



Information Technology Industry Council

"The U.S. – E.U. Free Trade Agreement: Tipping Over the Regulatory Barriers" Testimony of ITI's Dean C. Garfield House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade

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Chairman Terry, Ranking Member Schakowsky, members of the Subcommittee, thank you for the opportunity to testify today. I am Dean Garfield, president and CEO of the Information Technology Industry Council, or ITI, a Washington-based non-profit business association representing 52 of the most innovative technology companies in the world. We applaud the subcommittee's interest in the Transatlantic Trade and Investment Partnership, or T-TIP, and welcome the opportunity to appear before you today to share our views on this major endeavor.

ITI's member companies span the information and communications technology (ICT) industry: infrastructure, computer hardware, software, telecommunications, consumer electronics, and IT, e-commerce and Internet services. This technology is essential to every sector of our nation's economy, and enables individuals of every age and ability to improve their quality of life.

Among ITI's highest priorities are global policies that advance technology and innovation, promote open markets, rely on market-based solutions, protect intellectual property, and develop and advance the use of global, voluntary standards. Unfettered market access is critically important to our ability to sustain U.S. technology leadership here and abroad. Even though there is already substantial trade between Europe and the United States, the T-TIP negotiations present an important opportunity for the world's two major economies to address global trade issues of common concern. Accordingly, ITI is actively engaged in achieving a T-TIP that will advance competitiveness, growth, and job creation, especially in the area of digital trade; reduce and minimize regulatory burdens and barriers to trade; and establish transparent, predictable regulatory convergence. My testimony highlights a number of issues where progress needs to be made to achieve these goals.

FOSTERING COMPETIVENESS, GROWTH, AND JOBS THOROUGH DIGITAL TRADE

As the digital trade becomes an even more fundamental element of the global economy, provisions to support the development and growth of ICT services, cloud computing, and e-commerce are critical if both sides of the Atlantic are to fully realize our shared potential in terms of investment and new business and job creation.

Digital trade, investment, and business and job creation are coming from a number of sources, a few of which are important to highlight here, namely, ICT services and cloud computing.

ICT Services

The ICT sector provides the infrastructure and technology that enable cross-border delivery of services for a number of sectors, ranging from financial services, and express delivery and retail -- just to name a few. Growth in transatlantic

services trade will not only benefit ICT service companies, but will also benefit manufacturers of ICT infrastructure and platforms, which allow for the fast and efficient delivery of services. To maximize the economic potential of ICT services, providers should have the freedom to choose the most efficient, cost-effective mean to deliver the services, e.g., through cross-border delivery or via a commercial presence. As these companies gain greater market access, U.S. high-tech companies will benefit by supporting their transatlantic operations.

Cloud Computing

By centralizing data storage and governance, clouds can actually provide better security at a lower cost than can traditional computing environments. Cloud environments can also provide differentiated levels of security, reflecting the fact that certain types of data warrant a higher level of protection. Fundamentally, the growth of cloud computing, and the cloud's value to future economic growth, will continue only if its development is guided by the same open, market-based approach that has long enabled the dynamic growth of the Internet and ICT generally.

To ensure transatlantic gains that advance ICT services, cloud computing and other similar aspects of digital commerce, the T-TIP should include the following:

- Strong, binding provisions to support the cross-border flow of data. Service suppliers across all industry sectors and their customers should be able to freely transfer, access, process, store, and manage information across borders, all of which are essential to meeting contractual obligations. Product developers and service suppliers rely on the free-flow of information, and the T-TIP should include workable mechanisms that allow for greater interoperability, thereby facilitating cross-border data flows.
- An explicit agreement assuring that ICT service providers will continue to be free to choose the methodology for delivering cross-border services, without country-specific, local data server, cross-border services or similar data requirements.
- Technology-neutral approaches to ensure that current services, including cloud computing, Web hosting, software as a service, audio visual services, and others, are all covered, and that commitments in computer and related services also cover emerging and evolving services as technology advances.
- Measures that embrace the promotion of interoperability and mutual recognition of privacy, data protection, and cybersecurity frameworks.
- Continued reliance on global ICT standards developed via standard-setting processes that are consensus-based, transparent, and industry-led, with participation open to interested parties.

