRs). This mapping seeks to find the common elements between BCRs and CBPRs so that credit can be given for the valid work of complying with one standard when demonstrating compliance with the other standard. This mapping and interoperability will reduce much of the duplicative effort required to comply with separate regulations without diminishing the standards upon which the regulations are founded.

Accordingly, CSI and the BCTT recommend that, among other principles, the TTIP negotiators (i) minimize the potential burdens and unintended consequences of developing and implementing separate, yet credible privacy policy frameworks and regulations; (ii) adopt global standards that facilitate innovation and access to the latest privacy features in ICT products and services; (iii) explore flexible and “totality of the circumstances” ways of recognizing credible approaches to privacy based on common principles to safeguard personal information in a way that furthers the digital economy and information society; and (iv) support and expand the mapping of new and existing regulations and policy frameworks to allow global organizations to leverage existing compliance procedures to satisfy some or all of the compliance requirements of other regulations. These “transatlantic privacy principles” will encourage global interoperability, thus ensuring a high standard of personal data protection in a manner that avoids undue administrative burdens and restrictions on international data transfer.

D. *Apply and Promote Effective Transatlantic Cyber Security Principles.* In recent years, there has been a dramatic increase in both the quantity and the severity of malicious cyber attacks that can impede the use and even discourage the development and dissemination of ICT and ICT-enabled services. It is important for the U.S. and the EU to pursue policies to incentivize organizations to create a more secure global digital infrastructure. To date, countries and regions have approached cyber security in a disconnected manner. Through TTIP, the U.S. and EU have an opportunity to embrace emerging common cyber security standards, incentives and principles that minimize both security threats and any trade-distorting impacts.

Specifically, in June 2012, ITI, Digital Europe (DE), and the Japan Electronics & Information Technology Industries Association (JEITA) issued a “Global ICT Industry Statement: Recommended Government Approaches to Cybersecurity.” This statement provides all governments with a common foundation for policymaking in the area of cyber security. The 12 recommendations represent a cooperative approach between government and industry that meets security needs while preserving interoperability, openness, and industry’s capability to innovate and compete. We urge the parties to use the TTIP to promote these approaches.

IV. Enhance Global Protection of Trade Secrets

The effective protection and enforcement of intellectual property rights (IPR) allows innovation to develop because it creates a climate in which innovators receive the incentives to invest in the research, development, and commercialization of leading-edge technologies. Moreover, in such a climate, innovators are more likely to share their innovations and transfer

technology voluntarily to others, knowing that the terms on which they do that will be respected and effectively enforced if necessary.³⁸

TTIP negotiators already know that they should not spend time and resources trying to fully harmonize their IP systems. Instead, as the HLWG report notes, the Parties are willing to address and cooperate extensively on several issues of common concern that “would not only be relevant to bilateral commerce, but would also contribute to the progressive strengthening of the multilateral trading system.” One IP issue that fits these criteria very well is the need to enhance global protection of trade secrets. Many of the cyber attacks, discussed in Section III.D, are designed to misappropriate trade secrets.

Although some of a company’s most valuable assets can be embodied in trade secrets, this type of IP often is subject to the weakest legal protections as compared to other types of IP. The entire economic value of a trade secret stems from the competitive advantage conferred by the confidential nature of the information. Once disclosed, trade secrets cannot be recovered because this form of IP does not give its owner an exclusive right (in contrast to a patent, for example).³⁹

Trade secret misappropriation is on the rise due to greater global competitiveness and a significant increase in the use of digital devices that process data on a nearly constant basis, which in turn increases the targets for cyber attacks. Moreover, some governments are requesting excessive amounts of confidential information as a condition of product approvals, which raises a different kind of disclosure risk.

The TTIP should be used to develop a comprehensive model trade secret protection system that can be promoted globally. This system should effectively (i) address trade secret theft; (ii) increase government to government cooperation to minimize cross-border incidences of trade secret theft; (iii) minimize increasing government requests for excessive and unnecessary confidential information (trade secrets) as a condition of product approvals (market access), and (iv) address inadequate government procedures to protect the confidential information they receive.

Both the U.S. and EU governments are currently reviewing their respective trade secret laws to determine how they could be improved. A TTIP commitment to identify and adhere to the basic elements of a model trade secret law, and promote it globally, is especially important because the relevant obligations in Article 39 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights require only minimum levels of protection for trade secrets. Separate from model legislation effectively addressing trade secret theft, a comprehensive trade secret protection system also should require governments to justify requests for disclosure of trade secrets as a condition of product approval or market access.

³⁸ See “The Economic Value of Intellectual Property,” Robert J. Shapiro & Kevin A. Hasselt, p. 8 (Oct. 2005); available: <http://www.sonecon.com/docs/studies/IntellectualPropertyReport-October2005.pdf>. See also D. M. Gould and William C. Gruben, “The Role of Intellectual Property Rights in Economic Growth,” *Journal of Development Economics*,” Vol. 48, No. 2 (1996).

³⁹ Trade secrets do not prevent another company from developing that same knowledge independently. Instead, they merely safeguard the often substantial investment by one company from unfair theft and deliberate misuse by another.

V. Conclusion

CSI and BCTT strongly support the proposed Transatlantic Trade & Investment Partnership. It has the potential to strengthen the U.S. economic recovery, generate good jobs, and fortify the global rules-based trading system. It will extend similar benefits to the citizens of the European Union. We urge that negotiations for a comprehensive and ambitious TTIP be formally launched as soon as possible with a goal of concluding them expeditiously. For the United States to achieve the goal of a true 21st century agreement with state-of-the-art rules, our negotiators must hold fast to the goal of a comprehensive and ambitious accord. We look forward to working with Congress and the Administration to assist in achieving this goal.