

## Kaye, Janice

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**From:** Yarusso-Horan, Amanda Horan  
**Sent:** Tuesday, September 10, 2013 2:27 PM  
**To:** Augerot, Arrow; Buntin, Jason; Fine, Thomas H.; Weiner, David; Tanner, Robb  
**Subject:** FW: Request for Meeting  
**Attachments:** CignaUSTRComments.pdf

Hi all,

Cigna would like to come in this Friday to talk about a number of different issues, including localization, market access in Qatar and the UAE, cross-border data flows, and TTIP and TiSA generally (see comments attached). Would you please let me know if there is a time that works for you or if not, what dates you might work going forward. Thanks.

A

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**From:** Zukowski, Peter [mailto:(b) (6)@steptoe.com]  
**Sent:** Tuesday, September 10, 2013 1:25 PM  
**To:** Yarusso-Horan, Amanda J.  
**Subject:** Request for Meeting

Ms. Yarusso-Horan,

I am writing to request a meeting on behalf of my firm's client, Cigna. If possible, Cigna representatives would like to meet with USTR officials involved with health insurance negotiations in the TISA, TTIP and TPP negotiations, an official from USTR's localization team (headed by Arrow Augerot), and market access negotiators for the Middle East. I know that USTR is very busy, but our client has indicated that they would be able to be in Washington for a meeting this Friday, September 13<sup>th</sup>, please let me know if a meeting that day would be possible. If not, please let me know so that I can work to identify further dates for a potential meeting.

I have reattached Cigna's comments, submitted last week, on the TISA negotiations, which should provide a good overview of the issues Cigna is interested in discussing with USTR.

Regards,

Peter

**Peter Zukowski**  
*International Trade Analyst*  
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**Step toe**

1330 Connecticut Ave NW  
Washington DC 20036

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**From:** Tanner, Neil B ESQ TL16X [mailto:(b) (6)@Cigna.com]  
**Sent:** Wednesday, September 04, 2013 1:56 PM  
**To:** [Amanda\\_Horan@ustr.eop.gov](mailto:Amanda_Horan@ustr.eop.gov)

**Cc:** Iacovelli, Corianne ESQ 645; Esserman, Susan; Zukowski, Peter  
**Subject:** Cigna Paper on Trade In Services Agreement

Ms. Yarusso-Horan,

On behalf of Cigna we are submitting a paper reflecting Cigna's interests in the Trade in Services Agreement negotiations.

We look forward to setting up a meeting with you and others at USTR in the next few weeks. We hope that the meeting can involve the USTR officials involved in the TISA and TTIP negotiations, the localization team, and market access negotiators for the Middle East.

Thank you for your consideration and we will follow-up in the near future regarding a meeting.

Sincerely,

Neil

**Neil Boyden Tanner**  
Chief Counsel, Global Employer Segment  
Two Liberty Place TL 18X  
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Philadelphia, PA 19192 USA

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Neil Boyden Tanner  
Chief Counsel, Global Employer Segment



September 4, 2013

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Amanda Yarusso-Horan  
Director, Service Trade Negotiations  
Office of the United States Trade Representative  
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Washington, DC 20508

**Request for Comments Concerning the Trade in Services Agreement Negotiations**

Cigna Health and Life Insurance Company (“Cigna”) is a leading global provider of health insurance and related services. Cigna has a keen interest in the United States Trade Representative’s (USTR) multilateral negotiations relating to the Trade in Services Agreement (TISA), and we are pleased to provide comments in response to USTR’s Request for Comments.

Cigna, headquartered in Connecticut, is a global health services organization with insurance subsidiaries that are major providers of medical, dental, disability, life and accident insurance and related products and services. Cigna's mission is to improve the health and well-being and sense of security of the individuals it serves around the world. Key to our mission and strategy is our customer-centric approach; we seek to engage our customers by offering effective, easy-to-understand insurance health and wellness products and programs that meet their unique needs. We do this by providing access to relevant information to ensure informed buying decisions, collaborating with physicians and care providers, and delivering a highly personalized customer experience. This approach aims to deliver high quality care at lower costs for each of our stakeholders: individuals, employers, and governmental entities.

Global competition among health insurance companies is rapidly increasing as the world’s population continues to be globally mobile. As a provider of domestic and international health coverage and services around the world, we welcome efforts to enable U.S.-based health insurance issuers to compete effectively with their foreign competitors.

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Cigna's long history and commitment to providing health insurance plans for clients with a globally mobile workforce remains among our core strengths and competitive advantages. Our international health plans (also known as expatriate plans) enable employers to provide health insurance for employees sent to work outside their home country as well as those employees' dependents. We have become increasingly concerned with localization and other trade barriers that impede our ability to offer efficient international health plans to our multinational clients with globally mobile workforces. In addition, we seek to address prohibitions against U.S. health insurance companies obtaining licenses to provide health insurance coverage to expatriates and local nationals in foreign markets. We hope that the Trade in Services Agreement can serve to address and eliminate the trade barriers that Cigna faces with the participating countries and set standards that establish a framework that discourages such policies globally.

### **Identification of Trade Barriers**

Cigna has encountered several types of localization barriers, including local coverage requirements, local processing requirements, restrictions on cross-border data transfers, equity caps, and local establishment requirements. We are concerned not only about barriers in TISA participating countries, but also about the emergence of an array of localization barriers in the Middle East. We view TISA as an opportunity to address current restrictions on health insurance services in the TISA participating countries as well as to establish a standard that will help to prevent the proliferation of these barriers in other markets.

***Local Coverage Requirements:*** Some countries take the strict view that any individual within their borders, including temporary residents or foreign nationals, may only be covered by locally admitted insurance. Other jurisdictions require locally admitted insurance in order to grant a work visa. Such requirements put the insurer, employer and employees in a position of having to purchase dual policies or risk non-compliance with one country's law. This results in additional cost and duplication for companies with globally mobile workforces. Such local coverage restrictions are already in place in the Czech Republic, Iceland, the Netherlands, Qatar, Saudi Arabia, and the United Arab Emirates, and we fear this practice will spread to other countries.

For example, in the Czech Republic, foreign nationals applying for a business visa or residence permit must purchase health insurance from an insurance company licensed or otherwise authorized to provide insurance in the Czech Republic. Individuals are denied a visa if their policy is issued by a U.S. insurance company. This requires U.S. employers to have a corporate entity capable of acting as a European policyholder. The Czech insurance product must also be customized to meet requirements of local law which deviate from industry standards within the EU and the U.S. Due to these requirements, U.S. companies with employees working in the Czech Republic are forced to purchase a Czech-specific insurance policy, typically in addition to their U.S. policy, resulting in additional cost and duplication. Because each insurance product would be designed to meet applicable local law, U.S. employers must choose between conflicting plans or offer different health insurance benefits to employee populations based on location.

It is our understanding that Saudi Arabia presents a similar localization barrier. In order to obtain a visa to work and live in Saudi Arabia expatriates and their dependents are required to have health coverage issued by a locally admitted carrier.

We face different types of local coverage restrictions in the Emirate of Abu Dhabi and, even more disturbing, it is our understanding that Abu Dhabi's regulations are being considered as the model for future regulations in the Emirate of Dubai and the UAE at the federal level. Residents and those working in the Emirate of Abu Dhabi are required to have a statutory level of health insurance that covers treatment in the Emirate of Abu Dhabi (and emergency services elsewhere in the UAE). This insurance must be issued by a duly authorized and approved insurance company in the UAE. Regulations stipulate that insurance policies may only be marketed and sold through authorized and approved intermediaries, and administered by approved administrators, all of whom are required to have a formal business presence in the Emirate of Abu Dhabi (i.e. not simply in the UAE). The state-owned National Health Insurance Company (Daman) was set up in 2006 to assist with the implementation of the scheme. Daman underwrites approximately 90% of health insurance business in Abu Dhabi. Moreover, new health insurance licenses are not currently being issued by the UAE, effectively closing the market altogether.

Qatar has recently enacted Law 7, which is even more restrictive than Abu Dhabi's regulation. Under the law, the National Health Insurance Company (NHIC) has been established to serve as the sole provider of the new compulsory health insurance coverage required for all residents and temporary workers, including expatriates and their family members.

***Japan Requirements:*** Japan maintains barriers to coverage of certain expats by foreign health insurance companies. An employer is required to enroll its employees, regardless of nationality, in Social and Labor Insurance programs. Expatriate citizens who work temporarily in Japan can be exempted from the obligation to enroll in Welfare Pension Insurance and Health Insurance provided they are from a country, such as the U.S., that has entered into a Social Security Treaty with Japan. The employer cannot opt out of payments into the Welfare Pension Insurance and Health Insurance systems unless the expat is a national of a country with which Japan has such a treaty. This makes it difficult to provide cost-effective international health plans to multinational companies with employees who are not citizens of countries that have signed treaties with Japan.

Additionally, while proof of health insurance is not required to secure an initial visa, expatriates applying for a renewal or changing the status of their visa are requested to show their Japanese Social Health Insurance card or proof of exemption.

***Cross-border Data Flows:*** Regulation of international data flows presents special problems for the health insurance sector, where processing of health information and individually identifiable financial and personal information is essential to effective provision of the basic services. Certain countries limit the transfer of such data outside of their jurisdiction and require insurance companies to locate servers containing client information physically within their jurisdiction.

For example, as noted in USTR's annual National Trade Estimate Report (NTE) on Foreign Trade Barriers, the United States is not recognized by the European Commission (Commission) to provide a blanket adequate level of protection that would allow broader transmission of EU data to the United States. As a result, U.S. companies need to demonstrate individually the existence of one of the specific and limited programs the Commission deems adequate under the EU Data Protection Directive (1995/46), such as the Safe Harbor Framework, Binding Corporate Rules, or intercompany data transfer agreement (Model Clauses) approach.

Delivering efficient, personalized insurance and related products and services to U.S.-based and global customers requires companies like Cigna to process and retain clients' personal data in multiple venues. The regulation of international data flows is of crucial importance. The U.S. and EU are key reference points for global standard setting as regards the processing, retention and security of personal data. Mismatches and lack of recognition between the two legislative regimes create significant challenges for the insurance industry and the available solutions to date have proven cumbersome for the industry to implement; they are insufficiently tailored to health insurance industry needs and may even be detrimental to the policy holder's/plan member's vital interests. Disruption to the delivery of a prompt, seamless service, as required by our clients, is a significant risk.

In light of the U.S. Health Insurance Portability and Accountability Act ("HIPAA"), U.S. law is arguably more robust in protecting an individual's personal health data than that of EU law. It is, therefore, of great concern to Cigna that the EU has yet to recognize the robust nature of U.S. privacy legislation and its enforcement regime. Cigna supports continued efforts by the various U.S. bodies to visit Brussels to increase understanding of the U.S. approach and to reassure EU stakeholders that individual rights are as protected in the U.S. as they are in the EU. In our view, privacy is a prime issue on which the U.S. and EU should conclude that, even if the methods and procedures are diverse, our regimes are, in fact, equivalent. Cigna would be pleased to share further information with USTR based on our experience in dealing with international data flows, if this would help to ensure an appropriate outcome which enables us to concentrate on delivering a modern insurance service to our global customer-base.

For the purpose of TISA, at a minimum, as discussed below, Cigna recommends that USTR draw from and slightly modify language included in the U.S.-Korea Free Trade Agreement (KORUS), which would require the partner country to allow financial institutions to transfer data into and out of its territory for data processing to facilitate the efficient supply of health insurance services.

***Processing of Claims and Systems Residency:*** Certain countries do not allow insurance claims filed in that jurisdiction to be processed outside of the same jurisdiction. Restrictions on processing of claims are in place in the UAE and other countries. Similarly, some countries, such as China, require that the computers housing data and all backup systems be maintained within their jurisdiction. This protects the local IT industry, creates redundancy, limits the

ability of foreign-owned insurers to take advantage of pre-existing facilities in other parts of the world, and adds unnecessary costs to the health insurance system.

***Preferential Tax Treatment:*** Some jurisdictions, such as Russia, provide a tax benefit to companies who cover expatriates on a local policy. These benefits are not available to the company if those individuals remain on a policy providing global coverage that was issued in their home country.

***Licensing Restrictions and Establishment of U.S. Insurers:*** Cigna seeks the ability to secure authorization in foreign markets to provide health coverage to both expatriates and local nationals. We therefore urge USTR to address formal and informal barriers that preclude licensing of U.S. insurers or U.S.-owned insurers in foreign markets.

In the UAE, we understand that the Board of the UAE Insurance Authority has imposed an indefinite, unofficial moratorium on all new applications for insurance and reinsurance licenses since late 2008. The moratorium applies to (re)insurers, brokers and insurance consultants. Notwithstanding the moratorium, new licenses have been issued to local insurance companies and brokers since 2009. This is a troubling policy because, as described above, Abu Dhabi already has in place, and Dubai and the UAE (at a federal level) are considering, restrictions limiting the issuance of policies to locally admitted insurers. Similarly, while some jurisdictions do not have outright prohibitions, they have limitations on U.S. ownership in local insurance companies.

***Limitations on Ownership:*** Several jurisdictions require that insurance companies are locally owned or partially locally owned. As we are often compelled to be the minority partner in these jurisdictions, such policies increase cost and limit our ability to offer streamlined service to our clients. For example, India currently has a 26% cap on foreign direct investment in the insurance sector. This is also an area of growing concern for us in the Middle East, as several countries in the region have caps on foreign ownership of locally domiciled insurers. Qatar limits foreign ownership to 25% in locally domiciled insurers and only to that level with approval from the Council of Ministers. The UAE also only allows 25% foreign ownership of locally domiciled insurers, while restrictions on foreign ownership also exist in Kuwait, Oman, and Saudi Arabia. We are concerned not only about equity caps, but also about restrictions on the types of legal entities through which an insurance provider must supply the service.

## **Recommendations**

It is important that TISA establishes strong commitments and appropriate principles to address the array of local restrictions that are in place or under development that impede efficient delivery of health insurance services. Particularly as the world's economies become more interdependent, and as businesses and individuals become more globally mobile, it becomes essential that local regulations not impede the development of the global health policies required by these individuals and the businesses they support to promote global business and trade.

- We want to be sure that members' commitments cover health insurance service providers. We are aware of some confusion in the GATS classification scheduling as to whether health insurance falls under "life insurance" or "non-life insurance." It is important that there be clarity as to which commitments apply to health insurance.
- We seek market access and national treatment commitments for foreign suppliers of health insurance to foreign persons residing in trade agreement partner countries. This should also address formal and informal barriers, including differential and unequal laws, regulation and other measures applied; denial of equal access to provider networks; and special exemptions from taxation and business fees for favored domestic insurance.
- To address local restrictions on foreign claim processing and data transfers, we urge, at a minimum, slightly adjusting the relevant provisions in the KORUS FTA for use in TISA, to provide that partner countries allow transfer of information into and out of their territory for data processing to facilitate the efficient supply of health insurance services.
- We want to ensure that market access and national treatment commitments are not undermined by behind-the-border and other indirect measures. As indicated above, we are concerned about provisions restricting visas to foreign nationals with home country issued global healthcare insurance coverage. Visas should not be contingent on obtaining health insurance issued by a local provider, thus precluding foreign insurers who issue valid policies providing global coverage in the home jurisdiction of the multinational employer or the expatriate.
- We seek market access and national treatment commitments to enable foreign providers or foreign-owned providers of health insurance to be licensed under national as well as local regulations on a basis consistent with that afforded to locally owned companies. Such commitments should also ensure the elimination of equity caps and the freedom to choose the form of legal entity through which insurance providers can operate. The agreement should also prohibit nationality requirements for officers, senior management and board members.
- Commitments in all four modes of services trade should be included.

Finally, we endorse in general the recommendations made by the American Insurance Association and the American Council of Life Insurers in their written comments submitted to USTR in February 2013.

Thank you for your consideration of these comments.

Respectfully,



Neil Boyden Tanner



## Kaye, Janice

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**From:** Gasster, Liz (b) (6)@brt.org>  
**Sent:** Thursday, January 09, 2014 3:36 PM  
**To:** McHale, Jonathan; Tanner, Robb  
**Cc:** Thomas, David; Elliott, Christina  
**Subject:** RE: Invitation to speak with BRT member companies Feb. 6

Hi Jonathan, thank you, I should have mentioned that, yes, completely off the record.

We're so pleased that you will be able to join us. Please let me know if you have any other questions.

Best, Liz

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**From:** McHale, Jonathan [mailto:Jonathan\_McHale@ustr.eop.gov]  
**Sent:** Thursday, January 09, 2014 3:32 PM  
**To:** Gasster, Liz; Tanner, Robb  
**Cc:** Thomas, David; Elliott, Christina  
**Subject:** RE: Invitation to speak with BRT member companies Feb. 6

Liz,

I assume this is off the record? If so, happy to join, with Robb, if he is also free.

Jonathan

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**From:** Gasster, Liz [mailto:(b) (6)@brt.org]  
**Sent:** Thursday, January 09, 2014 3:27 PM  
**To:** Tanner, Robb; McHale, Jonathan  
**Cc:** Thomas, David; Elliott, Christina  
**Subject:** Invitation to speak with BRT member companies Feb. 6

Dear Robb and Jonathan,

Business Roundtable is hosting a meeting of senior technical company experts and Washington Representatives at our offices on Thursday, February 6, focused on a range of information and technology issues, including global IT policy issues included in ongoing trade negotiations (e.g., TPP, TTIP, TISA). Given your roles as key Administration officials involved in these trade negotiations, our members would greatly benefit from your thoughts how negotiations are proceeding (especially on provisions related to business use of IT and data), key Administration priorities, top challenges, and opportunities you see for Business Roundtable to help advance our mutual goals.

We would be delighted if you could join us at 10:00 a.m. and provide remarks in the range of 5-10 minutes followed by a question and answer session (total time commitment would be 30 minutes). This event is an excellent opportunity for you to interact with a large cross-section of companies, including utilities, oil and gas, chemicals, financial services, healthcare and retail. We anticipate participation in the range of 25-30 companies.

By way of background, while BRT also has an International Engagement Committee that works exclusively on global trade issues, in addition, our Information and Technology Committee has focused on global IT policy issues for the past several years, releasing a study on the impact of local data server requirements in 2012, and we are currently examining the business and economic impacts of cross-border data flow restrictions on Business Roundtable companies. We believe that our current work on cross-border data flows could greatly benefit from your impressions of current trade

negotiations and perhaps we may identify opportunities for Business Roundtable to articulate business cases which help you negotiate policies reflecting our mutual priorities.

If you have questions regarding this meeting, please feel free to contact me at (b) (6) or via email at (b) (6) [@businessroundtable.org](mailto:(b) (6)@businessroundtable.org).

Thanks so much for your consideration of this invitation.

Best regards, Liz

**Liz Gasster** | Vice President | Business Roundtable  
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## Kaye, Janice

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**From:** Schlosser, Adam (b) (6)@USChamber.com>  
**Sent:** Thursday, January 16, 2014 6:06 PM  
**To:** McHale, Jonathan; Tanner, Robb  
**Cc:** 'Malkin, David (GE Corporate)'  
**Subject:** GE on cross-border data flows

Hi Jonathan and Robb,

Hope you both had a great holiday and the new year is going well. GE's chief privacy counsel will be in town on Jan 29-30 and is interested in talking about your work in TPP, TTIP, and TISA on cross-border data flows. The GE lead on these issues, David Malkin is cc'd – hopefully he can reach out to you to set up a time to chat.


Regards  
Adam

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Adam C. Schlosser  
Director  
Center for Global Regulatory Cooperation  
U.S. Chamber of Commerce

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## Kaye, Janice

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**From:** Rangaswami, Viji <(b) (6)@LibertyMutual.com>  
**Sent:** Wednesday, February 12, 2014 4:34 PM  
**To:** Yarusso-Horan, Amanda Horan; Melly, Christopher; Tanner, Robb  
**Cc:** Kho, Stephen  
**Subject:** RE: Meeting request from Liberty Mutual re TTIP and TISA

Amanda, Chris and Robb –

Thanks again for taking so much time with us yesterday. We very much appreciate it, and look forward to working with you all. Please let us know when we can be of assistance on our end.

Best,  
Viji

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**From:** Yarusso-Horan, Amanda Horan [mailto:Amanda\_Horan@ustr.eop.gov]  
**Sent:** Thursday, January 30, 2014 3:57 PM  
**To:** 'Kho, Stephen'; Melly, Christopher; Tanner, Robb; Fine, Thomas H.  
**Cc:** Rangaswami, Viji; Grant, Alexis  
**Subject:** RE: Meeting request from Liberty Mutual re TTIP and TISA

Hi Steve,

We'd be happy to meet with you and Viji next week on both TISA and TTIP. What days/times work best for you? Right now Tuesday morning and Wednesday afternoon are bad for us.

A

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**From:** Kho, Stephen [mailto:(b) (6)@akingump.com]  
**Sent:** Wednesday, January 29, 2014 3:25 PM  
**To:** Melly, Christopher; Yarusso-Horan, Amanda Horan; Tanner, Robb; Fine, Thomas H.  
**Cc:** (b) (6)@libertymutual.com; Grant, Alexis  
**Subject:** Meeting request from Liberty Mutual re TTIP and TISA

Hi Chris, Amanda, Rob and Tom – I wonder if you might have time to meet next week with Viji at Liberty and us about TTIP and TISA, particularly in the area of non-life insurance (and not limited to data transfer issues)? We have some questions and thoughts, and wanted to get your advice and guidance on those, as well as better understand how Liberty can be helpful in these negotiations. Also, if separate meetings for TTIP and TISA make sense, we'd be happy to make time to do that. Please let us know what times might work for you.

Best,  
Steve

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**Kaye, Janice**

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**From:** Claman, Kimberley (b) (6) @citi.com>  
**Sent:** Tuesday, February 25, 2014 12:31 PM  
**To:** McHale, Jonathan; Bliss, Christine J.; 'Gavin.Buckley@treasury.gov'; Tanner, Robb; Yarusso-Horan, Amanda Horan; 'Tracton, Michael K'; Bahar, Daniel  
**Cc:** Johnston, Charles R  
**Subject:** CEO Michael Corbat highlights cross-border data flows at Mobile World Congress in Barcelona, Spain  
**Attachments:** Citi-MobileWorldCongressKeynote-25February2014.pdf

Rick and I thought you might find this piece of interest --

Today Citi CEO Michael Corbat gave the keynote speech at the Mobile World Congress in Barcelona, Spain. Mr. Corbat is the first bank CEO asked to deliver the keynote speech at the conference in its 27 year history. Mr. Corbat spoke about the opportunities and challenges of the digital economy and highlighted the importance of cross-border data flows to companies seeking to do business in a modern world (see highlighted para).

Best,  
Kimberley

Citigroup CEO Michael Corbat  
Mobile World Congress Keynote  
Barcelona  
Tuesday, February 25<sup>th</sup>, 2014  
As Prepared for Delivery

Good morning.

I would like to thank GSMA for inviting me to this truly remarkable gathering. And I thank all of you for coming.

I have to say, I've been impressed by the energy here in these halls, and by what so many of you have achieved in the digital and mobile spaces. And I also have to say, as a banker, I'm a little bit daunted to speak to an audience like this about technology.

Yet I'm also proud of my company's record of innovation on behalf of our clients and customers and the whole financial sector. Banking has traditionally been innovative in the financial space, from inventing new products such as the credit card, to spotting transformative projects and putting our resources to work behind them. For instance, Citi provided indispensable financing to the Transatlantic Cable and the Panama Canal—both of which revolutionized communication and connectivity in their day.

And when it comes to revolutionizing our own operations, Citi has acted quickly to bring the power of technology to bear for our clients. We were the bank that pioneered the widespread use of ATMs and made them an industry standard. We continually scan the world for ideas and technology innovation—from our venturing business in Silicon Valley to our digital labs around the world—and bring to them the scale, safety and soundness required for the global banking system.

Which is why this gathering is so important to us.

Our mission is to enable progress. We do that by providing our clients with the best possible service for their financial needs ... by helping individuals manage money and build assets ... helping governments deliver services to billions around the world ... and helping companies innovate and invest in the transformative projects of tomorrow. And to do all that, we have to stay with—and ahead of—the trends.

That's what I want to talk to you about today: how we see those trends, and how we're responding to them.

Citi's strategy is built around what we've identified as the three defining secular global trends of our time:

- Globalization—the increasing connectivity of all the world's nations, economies and markets;
- Urbanization—the concentration of people and GDP growth in cities; and

- Digitization—the transformative power of technological innovations, large and small, and the countless efficiencies they create.

