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May 10, 2013

Via www.regulations.gov

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

**RE: Federal Register document number USTR-2013-0019
Request for Comments Concerning Proposed Transatlantic Trade and
Investment Agreement**

Dear Mr. Bell:

Thank you for the opportunity to comment on the Transatlantic Trade and Investment Partnership (TTIP) agreement with the European Union (EU). We welcome the announcement by the United States Trade Representative (USTR) to notify Congress of the Administration's intention to enter into negotiations for a TTIP and support the pursuit of an agreement that will help to maximize the competitiveness of American businesses and workers and encourage U.S. job creation and entrepreneurship.

The United States and the European Union are the world's largest economies, with each generating over \$15 trillion in GDP and together producing half of the world's output. Each is also the other's largest trading partner, with more than \$1.5 trillion in goods, services, and income receipts annually. Together we lead the world in maintaining and shaping the rules based global trading and investment system that powers growth, prosperity, and jobs at home and in every country on earth.

As noted in prior comments, NFTC urges the Administration to negotiate an agreement that will:

- Maintain strong political commitment to a successful conclusion and oversight of technical negotiations to assure a timely and ambitious result.
- Set clear criteria to “do no harm” that would backtrack on existing U.S. high standards set in U.S.-Korea (KORUS) free trade agreement and other bilateral or multilateral agreements or result in any new barriers to trade and investment between the US and EU or against third parties.
- Build on ground breaking disciplines on “21st century” trade and investment issues developed in the context of current Trans-Pacific Partnership negotiations.

- Bring a “whole of government” commitment to include the range of U.S. and EU independent governmental and sub-federal entities.
- Increase regulatory cooperation to maximize existing and future regulatory compatibility and equivalence wherever possible, recognizing industry developed testing and voluntary consensus standards.
- Pursue efforts, including increasing regulatory cooperation, in key sectors with the most economic impact in the transatlantic relationship including autos, chemicals, pharmaceuticals, medical equipment, financial services and insurance.
- Advance common interests with respect to intellectual property rights and international flows of information.
- Strengthen rules for cross-border investment protection, including broad provisions for reducing or eliminating exceptions to national treatment principle, robust disciplines to protect investments against expropriation, fair compensation for expropriation in all sectors, and meaningful procedures for resolving investment disputes.
- Increase access to an open, transparent, non-discriminatory and efficient government procurement process that optimizes competition among suppliers and increases the efficiency of funding across all levels of government.
- Increase cooperation in the areas of transparency and due process in competition enforcement proceedings and secure a level-playing field between all commercial actors (both state-owned, state-favored, and privately held either foreign or domestic).
- Maximize an evidence based cooperative approach to future regulatory development which enables and encourages the innovation economy by creating institutional mechanisms for both regulators and legislators to consult bilaterally in advance of new regulations and
- Focus on regulatory compatibility which will lead to joint strategies toward third countries and multilateral efforts.

NFTC fully backs an ambitious TTIP that addresses tariff and non-tariff barriers and regulatory issues as appropriate, though the remainder of these comments will focus on several priority areas that we believe are essential to address in the negotiations:

- (1) boosting participation in the global digital marketplace;
- (2) enhancing the transatlantic framework for Intellectual Property rules and protections and bolstering collaboration vis-à-vis third countries and global forums;
- (3) facilitating global mobility; and
- (4) improving disciplines on state-owned enterprises.

Boosting participation in the global digital marketplace

The TTIP should build on a growing number of efforts and frameworks to improve the ability of individuals and businesses to participate in the global digital marketplace. Companies and individuals must be able to access data, communicate, market, transact business, and operate effectively and securely online, including across borders. For this reason, ambitious commitments on a cluster of issues including ICT and financial services, e-commerce and access to information flows are essential.

In particular, we hope that U.S. negotiators will build on the United States-European Union Trade Principles for Information and Communication Technology Services to achieve commitments on a range of issues important to the ability of businesses and individuals to access the global digital marketplace. As highlighted in the joint principles, these efforts should include: improving transparency; maintaining open networks, network access and use: expressly permitting cross-border information flows; prohibiting local infrastructure requirements; allowing full participation of foreign companies in ICT services sectors; maximizing use of spectrum; ensuring impartial and independent regulatory authorities; guaranteeing competitive telecommunication services via the provision of authorizations and licenses; ensuring non-discriminatory interconnection practices; and cooperating globally to improve digital literacy globally and lessen the "digital divide," with a particular focus on enabling the growth of small businesses and entrepreneurs by promoting access to the technology tools and resources to permit effective engagement in the global marketplace.

