

# Digital Priorities for TTIP

## Executive summary

The Transatlantic Trade and Investment Partnership (TTIP) provides a unique opportunity for the EU and the US to set a framework that will further enhance the development of a transatlantic digital market. The Digital Economy is a strong driver of innovation, jobs and growth globally. AmCham EU believes that TTIP should be comprehensive and address (1) non-tariff barriers to trade, (2) unnecessary regulations (3) tariffs and (4) global emerging challenges with regards to the digital economy.

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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.9 trillion in 2012 and directly supports more than 4.2 million jobs in Europe.*

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Brussels, 7 May 2014

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AmCham EU is a strong supporter of the current negotiations for a Transatlantic Trade and Investment Partnership (TTIP). We have published our overall views on TTIP in [‘Building the framework for strengthening the transatlantic partnership’](#) [14 March 2014] which focuses on all sectors. In this paper we specifically focus on priorities affecting the digital economy in more detail and outline our recommendations. We believe digital priorities could be grouped around the following topics; (1) non-tariff barriers to trade, (2) unnecessary regulations (3) tariffs and (4) global emerging challenges with regards to the digital economy.

### **The impact of global digital trade on the economy**

The Digital Economy is a strong driver of jobs and growth globally and within the transatlantic market place. Some examples:

- The Internet and other information technologies are facilitators of exports of goods and services, enabling participation in global supply chains, providing access to innovative services at competitive prices and creating growth opportunities for businesses, both large and small. A wide range of services, including education, financial, business, news and health, are increasingly being offered and delivered digitally, leading to growth in digital trade.
- Apps for mobile devices create new opportunities for individuals and small businesses to develop software and services for a global customer base.
- Data analytics create opportunities for growth, innovation and job creation through new services and smarter ways of addressing society’s challenges.

Much of the growth in global trade has largely been enabled by the development of fast, efficient and cost-effective electronic communications networks, including the Internet, which has become ‘the global trade route of the 21<sup>st</sup> Century’. Almost half of cross-border trade in services worldwide is enabled by Information and Communications Technology (ICT) services and the share of electronically delivered services is increasing.

The group of services enabled by ICT extends far beyond computers and related services and telecommunication services. ICT-dependent services include as varied sectors as financial analysis, design, engineering, manufacturing, research and development, insurance claims processing, education, publishing, medical services, journalistic work and many others.

Robust ICT networks and cloud computing allow information, knowledge and expertise to cross borders. As such, firms in many services industries are increasingly able to use data to more effectively serve customers and users around the world, reduce transaction costs and improve efficiency, resulting in economic growth, productivity and innovation.

Today, users (ranging from citizens, employees to organisations of all sizes) expect to be connected – anytime, anywhere. Businesses specifically depend on connectivity to mobilise and in the case of cloud computing, to virtualise their operations on a local, regional and even global scale.

As we continue to innovate and especially as we begin to transition to next-generation connected services and networks, defined by high speed broadband, both wireline and wireless, IP and cloud,

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new services and opportunities will emerge in every sector of the economy and impact society in a profound way. To enable this, we need future-focused and technology-neutral regulatory models and consistent policy approaches across regions.

Any 21<sup>st</sup> century trade agreement such as TTIP needs to have a strong focus on ‘digital priorities’. In 2011, the EU and US already developed a set of non-binding trade-related principles for Information and Communication Technology Services that provide guideposts for digital economy issues. Each of the ICT principles expresses an approach to policy and regulation in the information and communications technology sector that is broadly shared by both sides and can be used as building blocks for many of the issues as outlined below.

A strong TTIP will set a gold standard not only between the EU and US but also globally.

### **1. Non tariff barriers to trade**

**We recommend that TTIP includes specific language to further enable cross border data flows and oppose forced localisation measures as a way to support trade and mutual investment.**

No global or multinational corporation is set up as a patchwork of individual-country, hermetically sealed entities with every function replicated in each country, rather, such entities are set up with global functions that share information and work across time zones and national borders. Data is essential for the 21<sup>st</sup> century economy and a vital source of innovation and competitive advantage for all sectors. At the same time data has a tremendous potential for social good.

TTIP should focus on removing existing and avoiding new Non-Tariff Barriers (NTBs) which threaten to fragment the digital economy. One specific example is the restriction of data flows through forced localisation of servers and data centres. Such measures unnecessarily increase the costs of doing business, harm competitiveness and restrict the range of value-added services available to end-users.

Various countries have introduced server and data localisation requirements and similar measures in recent years, often under the false pretence of improving data security. Such measures not only create a self-imposed economic handicap but also set a dangerous precedent for other countries, thereby encouraging them to adopt similar restrictions. Such ‘digital data protectionism’ undermines global trade in services and threatens the development of a truly global digital economy. Both the EU and US should send a strong signal that this is not the right way forward.

In addition to the ICT sector, cross-border data flows are also becoming essential to a range of economic sectors, to include energy, transportation and manufacturing. These industries increasingly rely on external data management, storage, and access (including the ability to use cloud-based technologies) both within a firm and in its operations with customers. Additionally, these industries often depend on third-party service providers that offer remote analytic support to improve the safety, reliability and efficiency of equipment and operations. For example, many commercial airlines rely on remote monitoring and diagnostic services for the safe and reliable operation of their aircraft engines. These services include the cross-border transfer and collection of in-flight engine performance data for the purpose of troubleshooting alarms and recommending preventative maintenance to minimise unplanned downtime. Server localisation requirements and other similar restrictions limit the breadth of these essential services and would adversely impact innovation in areas such as cloud computing

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and machine-to-machine (M2M) communications and ultimately inhibit the true economic and societal potential of these technologies and services.