It's easy to see how these trends are interrelated and self-reinforcing. Digitization enables the “shrinking” of the world that fuels globalization, which in turn creates wealth that drives the rise of cities, where an expanding consumer class buys digital products and invests in technological innovation. The most pertinent issue for a bank is how digitization is changing the way everyone—businesses, governments, consumers—all handle money.

On the one hand digitization promises to change everything—to make banking more personal, more efficient, more transparent, and more accessible. But on the other hand, what's really new? Hasn't banking been digital for a long time?

Yes ... and no.

My company, on an average day, moves \$3 trillion in business and institutional financial flows—and \$9 trillion on peak days, or more than half the entire U.S. GDP. Nearly all of that is moved electronically. In many ways, we see ourselves as a technology company with a banking license.

But these flows are dwarfed in volume, though not in value, by consumer flows, which are still mostly paid in cash. In fact, even today 85% of global consumer transactions are still paper-based. For all we've achieved in digitizing the financial sector, we've reached only 15% of the global consumer economy. That leaves a lot of room for improvement—and growth.

The projected benefits are tremendous. A study conducted by Citi and The Imperial College in London found that a mere 10% increase in the adoption of digital money would move \$1 trillion in “off the books” transactions into the formal economy—with a corresponding \$100 billion rise in global tax revenues. In an era when governments are struggling to meet their obligations, that's significant.

The benefits to companies can also be great—but only for those that keep up. McKinsey forecasts that the adoption of digital and mobile technologies will cause \$350 billion in market share to shift among companies in the U.S. alone over the next three years. In other words, some companies will win ... and others will lose. The winners will be those that embrace digital, extend their reach globally and start to exploit direct-to-consumer opportunities. As those businesses expand their horizons, we want to be the bank that they choose to partner with.

For consumers, the benefits may be the most straightforward and easy to understand. We all live with this technology every day—not just ATMs, but websites, tablet and mobile apps, and so many others. These technologies are really transformative. Today it's possible to do nearly all your banking without ever entering a brick-and-mortar branch. Soon “nearly all” will be, literally, all.



I have two children—one is 25 and the other is 21. Sometimes when they're home and a group of their friends come over, I like to ask them, "When was the last time one of you walked into a bank branch?" Most of them can't remember. One told me that he got something called a traveller's check from his grandmother and took it to the bank because he didn't know what to do with it.

But maybe the most important changes are those that impact the most vulnerable in our society. Many developing countries, when building their telecommunications network, leapfrogged landlines and went straight to mobile. We're seeing something similar in the credit card industry. Mobile adoption is extremely widespread—more than 3 billion people have mobile phones but only around 2 billion people have bank accounts. In those markets where banking is not already well established, many are moving straight to mobile payments, and skipping plastic and branch banking altogether. Having a smart phone is like having a bank right in the palm of your hand.

We estimate that a 10% increase in digital money usage would bring an additional 220 million people into the banking system —helping them save for the future and meet their financial goals. The combination of financial inclusion, economic empowerment and greater efficiency is why Citi actively promotes the transition to digital money. We're a founding partner of the not for profit "Better than Cash" Alliance, an organization that promotes the digitization of payments globally. And we're partnering with the U.S. Agency for International Development to digitize the delivery of foreign aid. This will help protect it from the corruption and graft which prevents it from reaching its intended recipients.

I think we all agree that security will perhaps pose the greatest challenge. And the risks go beyond headline-grabbing data breaches and online theft. Issues such as money laundering that banks have been wrestling with for years are amplified in the digital space. So as we look to embrace innovation and the promise that digital money holds, we must do so without compromising the industrial standards that underpin today's payment flows.

Some of the world's governments believe that limiting the private sector's ability to transfer, store, and process data across borders will somehow protect user privacy and improve security. Yet these well-meaning efforts are ultimately counter-productive. The movement of data is no less important to the global economy than the movement of money. And it's not just critical for banks but also for our clients—for any company that does business in many countries. Cross-border data flows, just like cross border financial flows, allow companies to integrate their personnel, manage their global supply chains and customer networks, and maintain the competitiveness they need to grow and thrive. The free movement of data is fully compatible with legitimate security concerns. As we know, companies try and strike this balance every day. Citi is working with other companies to help develop an international regime that does just that across industries.

Now let me, then, tell you a little about Citi's ambition to become the world's digital bank, and what we're doing to make it happen.

Our digital strategy has three core pillars.

- First, everything we do is customer-centric. We seek to deliver the best possible experience to our target clients and customers.
- Second, our efforts must be globally common. We work to leverage our global footprint and operational infrastructure to provide one-stop solutions for multinational clients.
- Third, we're creating digital partnerships. Working with existing and prospective clients, we're building new distribution channels that expand our reach in the digital space.

I'll say a few words about each.

First, customer centricity.

At a rapidly increasing rate, our customers prefer to do business with us digitally. More than 60% of our interactions with our customers are now online. Just in our cards business alone, digital spending is growing at twice the rate of traditional swipe-and-pay transactions. In fact, the entire industry is consistently seeing higher customer satisfaction from people who use digital services compared to those who don't, and higher still from mobile users. And the younger a customer is, the more this holds true.

Our focus and investment in digital reflect this accelerating trend. We see digital as critical to the delivery of world-class customer experiences—and our mobile banking platform is now operational in more than 30 countries. Quite simply, digital is better, faster and cheaper for most interactions.

We've developed a platform called Citibank Express or, informally, we call it "bank in a box." It's a next-generation ATM that allows customers to access nearly all of the services available at a traditional branch—including opening accounts and applying for loans, credit cards and cashier's checks. In fact, the machines can issue a card on the spot—no waiting for it to come in the mail. The machines are also equipped with an online banking connection, and video-conferencing and biometric capabilities for identity authentication. A customer can start a transaction on a computer or mobile device and complete it on Citibank Express—and vice versa.

Corporate demand is just as significant. For instance our mobile Citi Velocity trading platform packs everything a trader needs—all the data flows, research, collaboration and real-time trading capability—into a mobile phone. In one of the most demanding technology environments—characterized by multiple monitors and content feeds with zero latency—we have launched a mobile solution that fits all this into one 4-inch screen. Built in our lab in Israel and launched in December last year, the platform is already averaging over \$2 billion per week in trading flows.

Second, being globally common.

One of the challenges of running a bank that operates in more than 100 countries is to ensure that as many of our products and processes as possible are globally common. Citi Velocity is a good example. Another is CitiDirect BE Mobile, which allows companies to use our payments infrastructure to provide mobile payments anywhere. A corporate treasurer doesn't have to be at a desk to pay the company's bills. If they want, they can do it from the beach. A product of our innovation lab in Ireland, this platform is now operational in 90 countries and 16 languages, and is compatible with more than 50 devices. In its first eight months of operation, the platform moved \$1 billion. Last year that number rose to \$115 billion. In January of this year alone, we've already processed \$25 billion in payments through mobile phones. And we've noticed that flows from our clients that use CitiDirect BE Mobile are growing at three times the rate of the firm-wide average for all our clients. Thanks largely to the success of this platform, Citi was named best global mobile bank in 2013 by *Global Finance*.

Third and finally, digital partnerships.

We've been active in creating new digital distribution channels in partnership with clients and in ways that meet their specific needs.

For instance, in Mexico, working with the telecom company America Movil, we created Transfer, a mobile payments product to reach the unbanked. The Government is now using the product to distribute disbursements, and Oxxo—the country's largest convenience store—has joined to allow people to cash in, cash out and shop. Launched in May 2012, we now have 1.2 million active customers, growing at 120,000 per month, 60% of whom are new to banking, and another 80% new customers to Citi. It's good for people ... it's good for us ... it's good for the financial system ... and it's good for local economies.

On the other side of the world, and at the more affluent end of the consumer spectrum, we are equally proud of our partnership with Hutchison Whampoa's mobile subsidiary "3" in Hong Kong. Together, we launched 3 Citi Wallet, a smartphone app that provides integrated payments, loyalty programs and offers.

These efforts don't stop with consumer banking, either. For instance, we're in the early stages of formulating a payments system for Aetna, a U.S. insurance company, that holds the promise of transforming the way they, and the entire healthcare industry, bills and collects from patients.

In each of these cases, we are bringing our global banking platforms and capabilities to help create new digital ecosystems and value. However, we recognize that success requires more than Citi—it requires partnerships across the value chain, and respect for the capabilities that different institutions can bring.


I started my presentation talking about three global trends. At Citi, we believe that not only can we benefit from globalization, urbanization and digitization ... but by delivering global customer solutions on common digital platforms, we're making a positive contribution to accelerate their transformative impact.

Whether on a trading floor, in the halls of government, in the treasury departments of multinational companies, or in the hands of our individual customers, our future will be global—and it will be digital.

Thank you.

**Kaye, Janice**

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**From:** Eric Holloway <(b) (6)@tiaonline.org>   
**Sent:** Monday, March 10, 2014 4:13 PM  
**To:** Tanner, Robb  
**Subject:** Draft TiSA Position Paper  
**Attachments:** The importance of the TiSA for telecom operators\_ Draft 131213 .docx

Robb,

Wanted to pass along the following draft “global association” paper on TiSA. While TIA is listed as a signatory, I have already informed the organizer for the letter (ACHIET) that we are not able to sign-on to the letter as it is. It does appear that ETNO is willing to sign-on to the letter. As an alternative, I am working on a separate draft that I will propose for the associations’ consideration as a replacement for the attached, which will be much more high-level and focused on enabling innovation.

Best,  
Eric

## Kaye, Janice

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**From:** Steve Stewart (b) (6)@us.ibm.com>  
**Sent:** Tuesday, March 12, 2013 12:04 AM  
**To:** Melly, Christopher  
**Subject:** Question to ask me

Chris,

Since I have had to shorten my testimony to fit within 5 minutes, I deleted reference to Vietnam's IT services decree. I would still like to reference this, so I think it would be helpful if you would ask me a question that would enable me to point to this as an example of why we need to include specific digital trade rules covering cross-border data flows and server location requirements. You might ask something like this:

"Can you provide any examples of digital trade barriers to illustrate why new rules are need to address cross-border data issues and local server requirements?"

or

"If existing cross-border market access and national treatment commitments in computer and related services cover Internet-based IT services, such as cloud computing, why do you think it is important to create new rules to prohibit local computer server requirements?"

See you in the morning.

Best regards,

Steve

Steve Stewart  
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IBM Governmental Programs  
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600 14th St., NW, Suite 300, Washington, DC 20005

## Kaye, Janice

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**From:** Johnston, Charles R (b) (6)@citi.com>  
**Sent:** Thursday, March 14, 2013 6:02 PM  
**To:** Bliss, Christine J.  
**Cc:** Claman, Kimberley; Yarusso-Horan, Amanda Horan; Melly, Christopher  
**Subject:** FW: Cross-border data flow and processing  
**Attachments:** FINAL\_Citi\_Digital Trade Submission\_3-14.pdf

Hi Christine – Attached is a document that Citi submitted today to the International Trade Commission regarding cross-border data flow. It is a public document so feel free to use it as you think useful. A portion of my transmittal note to our Citi stakeholders is also included below. Rick

Charles R. Johnston  
Director and Senior Vice President  
International Government Affairs  
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email: (b) (6)@citi.com



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**From:** Johnston, Charles R [GGA]  
**Sent:** Thursday, March 14, 2013 5:39 PM  
**Subject:** Cross-border data flow and processing

Please find attached a document prepared by Citi that provides the US International Trade Commission with an authoritative statement regarding regulatory trends in cross-border data flow and the interface with privacy and prudential oversight in the delivery of financial services.

This is an important document because there is a growing number of governments that consider forced localization of data processing a viable policy choice. Citi IGA is working with the US Government to advocate against this approach and we are seeking commitments in relevant trade agreements that will restrain such policy decisions, at least in those countries that enter into trade and investment agreements with the U.S. The paper makes the case for how governments can approach cross-border data flow policy without adding unnecessary costs to services provided to customers and allowing companies like Citi to maintain and develop its business model and competitiveness based on digitally-enabled architecture.

Thanks, Rick Johnston

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March 14, 2013

Ms. Lisa Barton  
Acting Secretary  
United States International Trade Commission  
500 E Street, SW  
Washington, DC 20436

RE: Investigation Number 332-531, Digital Trade in the U.S. and Global Economies, Part 1

Dear Ms Barton:

Pursuant to Federal Register Notice dated January 14, 2013, this letter of transmittal and attachment constitute Citi's submission for Investigation Number 332-531, Digital Trade in the U.S. and Global Economies, Part 1. This submission is non-confidential.

Should you have any questions or need further information regarding this submission, please contact me at my office number: +1(202) 879-6836.

Respectfully submitted,

A handwritten signature in blue ink that reads "Charles R. Johnston". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Charles R. Johnston  
Director and Senior Vice President  
International Government Affairs  
Citi

## **Challenges to Cross Border Data Processing of Personal Information**

This paper is submitted in connection with the investigation by the U.S. International Trade Commission (USITC) into the role of digital trade in the U.S. and global economies. In particular, this submission focuses on the identification of trends in national and regional regulatory schemes that adversely impact cross border data processing and hosting operations<sup>1</sup> of financial institutions involving personal information. Specific discussion of the drawbacks and negative consequences which flow from implementation of such regulatory schemes is addressed. In addition, recommendations which facilitate interoperability of cross border data processing regulatory regimes and safeguard customer information are proposed.

Citigroup (Citi) offers its insights below and suggests that the U. S. International Trade Commission take these into account in its investigation. Increased interoperability will facilitate global digital trade, enhance competition and provide customers with increased choice and service quality.

### **I. Background: Data Processing is the Foundation to the Delivery of Citi's Global Operations and Services.**

Citi has approximately 200 million customer accounts and conducts business in more than 1,000 cities in over 160 countries and jurisdictions around the globe. Citi's customer base is comprised of consumers, corporations (including the world's largest multinational corporations), governments and institutions. A broad range of financial products and services are provided to customers, including consumer banking and credit, corporate and investment banking, securities brokerage, transaction services, and wealth management. Customers rely on Citi's ability to facilitate trade and capital flows in real time in all of its locations. Citi's data processing operations are the foundation which facilitates the delivery of these products and services around the globe.

### **II. Types of Local Restrictions Impacting Cross Border Data Processing**

As a global financial institution, Citi's data processing operations must be compliant with a wide variety of legal and regulatory requirements impacting cross border data processing of personal information in the jurisdictions in which it operates. Discussion of four trends observed in national legal requirements are considered below.

#### **A. Restrictions Requiring Establishment of Domestic Data Centers**

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<sup>1</sup> As a preliminary matter, it should be noted that the term "processing" refers to a wide array of activities and operations on the digital continuum including collection, access, use, transfer, disclosure, storage, retention and back up operations (i.e. disaster recovery or continuity of business). Specific operations will be identified when appropriate. Data Hosting is the storing of information in a secure facility (i.e. data center) with redundant capabilities.

A number of countries have enacted laws or implemented regulations which limit the cross border transfer of data by imposing local data center restrictions which require domestic processing of customer personal information. Country requirements vary. Some countries, such as Venezuela, prohibit offshore data processing and requires that data centers reside in Venezuela. Others countries require that both the data centers and disaster recovery centers are in-country. For example, Indonesia has mandated that by October 2017, electronic service operators (a term which includes banks) onshore their data center and disaster recovery center operations. China and Argentina also have variations of local data center restrictions. Argentina restricts offshore processing except when such processing is done in the location of the head office or a subsidiary of the head office. China has a similar offshore data center restriction but the restriction is specifically limited to data processing activities that involve consumer customers as opposed to corporate customers.

Typically, local governments' stated rationale for imposing local data center restrictions is that these restrictions (i) facilitate and ensure the confidentiality and security of customer personal information and/or (ii) enhance home country regulatory supervision over inherent or core banking activities.

#### B. Laws Directly Regulating Cross Border Access to Personal Information

Countries can also impede cross border data processing by regulating the "disclosure" of personal information through local bank secrecy laws. Bank secrecy laws prohibit or restrict the disclosure of bank customer information to a third party. Typically, customers can waive this prohibition by consenting to the disclosure of their customer banking information. While customers can revoke their consent, the use of consents is one mechanism for the transfer of information. This is particularly true in jurisdictions that do not have a national data privacy or other comparable law.

In some jurisdictions, such as Mexico, customers can not waive bank secrecy prohibitions by consenting to the disclosure of their transactional or deposit information. Other countries, such as Poland or Panama, may permit customers to waive bank secrecy prohibitions but requirements for a compliant consent are so specific that it is impracticable to obtain customers' consent.

#### C. Restrictions Impacting Relationships Between Affiliates and Third Parties

Many country laws restrict processing of information between affiliates and third parties.<sup>2</sup> Local legal requirements, particularly those relating to data protection, bank secrecy, and outsourcing, typically do not distinguish between cross border data processing involving financial institutions and their affiliates, as opposed to data processing between financial institutions and unrelated third parties. Depending upon the jurisdiction, an affiliated service provider is subject to the same regulatory requirements concerning Privacy Notices, customer consents, contractual provisions or regulatory notifications and/or approvals as a third party service provider.

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<sup>2</sup> For the purposes of this statement, the term "affiliates" refers to those companies that are related to one another through common ownership or control by the parent company (i.e. members of the same corporate group). By contrast, the term "third parties" refers to unaffiliated entities.

#### D. Divergent Data Protection Regulation

Conflicting approaches to data protection safeguards can also adversely impact the cross border transfer of personal information. The European Union's (EU) current consideration of the Draft General Data Protection Regulation<sup>3</sup> is another example of a regulatory regiment which, if implemented, could significantly and adversely impact cross border transfers of individual personal data in several respects. First, the Draft Regulation is extra-territorial; it imposes restrictions on conduct outside of the EU. Second, the Draft Regulation provides that the current adequacy determinations of the EU Commission and data protection authorities in support of international transfers to third countries will expire two years after the Regulation enters into force. Finally, data protection authorities will no longer have the ability to approve alternate forms of model contracts or other contractual provisions without using a new consistency mechanism which will impose an additional level of bureaucracy and delay in cross border transfers of data.

### III. Drawbacks of Local Restrictions Impacting Cross Border Data Processing

#### A. Local Data Center Restrictions

Local data center processing does not afford customers the same benefits that would be derived from processing through large offshore mainframe environments. These regionally centralized facilities are purposely built to provide the highest level of resiliency to house information technology equipment (servers, storage, network) and provide IT services and support to Citi customers in an environmentally controlled and secure location. These centers also offer customers improved service quality such as real time processing of customer transactions and operational and technical support. Local data center restrictions prevent customers from enjoying these considerable benefits. Onshore data centers can not replicate the benefits of the large offshore mainframe environments which are, as a practical matter, extremely cost prohibitive to replicate on a national level.

Local data center restrictions contribute to increased costs and inefficiencies. They require implementation of additional layers of in-country procedures and processes to support technology or operational needs (i.e. call center operations, payroll administration, or satisfaction of reporting or compliance requirements) which would otherwise be achieved through the regional data center. Establishment of local data centers diverts funds away from implementation of new initiatives and applications to support these in-country processes and compliance activities. For example, regional restrictions do not allow financial institutions to take advantage of the efficiencies to be gained by process and system automation and implementation to achieve comprehensive auditing capability. They may also cause financial institutions to pull out operations, or decline to conduct operations, in a particular jurisdiction because of cost and staffing considerations associated with establishing a local data center.

Another drawback to local data center restrictions is that they are typically overly broad and are not very clear in describing the specific activities that they seek to prohibit. They generally do not address what

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<sup>3</sup> The Draft General Data Protection Regulation as modified by the January 8, 2013 Albert Report (Draft Regulation).

functions are restricted. In particular, they tend not to indicate whether offshore access to customer data is permissible. This lack of clarity makes it difficult to plan operations and impede the ability of financial institutions to make optimal use of their global services to the benefit of their customers.

Local data center requirements that require that both the data center and the disaster recovery center are to be onshore do not offer customers optimal security of their personal information. Offshore placement of disaster recovery centers protects customers from domestic natural or man-made disasters. For example, onshore data center operations in the Asia Pacific's "Ring of Fire" which is composed of 75% of the world's active and dormant volcanoes, would benefit from offshore disaster recovery operations.

Local data center restrictions implemented to further the stated goal of protecting personal information do not actually further this objective and for this reason, can be counterproductive. Because the objective is to protect individual customer data, restricting offshore data processing of multinational and corporate customers is unnecessary and unduly constraining. This is particularly true in light of the fact that multinational and corporate customers expect that global platforms will be utilized to provide efficient and safe migration of information to support highly complex transactions in real time. Furthermore, with respect to protection of individual customer information, greater security of customer personal information can be provided in offshore data centers for the reasons detailed above.

Another rationale advanced for local data center restrictions is that they enhance home country regulatory supervision over inherent or core banking activity. In these cases, systems which are not used for inherent banking functions for personal and domestic corporate account holders should be permitted to be placed in offshore data centers. Examples of non-core banking functions include Risk Management, Treasury, Trade, Finance or Internet banking functions or anti-money-laundering (AML) monitoring.

In addition, numerous country regulators exercise control over offshore data processing by mandating that specific controls are put in place with respect to outsourced activity. These include obligating financial institutions to conduct due diligence of third party service providers and to execute contracts which contain sound security, informational and confidentiality protections. Appropriate controls are also established through contract requirements which mandate that the service provider (i) establish continuity of business plans, (ii) segregate customer data of the subcontracting entity from other data processed by the service provider, and (iii) give the subcontracting financial institution the right of access and inspection to the service provider's operations and records that pertain to the outsourced services. Many local country requirements impose a variant of these safeguards including Australia, Hong Kong, Indonesia, and India.

In addition to the controls identified above, in a number of countries, the banking regulator must approve the outsourcing arrangement. There is also an increasing trend among regulatory authorities to impose a requirement that a financial institution obtain a regulatory letter assuring rights of access and inspection ("Assurance Letter") over the outsourced activities. For example, in addition to imposing a number of the controls noted above, the Monetary Authority of Singapore (MAS) requires that in instances where the service provider is a regulated entity, the MAS must receive written confirmation from the service provider's supervisory authority that the MAS will be permitted rights of access to bank information and

documents, as well as rights of inspection of the service provider's premises. In light of many country regulators' ability to mandate that financial institutions implement these types of controls, local data center restrictions do not offer any discernable benefit to offset the significant adverse consequences that such restrictions can have on competition, customer service, and product and technological innovation.

B. Disclosure Restrictions Under Bank Secrecy Requirements

Bank secrecy restrictions which do not permit customer consents to disclosure of the customer's personal information result in the establishment of domestic data centers. In these situations, the drawbacks associated with local data center restrictions, discussed above, are applicable. Bank Secrecy prohibitions which impose burdensome requirements for obtaining compliant specific consents require financial institutions to develop uniquely tailored solutions to achieve compliance with local restrictions. Data processing operations involving transfers of, or access to, significant numbers of customers' personal information are adversely impacted by these unduly constraining requirements. Such restrictions inhibit efficient operations by delaying implementation of initiatives and product offerings and impede the development of global platforms which enhance competition.

C. Restrictions Impacting Relationships Between Affiliates and Third Parties

As previously noted, local requirements typically do not distinguish between cross border data processing of personal information between affiliated entities and exchanges of information between financial institutions and unrelated third parties. This approach can result in considerable delays and inefficiencies in the delivery of services to customers, implementation of innovative customer initiatives, and rendering of customer technology and operational support to enhance customer service quality. The benefits to be achieved by such treatment are far outweighed by these disadvantages and inefficiencies. As long as the affiliated entities that exchange personal information are under common control and are subject to required to adhere to similar internal policies and procedures associated with the processing of such information, there a few discernable benefits to be achieved by imposing restrictions, such as the need to obtain separate regulatory approvals for transfers of information or Assurance Letter (described in Section III A), upon these affiliates.

It should be noted that the observation that there is no need to treat an affiliate in the same manner as a third party does not mean that third party data processing poses significant additional risks in safeguarding personal information. Third party data processing is appropriate when conducted pursuant to meaningful controls. These controls, as noted above in Section III A, provide local regulators and financial institutions with an effective means to protect personal information.