Cross-border information flows

We encourage the administration to build upon efforts to secure commitments on information flows in the Transpacific Partnership (TPP), and through in the above-referenced ICT principles, to create new binding obligations in the TTIP. NFTC has recommended several commitments that would encourage the flow of information among participants in the TPP, which we hope will be captured in the TTIP –

1. Expressly prohibit restrictions on legitimate cross-border information flows;
2. Prohibit requirements to use local computing infrastructure, such as servers, as a condition for doing business or investment in an TTIP country or engaging in e-commerce or cross-border trade;
3. Allow business enterprises from TTIP parties to transact business through e-commerce platforms without establishing a commercial presence in each country.

Negotiating these types of commitments will require the United States and European Union to achieve understandings with respect to addressing important, shared privacy and security issues. The two partners must address privacy and security concerns in a flexible manner, rather than via country-specific mandates or standards, that minimally impedes trade and innovation, and must recognize that differing approaches to these issues can achieve compatible outcomes.

Moratorium on e-commerce duties

In addition, an agreement should enshrine and strengthen the WTO e-commerce moratorium whereby WTO members have committed to refrain from imposing customs duties on electronic transmissions.

Internet intermediaries

An agreement should also include the following safeguards with respect to internet intermediaries for matters other than criminal law, communications privacy and intellectual property: (1) liability protections for providers of online platforms; and (2) assurances that intermediaries are not treated as the producers of content.

Financial services

NFTC supports a comprehensive financial services framework under TTIP that increases market access, eliminates “behind the border” non-tariff” measures and sets up a structure and process for regulatory cooperation with a view to enhancing compatibility of financial regulations. The TTIP framework and process should be guided by commitments on fundamental principles to: cooperate; be transparent; establish mutually agreed upon objectives; perform impact assessments that can help minimize unintended consequences; seek to avoid extra-territorial effect; and seek to ensure that measures do not create barriers to trade and investment.

It is critical that these commitments are sufficient to maximize the benefits of the digital marketplace to economic development, business and entrepreneurs. For example, commitments must permit the kinds of innovative services and emerging technologies that enable food trucks to accept credit cards, online merchants to utilize electronic payments, e-commerce platforms to facilitate transactions between international buyers and sellers, and organizations and individuals to accept gifts, remittances and donations from abroad. Ensuring that financial services – in particular services that facilitate cross border remittances, electronic payments and online commerce – are covered by a cross-border data commitment would help support this goal. Supporting innovation in these types of international business transactions will also have a massive multiplier effect on the economies of small business in the United States and Europe.

Retail and distribution services

Although the European Union maintains a very open investment regime with regard to retail and distribution services, the TTIP is an opportunity to build a high-standards template for future agreements. Establishing robust market access commitments in retail and distribution services is critical in its own right, as well as for maximizing the benefits of the digital marketplace. An agreement must permit the right to provide retail and distribution services across formats without respect to size, location or merchandise. An agreement should establish equitable treatment of retailers and distributors by requiring transparent and equitable licensing regimes, capital requirements, land ownership and leasing arrangements, and by prohibiting restrictions on FDI and other discriminatory practices such as restricting the sale of specific categories of merchandise. Specifically

with regard to the European Union, we request that the TTIP eliminate economic needs tests with regard to department stores. In addition, we believe the European Union should bind commitments related to foreign ownership of pharmacy operations.

Enhancing the transatlantic intellectual property rights framework

Recognizing the unique nature of the relationship – the general alignment that exists between the United States and Europe with respect to the effective protection of IPRs as well as variations in the way in which the two countries have approached these issues historically in separate trade agreements – NFTC urges negotiators to engage on a discrete set of issues to improve the framework for protecting and promoting U.S. innovation.