Even if the United States and the European Commission (EC) reach agreement on the above, if the two markets are not aligned relative to policies and protections afforded to services and content, then the potential for expanding digital trade -- and the economic growth and job creation it stands to generate -- will remain unnecessarily constrained. Accordingly, it is essential that the T-TIP address three key, related policy areas:

Intellectual Property

The T-TIP should strive to sustain and enhance cooperation on the protection of intellectual property rights. It should provide effective protection and enforcement of intellectual property rights to create a climate in which innovators are encouraged to invest in the research, development, and commercialization of leading-edge technologies, and promote the dissemination of technologies and services. New and complementary approaches that enable the digital economy to function, balanced to include effective protection of intellectual property, should be encouraged, and should respect principles such as freedom of expression, fair process, and privacy.

Trade Secrets Protection

ITI urges both the United States and the EC to strive toward a uniform trade secrets protection regime. Through the T-TIP, the United States and the EC have the opportunity to create a global model for the protection of trade secrets and increase cooperation on theft by third countries.

ITI also urges the United States and the EC to develop model protections for trade secrets in addition to those provided via the World Trade Organization's (WTO) Technical Barriers to Trade Agreement (TBT) that are submitted to government authorities as a condition of market access (i.e., where the disclosure is linked to the importation and/or sale of goods). Our industry, like others, is concerned with the increasing number of overbroad testing or certification systems and other regulatory schemes being developed by foreign governments that require the disclosure of unnecessary proprietary information. The risk that the required sensitive information will leak to domestic competitors is compounded by the reality that many governments have inadequate procedures to protect such information and some of those governments are focused on increasing indigenous innovation.

Industry recognizes that in certain circumstances, some proprietary product information needs to be provided to governments, including ours, for legitimate health, safety, security and other reasons. In such cases, however, U.S. agencies have detailed procedures to protect confidential business information, which are enforceable against the officials that administer them. T-TIP could seek agreement from the EC and Member States to emulate the principles embedded in such procedures, and set a global standard for other governments to follow.

Copyright Levies

Collecting societies in a number of Member States of the European Union have been granted the right to charge levies on specific goods to provide compensation to the rights holders of certain copyrighted material that has been subject to private copying. These levies are an outdated method of compensating content rights holders in light of highly effective digital rights management tools. Moreover, copyright levies on digital goods undermine the objectives of the Information Technology Agreement to reduce costs of and expand trade in information technology products. The levies are a prime example of the type of tariffs or duties that should be eliminated through the T-TIP, especially given their negative impact on demand for ICT products that is so critical to increasing the productivity and innovation capability of the transatlantic economy.

Move of STEM Workers

High-value innovation is increasingly collaborative and cross-border, involving multiple sites, corporate affiliates or other parties, and is especially important when it comes to fostering growth in the digital economy. U.S. and European workers 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. Moreover, U.S. employers should be able to easily hire highly skilled workers from the European Union and vice-versa. Too often, however, visa applications take an unreasonable amount of time to process and these delays restrict important business activities. T-TIP provides an opportunity to modernize the rules guiding workforce mobility for employees with STEM degrees and their employers who are based in the United States and European Union. Simpler and more streamlined immigration policies for employees with STEM degrees will strengthen the U.S.-European relationship and enhance innovation and cooperation between U.S. and European companies.

Accordingly, for employees with STEM degrees, U.S. and EC negotiators should include in T-TIP commitments providing for the 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, better treatment for family members relocating with a worker, and an adjustment to the J-1 home residency requirement.

REDUCING BURDENS TO TRADE THROUGH EXAMPLE

Forced Localization

The trend towards forced localization policies is a serious and growing concern. More and more governments are pursuing “forced localization” policies designed to boost domestic manufacturing, high-tech and R&D capabilities, and service industries, often at the expense of foreign players. These policies include troubling provisions, including requirements on technology transfer, local sourcing in government and private sector procurements, sharing of software source code and other sensitive design elements, and flow of data. And they conflict with international norms, jeopardize future growth of global ICT and other industries, and threaten the advance of innovation and job creation tied to the global technology industry. The ability to develop new innovations through cost-effective global supply chains, and access and compete in global markets has been critical to the health of our industry.