D. Divergent Data Protection Regulation

The Draft EU Data Protection Regulation contains troubling aspects which if implemented, would significantly impede cross border data processing. First, the extra-territorial application of the Draft Regulation could lead other jurisdictions to implement similar provisions. In fact, since the issuance of the first Draft Regulation, the Philippines has enacted a data protection law which has extra-territorial application. Also, the move to limit the validity of adequacy determination to two years is quite

significant. Not only would this contribute to considerable uncertainty as to how transfers will be impacted but, it could require expenditure of additional costs after companies have already made significant investments associated with the development of Binding Corporate Rules (BCRs) and model contracts. The inability of data protection authorities to approve alternate forms of model contracts or other contractual provisions without using the consistency mechanism also contributes to this increased level of uncertainty. Finally, compliance with financial and reporting requirements, including anti-money laundering requirements and obligations to protect customers from financial loss and crime, could be adversely impacted by these changes proposed by the Draft Regulation and could require country-tailored solutions to achieve compliance with local restrictions.

#### **IV. Recommendations**

Citi appreciates this opportunity to present its views on the trends in regulatory schemes that adversely impact cross border data processing and hosting operations of financial institutions involving personal information. A balanced approach to the regulation of cross border data processing which incorporates the following recommendations would protect the confidentiality and security of customer information while at the same time enabling financial institutions to utilize their global data processing networks to deliver services and products in an efficient and competitive manner.

1. A primary goal of any regulatory scheme concerning cross border data processing should be the establishment of global interoperability of national legal and regulatory requirements applicable to cross border data transfers and data processing.
2. Local data center restrictions should be discouraged and permit data processing in locations which support optimal security, resiliency, confidentiality of customer information and technical and operational support.
3. If local data center restrictions are to be utilized, they should be clear and narrowly tailored to address a specific need. For example, restrictions which seek to achieve protection of customer information should not require onshore processing of corporate customer information. Similarly, local data center restrictions which seek to protect the regulatory authorities' ability to supervise core banking activities should not require onshore processing of non-core activities.
4. Offshore placement of disaster recovery operations should be encouraged to offer customers optimal security of their personal information to mitigate the adverse consequences of natural or man made disasters.
5. Regulatory schemes should recognize that financial institutions have greater control mechanisms in place with respect to affiliate transactions than with unrelated parties. As long as the affiliate is subject to the same institutional controls as the transferring entity, separate approval processes should not be required in order to transfer personal information between affiliates.
6. A regulatory framework which encourages the use of Assurance Letters by country regulators and mandates the establishment of appropriate contractual controls provide country regulators with the ability to (i) safeguard customer data, (ii) retain regulatory supervision over outsourced activity, and

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(iii) avoid the adverse consequences that local data center restrictions can have on competition, customer service, and product and technological innovation.

7. Customer choice and consent should be recognized and encouraged.

8. Sector specific regulation should be considered when designing any new legal or regulatory requirements.



## Kaye, Janice

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**From:** Steve Stewart (b) (6)@us.ibm.com>  
**Sent:** Monday, March 17, 2014 9:00 PM  
**To:** Punke, Michael W.; Cutler, Wendy; Weisel, Barbara; Bliss, Christine J.; Melly, Christopher; Schagrin, Kenneth; McHale, Jonathan; Tanner, Robb; Nissen, Todd  
**Cc:** Christopher Padilla; Debra Marks; Michael DiPaula-Coyle  
**Subject:** IBM's View on Government Access to Data

Dear USTR friends,

We at IBM appreciate everything you are doing to negotiate strong provisions in trade agreements to enable cross-border data flows and to prohibit local server requirements. We also understand that you are undertaking this effort in a challenging environment.

IBM's clients have noted the wide range of proposed government regulations around the world related to the handling and treatment of data. Accordingly, they are asking questions about their data -- how best to secure it, where to locate it, and how IBM would respond should governments request access. The open letter to our clients, available at the link below, is intended to provide clarity to clients that IBM is committed to protecting their data -- wherever they are doing business -- and will use all appropriate measures under the law to do so.

We thought that you might find it helpful to know how IBM is responding to these issues to maintain the trust of our clients. Among the letter's recommendations to governments is the following:

"Governments should reject short-sighted policies, such as data localization requirements, that do little to improve security but distort markets and lend themselves to protectionist tendencies."

Thanks again for the work you are doing to modernize trade agreements in support of digital trade.

This is the link to our letter. We would be glad to answer any questions that you might have.

<http://asmarterplanet.com/blog/2014/03/open-letter-data.html>

Best regards,

Steve

Steve Stewart  
Director, Market Access & Trade  
IBM Governmental Programs  
Phone: (b) (6)  
Fax: (b) (6)  
e-mail: (b) (6)@us.ibm.com  
600 14th St., NW, Suite 300, Washington, DC 20005

**Kaye, Janice**

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**From:** Michael DiPaula-Coyle <(b) (6)@us.ibm.com>  
**Sent:** Monday, March 24, 2014 12:58 PM  
**To:** Tanner, Robb  
**Subject:** Meeting Request for IBM Trade Exec - Brussels Office

Rob,

I hope this e-mail finds you well. I work for Steve Stewart in IBM's government affairs office here in Washington and support him on trade related issues (including TTIP and cross-border data flows).

My Brussels-based colleague, Nicholas Hodac, will be in Washington during the week of April 7 for internal consultations. Nicholas leads our trade-related work in Europe and is IBM's main interlocutor with the European Commission on TTIP and TISA. We were wondering if you have availability to meet with Nicholas to discuss the status of these negotiations, particularly as they relate to data flows.

Would you be available for a short meeting during the afternoon of April 9 or 10? We would be happy to come to the USTR offices.

Many thanks,  
Michael

Regards,

**MICHAEL P. DIPAULA-COYLE**

IBM Governmental Programs

<p>(b) (6) E-mail: (b) (6) @us.ibm.com</p>	 <p>600 14th St, NW Suite 300 Washington, DC 20005-2012 United States</p>
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## Kaye, Janice

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**From:** Ruff, Jacquelynn (b) (6) @verizon.com>  
**Sent:** Wednesday, April 10, 2013 11:36 AM  
**To:** Tanner, Robb  
**Cc:** McHale, Jonathan  
**Subject:** RE: Any chance we could get together tomorrow?

It's a deal. OK to invite Karen and Anastacio? Or do you prefer "cleared" only?

Who will participate from USTR? Anything you want us to think about in advance?

Thanks.

Jackie

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**From:** Tanner, Robb [mailto:Robert\_Tanner@ustr.eop.gov]  
**Sent:** Wednesday, April 10, 2013 10:52 AM  
**To:** Ruff, Jacquelynn  
**Cc:** McHale, Jonathan  
**Subject:** RE: Any chance we could get together tomorrow?

Actually Tuesday does not work – let's meet Monday, 9 AM in the main USTR building, room305.

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**From:** Tanner, Robb  
**Sent:** Wednesday, April 10, 2013 10:23 AM  
**To:** 'Ruff, Jacquelynn'  
**Cc:** McHale, Jonathan  
**Subject:** RE: Any chance we could get together tomorrow?

We can meet Tuesday, 3PM in USTR Annex 6th Floor Conf Room

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**From:** Ruff, Jacquelynn [mailto:(b) (6) @verizon.com]  
**Sent:** Tuesday, April 09, 2013 6:16 PM  
**To:** Tanner, Robb  
**Cc:** McHale, Jonathan  
**Subject:** RE: Any chance we could get together tomorrow?

Thanks for checking, Robb. Unfortunately I'll be at an all-day roundtable at Yale Law school Friday.

Good times next week would be

- Monday, 4/15 9:00-10:00
- Tuesday, 4/16 2:30-4:00
- Wednesday, 4/17 10:30-11:30

There are other times on Tuesday or Wednesday, one of which may become available.

Any of these look good for you? Also, if something pops up as available tomorrow, just let me know.

Thanks.

Jackie

---

**From:** Tanner, Robb [[mailto:Robert\\_Tanner@ustr.eop.gov](mailto:Robert_Tanner@ustr.eop.gov)]  
**Sent:** Tuesday, April 09, 2013 4:11 PM  
**To:** Ruff, Jacquelynn  
**Cc:** McHale, Jonathan  
**Subject:** RE: Any chance we could get together tomorrow?

I'm pretty booked up tomorrow and Thursday. I have time Friday afternoon but otherwise we should plan on next week.

---

**From:** Ruff, Jacquelynn [[mailto:\[REDACTED\]@verizon.com](mailto:[REDACTED]@verizon.com)]  
**Sent:** Tuesday, April 09, 2013 2:21 PM  
**To:** McHale, Jonathan; Tanner, Robb  
**Subject:** Any chance we could get together tomorrow?

Jonathan and Robb,

As I discussed with Robb this morning on the margins of the EU Institute meeting, I'd like to set up a time to come in and talk.

Topics:

- Compare notes on ISA – haven't spoken since that meeting with Chris Melly, probably about 6 weeks ago – don't what your current thinking is – attached is a summary of what we are thinking
- Compare notes on EU-US – as we prepare input, it would be very helpful to discuss some of the overarching scope questions – (b)(3) (b)(5)
- Types of support that will be most useful? Letters from ITACs, etc?
- Ideas on the role of global industry support

Tomorrow is very flexible for me except for an ITAC call 10-11. Thursday and Friday I'll be out of town.

If OK, I'd like for Karen Johnson to join – but if you'd prefer cleared adviser that would be fine.

Robb said that Jake has emailed also. I'd be happy to do another call with him, assuming he wants to cover a similar list, but I would very much appreciate a conversation this week just to have a few more days to get some things in motion on the above.

Thanks.

Jacquelynn (Jackie) Ruff  
Vice President, International Public Policy & Regulatory Affairs  
Verizon  
(b) (6)

(b)(3) (b)(5)

(b)(3) (b)(5)

March 2013

**Market Access**

(b)(3) (b)(5)

*Technological Innovation*

(b)(3) (b)(5)

(b)(3) (b)(5)

(b)(3) (b)(5)

*Clustering/Integrating*

(b)(3) (b)(5)

(b)(3) (b)(5)

(b)(3) (b)(5) [Redacted]

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**Universal Rules**

*Equity Limitations*

(b)(3) (b)(5) [Redacted]

*Cross-border Data Flows*

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*Localization*

(b)(3) (b)(5) [Redacted]

*Performance Requirements*

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[Redacted]

*State-Owned Enterprises (SOEs)*

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*Regulatory Barriers*

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*Standards*

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[Redacted]

*Living Document*

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[Redacted]



**Kaye, Janice**

---

**From:** Schlosser, Adam (b) (6)@USChamber.com>  
**Sent:** Monday, April 14, 2014 3:28 PM  
**To:** Tanner, Robb  
**Subject:** Invitation to Speak at May 12 Event on Data Flows  
**Attachments:** Invite to May 12 Chamber event (Tanner).pdf

Hi Robb,


Good chatting with you earlier. Attached is an invitation to speak at the May 12 event I mentioned. Please let me know if you have any questions.

Thanks  
Adam

---

Adam C. Schlosser  
Director  
Center for Global Regulatory Cooperation  
U.S. Chamber of Commerce  
(b) (6)

<http://www.uschamber.com/grc>

Follow us: 

Dear Mr. Robb Tanner,

The U.S. Chamber of Commerce is pleased to invite you to serve as a panelist at an event, entitled “Preserving Data Flows and Providing a Path Forward on Privacy,” on Monday, May 12, at the U.S. Chamber headquarters at 1615 H Street NW. The event will run from 2:00pm – 4:30pm.

The event will feature the release of a new publication, entitled “Business Without Borders: The Importance of Cross-Border Data Transfers to Global Prosperity,” developed in coordination with the global privacy experts at Hunton & Williams. “Business Without Borders” highlights the benefits of cross-border data transfers across all sectors of the economy and presents pragmatic solutions towards developing multi-lateral mechanisms that both protect privacy and facilitate data flows.

There will be two panel discussions. The first panel, will feature 3-4 business representatives discussing the importance of data flows to all sectors and providing insights into opportunities to create flexible privacy solutions on a global basis. You are invited to participate on the second panel, featuring other U.S. government officials. We ask that you discuss current efforts related to cross-border data transfers and privacy in TTIP, TISA and other multilateral forums.

The event is open to the public, including media, and we expect about 100 attendees from the private sector, U.S. government, and local embassies.

Please let me know if you have any questions. I can be reached at (b) (6) or (b) (6) [@uschamber.com](mailto:(b) (6)@uschamber.com).

Sincerely,



Adam Schlosser  
Director  
Center for Global Regulatory Cooperation  
U.S. Chamber of Commerce

## Kaye, Janice

---

**From:** Ruff, Jacquelynn (b) (6) @verizon.com>  
**Sent:** Wednesday, April 24, 2013 11:59 AM  
**To:** McHale, Jonathan; Tanner, Robb; Melly, Christopher  
**Cc:** Johnson, Karen M; Ramos, Anastacio (Anastacio); (b) (6) @att.com; JENNINGS, JAKE E (b) (6) @att.com); TALBOT, JAMES (Legal)  
**Subject:** Suggestions for TISA ICT provisions  
**Attachments:** USTR TISA ICT Outline - VZ AT&T April 24 2013.docx

Jonathan, Robb, and Chris,

In follow-up to discussion that AT&T and we have had with you, attached are suggestions for an approach to ICT provisions in the TISA. Thanks for all the great work you're doing on this and the other agreements.

Please let us know if you have any questions.

Jackie

Jacquelynn (Jackie) Ruff  
Vice President, International Public Policy & Regulatory Affairs  
Verizon  
(b) (6)

(b)(3) (b)(5)

4/24/13

**PART I**

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**PART II**

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**PART III**

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**PART IV – Other provisions**

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<sup>1</sup>(b)(3) (b)(5) [Redacted]

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- (b)(3) (b)(5) [Redacted]

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## Kaye, Janice

---

**From:** David Weller (b) (6) @google.com>  
**Sent:** Tuesday, May 06, 2014 2:26 PM  
**To:** Tanner, Robb; Melly, Christopher  
**Cc:** McHale, Jonathan; Winter Casey  
**Subject:** Data Localization Costs and Ineffectiveness

Hi Robb and Chris- To follow up on our conversation last week after the TISA data event, wanted to share a few resources (copying Jonathan too in case he hasn't seen some of this):

### Costs of Data Localization/Value of cross-border movement of data

a) Brussels think tank ECIPE has just put out a study called *The Costs of Data Localization: Friendly Fire on Economic Report*. It tries to quantify the costs of such policies for seven countries (Brazil, China, EU, India, Indonesia, Korea and Vietnam): blog is at <http://blog.ecipe.org/2014/04/the-costs-of-data-localization.html> and study is at <http://www.ecipe.org/publications/dataloc/>

b) Swedish Board of Trade Paper (this is the paper that the Microsoft rep spoke about last week): *No Transfer, No Trade– the Importance of Cross-Border Data Transfers for Companies Based in Sweden*. It's at [http://www.kommers.se/Documents/dokumentarkiv/publikationer/2014/No Transfer No Trade webb.pdf](http://www.kommers.se/Documents/dokumentarkiv/publikationer/2014/No%20Transfer%20No%20Trade_webb.pdf)

c) Anupan Chander & Uyen Le, *Breaking the Web: Data Localization vs. the Global Internet*

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2407858](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2407858)

### Why Data Localization Doesn't Work

Regarding specifically why data localization is ineffective in addressing security and privacy, a couple of resources (in addition to the Chander paper listed above, which addresses too):

a) Patrick Ryan & Sarah Falvey, *Trust in the Clouds*: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2295216](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2295216)

b) Leslie Daigle, Internet Society (ISOC) blog, *Provoking National Boundaries on the Internet? A Chilling Thought....* <http://www.internetsociety.org/blog/2013/06/provoking-national-boundaries-internet-chilling-thought>

Also, at a broader level and relevant generally to the value of data flow, McKinsey Global Institute put out in April a study called *Global Flows in a Digital*

*Age*: [http://www.mckinsey.com/insights/globalization/global\\_flows\\_in\\_a\\_digital\\_age](http://www.mckinsey.com/insights/globalization/global_flows_in_a_digital_age). It's a big report, so a few takeaways:

- **Connectedness produces growth.**
  - McKinsey produced a “connectedness index” based on inward and outward flows of goods, services, people, finances and information. They found that economies with more connections see up to 40% more benefit than do less connected economies.
  - Flows of goods, services, finances and people contribute up to 15-25% of total global growth in GDP.
- **The flow of information supports a global knowledge economy worth trillions of dollars.**



- Knowledge-intensive goods and services flows transmit information, ideas or expertise among exchanging parties. These flows are estimated at being worth \$12.6 trillion globally, about half the combined total value of goods, services, and financial flows.
- Trade in knowledge-intensive goods is growing 1.3 times as fast as trade in labor-intensive goods.
- **Networks of global flows are broadening and deepening as emerging economies join in.**
  - South-South trade has grown at double-digit rates annually for the past three decades, rising from 6% of global trade in 1990 to 24% in 2012.
  - The share of the largest routes in total trade has fallen—across goods and services. In data and communication, the top 50 routes of information flows carried nearly half of Internet traffic in 2006 but only one-third in 2013.
- **Digitization is transforming all global flows, but it especially empowers small companies and individuals.**
  - For example, 90% of commercial sellers on eBay export to other countries, compared to fewer than 25% of traditional SMBs.
  - Khan Academy reports that 25 percent of its users are from countries outside the US. Furthermore, more than half of the ten countries that send the most users to the site are in the emerging world—most prominently India, South Africa, and Mexico.

Hope this is helpful.

David

## Kaye, Janice

---

**From:** Schlosser, Adam <(b) (6)@USChamber.com>  
**Sent:** Friday, May 09, 2014 3:00 PM  
**To:** Tanner, Robb  
**Subject:** FW: Invitation: Preserving Data Flows and Providing a Path Forward on Privacy

Hi Robb,

Thanks again for agreeing to participate at our even on Monday. I left you a voicemail but wanted to follow up in case you are out of office for the day.

Your panel will be second, starting around 245 or 3. I'll be moderating and it will be relatively straightforward. It would be great if you could talk for 12-15 mins about your work in TiSA and TTIP regarding data flows, localization and privacy and any predictions you could provide on future developments.

Also please let me know if you have any off limit questions or any softballs you want me to toss. Please feel free to share invite with anyone interested. And as a reminder press will be invited.

Thanks again. Enjoy the weekend  
Adam

---

Adam C. Schlosser  
Director  
Center for Global Regulatory Cooperation  
U.S. Chamber of Commerce  
Office: (b) (6)

---

**From:** Global Regulatory Cooperation, U.S. Chamber [mailto:grc@uschamber.com]  
**Sent:** Friday, May 09, 2014 10:11 AM  
**To:** International  
**Subject:** Invitation: Preserving Data Flows and Providing a Path Forward on Privacy

[View Web Version](#) | [Forward to a Friend](#)

The U.S. Chamber invites you to join us to advance the discussion around trade and privacy on

May 12  
2:00 - 4:00 pm

## Preserving Data Flows and Providing a Path Forward on Privacy

The event will feature the release of a new publication, entitled "*Business Without Borders: The Importance of Cross-Border Data Transfers to Global Prosperity*," developed in coordination with the global privacy experts at Hunton & Williams. "*Business Without Borders*" highlights the benefits of cross-border data transfers across all sectors of the economy and presents pragmatic solutions towards developing multi-lateral mechanisms that both protect privacy and facilitate data flows.

Panels will feature discussion from private sector privacy experts as well as U.S. government officials about the current opportunities to implement the solutions proposed by the publication, including commentary related to Safe Harbor, TTIP, TISA, and APEC.

### Current Agenda:

Presentation of "Business Without Borders: The Importance of Cross-Border Data Transfers to Global Prosperity"

### Private Sector Views on Preserving Data Flows, Protecting Privacy, and Promoting Prosperity

- Lisa Sotto - Partner and Head of Global Privacy and Cybersecurity Practice, Hunton & Williams
- Victoria King - Global Privacy Officer, UPS
- JoAnn Stonier - EVP, Chief Information Governance & Privacy Officer, Mastercard

### Government Perspectives and Implementing New Data Transfer Mechanisms

- Robb Tanner - Director for Telecommunications and E-commerce, U.S. Trade Representative
- Ted Dean - Deputy Assistant Secretary for Services U.S. Department of Commerce International Trade Administration
- Hugh Stevenson - Deputy Director for International Consumer Protection, Office of International Affairs

Please contact Kathleen Aldrich at [kaldrich@uschamber.com](mailto:kaldrich@uschamber.com) to RSVP.  
*This event is by invitation only.*

Lee Anderson Veteran's Center  
U.S. Chamber of Commerce  
1615 H St NW  
Washington, DC 20062

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## Keppel, Melissa

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**From:** Schagrin, Kenneth  
**Sent:** Tuesday, June 09, 2015 2:33 AM  
**To:** Keppel, Melissa  
**Subject:** FW: Follow-up to our Lunch Meeting Yesterday  
**Attachments:** Networked Economy and TISA - A4.pdf; ICANNIDEALunchAttendeeList.pdf

---

**From:** Matthias Langenegger [mailto:(b) (6)@ccianet.org]

**Sent:** Thursday, May 16, 2013 11:04 AM

**To:** Felipe Sandoval Zamorano; Catalina Gaviria; angelos.pangratis@eeas.europa.eu; hketto@hketogeneva.gov.hk; HOKUGO KYOKO; yfosado@mexico-wto.org; chernandez@mexico-wto.org; lcaballero@onuperu.org; iprshkim@gmail.com; joakim.reiter@gov.se; johannes.ruehl@seco.admin.ch; Hüseyin Güngör; alexandra.cole@fco.gov.uk; Punke, Michael W.; Schagrin, Kenneth; nancy.segal@international.gc.ca; tim.yeend@dfat.gov.au

**Cc:** Nick Ashton-Hart; Nigel Hickson; Paula Gibbs

**Subject:** Follow-up to our Lunch Meeting Yesterday

Dear All,

On behalf of the Internet Corporation for Assigned Names and Numbers (ICANN), the International Digital Economy Alliance (IDEA) and the Computer & Communications Industry Association (CCIA): Thank you very much for your participation in yesterday's lunch meeting. Hopefully you enjoyed the meal and found the discussions stimulating and instructive.

You will find the final attendee list in the attachment. If you would like to follow up with one of the private sector participants, we will be happy to put you in contact.

I would also like to take this opportunity to inform you that our long-promised paper on the Networked Economy and TISA has finally been published on the [IDEA Website](#) (also attached). We hope it will give both the Trade community and the Internet-sector stakeholders a shared understanding to collaborate in producing a truly modern trade agreement.

And finally, I would like to point you to our [IDEA workshop](#) today on the economic dimensions of Internet Governance, which is part of the World Summit on the Information Society Forum. The workshop will take place from 16:00 to 18:00 in room L at the ITU Montbrillant building and includes an illustrious panel of Internet and Trade experts:

- H.E. Joakim Reiter, Permanent Representative of Sweden to the World Trade Organization, Sweden
- Mr. Tarek Kamel, Senior Adviser to the President - Government Affairs, Internet Corporation for Assigned Names and Numbers, Inc. (ICANN) and Former Minister of Communications and Information Technology, Government of Egypt, Belgium
- Mrs. Erika Mann (MEP), Managing Director Public Policy Facebook Europe and former Member of the European Parliament, Belgium
- Mr. Hosuk Lee-Makiyama, Director, European Centre for International Political Economy,

There is also a [remote participation option](#) for those of you who would like to follow it remotely via webcast.