TTIP should include strong provisions to improve the bilateral IPR framework and protections where necessary and mechanisms that build upon the Transatlantic IPR Working Group’s Action Strategy and Transatlantic Economic Council’s commitments. The two partners should also seek to build upon past U.S.-EU collaboration vis-à-vis third countries. Given the influence of the transatlantic economy, and the mutual importance of intellectual property rules to the U.S. and EU economies, a transatlantic agreement could serve as a vehicle to tackle issues of common concern with respect to efforts to erode longstanding international intellectual property norms. Specifically, we believe TTIP should include commitments to:

- Maintain and promote robust IP frameworks and effective levels of intellectual property protection in the European Union and the United States, including by preserving the IPR norms set forth in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS);
- Ensure that current or proposed practices in Europe that undermine intellectual property are addressed (e.g. ensure that confidential commercial information submitted to government regulatory agencies in marketing applications is protected from disclosure).
- Strengthen and better harmonize protections for trade secrets, which are increasingly critical as knowledge and information become more valuable and are targeted for theft in the digital age.
- Improve U.S.-EU alignment in the context of dialogues in multilateral forums and with respect to third countries on IPRs to ensure that commitments taken elsewhere do not undermine international IP norms and international commitments;
- Cooperate to improve the efficiency and effectiveness of the IP system at the global level, for example by promoting greater international harmonization in patent examination litigation systems and collaborating to promote adequate and effective trade secret protections in third countries.

While the NFTC has historically endorsed a comprehensive approach to trade agreements, including with respect to intellectual property rules, we believe the inclusion of strong provisions to improve the bilateral framework and target several areas of cooperation in this unique circumstance would best serve U.S. interests. Because of this belief, we are not

advocating in favor of addressing the entire landscape of issues that have been included in the IP chapters in recent U.S. trade agreements. However, to the extent that negotiators decide it is appropriate and mutually beneficial to engage on issues related to copyright, we believe it is essential to do so in a way that preserves the robust copyright framework, including the balance of rights and limitations achieved in U.S. law, that ensures that these rules continue to promote economic growth, innovation and expression.

Global mobility

The long term competitiveness of the United States will depend in part on the ability of public policy to accommodate the growing importance of global mobility. The United States and EU have an opportunity to improve the ability of business professionals to travel and work temporarily for business purposes, which will enhance transatlantic economic growth and integration.

To improve the competitiveness of the United States, NFTC supports action on “Mode 4” services in TTIP that would:

1. Clarify, harmonize and broaden the definition of business visitor across TTIP participants.
2. Permit, facilitate and remove obstacles to the temporary entry and assignment of intra-company transferees; professionals with specialized knowledge or advanced degrees; and traders and investors.
3. Create pathways to facilitate visa processing and entry for business professionals and frequent travelers, including by facilitating the creation and harmonization of electronic document submission options for TTIP countries; and developing a transatlantic trusted-traveler and border-processing program.

Competition policy and state-owned enterprises

State-owned enterprises (SOEs) often enjoy competitive advantages vis-à-vis private competitors, and may act as an instrument of a government in support of a variety of non-commercial policy objectives such as maintaining employment or advancing national industrial policy goals. As a result, SOEs may distort trade and investment patterns and the competitive landscape.

Trade agreements, including the TTIP, provide an opportunity to establish enforceable rules governing SOEs and level the playing field between government-backed enterprises and other commercial actors. Obligations should cover national and sub-national SOEs which engage in commercial competition with other private enterprises. The TTIP should commit SOEs to a code of conduct that emphasizes non-discrimination, national treatment obligations, and other standards and practices that ensure fair competition and that SOEs act in accordance with commercial considerations.

Conclusion

Expanding trade and investment through the TTIP will bolster U.S. economic growth, improve exports, increase jobs and benefit U.S. companies and the thousands of Americans they employ. Additionally, it will serve as a roadmap for the rules based global trading and investment system to bring this promise of economic opportunity to all willing partners.

We strongly urge the Administration to make the swift negotiation and conclusion of TTIP a priority. We believe that a high-quality TTIP agreement, combined with a robust TPP agreement and Trade in Services Agreement (TISA) will provide a modern framework for the conduct of business and improve the ability of American entrepreneurs, innovators and companies to engage in the global marketplace.

While this submission focuses specifically on several key areas of interest for NFTC and our member companies, as noted above, we support a high-quality TTIP and look forward to providing more detailed views on a range of issues as the process unfolds. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "W. A. Reinsch". The signature is fluid and cursive, with a large initial "W" and "A".

William A. Reinsch
President