The United States and Europe have been working together to combat forced localization policies. Mr. Chairman, last month, ITI testified before this Subcommittee on India’s planned forced localization policies on ICT products and services. Last week, the Prime Minister of India announced that these policies would be put on hold pending a more extensive review. This was an important, positive step – one that would not have been possible without the participation and encouragement of public and private entities within the European Union.

We believe the United States and Europe can build on that collaboration and promote sound regulatory approaches that can serve as an alternative model for building innovation and manufacturing capabilities. Specifically, the T-TIP commitments should clarify that market access for ICT goods and services shall not be conditioned on involuntary requirements to transfer technology, or invest in, develop, or use local R&D, intellectual property, ICT manufacturing or assembly capabilities.

Internet Governance

Free of encumbering government controls and regulations, the Internet continues to transform the world in ways that benefit all nations, regardless of economic status or geographical region. Internet usage continues to grow exponentially in most of the world. For example, studies indicate that, since 2000, Internet usage growth has exceeded 3,500 percent in Africa, and 1,300 percent in Latin America. Despite such incredible numbers, it is important to bear in mind that, as a technology and platform, the Internet is still in its infancy. It continues to evolve in unanticipated ways and produce benefits well beyond expectations.

It is widely acknowledged that the current approach to Internet governance has provided a stable, predictable environment that has helped to facilitate global innovation and investment. Yet, despite this success, we hear criticism from some corners about the unfairness and concentration of control in the current governance model. Variations on this inequity theme can be heard almost weekly at conferences and workshops sponsored by the International Telecommunication Union (ITU), a specialized agency of the United Nations.

The United States and Europe worked together to resist threats to Internet governance at last December's ITU World Conference on Information Technology. While we achieved a degree of success, opponents of the current governance model are at work devising plans that would force the United States and our partners to either accept radical changes to Internet governance or leave the ITU altogether. There is simply no good economic justification, or otherwise, for undermining the current Internet model, particularly for the sake of political expediency. The risks to innovation, job creation, and consumer freedom are far too high.

The T-TIP provides us with the opportunity for both parties to reiterate our commitment to an open, multi-stakeholder approach to Internet governance. In addition, both the United States and Europe should expand their efforts to communicate with and educate other ITU Member States about the benefits of a free and open Internet to businesses and citizens alike.

Cybersecurity

ITI commends the United States and Europe for undertaking the challenging task of developing policies and strategies for cybersecurity. The ICT sector has a direct stake in effective security management and best practices. In June 2012, ITI, DIGITALEUROPE, and the Japan Electronics & Information Technology Industries Association (JEITA) issued a "Global ICT Industry Statement: Recommended Government Approaches to Cybersecurity." In the document, industry expressed the view that, to be effective, efforts to enhance cybersecurity must:

- Leverage public-private partnerships and build upon existing initiatives and resource commitments;
- Reflect the borderless, interconnected, and global nature of today's cyber environment;
- Be able to adapt rapidly to emerging threats, technologies, and business models;
- Be based on effective risk management;
- Focus on raising public awareness; and
- More directly focus on bad actors and their threats.

The statement provides governments worldwide with a common foundation for policymaking in the area of cybersecurity. The recommendations present a cooperative approach between government and industry that meets security needs, including preserving interoperability, openness, and a global market, while permitting industry to innovate and compete. ITI will continue to urge the United States and Europe to promote the use of such approaches to governments globally.

We will urge the two governments to ensure the commitments ultimately obtained in T-TIP are consistent with the approaches set forth in these documents so as to ensure compatible policies across the Atlantic will promote security while also enabling innovation and trade. In particular, in the realm of government advocacy or promotion of the use of cybersecurity standards and best practices in the commercial sector, we will urge the two governments to commit to continue relying on globally accepted voluntary standards, best practices, and international assurance programs developed via standard-setting processes that are consensus-based, transparent, and industry-led, with participation open to interested parties.