--

Kind Regards,

Matthias Langenegger

Deputy Geneva Representative

---

Computer & Communications Industry Association (CCIA)

Phone: (b) (6)

Mobile: (b) (6)

Fax: [+41 22 594 85 44](tel:+41225948544)

email: (b) (6) [@ccianet.org](mailto:(b) (6)@ccianet.org)

<http://www.ccianet.org>

## ICANN/CCIA/IDEA Lunch Participant List

**Total: 41**

### **TISA Countries**

(total:17 participants)

Australia:

*H.E. Ambassador Tim Yeend, Permanent Representative to the WTO*

Canada:

*Ms. Nancy Segal, Counsellor*

Chile:

*Mr. Felipe Sandoval Zamorano, Counsellor*

Columbia:

*Ms. Catalina Gaviria Bravo, Counsellor*

European Union:

*H.E. Ambassador Angelos Pangratis, Permanent Representative to the WTO*

Hong Kong:

*Mr. Sam Hui, Deputy Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO*

Japan:

*Ms. Kyoko HOKUGO, Counsellor*

Mexico:

*Mrs. Cristina Hernandez, Deputy Permanent Representative*

*Ms. Yara Fosado, Counsellor*

Peru:

*Ms. Luz Betty Caballero de Clulow, Deputy Permanent Representative*

South Korea:

*Mr. Shi-Hyeong Kim, Intellectual Property Attaché*

Sweden:

*H.E. Ambassador Joachim Reiter, Permanent Representative to the WTO*

Switzerland:

*Mr. Johannes Rühl, Counsellor*

Turkey:

*Mr. Hüseyin Güngör, Counsellor*

United States:

*H.E. Ambassador Michael Punke, Permanent Representative to the WTO and Deputy USTR*

*Mr. Kenneth Schagrin, Attaché, Office of the USTR in Geneva*

United Kingdom:

*Ms. Alexandra Cole, First Secretary*

### **Intergovernmental Organisations**

(total: 1 participant)

International Trade Center (ITC):

*Ms. Jane Drake-Brockman, Senior Services Adviser*

### **Technical Internet Organisations**

(total: 8 participants)

Internet Corporation for Assigned Names and Numbers (ICANN):

*Mr. Steve Crocker, Chairman of the Board*

*Mr. Fadi Chehadé, President and CEO*

*Mr. Nigel Hickson, VP, Europe*

*Mr. Bertrand De La Chapelle, Member of the Board*

*Mr. Chris Disspain, Member of the Board*

*Mr. Bill Graham, Member of the Board*

Internet Society (ISOC)

*Mr. Markus Kummer, VP, Public Policy*

Asia-Pacific Network Information Center (APNIC)

*Paul Wilson, Director General*

### **Commercial Internet Services and Network Providers**

(total: 11 participants)

AT&T:

*Mr. Virat Bhatia, President, External Affairs South Asia and Chairman, Communications and Digital Economy Committee at the Federation of Indian Chambers of Commerce and Industry (FICCI)*

*Ms. Claudia Selli, EU Affairs Director*

British Telecom

*Mr. Philip Rushton, Naming, Numbering, Addressing Policy and Strategy*

*Ms. Jennifer Taylor-Hodges, VP, US Governmental Affairs*

Cisco:

*Mr. Robert Pepper, Vice President, Global Technology Policy*

*Mr. Hascall Sharp, Director of Technology Policy and Internet Governance*

Google:

*Mr. Patrick Ryan, Sr. Policy Counsel, Free Expression & Int'l Relations*

*Ms. Sarah Falvey, Public Policy & Gov't Relations Manager, Free Expression and International Relations*



Paypal:

*Mr. Bill Smith, Technology Evangelist*

Red Hat Software

*Mr. Paul Brownell, Public Policy Director*

Verizon Communications

*Jacquelynn Ruff, VP, International Public Policy and Regulatory Affairs*

### **Trade Associations**

(total: 4 participants)

Computer & Communications Industry Association (CCIA) and International Digital Economy Alliance (IDEA)

*Mr. Nick Ashton-Hart, CCIA Geneva Representative & Executive Director, IDEA*

*Mr. James Waterworth, VP, Europe, CCIA*

*Mr. Ross Schulman, Public Policy & Regulatory Counsel, CCIA*

*Mr. Matthias Langenegger, Deputy Geneva Representative, CCIA*



International Digital Economy Alliance

# **The Trillion Dollar Question: How trade agreements can maximise the economic potential of data in the networked economy and support the Internet as the world's trading platform**

## **Purpose and scope of this document**

Trade negotiators from countries across the world have said they need to understand the networked economy better in order to determine how best to craft provisions that accelerate access and economic benefits it brings. At the same time, many Internet services companies and stakeholders need to understand how trade policy works. This document seeks to create a common understanding for both communities. A subsequent initiative will then present options for how to reconcile the need for effective pro-trade provisions suited to the digital economy in trade agreements and the legacy of GATS<sup>1</sup> and previous bilateral and plurilateral trade agreements' provisions.

This document deals with the first two of three areas at the level of strategy:

1. The publicly-accessible global Internet and managed private networks and their interrelated role as the world's trading platform<sup>2</sup>;
2. The data, and services that provide that data across those networks.

This document does not address the interface between electronic and non-electronic commerce and the measures that should relate to it - for example, the customs and duty-related formalities that result when goods purchased online must be delivered from the supplier to the customer across national borders, nor does it address the movement of persons - in trade known as "Mode 4" - between countries where those people have skills that are integral to the operation of the networks, services, and data they involve. It is anticipated that these questions will be dealt with subsequently; they are not of the same 'horizontal' nature as the questions this document tackles.

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<sup>1</sup> 'GATS' refers to the 'General Agreement on Trade in Services,' the part of the WTO treaty system that deals with services trade. You can read more about GATS and its history here: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm).

<sup>2</sup> It is not widely understood that the public Internet's backbone is generally based upon the connectivity, such as undersea cables (in the case of countries with coastline) and land-based fiber and satellite-provided bandwidth that is financed by private companies' need for connectivity that cannot be met by existing capacity or where security concerns require dedicated service. ISPs that serve this market resell excess bandwidth on new physical infrastructure for the provision of public Internet connectivity. As a consequence, trade agreements need to cover both the publicly accessible Internet and privately managed networks.



International Digital Economy Alliance

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<b>Trade provisions for the networked economy must reflect its nature</b>	<b>2</b>
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## **A strategic view of the networked economy and what it needs from the trade system**

### ***The Networked Economy is the present and the future of all trade***

It is widely understood that the Internet is key to global trade. A few facts that illustrate this:

In 2010, the Internet economy amounted to \$2.3 trillion or 4.1 percent of GDP across the G20 countries. This number is expected to grow to \$4.2 trillion or 5.3 percent of GDP by 2016, when the Internet economy will employ 32 million additional people in those countries.<sup>3</sup>

In the developing world, growth rates of the Internet economy will be over 18% in the next 5 years - more than twice as fast than those in the developed countries.<sup>4</sup>

- 75% of the Internet's economic benefit goes to traditional industries through efficiency gains and expanded markets, and SME<sup>5</sup>s who heavily utilize the Internet export twice as much as those that don't.<sup>6</sup>
- Over 500,000 people get connected to the Internet for the first time *every day* - 3 billion people will use the Internet by 2016, from 2 billion in 2010<sup>7</sup>. That means any business with a product or service that can leverage the Internet can reach an *additional billion customers* in just the next three years.
- Half of global Services trade is enabled by the networked economy, according to UNCTAD,<sup>8</sup> which means the networked economy is increasingly the beating heart of the economy.
- The networked economy is inherently borderless - and so the promotion of economic activity that relies upon it will become more effective as more countries subscribe to common rules.

There is no other area of international trade where liberalisation can meaningfully enhance economic opportunity for one half of the global population. That alone justifies ensuring that the priority in any trade negotiation should be the networked economy.

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<sup>3</sup> Boston Consulting Group, *The Internet Economy in the G-20: The \$4.2 Trillion Growth Opportunity*, March 2012, available at [https://www.bcgperspectives.com/content/articles/media\\_entertainment\\_strategic\\_planning\\_4\\_2\\_trillion\\_opportunity\\_internet\\_economy\\_g20/](https://www.bcgperspectives.com/content/articles/media_entertainment_strategic_planning_4_2_trillion_opportunity_internet_economy_g20/) and McKinsey Global Institute, *Internet Matters: The Net's sweeping impact on growth, jobs and prosperity*, May 2011; see also McKinsey Global Institute, *The great transformer: The impact of the Internet on economic growth and prosperity*, Oct. 2011.

<sup>4</sup> *ibid.*

<sup>5</sup> Meaning Small and Medium-Sized Enterprises.

<sup>6</sup> *Internet Matters*, *supra* note 1.

<sup>7</sup> Boston Consulting Group *supra* note 1 and International Telecommunications Union, "2010 ICT Facts and Figures" available at <http://www.itu.int/ITU-D/ict/facts/2011/material/ICTFactsFigures2010.pdf>

<sup>8</sup> UNCTAD Information Economy Report 2009, at <http://unctad.org/en/pages/PublicationArchive.aspx?publicationid=1574>.



## ***Trade provisions for the networked economy must reflect its nature***

The public Internet (and private managed networks that connect to it that are based upon the same technologies)<sup>9</sup> are not just an invention. They are, as the printing press, the steam engine and electricity before it, a *general purpose technology* (GPT)<sup>10</sup> - transforming our societies and economies on all levels. Across industries, the Internet is transforming production and distribution, making markets more transparent, opening markets to new entrants and lowering barriers of entry, transforming entire sectors, and creating entirely new sectors that spring from nothing to global reach and influence, creating enormous global economic activity, all in less time than a traditional trade agreement can even be negotiated.

This rapid pace of change means that provisions that work for the networked economy must be designed to stand the test of time - and that will require different structural approaches than in previous regimes like GATS in some areas, as is noted below.

## ***Four principles to protect and promote the networked economy***

What follows are the four foundational principles that should guide the development of provisions related to the networked economy in any modern trade agreement such as TISA:

1. **Networks are a trading platform that all sectors depend on and this requires provisions that ensure they remain ‘open for business.’** In this context, it is worth noting that the public Internet and private networks interoperate<sup>11</sup> to create the greater whole and all the systems and functions which are essential to the operations of both need to be supported.
2. **All commercial activity that takes place online depends upon information and data moving without hindrance or distortion** to respond to real-time access needs internationally. Ensuring the widest possible application of this principle is an absolute necessity in TISA, though issues such as the protection of personal privacy and protection from fraud and abuse, national security, different societal views on public morality and free expression in a globalised medium, and intellectual property will need to be dealt with

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<sup>9</sup> The terms “Internet” and “networks” or “networked economy” refer to both public and private connected networks interchangeably, since at a public policy level in a Services agreement they need identical treatment. It is important to recognise that both exist and are mutually-reinforcing in their economic impact and value. Naturally, any trade agreement shouldn’t address only networks based upon the Internet protocol, but allow for any network based upon a successor technology were it to arise. It is noted that ensuring that sort of technology neutrality is a hallmark of trade agreements generally.

<sup>10</sup> Additional discussion of the impact of GPTs and how they differ from less transformative inventions is available in: Nathan Rosenberg & Manuel Trajtenberg, “A General-Purpose Technology at Work: The Corliss Steam Engine in the Late-Nineteenth-Century United States,” 64 J. of Econ. History 61-99 (2004) available at [http://journals.cambridge.org/abstract\\_S0022050704002608](http://journals.cambridge.org/abstract_S0022050704002608); Susanto Basu & John Fernald, “Information and Communications Technology as a General-Purpose Technology: Evidence from US Industry Data,” 8 German Econ. Rev. 146–173 (2007) at <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0475.2007.00402.x/abstract>; and Boyan Jovanovic & Peter L. Rousseau, “Measuring General Purpose Technologies,” 2005 Handbook of Economic Growth, Elsevier at <http://www.unc.edu/depts/econ/seminars/Rousseau.pdf>

<sup>11</sup> ‘interoperability’ refers to the ability of diverse systems and organizations to work together harmoniously.



such that exceptions are transparent, rules-based, and as free from unanticipated side effects as possible. Simply copying-over general exceptions from other agreements like GATS that were designed before the networked economy was a factor in trade will in many areas be insufficient, for reasons we will explore later in the document.

3. **Creating a level playing field for services in a networked environment requires rules that respond flexibly to change to a far greater extent than ‘bricks and mortar’ sectors.** The pace of rapid change in entire industries created by the networked economy means that the ‘positive list’ construct of services commitments<sup>12</sup> is not viable in many areas.
4. **Network-based economic activity frequently blurs the line between the different traditional ‘Modes’ that are the hallmark of services agreements.** The TISA needs to accommodate this reality in a way that lives with the legacy of the past while creating a bridge to the future.

More detail on each of these follows.

### **Networks are a trading platform that all sectors depend on and this requires provisions that ensure they remain ‘open for business.’**

Including provisions in any trade deal that recognise the Internet as a trading platform is actually conceptually congruent with the way the Internet is structured: as a closely integrated web of hardware and software that is designed to interoperate<sup>13</sup>, involving actors such as:

- ISPs (providing physical network access as well as routers and related software services responsible for forwarding traffic between any ‘point A’ to any ‘point B’);
- The processes by which unique identifiers that allow any ‘node’ of the network to be identified and reached from any other node are allocated and managed (such as Internet Protocol (“IP”) addressing and the domain name system (“DNS”));
- Key trust authentication services - those services that ensure key technologies are resistant to misuse by the unscrupulous - for example, the infrastructure that supports DNSSEC (which provides security for the DNS), or which provide authentication of resources like websites through certificate verification (such as the ‘secure sockets layer’ (SSL protocol)).

It is not widely understood that Internet Protocol (“IP”)-based networks are designed to operate with maximum efficiency, and a continuous process of evolution of standards responds to the need to deliver greater performance, interoperability, resiliency, and trust and

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<sup>12</sup> Where a ‘positive list’ of commitments is used, only those services specifically listed are included. The result is that as new types of services are created in the marketplace these are outside of an agreement that uses this mechanism. A ‘negative list’ of commitments is the opposite: here, the only areas that are excluded are those specifically listed. A negative list approach is much more future proof, but, also means that countries must be comfortable with the idea that over time the commitments to liberalization they are making will expand automatically.

<sup>13</sup> For a user-friendly overview of the Internet and the ‘network of networks’ that it is comprised of the Internet Society’s “An Introduction to Internet Interconnection Concepts and Actors” is excellent: [www.internetsociety.org/sites/default/files/bp-interconnection.pdf](http://www.internetsociety.org/sites/default/files/bp-interconnection.pdf).



security as networks develop. The result is that these networks can, if left to themselves and the web of stakeholders who operate and maintain them:

- Automatically find the optimal (which is not necessarily the most direct) route between any two points at any given time;
- Deliver data between any two points in a way that optimizes bandwidth used;
- Ensure that anyone may extend the public Internet simply by connecting a device called a router<sup>14</sup> to the ‘edge’ of the network and applying for a unique address for that router, which are ultimately provided by ‘regional internet registries’ (“RIRs”)<sup>15</sup>
- Ensure that users of globally popular services access the copy of the information sought that is closest to the user on the network (which may or may not be closest in geographic terms), which both minimises the cost to the service and maximises the performance the user experiences.

However, legal regimes often act to distort or frustrate these functions, even where that is not the intention. For this reason TISA must have provisions that:

1. **Oblige signatories to avoid actions that impede or distort basic functions such as addressing and traffic routing.** Where a signatory state needs to remove a ‘node’ from the network or prevent access to certain information that the network carries for whatever reason, it must do so in a way that does not affect the network’s operations. There are many different mechanisms that can be used in pursuit of national social and security priorities with respect to data on the network that do not affect network operations.
2. **Oblige signatories not to take actions that affect the choices of commercial actors in physical provision of hardware, software, or services that would impact network performance, resiliency, security, and/or costs of deployment or operations.** Many countries are tempted to require that certain types of hardware or software integral to the operation of the network be physically sited within their national boundaries. There are many reasons why these choices are made but the reality is that mandates of this kind generally have unanticipated negative consequences, frustrating choices which are otherwise designed to ensure the best performance for the largest number of users at the lowest cost. This is not in the long-term interests of any country - and there are better and more sustainable ways to encourage local investment in the ICT sector than through these kinds of mandates.<sup>16</sup>

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<sup>14</sup> A router is a device which ‘talks’ to other such devices to figure out how to forward requests from any device connected to it to any other part of the network; the standards used ensure that this can happen automatically and as the network topology changes in real-time, these changes are ‘learnt’ by those devices which need to know about them. Pretty much every business and residence has a router, generally provided by their Internet service provider.

<sup>15</sup> These organisations are responsible for managing the key forms of addressing on the Internet - which are akin to the various types of addresses in the worldwide postal system in the functions they perform; all of them are ultimately linked to IANA, the Internet Assigned Numbers Authority, managed by ICANN. IANA, and the RIRs, work together; more information is available at <http://www.iana.org/numbers>.

<sup>16</sup> There is much scholarly literature on the subject. The 2009 WEF report, “*ICT for Economic Growth: A Dynamic Ecosystem Driving The Global Recovery*” is simultaneously comprehensive, accessible, and at 11 pages, short. It can be found here: <https://members.weforum.org/pdf/ict/ICT%20for%20Growth.pdf>.



It is important to emphasise that all of the provisions discussed above do not cover or relate in any way to any data created by, or perceivable by, a person in any manner or form: the provisions which relate to data as mere traffic or bitstreams should be kept separate for reasons that will become clear.

It is also important to note that there are other kinds of barriers related to lack of competition in the provision of physical connectivity within or between countries and the often arbitrary nature of various kinds of fees (in trade parlance “non-tariff barriers”) that are frequently applied to the landing of new undersea cables to increase available network bandwidth - or the charges to provide network connectivity between land-locked and non-landlocked countries.<sup>17</sup>

## **All commercial activity that takes place online depends upon information and data moving without hindrance or distortion**

It is certainly the case that the networked economy depends upon data flowing freely without impediment - and it is also the case that this critical need can (and more and more frequently is) undermined in pursuit of other public policy priorities.

Networked economy-based services should also receive the benefit of national treatment, which at present is often not the case. Some countries, for example, have alleged foreign search sites to be purveyors of pornography, even though domestic services allow users to link to similar adult content.<sup>18</sup> Numerous other Internet services, including social networks, blogging and photo sharing sites, have over time been blocked or severely restricted by the some governments, while domestic versions of the same services are permitted to operate, even though they contain similar levels of “offensive” content.<sup>19</sup> The economic consequences of such treatment can be substantial.<sup>20</sup> There is also very little transparency about what material is removed from online services, when, for what purpose, and at whose instruction. Some companies have unilaterally begun publishing information about this<sup>21</sup> but that’s not a replacement for a rules-based regime, with a disclosure process for at least a basic minimum

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<sup>17</sup> For an interesting viewpoint on these issues see Sunil Tagare’s personal blog post of 8th February 2013, “Indian Government Does Not Understand Submarine Cables” at <http://blog.buysellbandwidth.com/indian-government-does-not-understand-submarine-cables/>. Tagare is a well-known engineer and entrepreneur in the undersea cable industry.

<sup>18</sup> Simon Elegant, *Chinese Government Attacks Google Over Internet Porn*, Time, June 22, 2009, at <http://www.time.com/time/world/article/0,8599,1906133,00.html>

<sup>19</sup> Jordan Calinoff, *Beijing’s Foreign Internet Purge*, FOREIGN POLICY, Jan. 15, 2010, [http://www.foreignpolicy.com/articles/2010/01/14/chinas\\_foreign\\_internet\\_purge](http://www.foreignpolicy.com/articles/2010/01/14/chinas_foreign_internet_purge)

<sup>20</sup> For example, in 2007 China blocked U.S. based search engines and redirected users to the leading Chinese search engine, Baidu. Google’s policy of redirecting Chinese users to the site’s uncensored Hong Kong page led the Chinese government to filter all Google search results through its “Great Wall” monitoring system. As a result, Google’s market share fell to 30.9 percent in the first quarter of 2010, down from 35.6 percent in the fourth quarter of 2009; Baidu, China’s largest domestic search engine, saw its market share increase from 58.4 percent to 64 percent over the same period. As a result of its loss in search market share, Google experienced a drop in advertising revenue in China as advertisers shifted their business to Baidu, allowing Baidu to charge higher rates for advertising. See Mark Lee, *Google Wins China Permit Renewal, Defusing Standoff*, BUSINESSWEEK, July 9, 2010, <http://www.businessweek.com/news/2010-07-09/google-wins-china-permit-renewal-defusing-standoff.html>

<sup>21</sup> Perhaps the most granular such reporting is provided by Google’s Transparency Report, available here: <http://www.google.com/transparencyreport/>. An example of a cross-Internet industry initiative to promote disclosure of such requests (in this instance in connection with free expression and personal privacy) is the Global Network Initiative, online at <http://www.globalnetworkinitiative.org/>.





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of information on the conditions under which information may be removed from digital services. The WTO notifications process embodies such an approach; TISA should ensure that it builds upon this legacy, as an increase in transparency and legal certainty would build confidence and competitiveness in the TISA economies vis a vis non-participating markets.

Trade agreements normally allow signatories to override normal treaty operations in order to deal with key policy priorities<sup>22</sup> - however, the general exceptions of GATS by themselves are likely to prove inadequate as a way to fully address issues like personal privacy and end-user security in the networked economy. In the case of privacy, this is because information associated with individuals is frequently (and in some cases almost routinely) subject to movement across borders as an integral part of services that generate them; this is especially true of services that include content generated by users themselves. Moreover, the simple act of tracking who visits a website<sup>23</sup> can reveal who that visitor is, at least to the level of an IP address.<sup>24</sup> This differs considerably from the offline world where the commercial use of personal information is very much the exception in most sectors, and the exception for private information was drafted before online data privacy was an issue.<sup>25</sup>

It is also the case that measures taken to protect national security in the online environment can very easily create substantial barriers to efficient network operation and introduce legal uncertainty that in both cases is unnecessarily damaging to commerce.<sup>26</sup> A good example of this is the US Patriot Act<sup>27</sup>; certain provisions of this act have resulted in reluctance by other countries to allow their nationals' data to be stored within the USA<sup>28</sup>. While the routing decisions of major Internet service and backbone providers are not generally disclosed, it is understood that there have been instances where non-US-based commercial operators have chosen to try and route traffic such that it does not transit the USA if the source or destination does not otherwise require it.

These issues will require real innovation in the structure of the agreement, as most (if not all) countries in TISA are in the throes of national debates about key questions that have huge impacts on the networked economy, such as:

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<sup>22</sup> Contained in Article XIV and available here: [https://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm#articleXIV](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#articleXIV)

<sup>23</sup> Website usage tracking tools ("web analytics") are used by a large number of all public websites as they help web designers understand how the site is used and who by. More information on Wikipedia is to be found here: [http://en.wikipedia.org/wiki/Web\\_analytics](http://en.wikipedia.org/wiki/Web_analytics)

<sup>24</sup> In some jurisdictions it is an open question as to whether an IP address alone is considered personal information.

<sup>25</sup> While the volume of literature on the subject is considerable, for those in the trade community we recommend the February 2013 WEF report "*Unlocking the Value of Personal Data: From Collection to Usage*"; available at <http://www.weforum.org/issues/rethinking-personal-data>. Another WEF report from May 2012, "Rethinking Personal Data: Strengthening Trust" is also worth reviewing; available at [http://www3.weforum.org/docs/WEF\\_IT\\_RethinkingPersonalData\\_Report\\_2012.pdf](http://www3.weforum.org/docs/WEF_IT_RethinkingPersonalData_Report_2012.pdf).

<sup>26</sup> Cloud services are particularly susceptible to this problem: for an example of the harms see "Dutch government to ban U.S. providers over Patriot Act concerns," Zdnet, 19th September 2011, at <http://www.zdnet.com/blog/btl/dutch-government-to-ban-u-s-providers-over-patriot-act-concerns/58342>. This decision was subsequently reversed but it clearly illustrates the issues of unintended consequences of national legislation related to networked activity.

<sup>27</sup> An accessible summary of the Act and subsequent amendments may be found at Wikipedia here: [http://en.wikipedia.org/wiki/Section\\_summary\\_of\\_the\\_Patriot\\_Act,\\_Title\\_II](http://en.wikipedia.org/wiki/Section_summary_of_the_Patriot_Act,_Title_II).

<sup>28</sup> Perhaps the most well-known being Canada. See Clement, Andrew and Obar, Jonathan A., *Internet Boomerang Routing: Surveillance, Privacy and Network Sovereignty in a North American Context* (March 31, 2013). Available at <http://ssrn.com/abstract=2242593>.



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- What is the balance between the privacy of individuals in the networked environment and the commercial or government use of information about them?
- How do we (each country being a different 'we') ensure that key information needed for regulators - such as that related to financial transactions and institutions - is protected when it leaves national boundaries?
- How do we create rules to protect users against online fraud and abuse and use of public networks for criminal activity without harming the fundamental freedoms of our nationals?
- Where is the dividing line between national security issues and everyday commercial and end-user security?

The reality is that the global nature of data flows in the networked economy raises issues that will be the subject of debate at the national level for some time and laws made nationally in response will continue to evolve. However, the answers of each country to these value questions have undisputed commercial implications especially with respect to services trade - yet trade negotiators will quite naturally be wary of agreeing to binding international obligations where national discussions are not mature.