A comprehensive EU-US agreement therefore presents an important opportunity for the world's two leading services economies to establish a model agreement and rules to enable the global digital economy, setting a precedent in defence of an open internet.

One way to do so is for the EU and the US to follow through on their pledge to implement the EU-US Trade Principles for ICT Services and should also seek to incorporate the OECD Internet Policy Principles in any agreements that they negotiate with each other or with other parties.

Finally, we also think that a strong commitment in the TTIP to the development and use of international standards rather than country-specific requirements aimed at individual market concerns is a crucial aspect to avoid NTBs.

### **We recommend TTIP to:**

- 1. Recognise the importance of cross-border data flows and oppose forced localisation requirements to enable future mutual trade and investment.**
- 2. Include specific language supporting the development and use of international standards.**
- 3. Build on language already agreed upon in the EU-US ICT principles and the OECD Internet Policy Principles.**

## **2. Unnecessary Regulation**

**AmCham EU recommends a 'negative-list' approach as the best way to achieve greater liberalisation, while at the same time being future proof as it prevents new evolving and innovative services and technologies of being excluded.**

Regulatory requirements should not act as discriminatory barriers to market access. To minimise these impediments the EU and the US should commit to limiting regulation to those necessary in achieving specific and legitimate public policy objectives, to ensure a transparent and open regulatory process, to review and cut regulations, or suspend their application if market competition has the same effect. Both the EU and the US should systematically cooperate and strive for maximum interoperability or mutual recognition.

One way to avoid NTBs and unnecessary regulations arising within the transatlantic digital economy would be to build even greater procedural awareness before legislations are introduced on either side of the Atlantic. Such transatlantic cooperation should have the goal of achieving the same level of environmental and consumer protection, whilst avoiding trade distortions and benefitting from the digital technologies and its innovative uses.

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**We recommend TTIP to:**

- 1. Adopt a ‘negative-list’ approach as the best way to achieve greater liberalisation, while at the same time being future proof as it prevents new evolving and innovative services and technologies of being excluded.**
- 2. Avoid unnecessary regulation, and where necessary, ensure compatibility, interoperability or mutual recognition.**
- 3. Contain commitments to transparent and participatory procedures on pre-legislative and regulatory coordination and coherence.**

**3. Tariffs**

**We recommend an elimination of tariffs covering all goods without exceptions and comprehensive tariff ‘elimination’ in the broader context of comprehensive market access.**

Even though trade tariffs are in almost all cases already low between the US and EU, they are still a tangible nuisance to economic actors, including the digital economy sector. Moreover, with the complex supply chains almost all global products and services involve, these tariffs simply act as an unnecessary cost to companies seeking to compete on equal terms with companies in emerging economies. AmCham EU urges negotiators on both sides to approach the removal of tariffs in a way which reflects companies’ complex global value chains today and to avoid the process becoming a classic tit-for-tat negotiation.

The Information Technology Agreement (ITA) has enabled a significant reduction in tariffs. The revolutionary developments in the technology sector have triggered negotiations on an expanded ITA. AmCham EU supports such global tariff reduction agreements. However, as their outcome is not clear, we urge negotiators to set the example and remove transatlantic tariffs on digital economy products.

Where full removal of tariffs proves impossible, both sides should look carefully at generous zero-tariff quotas as an alternative.

**We recommend TTIP to:**

- 1. Endorse an elimination of tariffs covering all goods without exceptions and comprehensive tariff ‘elimination’ in the broader context of comprehensive market access.**

**4. Global emerging challenges**

We strongly welcome the objective of both the US and the EU to also address global emerging challenges within TTIP such as localisation requirements and forced technology transfers. A comprehensive 21<sup>st</sup> century agreement should find ways how to leverage joint strengths. Strong joint language within TTIP on how to address these global challenges will send a strong signal and could also be leveraged in future trade discussions with third parties.

Some examples of global challenges:

- Addressing other forced localisation requirements – Apart from the earlier mentioned data centre localisation requirements within the context of global data flows, governments are increasingly employing other localisation measures such as on R&D, IP and/or manufacturing within their borders as a condition of market access or to qualify for trade distorting incentives. This is unrealistic given the complex global supply chain of multinational technology companies. TTIP should include a chapter with agreed language on avoiding such measures between the EU and the US but which can also then be re-used in their respective bilaterals with other trading partners and in other venues. The EU-US ICT principles include language that could be used as a template or starting point for such language.
- Global rules to prohibit regulations that require technology transfer – The parties also should set global principles on preventing forced technology transfer through broad compulsory licensing, disclosure of sensitive information as a condition of market access, or otherwise.
- Internet governance - The multi-stakeholder process has enabled the Internet's evolution across the world and it will be crucial for the Internet's future success. Given the rapid pace of technological change, any framework for Internet governance needs to be guided by fundamental principles for international co-operation. Some countries and institutions, however, continue to support a more traditional model of national sovereignty and inter-governmental control over Internet governance. Such an expansion of the traditional government-controlled governance model would undermine the transparent fabric on which the Internet is built, potentially stifling its unprecedented capacity for economic and social development. The fragmentation of the Internet that could result from governance disputes has serious implications for the free flow of information across national borders and this risk is emerging at a time when the need to protect the free flow of information online has never been greater. It is therefore key that the Internet governance debate continues to be transparent and open to all stakeholders.

**We recommend TTIP to:**

- 1. Include a chapter with agreed language on avoiding forced localisation measures between EU and US and a commitment to push back on these in other global fora.**
- 2. Set global principles on preventing forced technology transfers.**
- 3. Recognise the multi-stakeholder process on Internet governance, guided by the principle of international cooperation.**