This approach will improve security, because nationally focused efforts may not have the benefit of the best peer review processes traditionally found in global standards bodies; because proven and effective security measures must be deployed across the entire global digital infrastructure; and because the need to meet multiple, conflicting security requirements in multiple jurisdictions raises enterprises' costs, diverting valuable security resources. This approach also will: 1) improve interoperability of the digital infrastructure, because security practices and technologies can be

better aligned across borders; 2) permit more private sector resources to be used for investment and innovation to address future security challenges; 3) increase international trade in cybersecurity products and services that can be sold in multiple markets; and, 4) allow countries to comply with their international commitments, such as the WTO TBT Agreement.

Finally, in developing cybersecurity-related policies, ITI will urge the United States and Europe to avoid U.S.- and European-specific approaches to cybersecurity that fail to reflect cyberspace's borderless nature, and to also avoid static, "check-the-box" compliance regimes that would encourage some firms to invest only in meeting requirements that may well be outmoded before they can even be published.

PROMOTING REGULATORY CONVERGENCE

In the area of regulatory convergence, ITI is urging the United States and Europe to develop a framework that will focus on current regulatory burdens and, in particular, avoid unnecessary regulatory divergences in emerging sectors that are ripe for future growth and job opportunities, such as nanotechnologies. Alignment of regulations and standards-setting could significantly reduce costs, create conditions that make both markets attractive for new investment and startups, and compel other countries and regions of the world to engage in similar harmonization efforts to stay competitive.

Greater regulatory transparency is also particularly important. An "early warning system" on prospective or revised regulations would reduce uncertainty for business, while also providing industry with the opportunity to share essential, timely market and technical expertise with regulators and other stakeholders. We are also recommending conformity assessments that would ensure the greatest degree of compliance at the lowest level of government intervention, as justified by science-based risk assessment. Currently, Europe employs what is known as the "precautionary principle," which permits the imposition of rules and regulations based on assumptions or potential risks that may never arise. This approach forces manufacturers to waste resources that could be better utilized expanding R&D, hiring new workers and reducing costs to consumers. We urge the avoidance of redundant and/or unnecessary testing and certification requirements, as they can create delays and barriers to entry, and may prevent the uptake of new, innovative and more efficient technologies.

Finally, we recommend wider adoption of supplier's declaration of conformity in both markets, where companies can self-evaluate and report on compliance with standards and regulations. Experience has shown that self-declaration, coupled with effective post-market regimes (including surveillance and enforcement), offers a more flexible, trade-friendly, and cost-effective approach for meeting regulatory objectives.

ICT Standardization

During the past several years, ITI has invested considerable effort into advocating government acceptance of global, private sector-led, voluntary, consensus standards to advance ICT innovation and competition. The motivation was to encourage a broader view on what constitutes a global ICT standard and promote greater transparency and openness in the methodology employed for identifying relevant standards. ITI believes the T-TIP negotiations provide an excellent opportunity to develop a common approach on global standards and corresponding conformity assessment schemes in a manner that could serve as a model for other countries seeking to leverage ICT investments to enhance economic growth and job creation.

United States and European standards policies reflect a firm commitment to the WTO TBT Agreement, including an emphasis on the use of voluntary global standards. This common foundation should be further leveraged both bilaterally and globally when dealing with other countries of common concern. There are still, however, notable differences between the two standards systems, which are built on a different view regarding the role of the public and private sectors.

In some cases, those differences present distinct challenges to American and European tech companies doing business in both markets. To eliminate potentially discriminatory practices and thereby ensure the broadest possible benefits of ICT innovation and trade via T-TIP, ITI recommends that the United States and EC develop a joint approach to ICT standardization that maximizes reliance on global, private sector-led voluntary consensus standards. The EC has already moved in this direction for public ICT procurements, but more progress can be made. T-TIP should also include agreement on a definition of what constitutes global standards-developing organizations, or SDOs, giving due deference to those whose standards are widely implemented globally rather than merely nationally or regionally. Both the United States and EC should recognize the important role of those global SDOs by defining appropriate preferences for global ICT standards over other types of standards.