A way to deal with the need for legal certainty in an environment where that certainty is a moving target may be found in a different structure of agreement increasingly used in other areas of international treaty making: the framework convention.<sup>29</sup>

The basic conception is that TISA would create a process whereby the minimum obligations parties have with respect to specific key areas would evolve over the course of time through a collaboration with the relevant trade and other government officials meeting periodically to define (and refine) them. For example, with respect to protection of data associated with individuals, the process might be as follows:

- TISA would provide that the parties had an obligation to permit the free flow of information subject to specific provisions limiting the use of data which is related to a natural person, where the definition of the scope of coverage (what information related to natural persons) as well as the minimum standards to be applied to usage of that information in trade would be created and modified over the course of time through a meeting of the parties established specifically for that purpose.
- That body would be made up of designated individuals from each contracting state's relevant ministry (or ministries) responsible for data protection alongside the contracting state's trade ministry. They would collectively meet regularly to redefine what the TISA obligations are, again specifically as they relate to commercial application of the information in question.<sup>30</sup>

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<sup>29</sup> An excellent resume of framework conventions, why they are used and the various areas of law they've been used in may be found in "Framework Conventions as a Regulatory Tool", Goettingen Journal of International Law 1 (2009) 3, 439-458, N Matz-Luck, at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1535892](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1535892)

<sup>30</sup> The framework convention that inspired the approach used here is CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) - where the obligations parties have to protect Threatened and Endangered animal species are embodied in the main agreement, while the actual species that are to be protected under each category are decided upon through regular meetings



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- The points of contact for each country in respect of the obligations settled upon could be the object of a notification procedure to ensure that other parties - and stakeholders - were clear on whom to contact.

These bodies would not be a replacement for national debate and action on this area - nor should national debates simply transfer to them. What would have value is for the parties to bring the results of their national consensus and legal evolution to the new forum in order to create a consensus on the minimum obligations of all countries, which would naturally evolve over time.

A framework convention should not become a way of 'kicking the can down the road' – deferring dealing with a complex area of policy through process. These issues and the uncertainty that the changing legal landscape in these areas has involves a real economic impact that will only grow as services become more sophisticated.

### **Creating openness for services in a networked environment requires rules that respond flexibly to changes to a far greater extent than in 'bricks and mortar' sectors.**

In trade lingo, the flow of information across borders is not a scheduling issue or a sectoral-issue where a negative list or a positive list construction is relevant.

In other words, just creating an 'ecommerce chapter' in the agreement or a 'schedule of commitments'<sup>31</sup> that is vertical (meaning applicable only within that chapter or only applying to specific named services) will not work: all sectors rely upon the networked economy for often-critical elements of their operations. Provisions that relate to the flow of information or data must therefore be 'horizontal' or applicable across all sectors TISA covers.<sup>32</sup>

### **Network-based economic activity frequently blurs the line between the different traditional 'Modes' which are the hallmark of services agreements**

The overall lack of consistency and successes in digital trade liberalisation even in preferential agreements is partly due to the heritage of GATS, especially the mode-based negotiations<sup>33</sup> – services are not delivered according to the theoretical modes of delivery of GATS and FTA

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of the parties. CITES is a very successful international agreement, currently with 178 countries, one of the most widely adhered to of all agreements. CITES may be found online here: <http://www.cites.org/>

<sup>31</sup> A 'schedule of commitments is how countries agree what they will be bound to do in relation to trading partners. The WTO has a good explanation of how schedules work and are constructed here: [http://www.wto.org/english/tratop\\_e/serv\\_e/guide1\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/guide1_e.htm).

<sup>32</sup> Two examples of many just in relation to the value of the Internet in supply chains: 1) The European Union has two projects to enable SMEs to participate in global supply chains relating to the automotive industry, see [http://ec.europa.eu/enterprise/magazine/articles/innovation/article\\_11049\\_en.htm](http://ec.europa.eu/enterprise/magazine/articles/innovation/article_11049_en.htm) and 2) Pfizer, the global pharmaceutical giant, recently announced that it had moved its entire supply chain, vendor and customer management processes into a cloud based application; see "Pfizer moves supply chain to cloud," Financial Times, 11th September 2012, at <http://www.ft.com/cms/s/0/1608e5d6-fc59-11e1-ac0f-00144feabdc0.html>.

<sup>33</sup> Trade agreements addressing services that follow the WTO GATS model are divided into four 'modes' of supply – a demarcation that is difficult to manage in the networked economy where activities span across modes. For more information on modes, see here: [http://en.wikipedia.org/wiki/General\\_Agreement\\_on\\_Trade\\_in\\_Services#Four\\_Modes\\_of\\_Supply](http://en.wikipedia.org/wiki/General_Agreement_on_Trade_in_Services#Four_Modes_of_Supply).



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schedules. They are exported to foreign markets in the form of competences (consultants and experts flown in to perform a task), intellectual property (by transferring franchise licences, copyright or patents), plain investments, or as data. Unlike business mobility, IP and investments that are now established chapters of all modern trade agreements and the WTO, free movement of data is yet uncovered.<sup>34</sup>

Trade negotiations often bring up this issue of categorisation - and perhaps the best option with respect to data is not to try: simply treat data itself as an entity that is neither product nor service. This is factually true: data, once it is encapsulated digitally for transmission in a network, is simply bits that must be reassembled upon reception. Upon reassembly, data may be part of a product - for example, a digital download of a licensed copy of software. Other data is associated with a service - such as the results of an online search or email being delivered. The common element is that it is data which is integral to delivery of the product or service, but the data is not itself either of those things.

### **What *is* the service, then?**

To continue this demarcation, the service can be defined (continuing the examples above) for software as the the software vendor's online shop or a third-party authorized vendor of that software; in the case of search, the search service and its associated logic that assembles raw information into a relevant search result could be classified as an advertising service (since search engines generate revenue based upon advertising in various ways). In general, where an online service (or product, for that matter) is an analogue to one offline, barring some special circumstance the two should be treated the same.

## **In Conclusion**

We hope that this document provides a useful point of departure for stakeholders and the trade community generally to consider how to integrate the networked economy into the Trade in Services Agreement. IDEA welcomes comments and contributions by email or post to [comments@internet-economy.org](mailto:comments@internet-economy.org) or at the address details below.

## **Acknowledgments**

IDEA would like to thank ECIPE's Hosuk Lee-Makiyama for his many thoughtful comments and suggestions during the drafting process - and the influence on IDEA's thinking of his ideas more generally on networked economy trade, a fine selection of which may be found on ECIPE's site at <http://www.ecipe.org/people/hosuk-lee-makiyama/>. Gary Horlick Esq. is equally deserving of special mention and IDEA thanks him for his time and thoughtful commentary, which certainly improved the text. A selection of his writing may be found at <http://www.ghorlick.com/articles.aspx>.

We would also like to acknowledge the influence of the following, in no particular order:

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<sup>34</sup> This paragraph taken from Hosuk Lee-Makiyama's 2013 statement to the US ITC entitled "Digital Trade in the US and Global Economies." The full text may be found here: [http://www.ecipe.org/media/external\\_publication\\_pdfs/USITC\\_speech.pdf](http://www.ecipe.org/media/external_publication_pdfs/USITC_speech.pdf).



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- The US and EU communication to the WTO Council for Trade in Services entitled “Trade Principles for Information and Communication Technology Services” (13th November 2011) at [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(@Symbol=%20s/c/w/338\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20s/c/w/338)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)
- Submission of the Computer & Communications Industry Association to the Office of the United States Trade Representative (1st March 2013) at <http://www.regulations.gov/contentStreamer?objectId=090000648120a833&disposition=attachment&contentType=pdf>.
- The National Foreign Trade Council’s (NFTC) “Promoting Cross Border Data Flows: Priorities for the Business Community” (3rd November 2011) at <http://www.nftc.org/default/Innovation/PromotingCrossBorderDataFlowsNFTC.pdf>

## Kaye, Janice

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**From:** McHale, Jonathan  
**Sent:** Wednesday, June 12, 2013 8:30 AM  
**To:** Fine, Thomas H.  
**Cc:** Melly, Christopher; Tanner, Robb  
**Subject:** FW: Suggested TISA text

Tom:

Internal USTR communication - non-responsive

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**From:** Ruff, Jacquelynn [mailto: (b) (6) @verizon.com]  
**Sent:** Tuesday, June 11, 2013 11:10 PM  
**To:** McHale, Jonathan; Tanner, Robb  
**Cc:** (b) (6) @att.com'; Ramos, Anastacio (Anastacio); (b) (6) @att.com'; Johnson, Karen M; (b) (6) @att.com'; Fine, Thomas H.; Melly, Christopher  
**Subject:** Re: Suggested TISA text

Jonathan,

Thanks for what is obviously active engagement in thinking through various issues. Lots to absorb here.

In the short term, is there a way to include a placeholder in your working draft?

In the simplest terms, (b)(3) (b)(5)

(b)(3) (b)(5)

Let's continue to work expeditiously and creatively on this, but using a placeholder may be necessary.

Thanks.

Jackie

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**From:** McHale, Jonathan [mailto:Jonathan\_McHale@ustr.eop.gov]  
**Sent:** Tuesday, June 11, 2013 11:39 AM  
**To:** Ruff, Jacquelynn; Tanner, Robb <Robert\_Tanner@ustr.eop.gov>  
**Cc:** (b) (6) @att.com (b) (6) @att.com>; Ramos, Anastacio (Anastacio); (b) (6) @att.com' (b) (6) @att.com (b) (6) @att.com>; Johnson, Karen M; TALBOT, JAMES (Legal) (b) (6) @att.com>; Fine, Thomas H. <Thomas\_Fine@ustr.eop.gov>; Melly, Christopher <Christopher\_Melly@ustr.eop.gov>  
**Subject:** RE: Suggested TISA text

A couple of initial reactions:

(b)(3) (b)(5)

(b)(3) (b)(5)

(b)(3) (b)(5)

(b)(3) (b)(5)

(b)(3) (b)(5)

(b)(3) (b)(5)

(b)(3) (b)(5)

(b)(3) (b)(5)

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**From:** Ruff, Jacquelynn [[mailto:\[REDACTED\]@verizon.com](mailto:[REDACTED]@verizon.com)]  
**Sent:** Sunday, June 09, 2013 10:54 PM  
**To:** McHale, Jonathan; Tanner, Robb  
**Cc:** [REDACTED]@att.com; Ramos, Anastacio (Anastacio); [REDACTED]@att.com; [REDACTED]@att.com; Johnson, Karen M; TALBOT, JAMES (Legal); Ruff, Jacquelynn  
**Subject:** Suggested TISA text

Jonathan and Robb,

Thanks for meeting with us and AT&T last week on possible TISA proposals. As discussed, (b)(3)(b)(4) (b)(5)

[Redacted]

I've provided this to the colleagues from AT&T and Verizon yesterday, but have not heard back – therefore we may come back to you with further ideas. Thanks for your consideration of something along these lines.

Jackie

(b)(3) (b)(5)

[Redacted]



## Kaye, Janice

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**From:** Bliss, Christine J.  
**Sent:** Wednesday, June 12, 2013 11:39 AM  
**To:** Melly, Christopher; McHale, Jonathan; Tanner, Robb; Yarusso-Horan, Amanda Horan  
**Subject:** RE: CSI Participant List for Today's Meeting @ 3:00

Peter's request was to discuss how we intend to handle cross-border data flow issues in TISA

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**From:** Melly, Christopher  
**Sent:** Wednesday, June 12, 2013 11:39 AM  
**To:** Bliss, Christine J.; McHale, Jonathan; Tanner, Robb; Yarusso-Horan, Amanda J.  
**Subject:** RE: CSI Participant List for Today's Meeting @ 3:00

Do we have any sense of the agenda for this?

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**From:** Bliss, Christine J.  
**Sent:** Wednesday, June 12, 2013 11:31 AM  
**To:** McHale, Jonathan; Tanner, Robb; Yarusso-Horan, Amanda J.  
**Cc:** Melly, Christopher  
**Subject:** FW: CSI Participant List for Today's Meeting @ 3:00

FYI

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**From:** Olivia Burzynska-Hernandez [[mailto:\(b\) \(6\)@uscsi.org](mailto:(b) (6)@uscsi.org)]  
**Sent:** Wednesday, June 12, 2013 11:25 AM  
**To:** Bliss, Christine J.  
**Subject:** CSI Participant List for Today's Meeting @ 3:00

Christine,

Attached is the participant list that I have compiled for the meeting today at 3:00. I was unsure if you needed names for security purposes, so I wanted to send it just in case.

Please let me know if you need any other information.

Thank you,  
Olivia

Olivia Burzynska-Hernandez  
Program Assistant  
Coalition of Services Industries

(b) (6)

**Kaye, Janice**

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**From:** Mendenhall, James (b) (6) @sidley.com>  
**Sent:** Tuesday, July 01, 2014 9:52 AM  
**To:** Bliss, Christine J.; Melly, Christopher; Yarusso-Horan, Amanda Horan  
**Subject:** MasterCard

Hello everyone – Would you by any chance be available on July 8 to meet with MasterCard? We were hoping to have a discussion about positioning in TPP, TISA and TTIP, including both electronic payments and data flows. If that would be of interest, can you please let me know? Thanks, Jim

**JAMES MENDENHALL**  
Partner

Sidley Austin LLP  
1501 K Street, N.W.  
Washington, DC 20005  
(b) (6) @sidley.com  
[www.sidley.com](http://www.sidley.com)



**SIDLEY AUSTIN LLP**

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## Kaye, Janice

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**From:** Wenk, Christopher (b) (6)@USChamber.com>  
**Sent:** Tuesday, July 08, 2014 4:34 PM  
**To:** Melly, Christopher  
**Subject:** RE: Q

What is current thinking on timetable to get an agreement?

Latest on China joining?

Christopher Wenk  
Senior Director, International Policy  
U.S. Chamber of Commerce  
1615 H Street, NW  
Washington, D.C. 20062  
Phone: (b) (6)  
(b) (6) [uschamber.com](http://uschamber.com)

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**From:** Melly, Christopher [mailto:Christopher\_Melly@ustr.eop.gov]  
**Sent:** Tuesday, July 08, 2014 3:12 PM  
**To:** Wenk, Christopher  
**Subject:** RE: Q

Just a good working round. No breakthroughs, no crises. Majority of time on bigger chapters of financial services and telecom. But we also pushed our proposals on competitive delivery services, local content, local servers, and data flows. We continue to focus on text of sector/issue-specific disciplines but in the fall will start incorporating market access into the mix.

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**From:** Wenk, Christopher [mailto:(b) (6)@USChamber.com]  
**Sent:** Tuesday, July 08, 2014 2:48 PM  
**To:** Melly, Christopher  
**Subject:** RE: Q

Thanks.

Do you have a readout out on last round that you can provide? Higher ups seeking.

Christopher Wenk  
Senior Director, International Policy  
U.S. Chamber of Commerce  
1615 H Street, NW  
Washington, D.C. 20062  
Phone: (b) (6)  
(b) (6) [uschamber.com](http://uschamber.com)

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**From:** Melly, Christopher [mailto:Christopher\_Melly@ustr.eop.gov]  
**Sent:** Tuesday, July 08, 2014 2:46 PM  
**To:** Wenk, Christopher  
**Subject:** RE: Q

Intersessionals on telecom and financial services July 22-25. Next full round Sept 21-25.

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**From:** Wenk, Christopher [[mailto:\(b\) \(6\)@USChamber.com](mailto:(b) (6)@USChamber.com)]

**Sent:** Tuesday, July 08, 2014 2:38 PM

**To:** Melly, Christopher

**Subject:** Q

When are next TISA negotiations taking place?

THX

Christopher Wenk  
Senior Director, International Policy  
U.S. Chamber of Commerce  
1615 H Street, NW  
Washington, D.C. 20062  
Phone: (b) (6)  
[uschamber.com](http://www.uschamber.com)

## Kaye, Janice

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**From:** Eric Holloway (b) (6) @tiaonline.org>  
**Sent:** Friday, July 12, 2013 3:18 PM  
**To:** Tanner, Robb; (b) (6) @steptoe.com; Cary.Ingram@trade.gov  
**Subject:** RE: FSI Panel on Trade Issues  
**Attachments:** TIA Trade Priorities Final - 062313.pdf

Hi All,

Attached is TIA's Trade Priorities paper that was developed by TIA's International Committee, which could be helpful in formulating some questions to kick things off after each of us gives our introductory remarks.

Best,  
Eric

### Eric Holloway

Director, International & Government Affairs  
Telecommunications Industry Association (TIA)

(b) (6)

[tiaonline.org](mailto:(b) (6)@tiaonline.org) | [tiaonline.org](http://tiaonline.org) | [address/directions](#)



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**From:** Tanner, Robb [mailto:Robert\_Tanner@ustr.eop.gov]  
**Sent:** Tuesday, July 02, 2013 10:46 AM  
**To:** (b) (6) @steptoe.com; Cary.Ingram@trade.gov; Eric Holloway  
**Cc:** Tanner, Robb  
**Subject:** FSI Panel on Trade Issues

Cary, Eric and Markham,

Thanks for agreeing to participate on the panel for the FSI course in July. I am supposed to gather your bios for Tim Finton at State (or you can send them directly to him). He didn't give me a deadline but I'm sure sooner is better.

I am sure there is a lot we can talk about in the hour and fifteen minutes we have. I thought I would give a brief run through of the current trade efforts of the U.S. (TPP, TiSA and TTIP). Do each of you want to start off with a short statement (maybe 4-5 minutes each?) and then I can ask questions for the rest of the time? Please feel free to email me with any thoughts on areas you want to cover or possible questions.

I have the TTIP round of negotiations with the EU next week but I should probably have some time on Friday afternoon. Would anyone else be available to have a short call then on the panel?

Robert Tanner  
Director for Telecommunications and E-Commerce Policy  
Office of Services and Investment  
Office of the United States Trade Representative  
[rtanner@ustr.eop.gov](mailto:rtanner@ustr.eop.gov)  
+1.202.395.6125  
(b) (6)

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**From:** Finton, Timothy C  
**Sent:** Monday, June 24, 2013 2:57 PM  
**To:** Erickson, Markham  
**Cc:** 'Hauwa Otori'  
**Subject:** RE: FYI - Draft Schedule for FSI Course

That is great.

Here is how the trade panel is shaping up:

10:30 a.m.                    **Trade: Telecommunications, e-commerce, and information flows**  
*Moderator:* **Robb Tanner**, Telecoms/ICT, Office of the U.S. Trade Representative  
**Cary Ingram**, International Trade Administration, U.S. Department of Commerce  
**Eric Holloway**, Government Relations, Telecommunications Industry Association  
**Markham Erickson, Esq.**, Steptoe & Johnson, representing The Internet Association

I will send your contact information to Robb Tanner, your panel's moderator, and he will be in touch. Don't hesitate to let me know if you have any questions.

Also, I have attached the full schedule for the two day course for your information.

Tim Finton

**Timothy C. Finton**  
*Senior Counselor for International  
Communications and Information Policy*  
U.S. Department of State  
tele: (202) 647-5385  
fax: (202) 647-0158  
e-mail: [fintontc@state.gov](mailto:fintontc@state.gov)

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**From:** Hauwa Otori [[mailto:\[redacted\]@internetassociation.org](mailto:[redacted]@internetassociation.org)]  
**Sent:** Monday, June 24, 2013 2:50 PM  
**To:** Finton, Timothy C  
**Cc:** Erickson, Markham  
**Subject:** Re: FYI - Draft Schedule for FSI Course

Hi Tim,

Yes, Markham Erickson, our outside general counsel and Partner at Steptoe & Johnson, will be our representative on the panel. He is copied on this e-mail.

Thank you,

Hauwa



## TRADE PRIORITIES TO ADVANCE THE GLOBAL DIGITAL ECONOMY

In 2012, the global telecommunications market was valued at \$4.90 trillion, with about 76 percent of the total marketplace located outside the United States. Global investment is increasing in both wireless and fixed broadband networks. This trend includes the launch of long term evolution (LTE) 4G wireless networks, continued growth in smartphone penetration, and fiber deployments to enhance fixed broadband infrastructure. Each of these developments stems from a single underlying driver — the need for greater capacity to accommodate growing global data transmission demands.

Members of the Telecommunications Industry Association (TIA) are helping to meet this demand for a strong and dynamic global digital economy – one that requires quality infrastructure, a network of telecommunications services, and a solid legal and commercial framework that contribute to a level playing field for all manufacturers and service providers. This paper summarizes three key principles that promote full, fair, and open competition in international markets as well as specific examples of market access issues, policy challenges, and opportunities around the world.

### Key Principles

- I. **Enhancing Trade Liberalization and Expanding Markets:** Secure access to international markets by promoting trade liberalizing, market-based, and technology neutral approaches to regulation in key international markets. Promote transparency, independent regulatory authority, nondiscrimination against foreign suppliers, and technology neutrality for the telecommunications sector.
  - *WTO Information Technology Agreement (ITA):* TIA urges the completion, by the summer of 2013, of a commercially significant expansion of the ITA to maximize the coverage of information and communication technology (ICT) products.
  - *Trade Agreements:* TIA supports the Administration’s goal of completing negotiations for comprehensive, high-standard agreements that will eliminate or reduce tariffs and non-tariff barriers under the Trans-Pacific Partnership (TPP), Trade in Services Agreement (TISA), and the U.S.-EU Transatlantic Trade and Investment Partnership (TTIP).
  - *Technology Neutrality:* TIA advocates for policies that promote technology neutrality in which standards and products are developed by market-driven dynamics and open, transparent processes.
  
- II. **Combating Protectionism and Localization Barriers to Trade:** Enforce existing WTO commitments and bilateral commitments to limit the growth of protectionism and in particular, the requirement to manufacture locally for equal access to foreign markets. Localization barriers to trade distort markets and limit access to the best technologies and products available in the global supply chain.

- *Brazil*: TIA urges the elimination of local presence requirements for foreign companies to be eligible to participate in auctions for spectrum in Brazil.
- *China*: TIA remains concerned with the promotion of indigenous domestic standards by the Government of China that deviate from existing globally developed standards and in some cases, the *de facto* mandatory nature of these standards through conformity assessment regimes.
- *Cybersecurity*: While all countries have legitimate security concerns, TIA opposes the use of security as a pretext for protectionism. We urge governments to focus on leveraging public-private partnerships, enhancing dialogue between governments and industry, and adopting internationally accepted best practices relevant to the ICT products at issue when developing cybersecurity and critical infrastructure protection policies.
- *India*: TIA is deeply concerned with the Government of India's efforts to force telecommunications equipment manufacturers to manufacture their products in India. The Preferential Market Access (PMA) policy, telecommunications security policy, and a host of other measures intended to keep capital in the country are severely damaging the ability of multinational companies to operate. These policies are directed at the private sector and commercial transactions in India, against the spirit of free trade.

III. **Ensuring the Free Flow of Cross-Border Data:** Encourage common approaches to data privacy to allow for interoperable systems that will not unnecessarily impede the cross-border flow of information. Advocate for the preservation of the current multi-stakeholder approach to Internet governance.

- *Data Privacy*: TIA encourages the U.S. government to advocate for interoperable data privacy regimes to minimize impediments to cross-border data flows as it negotiates the TTP, TISA, TTIP, and other relevant undertakings.
- *Internet Governance*: TIA supports the efforts by governments to maintain the multi-stakeholder approach to Internet governance, which has been a key catalyst in the unprecedented growth of the Internet. We oppose efforts to place Internet governance under the control of a multi-national body.

### **About TIA**

The Telecommunications Industry Association (TIA) represents manufacturers and suppliers of global communications networks through standards development, policy and advocacy, business opportunities, market intelligence, and events and networking. TIA enhances the business environment for broadband, mobile wireless, information technology, networks, cable, satellite and unified communications. Members' products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, government, the military, the environment, and entertainment. If you have any questions, please contact Eric Holloway, Director for International and Government Affairs, at [eholloway@tiaonline.org](mailto:eholloway@tiaonline.org).



## Kaye, Janice

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**From:** Steve Stewart (b) (6)@us.ibm.com>  
**Sent:** Monday, July 15, 2013 1:36 PM  
**To:** Bliss, Christine J.; Augerot, Arrow; Melly, Christopher; McHale, Jonathan; Tanner, Robb  
**Cc:** Debra Marks; Michael DiPaula-Coyle; Dana M Gray  
**Subject:** IBM CEO Speech  
**Attachments:** LisbonCouncilRomettyAddress-1.pdf

USTR Colleagues,

I thought you might be interested in this speech that IBM's Chairman, President and CEO, Ginni Rometty, delivered last Friday at the Lisbon Council in Brussels. She talks about data as the new basis for competitive advantage and the importance of developing public policies to ensure the free movement and open use of data. She notes the need for an honest trans-Atlantic dialogue about government access to data and the need to address individual privacy and cybercrime, and she calls for that dialogue to balance these important issues with the societal benefits derived from data, analytics and the free flow of information. Calling the US and the EU "the most advanced and information-intensive societies in the world," she says that the two economies "are in the best position to define the rules of the road necessary to protect the world's vital governmental, environmental and societal interests, while unleashing maximum, long-lasting innovation and growth."

The speech explains why IBM thinks cross-border data provisions are so important in TPP, TTIP and TISA. I would be glad to discuss this with you if you have any comments or questions.

*(See attached file: LisbonCouncilRomettyAddress-1.pdf)*

Best regards,

Steve

Steve Stewart  
Director, Market Access & Trade  
IBM Governmental Programs

(b) (6)

us.ibm.com

600 14th St., NW, Suite 300, Washington, DC 20005

**Ginni Rometty**  
**Lisbon Council address – final as prepared**  
**July 12, 2013**

## **“Competitive Advantage in an Era of Innovation”**

Thank you, Ann. I am truly delighted to be here today, and so grateful to the Lisbon Council for this opportunity to share perspectives with you.

Today I want to offer three assertions to spark our discussion. I hope to convince you that:

1. Data is the new basis for competitive advantage.
2. A new generation of leaders is building a data-driven future.
3. The EU and the US have an opportunity to lead the world toward public policy that not only promotes innovation, but itself is as innovative as these new forms of technology and business.

### **1. Data is the new basis for competitive advantage**

We are witnessing an unprecedented phenomenon today – the convergence of five disruptive technologies at once: social, mobile, cloud, pervasive instrumentation and Big Data analytics.

It is not a revolution in information. We have been awash with information since the dawn of the Internet 20 years ago. Nor is it a revolution in consumer connectivity -- Facebook, Twitter, smart phones and the like. Those developments are important, but they are just a part of something much larger – a world that has become **instrumented, interconnected and intelligent**, in which computation is being infused into things nobody would think of as a computer.

Let me give you some idea of its scope.

We’re all aware of the approximately 2.7 billion people now on the Internet. This number is growing rapidly in every part of the world.

One of the reasons it’s growing is the explosion of mobile technology. There are estimated to be more than 10 billion wireless devices out there today – a number that one research firm projects will triple by 2020. And we are truly now a “mobile first” world. In one study in China, 90 percent of users said they have their mobile device within arm’s reach 100 percent of the time.

All these people aren’t just going to the Internet to read the news or buy things. They’re contributing their own thoughts, observations, comments and opinions about their preferences, habits, beliefs even their physical location. By one

estimate, one in four people worldwide, or 1.73 billion, will use social networks this year.

And all of that is just the start. There are also upwards of a trillion interconnected and intelligent objects and organisms – what some call the Internet of Things. There are a billion transistors today for every human being on the planet. Intelligence is now embedded in the systems that enable services to be delivered; physical goods to be made and sold; everything from people and freight to oil, water and electrons to move; and billions of people to work and live.

The result: a planet awash in data, which is growing exponentially. We are creating the equivalent of all the data generated through human history up to 2003... *every two days*.

This is nothing less than the appearance of a vast new natural resource. Data promises to be for the 21<sup>st</sup> century what steam power was for 18<sup>th</sup>, electricity for 19<sup>th</sup> and fossil fuels for 20<sup>th</sup> – that is, the creator of enormous wealth and progress. The economic, political and societal landscape will change in fundamental ways, as it did in each of those earlier eras. And unlike those previous natural resources, this one is infinite.

IBM began a conversation about this phenomenon almost five years ago. This is what we mean by the planet literally becoming **smarter**.

The question I would ask of us here today is: What will the EU and the US do? Will we seize upon this potential to drive innovation and compete energetically?

Data is flowing freely across the planet, and is creating a new basis for competitive advantage. The question every enterprise, city, school and community needs to ask is: “How do we get the value created by Big Data and a Smarter Planet to flow to us?”

Fortunately, many forward-thinking innovators – here in Europe and around the world – are showing the way.

## **2. A new generation of leaders is building a data-driven future.**

We have seen this at IBM in our partnerships with thousands of companies, universities, governments, cities and not-for-profits across scores of industries... in more than 170 countries. For example, in more than 2,000 Smarter Cities engagements, IBM is helping mayors and other urban leaders manage, analyze and use data for economic growth, increased profitability and the public good. And in five years, we have seen much progress.

In more than a dozen smarter traffic management solutions and pilots, cities have realized up to 20 percent reduction in traffic volume, up to 20 percent

reduction in emissions, up to 40 percent improvement in prediction of jams and an average of \$500 million in cost savings.

- The London Underground is using predictive analytics to increase the transit system's reliability by 30 percent... and the city of Toulouse is using analysis of social data to improve response time for things like road maintenance – from 15 days to one day.

In working with a score of clients on smarter healthcare – in Russia, Italy, Sweden, the U.S. and more – we have seen a 50 percent reduction in duplicative testing, up to 30 percent reduction in admissions and up to 75 percent reduction in readmissions.

- In Switzerland's Canton of Basel, the city is piloting a single, trusted system for managing patient identity. That's important in a place where more than 30 percent the 192,000 residents are foreign nationals, speaking a variety of languages. When it's up and running, any participating provider across the country will be able to locate patient records for a Basel resident and pick up where a prior clinician left off in developing a diagnosis or administering treatment.

In dozens of smarter crime prevention engagements – from Geneva to Los Angeles, from South Africa to Spain – we have seen an average reduction in crime rates of 27 percent, and an average shortening of response times by police and other first responders of 52 percent.

- In Vancouver, Canada, since the deployment of an investigative Big Data analytics system in 2009, the VPD has been able to spot where crime is headed, and in many cases, prevent it. Property crime rates have dropped city-wide by 24 percent, and violent crime rates decreased by nine percent from 2007 to 2011.

More than a dozen cities have implemented smarter water projects that have achieved an average cost savings of \$110 million. Many of you may know of the work we did with the city of Galway in Ireland to create the world's first smart bay. Here's another:

- The Dutch Ministry for water (Rijkswaterstaat) is building a system that analyzes precipitation patterns and data from levee sensors, radar and other devices to predict flooding in low-lying areas where 70 percent of the nation's gross domestic product originates.

Now, who would not want the kinds of benefits these uses of data provide? Clearly, everyone would welcome such results for their enterprise, their city, their country. But what is required to achieve them, and what is critical to their success?

We have learned that the most important gaps and inhibitors fall into a few key areas:

- There is the need for integration, common data standards and the free flow of data across systems, agencies, departments and industries. Without that, no amount of technology will be sufficient.
- There is an equally vital need for outreach and engagement with newly empowered populations of customers, collaborators, employees and citizens. Indeed, one consistent theme across most of our Smarter Planet engagements is the need to build not just technology, but constituency.
- There is the need to maintain investment in research and development, even during difficult economic times. Despite what some enthusiasts believe, the economic and societal value of Big Data will not just happen. As with prior eras' resources, it must be mined and managed.
- Perhaps most challenging of all is the need for new skills – at the leadership level and throughout agencies and organizations. This isn't just a change in tools, it's a change in mindset and culture. Which is also the greatest challenge it poses – the need to “unlearn” deeply engrained professional and leadership assumptions.

The leaders of the cities and companies I've mentioned are finding innovative ways to overcome these inhibitors – new ways to be a doctor... to be a teacher... to be a marketer... to be a mayor

- Police chiefs are fighting crime not with more cops and weapons... but with data and citizen engagement.
- Doctors are drawing on cognitive computing systems to expand exponentially their access to the latest medical research for improved diagnosis.
- Government leaders and politicians are drawing on Big Data, analytics and behavioral science to engage with citizens... not as voting blocs or demographic segments, but as specific individuals.
- And in cities from Miami/Dade County in Florida to Davao, Philippines – mayors are leading not from the proverbial smoke-filled rooms, but from new Intelligent Operations Centers that integrate and visualize data from dozens of city and regional systems and agencies.

The members of this formidable new generation of innovators here in Europe and in America are working hard to bring the EU and the US to the forefront of the 21<sup>st</sup> century's new competitive landscape.

What can – what must – we do to help them?

**3. The EU and the US have an opportunity to lead the world toward public policy that not only promotes innovation, but itself is as innovative as these new forms of technology and business.**

I believe it is incumbent on us to enable and equip this new generation, because it is they who will generate economic growth and societal progress in the coming era of Big Data.

To do so, we must get out in front of the crucial policy questions that this new reality raises – from privacy, to cybersecurity, to skills gaps, to investment in R&D. Indeed, we can and, I believe, must come together to lead the world into this new era. As the most advanced and information-intensive societies in the world, we are in the best position to define the rules of the road necessary to protect the world's vital governmental, environmental and societal interests, while unleashing maximum, long-lasting innovation and growth.

Let me cite three areas in particular that align with the chief inhibitors to innovators who are seeking to tap Big Data and build smarter systems.

1. **We must ensure the free movement and open use of data.** In order to capture the potential of this new natural resource and achieve the benefits of a Smarter Planet, enterprises, governments, universities, non-profits and individual citizens need to be able to move and use data responsibly, in real time. Indeed, many European cities and countries are at the forefront of helping their citizens do so.

In that context, recent news stories and revelations highlight how essential it is that there be honest trans-Atlantic dialogue about government access to data... and how vital it is that we address the issues of individual privacy and the dangers of cybercrime. We need dialogue that balances these imperatives with the societal benefits of data, analytics and the free flow of information.

One thing is clear: Excessive restrictions on data movement and use will stifle innovation and competitiveness. For instance, it would be counter-productive if protecting one group's privacy wound up making entire markets uncompetitive, unable to access and capture value from this vast new natural resource. And it would be tragic if free trade talks were canceled and harsh new regulations were imposed that stifle innovation, without carefully thinking through this balance.

Data that remains trapped – in overly restrictive rules or in bureaucratic silos – is data under-utilized. So our policy regimes must allow innovators to embrace cloud, mobile, social, analytics and the Internet of Things.

Today, we see some danger signs:

- The proposed European Data Protection Regulation currently being debated could create significant new restrictions to the collection, analysis and movement of data.

- An overly prescriptive, “check-the-box” compliance regime for cybersecurity – such as we see in some parts of the draft EU Directive on Network and Information Security – can never be nimble enough to keep up with real-world changes. Indeed, it risks encouraging firms to invest only in meeting specific standards or best practices that are outmoded before they can even be published.

2. **We must sustain investment in both long-term research and in near-term development.** At IBM, we understand this well. Our model is continuous transformation – we are an innovation company, and it’s why we are here after 102 years. We have sustained R&D investments through good times and bad. Thomas Watson Sr., our founder, doubled the company’s R&D budget during the Great Depression... and we have consistently protected our research capability over the decades. This has resulted in earning the most U.S. patents for 20 straight years – and it has spawned high-risk, high-reward breakthroughs such as our pioneering “cognitive” system, Watson, which represents not just a new computer, but a new era of computing – systems that are not programmed... rather, they learn.

As we have seen, the temptation is strong when economic times are tough to cut R&D budgets and science funding. This is as short-sighted in government as it is in business. You’re eating your seed corn.

A very hopeful sign, which we warmly commend, is the ambition of the Horizon 2020 program that was launched by Commissioner Geoghegan-Quinn and which the EU is near to finalizing. The commitment to an increased research budget of €70B over the next seven years is a serious sign of intent that whatever the general economic climate, the EU wants to continue to innovate.

3. **We must expect and enable continuous upgrading of skills – among employees and citizens.** The shift to a knowledge-based global economy places a premium on differentiating expertise. And as we’ve seen in the examples I’ve cited – and there are countless more – expertise and skills are a moving target. In the era ahead, expertise will need to be continuously updated, because knowledge is continuously evolving. This applies to individuals, as well as enterprises and societies. Gone are the days when you could rely on your university degree or degrees to carry you through a career.

This means that skill gaps will constantly arise – gaps that constrain companies’, cities’ and nations’ ability to innovate. By the way, this presents a challenge not only to universities and governments, but also to enterprises. We must become learning organizations that continuously upgrade and transform our own skills.

In this environment, it is clear that overly strict employment laws and labor market rigidities will inhibit businesses', governments' and cities' ability to remain at the forefront of learning and expertise. This is particularly true in the technology sector, where cost-effective business transformation and continuous upgrading of skills are vital to maintain and enhance competitiveness. The general principle should not be to protect incumbency... but to foster maximum opportunity.

Another hopeful sign is the recent decisions by the European Commission not to pursue a prescriptive Directive on business restructuring, or to review and tighten the EU Working Time Directive. We believe these decisions are very positive. They indicate an understanding that the route to enhanced European competitiveness is not through more restrictive labor laws.

In closing, let me emphasize how much Europe matters to IBM – and to the world. We care deeply about the EU – yes, because of the scale of our business here, but most importantly because of our deep belief in the inevitability of global integration. To us, a globally integrated economy is inconceivable without a healthy, innovative and progressive European Union, and we are committed to active, continuing partnership across European business and society in order to ensure it.

Despite the many challenges we face, I am optimistic. We have at our disposal both a vast new natural resource and the means to mine it for value. And that is unleashing new ways of working and thinking that are more flexible, innovative, democratic, sustainable, collaborative and humane.

Personally, I find this prospect highly appealing – and I expect you do, as well. Our role at this pivotal moment in history is to shape the strategies and policies that will allow this prospect to become reality.

Thank you.



**Kaye, Janice**

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**From:** Steve Stewart (b) (6)@us.ibm.com>  
**Sent:** Tuesday, August 27, 2013 5:36 PM  
**To:** Bliss, Christine J.; Melly, Christopher; McHale, Jonathan; Tanner, Robb  
**Subject:** Breton on "Schengen personal data"

Have you guys seen this? Have your DG Trade counterparts said anything about this? This should make for an interesting conversation when you next raise cross-border data in TTIP or TISA.

Link to original article in French:

<http://www.numerama.com/magazine/26826-thierry-breton-atos-veut-un-schengen-des-donnees-personnelles.html>

From Google Translate:

## Thierry Breton (Atos) wants a "Schengen personal data"

Former Economy Minister Thierry Breton, CEO of Atos now wants to defend the idea of creating a form of Schengen area for movement of personal data. Free Europe, this movement would be regulated when it crosses the border.

The case of the monitoring program PRISM and all revelations of Edward Snowden on the activities of the NSA and other spy agencies should make a great service professionals European cloud, happy to find here the argument to sell their hosting services deal with U.S. competitors like Amazon or Google.

While we were talking yesterday [sovereignty in the cloud](#), the challenge now is clearly to create a form of European sovereignty, focusing even mandating the storage of certain data within the borders of the European Union. This is all developed on Tuesday morning by former Economy Minister Thierry Breton, who now runs the company Atos, which is precisely to coordinate an idea [proposed European cloud](#) called Artist, with a budget of 9.7 million partly financed by the European Commission.

Thierry Breton will be received at the Elysee Palace Friday, and next week by German Chancellor Angela Merkel, to be consulted on the protection of personal data in Europe. On this occasion, with other major bosses digital, the entrepreneur intends to propose "to create a kind of Schengen data," he said on Europe 1, referring to the [Schengen area](#). Inside the area, traffic is free, but for external trade, the controls are strengthened.

*"Europe must protect the data of our compatriots. To do so, on the European continent, there will be total freedom of a country's data to another but outside of Europe, these data should be stored on the European territory,"* and defended Thierry Breton. Google, Amazon, Apple and other Microsoft would be required to store the data of Europeans in Europe, or failing that, to place the data in a system that corresponds to the minimum standard set by Europe.

Remains to be seen what can be the actual translation of such a proposal in an Internet environment that is international by definition.

Best regards,

Steve

Steve Stewart  
Director, Market Access & Trade  
IBM Governmental Programs  
Phone: (b) (6)

us.ibm.com  
600 14th St., NW, Suite 300, Washington, DC 20005

## Kaye, Janice

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**From:** Schlosser, Adam (b) (6)@USChamber.com>  
**Sent:** Monday, September 15, 2014 5:23 PM  
**To:** Tanner, Robb; McHale, Jonathan  
**Subject:** Cross-Border Data Flows Hearing

Hi Robb and Jonathan,

The Chamber is testifying this Weds at the House Subcommittee on Commerce, Manufacturing and Trade hearing on cross-border data flows. Any late breaking news from TPP, TTIP or TISA you think we should be aware of that might be helpful for us to include?

Hope you both had a great summer.

Regards  
Adam

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Adam C. Schlosser  
Director  
Center for Global Regulatory Cooperation  
U.S. Chamber of Commerce  
Office: (b) (6)

<http://www.uschamber.com/grc>

Follow us: 

## Kaye, Janice

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**From:** Peter Allgeier (b) (6) @uscsi.org>  
**Sent:** Tuesday, September 23, 2014 4:53 PM  
**To:** helen.stylianou@dfat.gov.au; deanna.easton@dfat.gov.au;  
caroline.mccarthy@dfat.gov.au; don.mcdougall@international.gc.ca;  
William.kendall@international.gc.ca; cary.seipp@international.gc.ca;  
alix.ersman@international.gc.ca; eric.futin@icgc.ca; fsandoval@minrel.gov.cl;  
catalina.gaviria@colombiaomc.ch; mchacon@mincomercio.gov.co;  
nlozada@mincit.gov.co; arivera@mincit.gov.co; (b) (6) @costaricawto.com;  
natalia.porras@comex.go.cr; ivano.casella@eeas.europa.eu;  
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victoria.deane@mfat.govt.nz; lawry.perrott@mfat.govt.nz; ylva.bie@mfa.no;  
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mespinola@misionparaguay.ch; (b) (6) @onuperu.org;  
johannes.ruehl@seco.admin.ch; alois.passaplan@seco.admin.ch; hgungor@mfa.gov.tr;  
yildirimal@economy.gov.tr; karakurtd@economy.gov.tr; btosun@btk.gov.tr;  
susanhu@taiwanwto.ch; patricia@trade.gov.tw; bcmei@moea.gov.tw;  
hcwu@moea.gov.tw; ytcheng@moea.gov.tw; Schagrin, Kenneth;  
barb.rawdon@trade.gov; paulette.hernandez@trade.gov; nolanr@state.gov; Melly,  
Christopher; lee.licata@dhs.gov; colette.morris@cabinet-office.gsi.gov.uk;  
james.ballantyne@fco.gov.uk; andrew.empson@bis.gsi.gov.uk; Bliss, Christine J.;  
Yarusso-Horan, Amanda Horan; Tanner, Robb; McHale, Jonathan; Punke, Michael W.;  
Wilson, Christopher S.; Nissen, Todd; Abdel-Hamid Mamdouh (abdel-  
hamid.mamdouh@wto.org); tim.yeend@wto.org  
**Subject:** TiSA Statement by the Global Services Coalition  
**Attachments:** GSC Statement on TiSA Sept 2014 FINAL.docx

Dear TiSA Negotiators,

Wishing you good luck during this week of negotiations and beyond. Attached is a joint statement from ten services trade associations around the world, supporting the TiSA negotiations and identifying in some detail what we hope will be included in the final agreement. We look forward to working with you to bring TiSA to a successful conclusion.

Thank you for all the work that you are doing on behalf of services, the most dynamic sector in our economies.

Best regards

Peter

Peter Allgeier  
President

Coalition of Services Industries (CSI)

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**GLOBAL SERVICES COALITION POSITION PAPER ON  
THE TRADE IN SERVICES AGREEMENT (TiSA)**

**September 2014**

The Global Services Coalition (GSC) is an informal coalition of associations representing the services industries from major economies, speaking for the services sector in their respective countries on matters of international trade and investment. Services, such as financial services, professional services, information and communications technology, express delivery and logistics, retail services, education services, electronic security services, and energy and environmental services, tourism and transport services lie at the heart of the functioning of modern, competitive economies. We have a shared interest in the continuing liberalisation of trade in services and modernizing rules on services.

The GSC expresses its strong support to the participating parties in the negotiation of the Trade in Services Agreement (TiSA), – comprising nearly a third of the WTO membership with 50 countries - for an ambitious and future-oriented agreement. We believe that the current plurilateral negotiations on the TiSA will significantly boost the growth prospects for this vital sector of the global economy, open new market access opportunities for business, and serve as the cornerstone for the rules governing services trade in the 21<sup>st</sup> century. With that in mind, we wish to provide a common input on the various issues that currently are being negotiated.

The world economy is increasingly dependent on services. According to the WTO, international trade in services (excluding intra-EU trade) reached over \$3.35 trillion in 2012, 68.7 percent of which occurred among the markets currently represented in the TiSA negotiations. Services provide essential components in all global supply chains and represent a growing share of value-added embodied in traded goods. Indeed, according to the WTO & OECD, global trade in services represents approximately one quarter of global trade in terms of balance of payments accounting, but nearly half of global trade in terms of “trade in value added – TiVA”. This stems from the rise of knowledge-based activities, the growing importance of intangible assets in all economies, together with the development of the Internet, and the enhanced interplay between services and the manufacturing and agricultural sectors. Major advances in computer networks, telecommunications, express delivery, and air transportation, have driven this economic shift. These changes have provided the platform for raising countless small and large services companies from local establishments to international businesses and are creating millions of jobs world-wide.

#### **A. Creating the New International Framework for Services**

During the current stalemate in the WTO trade negotiations, many bilateral and regional trade agreements have been negotiated or are underway. Our organizations believe that bilateral and regional approaches are vital for promoting expanded international trade and investment in services. At the same time, the long-term goal of GSC members is to achieve a multilateral agreement that increases market access and establishes a trading system in services that takes into account the dramatic changes in technology and business practices that have emerged in the twenty years since the negotiation of the General Agreement on Trade in Services (GATS), and those which will continue to emerge through ongoing innovation.

Therefore, while maintaining the goal of a high level of ambition in the TiSA, we encourage continued efforts to expand the number of participants, including among emerging markets, provided that new members show readiness to adhere to TiSA parties' shared objectives and guiding principles through concrete action.

We consider that countries seeking to join the talks should take all opportunities to demonstrate their commitment to the level of ambition required by accepting the already agreed core TiSA text and disciplines and by demonstrating its ability to table a comprehensive, high level initial offer going significantly beyond their current GATS schedules and aiming at reducing remaining market access impediments in services.

It is vital that the negotiations continue to focus on reaching an ambitious agreement in 2015 – a schedule that is challenging but achievable.

#### **B. Providing New Market Access Opportunities**

Our members seek real market access gains across all services sectors. While

we applaud the decision to start the market access discussion by agreeing to table the highest level of commitment expressed by each party under its best free trade agreement (FTA), we are concerned by reports indicating that not all TiSA participants have adhered to this commitment. The aim of TiSA should not be simply to repackage existing commitments in completed free trade agreements, but to create genuine new opportunities through new market access commitments that go beyond current openness.

We understand that the parties are tabling market access commitments using the positive list approach, and the national treatment commitments using the negative list approach. The GSC organizations had called on the negotiators to use the negative approach in scheduling their market access commitments because this enables businesses to better assess what they are allowed or not to do in a market. Nevertheless, the so-called hybrid list approach, although not optimal, may help to attract a wider range of WTO members, including those familiar with the positive list approach, to join the negotiating process.

We strongly support the participants' agreement to a standstill and a ratchet mechanism applied to the national treatment commitments and encourage the negotiators to consider extension of these clauses to cover their market access commitments. In particular, we urge the negotiators to ensure that "new services" are covered. It would be an error to repeat the major mistake made when negotiating the GATS by concluding an agreement that is outdated the day it enters into force. New services are invented and traded every day. Innovation is a key driver of a modern economy, and the TiSA has to incorporate that concept if it is to be and remain relevant for some time. Negotiators need to heed the lessons of the GATS' structural limitations to ensure that they are avoided in the TiSA.

Businesses aim to provide the best customized service to their clients. An essential aspect of this service standard is the ability to move highly skilled services personnel rapidly to the locations required by their business. The TiSA needs to address the important issue of talent mobility to allow market access to services providers in a predictable and expedited way across all participating countries.

### **C. Addressing Horizontal Issues**

The Global Services Coalition strongly encourages the TiSA negotiators to pursue their efforts in drafting horizontal disciplines as an integral part of the agreement. In this regard, TiSA negotiators must address the new so-called "21<sup>st</sup> century" issues such as cross border data flows, forced localization, and state-owned and state-sponsored enterprises (SOEs) that compete in commercial markets

Cross-border commercial data flows are the real backbone of the digital economy that is crucial to boosting growth in all sectors of the economy, including small and medium-size enterprises. The GSC calls upon negotiators to ensure that TiSA will allow cross border data flows and data-processing to occur free from

discriminatory terms and trade distorting conditions such as requirements to use local network infrastructure or local servers. These commitments should be applied across all services sectors. Any exceptions to these provisions should be limited to legitimate public policy objectives and only in full compliance with the provisions of GATS covering data privacy (GATS Article XIV). With the objective of enhancing users' trust and companies' certainty, and thus trade in goods and services, it is essential that security and appropriate and effective protection of data is assured through compliance with all applicable privacy and security regulations.