By establishing mutual policies for advancing non-discrimination and transparency, the common approach would serve as a model to help both governments to better address many of the emerging practices of concern to the transatlantic ICT community, such as opaque standardization practices, inadequate participation rights and comment periods, and the creation of unique national technical specifications that deviate from global standards. A common transatlantic approach to standardization that adheres to the above criteria could serve as an effective tool to discourage certain standards-setting approaches in emerging markets that deviate significantly from relevant global standards and tend to favor domestic businesses.

Regulatory Product Marks & Labeling

ITI recommends that the United States and EC strive toward greater regulatory alignment on product marks and labeling for ICT products. Countries around the world are increasingly requiring regulatory marks and labels on ICT products, with more labels for energy and environmental requirements expected in the near future. Manufacturers are struggling to find the necessary space to accommodate these labels on devices that are manufactured for a global market. The problem is exacerbated for small products with limited surface areas for product marks and labels. As ICT products become overcrowded with marks and other information, customers are more likely to ignore what they perceive as clutter, and government surveillance for regulatory compliance is not well served.

Without a global body to govern or coordinate these national requirements, industry and regulators will have to work together to find a solution. ITI believes the United States and EC should take this opportunity to address the issue. There should be a joint regulatory effort to eliminate requirements for product marks and labels to display nonessential information. Manufacturers should be allowed greater flexibility to place information deemed essential on the product, in the product manual, on packaging, or on the manufacturer's website.

ITI is therefore urging in the T-TIP negotiations greater regulatory alignment between the United States and EC on ICT product marks and labeling, which will provide needed global leadership on this issue of importance to our industry.

ICT Accessibility

The global ICT response to the accessibility needs of people with disabilities and age-related limitations has been accelerating in the past decade. This activity has been spurred in large part by U.S. leadership and by industry support for the World Wide Web Consortium's Web Content Accessibility Guidelines. As a result, numerous technical advancements in hardware and software have created improvements in video, data display, sound, voice and touch technologies, resulting in improved access for individuals with accessibility needs.

Governments are paying greater attention to the issue of accessibility due to a variety of factors, including the increasing role of ICT in national economies, the rapid migration of government services and data to the Internet, and the expansion of entertainment and communication services via the Internet and wireless technologies. Both the United States and Europe are in the process of identifying and updating ICT accessibility technical criteria. ITI members have supported this effort, including the commitment of both governments to work together to align their respective requirements. A common approach on accessibility will help streamline transatlantic trade in accessible ICT solutions, and create greater incentives for business to invest in new innovation. It is equally important, however, that both governments align conformity assessment requirements.

When the United States adopted ICT accessibility standards for public procurements, federal experts evaluated various approaches to helping agencies identify products and services that conform to the new standards. Ultimately, they decided to adopt the supplier's declaration of conformity (SDoC) model, which allows manufacturers to evaluate and report conformance through the use of such tools as the Voluntary Product Accessibility Template® (VPAT®). Under this approach, the market for accessible ICT has thrived in the United States. Given the EC's long-standing support for SDoC, we believe that adoption of a common approach on conformity assessment based on SDoC principles will magnify the benefits of US-EC alignment on accessibility, while reducing roadblocks to new accessibility technologies.

In the T-TIP context, ITI is recommending that the two governments continue to work together to achieve a harmonized approach to ICT accessibility, including alignment on the timing of implementation of the forthcoming requirements. This will help expand consumer access to the latest technology while avoiding unnecessary costs due to redundant or contradictory administrative requirements. A common approach on ICT accessibility can also serve as a model for other nations that are looking to advance opportunities for citizens with disabilities.

CONCLUSION

Mr. Chairman, Members of the Subcommittee, the opportunities and challenges presented by the T-TIP negotiations are considerable and exciting. A successful outcome is by no means assured as there are some significant differences in how we run our two economies. Nevertheless, we remain optimistic that a deal can be achieved, and look forward to working with you and other Members of Congress on finding solutions for next-generation trade issues impacting the high-tech sector, many of which we feel can be advanced in the T-TIP negotiations.

Thank you for this opportunity to provide comments on the Transatlantic Trade and Investment Partnership. I will be happy to answer any questions you may have.