We also call upon TiSA parties to require the elimination of discriminatory foreign ownership restrictions, including equity caps, localization requirements and other performance requirements, and economic needs tests. The TiSA should aim at establishing non-discriminatory treatment for all commercial participants in the economy, allowing freedom of establishment in the location and the legal form preferred by the investing businesses, including the use of corporate brand.

#### **D. Promoting Regulatory Coherence**

The current international environment poses serious challenges for regulated services seeking to meet conflicting and duplicative regulatory requirements – the higher the degree of regulation, the greater the risk of serious international divergences in the requirements to be met. The same factors impose the greatest burdens on small businesses with limited resources for compliance. It is essential, therefore, for TiSA parties' governments to work toward minimizing differences in services regulation and to encourage the adoption of processes aimed at greater regulatory coherence between the parties, including through mutual recognition of regulatory regimes.

#### **E. Adopting Transparent and Fair Domestic Practices**

We consider that one of the most significant TiSA achievements could be the adoption, as a minimum, of transparency and good governance disciplines in the conduct of domestic regulation. A transparent and fair regulatory system is important for every regulated services sector. We call upon the TiSA negotiators to work toward adoption of disciplines that will set general commitments in areas mentioned in the GATS, namely (a) Standard-setting, (b) Regulatory Application Process, and (c) Judicial, Arbitral, or Administrative Tribunals.

As a minimum, negotiators should seek agreement on the following regulatory practices:

- All new (or revised) regulations should be available for public comment prior to adoption with adequate time for comments by services suppliers operating in (or seeking to operate in) the national market;
- Regulators should establish a mechanism to respond to inquiries on rules and regulations from services suppliers, including by establishing enquiry points for the public;
- All current regulations and licensing criteria should be publicly available and accessible in writing and through electronic media;
- Licence applicants should be provided with a written statement setting out fully and precisely the documents and information the applicant must supply



- for the purpose of obtaining authorisation and license applications should be responded to in a commercially realistic timeframe.
- Administrative fees charged in connection with licences should be fair and reasonable, should not act to unreasonably limit licensing requests or the introduction of new products and services, and should seek to recover no more than the costs of the competent authority in processing the licence application and thereafter supervising the regulated entity;
  - Foreign and domestic firms, including state-owned enterprises operating in a commercial capacity, should be subject to the same regulatory regimes and approval processes;
  - Service providers should have an opportunity to file a complaint about inconsistent enforcement between foreign and domestic providers or arbitrary regulatory action. There should be effective legal recourse for such actions.
  - National technical regulations and standards should generally be compatible with international standards but, in any case, should not have the effect of a non-tariff barrier.

The TiSA should include the use of the Internet in implementing all of these regulatory procedures.

The Global Services Coalition will do further work on these questions and is ready to continue to provide input on other regulatory practices.

#### **F. Adopting Sector Specific Disciplines**

In addition to the market access commitments and the horizontal disciplines applicable to all sectors, we encourage the TiSA negotiators to develop wherever appropriate sector specific disciplines that would form the basis for common rules that all TiSA participants would agree to adopt when regulating such a specific sector.

In **financial services**, we urge all TiSA parties to make the fullest use of the GATS and its Financial Services Annex, and to adopt in full the WTO Understanding on Commitments in Financial Services, as the starting-point for market access and national treatment commitments. TiSA parties should expand financial services commitments to ensure that the TiSA not only reflects the best commitments in existing FTAs among the TiSA parties but also sets the highest forward-looking standards both for market-opening across all GATS modes of supply and for developing processes towards ensuring regulatory coherence.

Information and communications technology (ICT) are the key drivers of economic growth, innovation, and value in the digitally networked economy. It is essential, therefore, that the provisions of the TiSA support business innovation and development in the ICT sector. Accordingly, we support the development of updated measures in **telecommunications services and e-commerce**. Recognizing the globalized nature of the digital economy sector and the outdated policy distinction between communications services and Internet based services, we call upon the TiSA parties to improve the Reference Paper on

Telecommunications Services so as to set the highest forward-looking standards for both market access and regulatory practices.

Disciplines for the **professional services** sectors should not only incorporate and implement the disciplines relating to the accountancy sector adopted by the WTO Council for Trade in Services in 1998, but also seek to expand similar disciplines to other professional services sectors such as architecture services, legal services, engineering services, etc. Specifically, countries should commit to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures do not create unnecessary barriers to trade. TiSA parties also should ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate policy objective, such as public safety.

Furthermore, an annex on professional services should set a framework towards the possible adoption of mutual recognition of qualifications of professionals among the signatories, thereby enabling these professionals to take full advantage of the market opening while being held accountable for their work.

The Global Services Coalition understands that discussions are in progress covering additional services sectors such as transport services, postal and courier services, or energy or environmental related services.

### **G. Consultation with Industry**

We appreciate the opportunities provided to date by the TiSA parties for consultation with our services industries. We call on negotiators to give regular updates to all the services sectors being negotiated in the TiSA.

The Global Services Coalition will continue to monitor closely the TiSA negotiations and to provide input and comments throughout the negotiations.

## Kaye, Janice

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**From:** Burak Guvensoylar <(b) (6)@techamerica.org>  
**Sent:** Wednesday, October 02, 2013 3:35 PM  
**To:** McHale, Jonathan; Tanner, Robb; Fine, Thomas H.  
**Cc:** Rosen, Rebecca T.  
**Subject:** Cross-Border Data Flows Statistics

Hi Jonathan, Robb and Tom,

I hope all is well and you're hanging in there due to the shutdown.

After our meeting last week, I received feedback from our member company Cisco regarding their Cisco Visual Networking Index: Forecast & Methodology report with statistics on data flows from 2012 to 2017. The report includes total IP traffic, video streaming, consumer IP traffic, business IP traffic and mobile data and internet traffic all by geography and network types.

To view the full report visit the link below:

[http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-481360.pdf](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481360.pdf)

I hope that this isn't too short notice; however, I think this may be a very helpful tool to use when speaking with the EU negotiators. I'm still waiting on a couple other companies to get back to me and will send over the information once I get them.

All the best,  
-burak

### Burak Guvensoylar

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TechAmerica is the leading voice for the U.S. technology industry – the driving force behind productivity growth and job creation in the United States and the foundation of the global innovation economy. Representing premiere technology companies of all sizes, we are the industry's only trade association dedicated to advocating for the ICT sector before decision makers at the state, federal and international levels of government. With offices in Washington, D.C., Silicon Valley, Brussels and Beijing, as well as regional offices around the U.S., we deliver our members top tier business intelligence and networking opportunities on a global scale. We are committed to expanding market opportunities and driving the competitiveness of the U.S. technology industry around the world.

Learn more about TechAmerica at [www.techamerica.org](http://www.techamerica.org).

## Kaye, Janice

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**From:** Kho, Stephen (b) (6)@akingump.com>  
**Sent:** Friday, October 04, 2013 11:02 AM  
**To:** Tanner, Robb; Yarusso-Horan, Amanda Horan  
**Subject:** Follow up on data transfer issue related to non-life insurance

Hi Rob and Amanda – I hope you are receiving email and doing well. Thank you for meeting with the CSI companies a few weeks back. We found the meeting very informative. Per our discussion there (and earlier when you met with senior management at Liberty International), I wonder if we can meet again the week of October 21<sup>st</sup> to follow up on our suggested additional language for data transfer in TTIP and TISA, and talk about other sensitivities and issues you might be dealing with that may affect our concerns? If that week works for you, could you perhaps suggest some times you are available, and we will work towards your schedule?

Best,  
Steve

**Stephen Kho**  
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## Kaye, Janice

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**From:** Gasster, Liz (b) (6)@brt.org>  
**Sent:** Thursday, October 09, 2014 1:17 PM  
**To:** Tanner, Robb; McHale, Jonathan  
**Cc:** Bruce, Melissa  
**Subject:** RE: Invitation to upcoming BRT meeting October 30

Robb, that would be very welcome indeed. I realize TPP is further along (good luck Jonathan!) and I know your comments will be of great interest to our company folks. USITC Chairman Meredith Broadbent spoke to this same group a couple of weeks ago about their new digital trade report and we had a really excellent discussion.

As we get closer to the date, I will send you a list of the RSVPs. Thanks again! Liz

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**From:** Tanner, Robb [mailto:Robert\_Tanner@ustr.eop.gov]  
**Sent:** Thursday, October 09, 2014 1:13 PM  
**To:** Gasster, Liz; McHale, Jonathan  
**Cc:** Bruce, Melissa  
**Subject:** RE: Invitation to upcoming BRT meeting October 30

Liz,

I am in town that week so I could participate at least with respect to T-TIP and TiSA.

Robert Tanner  
Director for Telecommunications and E-Commerce Policy  
Office of Services and Investment  
Office of the United States Trade Representative  
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**From:** Gasster, Liz [mailto:(b) (6)@brt.org]  
**Sent:** Thursday, October 09, 2014 12:30 PM  
**To:** McHale, Jonathan; Tanner, Robb  
**Cc:** Bruce, Melissa  
**Subject:** RE: Invitation to upcoming BRT meeting October 30

Ahh, you both will be out then? Thanks, Liz

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**From:** McHale, Jonathan [mailto:Jonathan\_McHale@ustr.eop.gov]  
**Sent:** Thursday, October 09, 2014 12:07 PM  
**To:** Gasster, Liz; Tanner, Robb  
**Cc:** Bruce, Melissa  
**Subject:** Re: Invitation to upcoming BRT meeting October 30

Liz,  
Would love to but will be in Australia for TPP, sorry.

Jonathan

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**From:** Gasster, Liz [mailto:(b) (6)@brt.org]  
**Sent:** Thursday, October 09, 2014 11:23 AM  
**To:** McHale, Jonathan; Tanner, Robb  
**Cc:** Bruce, Melissa <(b) (6)@brt.org>  
**Subject:** RE: Invitation to upcoming BRT meeting October 30

Hi Jonathan and Robb, just wanted to check in to see whether you might be available to join us on October 30. I think we will have a very good turn-out of company representatives.

Ari Schwartz from the White House NSS staff will also be joining us to discuss our mutual efforts on cybersecurity issues.

I hope you can join us! Best, Liz

---

**From:** Gasster, Liz  
**Sent:** Monday, September 29, 2014 2:36 PM  
**To:** [jonathan\\_mchale@ustr.eop.gov](mailto:jonathan_mchale@ustr.eop.gov); 'robert\_tanner@ustr.eop.gov'  
**Cc:** Bruce, Melissa  
**Subject:** Invitation to upcoming BRT meeting October 30

Hi Jonathan and Robb,

As you may recall, the Business Roundtable has been working for the past year or so on a report concerning the benefits of cross-border data flows to globally-engaged companies. We are nearing completion of the report and would like to reengage with you to get an update on TTP, TTIP and TISA negotiations and to discuss how our report might be useful to your ongoing work. To start the discussion, I wanted to reach out to see if you would like to join our next quarterly Information and Technology Coordinating Committee meeting on October 30 from 10:00 a.m. to 10:40 a.m. The format would be the same as the meeting you attended this past February—brief initial remarks on the status of your respective trade agreements and then a Q&A with the audience (all off the record).

On a related note, it might also be beneficial for us to catch up prior to the October 30 meeting to discuss the focus of our report and more details about the meeting. Please let me know if that would be useful to you and if you're available for a call in the next couple of weeks.

Best regards, Liz

## Kaye, Janice

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**From:** Fares, David (b) (6)@21cf.com>  
**Sent:** Wednesday, October 15, 2014 3:06 PM  
**To:** Tanner, Robb  
**Subject:** Re: Thanks

I hope it was helpful!

Sent from my iPhone

On Oct 15, 2014, at 12:03 PM, "Tanner, Robb" <[Robert\\_Tanner@ustr.eop.gov](mailto:Robert_Tanner@ustr.eop.gov)> wrote:

Ron,

Thanks for taking time to meet yesterday.

Best regards,  
Robb Tanner

---

**From:** Tanner, Robb  
**Sent:** Monday, October 13, 2014 11:46 PM Eastern Standard Time  
**To:** 'Fares, David' (b) (6)@21cf.com>  
**Subject:** RE: LA -- possible meeting

David,

I'm at the Chamber until 10:30 or so and I've got a 2:30 meeting near Brentwood tomorrow, but would have some time between that or afterwards.

Can you use my personal email – (b)(6) or my cell (b)(6) tomorrow? I won't be able to check this address regularly tomorrow.

Thanks,  
Robb

---

**From:** Fares, David [[mailto:\(b\) \(6\)@21cf.com](mailto:(b) (6)@21cf.com)]  
**Sent:** Monday, October 13, 2014 5:27 PM  
**To:** McHale, Jonathan; Tanner, Robb  
**Cc:** Welch, Joe; O'Callaghan, Janet; 'Robb Tanner'  
**Subject:** RE: LA -- possible meeting

Robb,

I wanted you to meet with our international TV folks as they are distributing their TV series to platforms via the Internet. Unfortunately, they are all in Cannes for MIPCOM.

What is your availability tomorrow? I can check with others.

Thanks,  
David

---

**From:** McHale, Jonathan [[mailto:Jonathan\\_McHale@ustr.eop.gov](mailto:Jonathan_McHale@ustr.eop.gov)]  
**Sent:** 13 October 2014 19:42  
**To:** Fares, David; Tanner, Robb  
**Cc:** Welch, Joe; O'Callaghan, Janet; 'Robb Tanner'  
**Subject:** RE: LA -- possible meeting

David,

Robb lost his blackberry so try this (b) (6)

Sent with Good (>>[www.good.com](http://www.good.com)<<)

-----Original Message-----

**From:** Fares, David (b) (6) [[@21cf.com](mailto:(b)(6)@21cf.com)]  
**Sent:** Monday, October 13, 2014 02:04 PM Eastern Standard Time  
**To:** Tanner, Robb  
**Cc:** McHale, Jonathan; Welch, Joe; O'Callaghan, Janet  
**Subject:** RE: LA -- possible meeting

Robb,

Just to confirm, our you in LA tomorrow?

Thanks,  
David

---

**From:** Tanner, Robb [[mailto:Robert\\_Tanner@ustr.eop.gov](mailto:Robert_Tanner@ustr.eop.gov)]  
**Sent:** 10 October 2014 18:10  
**To:** Fares, David  
**Cc:** McHale, Jonathan; Welch, Joe; O'Callaghan, Janet  
**Subject:** RE: LA -- possible meeting

David,

Thanks. I am working on similar electronic commerce issues to Jonathan at USTR and was hoping to take advantage of being in Los Angeles to talk to stakeholders there. We are very focused on addressing potential trade issues arising from barriers to the movement of data on the Internet, particularly across borders and the threat of localization requirements in other countries. We are also looking at ensuring nondiscriminatory treatment for digital products. It would be very useful to talk about how your business is evolving in the Internet era, particularly with regards to new technology so we can better understand what the potential trade problems are (or could be).

Best regards,  
Robb



---

**From:** Fares, David [[mailto:\[REDACTED\]@21cf.com](mailto:[REDACTED]@21cf.com)]  
**Sent:** Friday, October 10, 2014 11:55 AM  
**To:** Tanner, Robb  
**Cc:** McHale, Jonathan; Welch, Joe; O'Callaghan, Janet  
**Subject:** LA -- possible meeting

Rob,

I hope all is well.

Joe forwarded the email below to me. Could you please let us know what you would like to discuss so that we can try to identify the best person for you to meet?

Thanks,  
David

---

**From:** McHale, Jonathan [[mailto:Jonathan\\_McHale@ustr.eop.gov](mailto:Jonathan_McHale@ustr.eop.gov)]  
**Sent:** Friday, October 10, 2014 8:38 PM  
**To:** Welch, Joe  
**Cc:** Tanner, Robb  
**Subject:** RE: DC for a day ...

Joe,

Linking you to Robb Tanner, (copied) who will be in LA next Tuesday, to talk to the LA Chamber of Commerce on digital trade. He is our lead on T-TiP and TiSA trade negotiations, for the telecom/e-commerce stuff. You mentioned a Fox technologist worth meeting; if possible, I think Robb would benefit.

Jonathan

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**Kaye, Janice**

---

**From:** Mullaney, Dan  
**Sent:** Wednesday, October 15, 2014 6:34 PM  
**To:** McHale, Jonathan; Tanner, Robb  
**Cc:** Vogel, Matthew A.; Brammer, Georgette; Weiner, David; Kalutkiewicz, Katherine R.; Lorenz, Andrew  
**Subject:** FW: 11/4/2014 SAP CEO Request for Introductory Meeting with Ambassador Froma  
**Attachments:** Ambassador Froman Request 11072014.pdf

Internal USTR communication - non-responsive

[REDACTED]

-----Original Message-----

**From:** Richards, Kevin (b) (6) [mailto:[kevin.richards@sap.com](mailto:kevin.richards@sap.com)]  
**Sent:** Wednesday, October 15, 2014 05:55 PM Eastern Standard Time  
**To:** Vogel, Matthew A.  
**Cc:** FN-USTR-SCHEDULING; Brammer, Georgette; TTIPOutreach@ustr.eop.gov; Mullaney, Dan  
**Subject:** 11/4/2014 SAP CEO Request for Introductory Meeting with Ambassador Froman

Dear Michael,

Please find attached a letter of request to Ambassador Froman to schedule an introductory meeting on November 7, 2014 with SAP's CEO, Bill McDermott. I believe that SAP and Mr. McDermott can be of great help to USTR on both sides of the Atlantic in supporting the Ambassador's efforts to advance TTIP and other major trade agreements under consideration by both the US and the EU. Please find Bill McDermott's bio below as well.

Thank you for your time and consideration of our request. Please feel free to contact me if you have any questions.

Best,

Kevin

Kevin M. Richards  
Director, Government Relations  
SAP America, Inc.  
The Ronald Reagan Building | International Trade Center  
1300 Pennsylvania Avenue, NW | Suite 600 | North Tower Gray  
Washington, DC 20004



(b) (6) [REDACTED]  
[REDACTED] [sap.com](mailto:kevin.richards@sap.com) | Web: [www.sap.com](http://www.sap.com)

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# Bill McDermott

## CEO



**Bill McDermott** is Chief Executive Officer and a member of the Executive Board of SAP, the world's business software market leader with more than 253,500 customers in 188 countries. He leads the company's 66,500 employees and more than two-million-person ecosystem in executing SAP's vision and strategy to make the world run better and improve people's lives.

Under Bill's leadership, in 2014 SAP unveiled a strategy to help businesses of all sizes simplify everything. The company has placed an unrivaled focus on delivering a beautiful user experience and has built the industry's most comprehensive portfolio of solutions in the SAP Cloud powered by SAP HANA.

A personal champion of customer centricity, Bill and former Co-CEO Jim Hagemann Snabe are credited with leading the reinvention of SAP in the era of mobility, cloud computing, advanced analytics, next-generation business applications and in-memory technology. Since 2010, this innovation-led strategy has resulted in expansive increases in customers, total revenue, market value and profitable growth. With a [99% approval rating from employees](#), Bill and Jim were ranked #2 on Glassdoor.com's listing of the world's top 50 CEOs in 2013.

Bill has more than three decades of experience in business technology. He joined SAP in 2002 to lead the business in North America and has steadily risen to his current role as chief executive officer. Before joining SAP he served in senior executive roles with Siebel Systems and Gartner, Inc. He launched his business career at Xerox Corporation, where he rose to become the company's youngest corporate officer and division president.

Bill got his start as a young entrepreneur running a small delicatessen business on Long Island, New York, at age 17. He is a passionate believer in engaging up-and-coming young leaders and has been recognized by organizations ranging from City Year of Greater Philadelphia to the Children’s Aid Society of New York City. A frequent speaker on leadership topics, he was a 2014 keynote speaker at Leadercast, a movement focused on building leaders worth following.

In addition to his SAP and civic commitments, Bill serves on the boards of directors of Under Armour and ANSYS, Inc. He regularly contributes original content to major international publications and blogs on topics ranging from innovation to the future of business.

Bill received his bachelor’s degree from Dowling College and his Master of Business Administration from the Kellogg School of Management at Northwestern University.

› **Leading with Purpose:** Visit the “[Leading with Purpose](#)” website and get SAP CEO Bill McDermott’s take on how technology helps shape a better world.



**SAP America, Inc.**  
The Ronald Reagan Building  
International Trade Center  
1300 Pennsylvania Avenue, NW  
Suite 600 | North Tower Gray  
Washington, DC 20004  
P: 2 (b) (6)

October 15, 2014

Ambassador Michael Froman  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20508

Dear Ambassador Froman,

I'm writing on behalf of Bill McDermott, CEO of SAP SE, to request an introductory meeting with you on Friday, November 7, 2014. He would very much like to discuss SAP's business and several current Administration policy priorities including: the Transatlantic Trade and Investment Partnership (TTIP); the EU-US Safe Harbour agreement; and other international trade issues related to cross border data flows.

Headquartered in Walldorf, Germany, with locations in more than 130 countries, SAP SE is the world leader in enterprise software and software-related services with annual revenue of \$23 billion. SAP North America, a subsidiary of SAP SE, oversees the company's business operations in the U.S. and Canada.

Our North America headquarters, SAP America, Inc., is located in Newtown Square, Pennsylvania. SAP SE employs 66,000 people worldwide including more than 18,000 employees in the U.S. We serve 253,000 customers worldwide including 80 percent of the Fortune 500.

SAP has a strong U.S. presence in the both the public and private sectors. Mr. McDermott would also like to discuss our current partnership with the U.S. government, and how we may strengthen it going forward.

Please let me know if you available to meet with Bill McDermott on Friday, November 7th. If you have any questions, please do not hesitate to contact me at (b) (6) [@sap.com](mailto:(b) (6)@sap.com).

Thank you for your time and consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads 'Kevin Richards'.

Kevin Richards  
Acting Head of U.S. Government Relations

## Kaye, Janice

---

**From:** Bruce, Melissa (b) (6)@brt.org> on behalf of Gasster, Liz (b) (6)@brt.org>  
**Sent:** Thursday, October 30, 2014 9:20 AM  
**Subject:** Business Roundtable: Information and Technology Coordinating Committee 10/30  
**Attachments:** 2014 10 30 Agenda Information and Technology Coordinating Committee Meeting.docx; Global IT Data Flow WP - Oct7 Review Copy Intro.pdf

To: Information and Technology Coordinating Committee



From: Mike Manchisi, MasterCard

Date: October 30, 2014

Subject: Agenda: October 30 Information and Technology Coordinating Committee Quarterly Meeting

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See the attached agenda and additional draft materials for the Information and Technology Coordinating Committee meeting today, **October 30, 2014 from 10:00 a.m. to 12:00 p.m. ET** at the Business Roundtable office (300 New Jersey Avenue, NW, Suite 800, Washington, DC). Ari Schwartz, White House National Security Staff, will join us and provide an update on the White House's cybersecurity legal barrier work. In addition, we have confirmed Robb Tanner, Director for Telecommunications and E-Commerce, Office of the United States Trade Representative, to provide an update on information and technology issues related to key trade agreement negotiations underway with the EU, including the Transatlantic Trade and Investment Partnership (TTIP) and Trade in Services Agreement (TISA).

Please note that the additional attached materials is a draft Introduction and Executive Summary of the Business Roundtable's pending report that makes a cross-industry sector business case to demonstrate the value of cross-border data flows; the risks that overbroad restrictions created for globally-connected businesses, citizens, and the global economy; and why risks should be minimized by policymakers in trade agreements, legislation and regulations.

If you have questions, please contact Liz Gasster at (b) (6) or via email at (b) (6)@brt.org.

Business Roundtable  
300 New Jersey Avenue, NW | Suite 800 | Washington, DC 20001  
Phone: (202) 872-1260 | Fax: (b) (6) | e-mail: (b) (6)@brt.org

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## Kaye, Janice

---

**From:** Joshua Meltzer (b) (6)@brookings.edu>  
**Sent:** Wednesday, November 27, 2013 12:27 PM  
**To:** Melly, Christopher  
**Subject:** Meeting on International Trade and Cross-Border Data Flows

Hi Chris

Further to the email introduction from Jonathan McHale I want to introduce myself. I work on international trade issues at Brookings and over the last year have been focusing some work on cross border data flow (CBDF) issues and international trade. Earlier this year we formed a partnership with the Annenberg-Dreier Commission (run by former Congressman David Dreier) and have been holding a series of meeting in the US and Asia with key stakeholders (mainly businesses, academics, government) to discuss this issue. The focus of the these meetings has been on how businesses rely on cross-border data flows to drive growth, and why this issue is important not only for large US companies, but also for the development of SMEs in Asia broadly. We aim to produce a report in March 2014 discussing this issues and with principles that we hope helps regulators balance between allowing CBDF with scope for pursuing legitimate goals (eg privacy) in ways that is least trade restrictive.

We are hosting another meeting on international trade and CBDF in Washington on 13<sup>th</sup> December. At this meeting we will discuss progress on trade agreements dealing with CBDF and services more broadly, with a focus on TISA, TPP and TTIP. If you are able to attend and make a brief presentation 10mins on progress with these agreements, that would be most appreciated. If you are unable to present, your attendance at the meeting would of course still be very welcome. The meeting will include approximately 20-25 people and will be closed door and off the record.

If you can attend and present can you please let me know what time you would prefer. At this stage I have canvassed with Jonathan a 12-2pm slot, though we could certainly try to do this earlier or later in the day if that is better for you.

Sincerely  
Josh Meltzer

Joshua Meltzer  
Fellow  
Global Economy and Development at BROOKINGS  
1775 Massachusetts Ave, NW | Washington, DC 20036

(b) (6)  
(b) (6)@brookings.edu | [www.brookings.edu/global](http://www.brookings.edu/global)



## Kaye, Janice

---

**From:** Steve Stewart (b) (6)@us.ibm.com>  
**Sent:** Thursday, December 12, 2013 4:53 PM  
**To:** Tanner, Robb  
**Cc:** Melly, Christopher; McHale, Jonathan; Michael DiPaula-Coyle  
**Subject:** Cross-Border Data Talking Points  
**Attachments:** Data-Driven Economy.pdf; US-EU Statistics.doc

Robb,

In case they might be helpful, I want to share a couple of documents with you. I used this set of talking points as a handout last month when I was in Brussels.

*(See attached file: Data-Driven Economy.pdf)*

This is a set of US-EU statistics.

*(See attached file: US-EU Statistics.doc)*

Good luck next week. Let me know if there is anything I can do to help.

Best regards,

Steve

Steve Stewart  
Director, Market Access & Trade  
IBM Governmental Programs  
Phone: (b) (6)  
Fax: (b) (6)  
e-mail: (b) (6)@us.ibm.com  
600 14th St., NW, Suite 300, Washington, DC 20005

# **The Data-Driven Economy and the Need to Modernize Trade Agreements**

## **Data Is the Lifeblood of the 21<sup>st</sup> Century Economy**

- Data is the lifeblood of the 21<sup>st</sup> Century economy and a vital source of innovation and competitive advantage for all sectors. Data is not just an ICT company issue.
- Global companies rely on communication networks to deliver services to customers, run manufacturing and internal operations, and manage global supply chains. The global economy cannot function without constant streams of data across borders.

## **Data Is a Tremendous Force for Social Good**

- Data analytics provide the tools to solve complex problems and extract insight from vast oceans of data, enabling the discovery of cures for disease, more efficient energy use, better water management, cleaner air, improved health care, smarter traffic and more efficient government.
- At the individual level, access to information and communications via the Internet helps people to enhance their education, make smarter consumer choices, improve their health and keep in touch with family and friends, wherever they are in the world.

## **The Internet and Data Create Opportunities for Innovation, Growth and Jobs**

- The Internet facilitates exports of goods and services, enables participation in global supply chains and provides access to innovative services at competitive prices, creating growth opportunities for businesses, both large and small.
- A wide range of services, including education, financial, business, news and health, are increasingly being delivered via the Internet, leading to growth in “digital trade”.
- Data analytics create opportunities for growth, innovation and job creation through new services and smarter ways of addressing society’s challenges.
- Mobile apps for smartphones create an opportunity for individuals and small businesses to develop software and services for a global customer base.

## **Restrictions on Data Flows Undermine Innovation, Growth and Jobs**

- Ensuring privacy and data security is essential, but local data requirements would create a self-imposed economic handicap without improving privacy or security. Policies must recognize that the globally integrated economy runs on the Internet.
- It is important not to conflate two different issues – government access to data and the commercial use of data.
- Restrictions on the private sector will not resolve issues regarding government access to data but will increase costs, discourage investment and job creation, block access to services, stifle innovation and make the local economy less competitive.
- Barriers to data flows also set a bad example for other countries, encouraging them to adopt similar restrictions, which will cut off access to export markets.

## **Trade Agreements Must Be Modernized to Support Digital Trade**

- The Internet has become an important trade route for the 21<sup>st</sup> Century, but there is a rising threat of “digital protectionism”.
- Countries cannot expect to expand their own digital trade exports while blocking online access to their markets by businesses from other countries.
- Current negotiations can create new rules to enable cross-border data flows to support trade and investment. Trade agreements take many years to negotiate and can establish rules that are in place for decades, so we can’t miss this opportunity.
- New trade agreements must be modernized to include cross-border data provisions if they are to gain business support and remain relevant for the digital economy.

## United States – European Union Statistics

### Key Statistics:

- The United States is by far the largest foreign investor in the EU27, supplying EUR 99 billion in inward FDI in 2012, accounting for 62% of all FDI in the EU27. U.S. investors depend on cross-border data flows to manage and operate their investments, and to support many European jobs. Restricting data flows will shrink investment and jobs.  
[http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Foreign\\_direct\\_investment\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Foreign_direct_investment_statistics)
- The United States and the EU together maintain nearly USD 4 trillion / EUR 3 trillion in investment in each other's economies, supporting nearly 7 million jobs.  
[http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\\_150519.pdf](http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf)
- The EU is the world's largest exporter of services (USD 784 billion in 2011), and many services can now be delivered via the Internet or other communications networks. These ICT-enabled services include financial, insurance, business, professional, computer, telecommunication, news and entertainment services.
- The EU and the U.S. are by far the world's largest exporters of services (USD 784 billion and USD 581 billion, respectively in 2011, accounting for 43% of world services exports, compared to number three China at USD 182 billion), so it makes sense for them to work together to write new, model trade rules for digital trade in services.  
[http://www.wto.org/english/res\\_e/statis\\_e/its2012\\_e/its12\\_world\\_trade\\_dev\\_e.htm](http://www.wto.org/english/res_e/statis_e/its2012_e/its12_world_trade_dev_e.htm) -- see Table I.10
- Each day, goods and services worth USD 2.7 billion / EUR 2.0 billion are traded bilaterally -- over USD 1 trillion annually.  
[http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\\_150519.pdf](http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf)

**"The Economic Importance of Getting Data Protection Right: Protecting Privacy, Transmitting Data, Moving Commerce,"** prepared by the European Centre for International Political Economy (ECIPE) of the U.S. Chamber of Commerce.  
(<http://www.uschamber.com/reports/economic-importance-getting-data-protection-right>)

- If service trade and cross-border data flows are seriously disrupted (assuming that binding corporate rules, model contracts clauses and EU-U.S. Safe Harbor framework are no longer recognized), the negative impact on EU GDP could reach -0.8% to -1.3%. This could more than offset the expected GDP gain from the successful conclusion of TTIP (estimated at 0.5% by the European Commission at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>).
- EU services exports to the United States drop by -6.7% due to loss of competitiveness.
- As goods exports are highly dependent on efficient provision of services (up to 30% of manufacturing input values come from services), EU manufacturing exports to the United States could decrease by up to -11%, depending on the industry.
- The direct negative welfare effect (under the same assumptions) of the regulation could reach up to 1,353 USD (1041 euro) per year for a household of four people.

**Kaye, Janice**

---

**From:** JENNINGS, JAKE E (b) (6)@att.com>  
**Sent:** Monday, December 16, 2013 1:07 PM  
**To:** McHale, Jonathan; Tanner, Robb; Bliss, Christine J.  
**Subject:** Fwd: HTC Ltr: cross-border data flows letter to USTR  
**Attachments:** Cross-Border Date Flows in Trade Negotiations Letter to USTR 12.13.2013.pdf;  
ATT00001.txt

Fyi.

Sent from my iPhone

Begin forwarded message:

>  
>  
>  
>  
>  
>

**Congress of the United States**  
**Washington, DC 20515**

December 13, 2013

The Honorable Michael Froman  
United States Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20508

Dear Ambassador Froman:

On behalf of the Congressional High Tech Caucus, we are writing to highlight the important issue of cross-border data flows in U.S. trade negotiations and raise concerns with recent efforts by some in multiple countries in Europe, Asia and elsewhere to promote protectionist data flow policies. These policies threaten to harm American and international businesses, global customers, and the successful development of cloud technologies and services, both here and abroad.

We commend the United States Trade Representative's (USTR) efforts to ensure the global free flow of data and to eliminate barriers to cross-border data flows. Data is the lifeblood of the 21st century economy and a vital source of innovation and competitive advantage for all sectors. Data is critical, not only to information technology (IT) companies, but also to companies across all sectors, as it enables them to compete fairly in the global economy. The Trans Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP), and Trade in International Services Agreement (TISA) provide unique opportunities to create new, common international rules to establish cross-border data flow policies that support global innovation, trade and enhance economic growth.

Unfortunately, some governments are seeking to erect new barriers to cross-border data flows and disadvantage U.S. companies. Some European Union (EU) officials are calling for discriminatory, protectionist policies that will undermine the ability of U.S. companies to compete fairly in Europe, such as an EU only cloud or an EU IT conglomerate along the lines of Airbus in aviation.

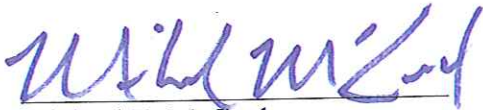
This EU activity is of great concern. The transatlantic economy is the largest and wealthiest market in the world, accounting for over 54% of world GDP in terms of value, 40% in terms of purchasing power, and generating close to \$5 trillion in total commercial sales a year. The EU is the world's biggest trader, accounting for 20 percent of global imports and exports. Companies headquartered in EU Member States have invested \$1.6 trillion in the United States and directly employ more than 3.5 million Americans. Similarly, U.S. firms have invested \$2.1 trillion in the EU—a sum representing more than half of all U.S. investment abroad. This mutually beneficial relationship would not be possible without constant streams of data between the EU and the U.S. For global trade to succeed and grow, access to data outside of the country is essential to the farmer, miner, shipper, or travel agent, and halting cross-border data flows will, by many measures, simply stifle cross-border trade.

Regrettably, this challenge is not limited to the EU. Brazil's President is involved in an effort to force data localization requirements into legislation and has issued a Presidential Decree

requiring that federal government agencies use only telecommunications and IT services provided by state organs or agencies. Meanwhile, some German officials have called on the EU to review Safe Harbor, the only mechanism through which U.S. and European companies can exchange information in compliance with the laws of the nations in which they conduct business. Canada has increased the number of federal government Requests for Proposals (RFPs) invoking a "national security exemption" and requiring IT vendors who bid for projects to keep all or portions of data within Canada. In other countries, the National Information Security Center is driving new procurement guidance that will also include data localization requirements for a wide range of data.

We encourage USTR to be vigilant in responding to all of these efforts and to remind our trading partners around the world that all governments and all segments of the economy benefit from cross-border data flows. Protectionist data flow policies will only frustrate the development of cloud-based technologies and services, and deny consumers and businesses around the world the potential benefits of the cloud. For this reason, we ask that the USTR to continue to prioritize cross-border data flows as a key topic in TTIP, TPP, and other trade negotiations, and recognize the high-priority the High Tech Caucus places on the inclusion of free flow of data in any future trade agreements.

Sincerely,



Michael T. McCaul  
Co-Chair  
Congressional High Tech Caucus



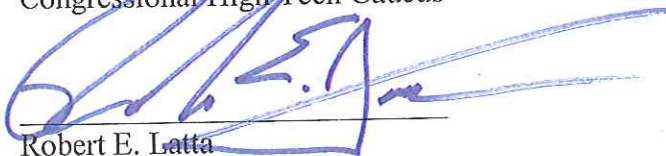
Doris O. Matsui  
Co-Chair  
Congressional High Tech Caucus



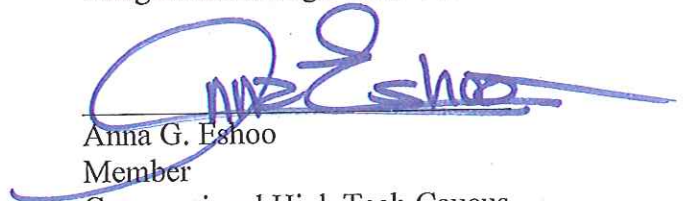
Marsha Blackburn  
Member  
Congressional High Tech Caucus



Dan Lipinski  
Member  
Congressional High Tech Caucus




Robert E. Latta  
Member  
Congressional High Tech Caucus



Anna G. Eshoo  
Member  
Congressional High Tech Caucus



Blake Farenthold  
Member  
Congressional High Tech Caucus



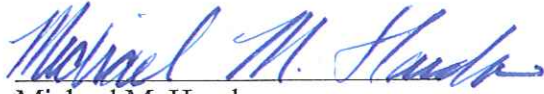
Ron Kind  
Member  
Congressional High Tech Caucus



Matt Salmon  
Member  
Congressional High Tech Caucus



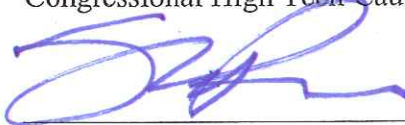
Jim Matheson  
Member  
Congressional High Tech Caucus



Michael M. Honda  
Member  
Congressional High Tech Caucus



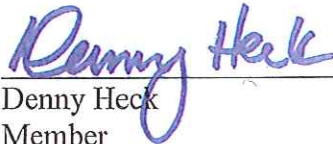
Jim Moran  
Member  
Congressional High Tech Caucus



Scott Peters  
Member  
Congressional High Tech Caucus



Jerry McNerney  
Member  
Congressional High Tech Caucus



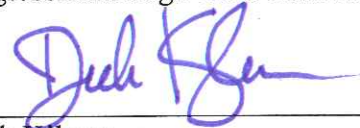
Denny Heck  
Member  
Congressional High Tech Caucus



Eric Swalwell  
Member  
Congressional High Tech Caucus



Suzan K. DelBene  
Member  
Congressional High Tech Caucus



Derek Kilmer  
Member  
Congressional High Tech Caucus

## Keppel, Melissa

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**From:** Melly, Christopher  
**Sent:** Monday, June 08, 2015 2:51 PM  
**To:** Keppel, Melissa  
**Subject:** FW: Addendum to CSI TISA Comments  
**Attachments:** TISA Addendum to CSI Comments May 2013.pdf

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**From:** Peter Allgeier [mailto:[allgeier@uscsi.org](mailto:allgeier@uscsi.org)]  
**Sent:** Wednesday, May 15, 2013 12:06 PM  
**To:** Schagrin, Kenneth; Shark, David P.; Melly, Christopher; McHale, Jonathan  
**Subject:** Addendum to CSI TISA Comments

*Following our submission of comments to USTR on the TISA negotiations, some of our members asked us to expand on our initial comments. I realize that the formal comment period has expired, but we wanted to share these views with all of you. I'm sure that reading these comments will be vastly more scintillating than going to see *The Great Gatsby*. ☺*

*Cheers.*

*Peter*

*Peter Allgeier  
President  
Coalition of Service Industries (CSI)  
1090 Vermont Avenue NW  
Suite 420  
Washington, DC 20005  
Tel: (b) (6)  
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(b) (6) [@uscsi.org](mailto:(b) (6)@uscsi.org)  
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May 14, 2013

Mr. Douglas Bell  
Chair, Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

RE: International Services Agreement, Docket USTR-2013-0001

Dear Mr. Bell:

In addition to the comments of February 26, 2013, that the Coalition of Service Industries (CSI) filed with the Office of the United States Trade Representative pursuant to FR Doc. 2013-01-01497, CSI would like to bring the following additional perspectives to the attention of the Office of the U.S. Trade Representative.

### **Information and Communications Technology (ICT) Services**

The International Services Agreement (ISA) needs to update the rules and definitions that apply to electronic communications services and digital services to reflect today's world, in which multiple services are intertwined, whether through bundling or supply chains, and offerings are changing rapidly, driven by the power of innovation. This will require both new market access commitments and trade rules that are relevant to the world of smartphones, tablets, video conferencing, and other forms of digital transformation throughout the global economy.

#### **Technological Innovation**

In this digital age, companies in international markets constantly use Internet-based services and broadband networks to move data for their own internal operations and in serving their customers. The ISA should facilitate trade in innovative information and communication technology services by encouraging public policy regimes that minimize regulatory impediments to such services and recognize the trade-enhancing value of relying on competition wherever possible. In order to minimize regulatory impediments and avoid unintended consequences, the ISA should include the following provisions for trade-impacting regulations:

- 1) Regulations should be limited to specific and legitimate public policy objectives, consistent with international treaties;
- 2) Regulations should be established pursuant to transparent procedures allowing comment by all interested parties;
- 3) Regulations should not constitute unnecessary barriers to trade in services;
- 4) Parties should review and eliminate regulations, or forbear from their application, in situations where competitive market forces are present to achieve the regulatory objective; and
- 5) Among ICT services, only public telecommunications services should be subject to a licensing requirement, with all others presumed to be value-added or computer-based services unless a party takes an exception. In general, when competitors are subject to differing regulatory obligations, parties should seek to facilitate trade by applying the least burdensome regulatory obligations to all such competitors.

### Regulatory Barriers

The ISA offers an opportunity to ensure that investment and trade in services are not inhibited or precluded electronically and ensure that cross border information flows are permitted. In support of services trade through electronic channels, there should be a clear obligation to permit cross border data flows and external data management, storage, and access (so, for example, users may benefit from the availability of cloud computing services) 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 US-EU Trade Principles on ICT Services and in the OECD Internet Policy Principles. Moreover, the agreement should ensure that privacy regulations are based on globally-recognized principles, such as the OECD Privacy Guidelines and the APEC Data Privacy Framework<sup>1</sup>, and that governments work to achieve global interoperability, i.e., by respecting different standards that are equally effective, even if not identical/equivalent to the standard in a particular market. Although this is most clearly demonstrated by privacy regulations, it can apply in other areas as well (e.g. safety standards).

The agreement should ensure technological and competitive neutrality in applicability of regulatory obligations and standards, along with transparency and opportunity for public comment on proposed regulations and standards.

There should be no new regulatory barriers imposed on one category of service that is bundled with another more regulated service in a party's market access commitments.

### Clustering/Integrating

Market access commitments should provide access throughout the supply chain to take account of 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 users.

The coverage by existing and new commitments should apply to all types of entities that supply the services, including when they also supply and integrate additional services such as software, e-commerce, and telecommunications. Market access commitments should focus on the service, not the entity that provides the service. For example, when a telecommunications company provides an internet protocol service, it should not be treated as a regulated telecommunications provider. Telecommunications companies should be regulated as such only to the extent that they are providing telecommunications services.

This issue of coverage for evolving ICT services was discussed extensively in the "Friends of Computer Services" group during the Doha Round negotiations. Some very useful work came out of this group, as was captured in the Understanding on Computer and Related Services, signed by 18 of the 22 ISA participants, and in the Plurilateral Request on Computer and Related Services, signed by 14 of the 22 ISA participants. The ISA could build on and update this work to ensure that evolving ICT services are covered and that the new commitments will not become obsolete due to technological advances.

### Building on Previous Work

Several unique attributes of the international negotiations in Geneva make it highly likely that these negotiations will result in a high-ambition agreement in the near future. In the information and communication technology services sectors, the development in 2011 of public policy frameworks for ICT services is notable and highly relevant. These include the OECD Communique on Principles for Internet Policy-making<sup>2</sup>, as well as the EU-US Trade Principles for Information and Communication Technology Services<sup>3</sup>. The principles in both are well-suited to a forward-looking and enduring services agreement.

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<sup>1</sup> [http://www.apec.org/Groups/Committee-on-Trade-and-Investment/~media/Files/Groups/ECSG/05\\_ecsg\\_privacyframewk.ashx](http://www.apec.org/Groups/Committee-on-Trade-and-Investment/~media/Files/Groups/ECSG/05_ecsg_privacyframewk.ashx)

<sup>2</sup> <http://www.oecd.org/internet/innovation/48289796.pdf>

<sup>3</sup> [http://www.ustr.gov/webfm\\_send/2780](http://www.ustr.gov/webfm_send/2780)

Similarly, the e-commerce and telecommunications chapters of the Korea-US Free Trade Agreement contain a number of exemplary provisions, as do the APEC Innovation Principles.

### **Electronic Security Services**

#### National Security

Electronic security services, where the customer is likely a business or household, do not threaten national security, and should not be regulated as such. The agreement should seek to circumscribe exceptions, such as security, to ensure they are not used as disguised barriers to trade.

#### Equity Limitations

Requirements that foreign security service providers cede a portion or all of their ownership or control to locally based interests should be prohibited. Furthermore, limitations on foreign direct investment in the commercial security sector should not be allowed. It is essential that strong investor protections are adopted that provide the basis for a predictable and non-discriminatory legal environment.

#### Movement of Persons

Given the technical and potentially lifesaving nature of commercial security, the quality of design, installation, maintenance, monitoring, and response may depend on skilled personnel, top management, and other personnel, regardless of their nationality. In particular, improving the rules surrounding the mobility of persons will improve the ability of companies to deploy their technicians and highly skilled workers to provide after-sales service, maintenance and repairs.

#### Licensing

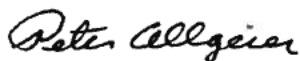
There should be rules to ensure transparency and non-discrimination in the issuance of licenses and certifications. Effective appeals procedures should exist in cases of denial.

#### Regulations

While we recognize the necessity of certain regulations, they should be subject to transparency and advance comment procedures and be applied consistently and fairly. Those that serve as barriers to investment or legitimate business activity should be eliminated or amended. Nationality requirements for Board members and management should also be prohibited.

Once again, we appreciate the opportunity to support and provide our input on this critical initiative for jobs, economic growth, and U.S. competitiveness. We look forward to the continued leadership of the United States towards an ambitious new International Services Agreement, and remain a solid partner in achieving its success.

Sincerely,



Peter Allgeier  
President

cc: Ambassador Michael Punke  
Assistant U.S. Trade Representative Christine Bliss  
Assistant U.S. Trade Representative Mark Linscott

## Keppel, Melissa


---

**From:** Tanner, Robb  
**Sent:** Monday, June 08, 2015 3:07 PM  
**To:** Keppel, Melissa  
**Subject:** FW: TISA leak and privacy

-----Original Message-----

**From:** Punke, Michael W.  
**Sent:** Thursday, December 18, 2014 6:52 AM  
**To:** McAlvanah, Matthew; Kincaid, Trevor; Vogel, Matthew A.; Bliss, Christine J.; Melly, Christopher; McHale, Jonathan; Tanner, Robb  
**Subject:** FW: TISA leak and privacy

Internal USTR communication - non-responsive



-----Original Message-----

**From:** Nick Ashton-Hart [mailto:nashton@internet-ecosystem.org]  
**Sent:** Thursday, December 18, 2014 12:39 PM  
**To:** Punke, Michael W.; Jonathan.Fried@international.gc.ca; Hamish.McCormick@dfat.gov.au; Angelos.Pangratis@eeas.europa.eu  
**Subject:** TISA leak and privacy

Dear Gentlemen,

As I'm sure you're aware there's been a leak of the US text on horizontal ICT provisions from April and very adverse comment on the fact that it doesn't contain an exception or other provision for privacy.

I am working to explain that the absence of a provision on that in one offer does not = TISA dismantling all privacy protections and that in fact the absence of a privacy provision in the US offer is likely due to the fact that all the parties entered into this as a GATS+ agreement and that the general exceptions of GATS would be carried forward at a minimum in any final agreement.

Obviously no party will make statements about a leaked text, but it would be very helpful if some countries, or all, could find a way to make clear that TISA will not negatively impact data protection or privacy protections amongst any or all parties - that would actually be GATS - and not congruent with the fundamental point of TISA at all.

Perhaps an "unidentified official close to the negotiations" could give Shawn Donnan at the FT (who is doing a story on this) a quote making clear that there's no possibility of an outcome that will undermine national privacy protections?

All the best to you and yours,

Nick