

LIMITED

Transatlantic Trade and Investment Partnership negotiations (TTIP)

The Information and Communication Technology (ICT) sector

The ICT sector cuts across several silos of the negotiation: trade in services, trade in goods, government procurement, technical standards... To be meaningful for the industry and the stakeholders on both sides of the Atlantic, the TTIP should deliver an ambition outcome in all of those areas. The present paper is a first attempt to review all relevant issues that should be addressed throughout the negotiations. As the negotiations progress, more items could be included.

1. A comprehensive chapter on electronic communication services

The TTIP should contain a set of legally binding rules and disciplines with respect to the provision of electronic communication (telecommunication) services. Those rules would aim at ensuring a level playing field for suppliers of electronic communication services and would include provisions on the following topics:

- Regulatory authorities;
- Authorisation and licensing;
- Scarce resources (spectrum);
- Access and interconnection;
- Anti competitive practices of major suppliers;
- Universal service;
- Number portability;
- Resolution of disputes;
- Foreign shareholding (removal of foreign equity limitation)

The proposed disciplines would apply across the board on all electronic communication services, defined in a comprehensive and technological neutral way.

2. Ensuring a large coverage of computer services

Through an adequate classification and definition, notably based on the WTO Understanding on computer services, the agreement should ensure that all computer services are covered.

3. Provisions relating to electronic commerce

As the delivery of services by electronic means (electronic communications, alone or in conjunction with other information and communication technologies), electronic commerce includes the cross-border provision of services in the meaning of GATS Article I ("mode 1"). As a consequence, the TTIP should recognise that e-commerce cannot be subject to customs duties.

The EU acknowledges that electronic commerce is a cross-cutting issue and increases trade opportunities in many sectors. The EU and the United States should agree to promote the development of electronic commerce between them, in particular by co-operating on the issues raised by electronic commerce. Among others, the potential issues for cooperation could include:

- the recognition of certificates of electronic signatures issued to the public, the conclusion of contracts by electronic means and the facilitation of cross-border certification services,
- the liability of intermediary service providers with respect to the transmission, or storage of information,
- the treatment of unsolicited electronic commercial communications,
- the protection of consumers in the ambit of electronic commerce and notably the information to be provided by service providers,
- the conditions under which provision of services by electronic means may be restricted,
- specific prior authorisation,
- any other issue relevant for the development of electronic commerce.

Such cooperation can take the form of exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

4. Public Procurement for the ICT sector

For the ICT sector, the relevance of government procurement is multiple, spanning from the traditional telecommunication services to high performance computing equipment and to cloud-based service providers. Access to public procurement, at both federal (notably for high performance computing) and at the sub-federal level, should be one of the primary topic of discussion. While public procurement is being dealt within other parts of the negotiation, it is important that the outcome of the public procurement negotiation will enhance trade in ICT.

For the cloud-based services, solutions could be envisaged via mutual recognition of accreditation for public IT procurement purposes based on the use of international standards and certificates.

5. A regulatory structure and a regulatory agenda on ICT for the TTIP

A regulatory structure

Given the TTIP's ambition to create a framework for a regulatory environment conducive to businesses on both sides of the Atlantic, it is important that traditional trade provisions as set out in sections 1 to 4 are accompanied by a wider set of conditions and structures. The ICT sector itself is not a traditional one made of goods and tariffs only and any bilateral agreement must encompass its complexities.

Hence the agreement should envisage a body, which would allow for a platform for interaction between different regulatory authorities. This body would have a role beyond a traditional trade committee and in particular would allow for regulators on both sides of the Atlantic (European Commission, BEREC, NTIA, FCC, etc.) to be able to discuss regularly and directly.

This body would ensure the proper implementation of the agreement, monitor the conditions for market access, and look at wider regulatory issues.

A regulatory agenda

Some of those regulatory issues would include (in a non-exhaustive way): wholesale access, cloud computing services, cyber-security, standards, the legal framework for e-health, etc.

Evidence tends to show that the absence of regulation in the **wholesale access market** has comforted the dominant position of two major companies on the US market. This also has repercussions on the value-added services for the provision of which leased lines and other wholesale products are crucial inputs. Progress in the review of the market is slow and the outcome uncertain. As a result, EU companies have expressed difficulties in accessing the US market, while US companies enjoy access to a regulated EU wholesale market. It is therefore suggested that the TTIP negotiation looks into that issue and address means to correct this asymmetry (notably through effective implementation of wholesale access provision).

With respect to **cyber-security**, a uniform approach across the Atlantic would facilitate trade in products, services and applications while at the same time ensuring a high level of security. Both the EU and the US have begun discussions with their stakeholders to identify best practices on risk management. These are not technical standards but rather process standards adopted to ensure security of networks and information systems. The EU work takes place in the Network and Information Security (NIS) Platform. Hence we could imagine that this platform could engage with its US counterpart, the National Institute on Standards and Technology (NIST) in a structured way. The TTIP could take stock, e.g. at the end of 2014, on progress and ensure that cyber-security measures do not translate in trade barriers.

Standards have a paramount importance in the ICT sector, well beyond what appears from a first traditional product based criteria. It is essential to ensure that technological developments, regulatory measures and standardisation do not lead to divergences and lack of interoperability which develop into trade barriers. Examples include: lack of harmonised standards between the EU and the US; Internet of Things where the lack of interoperability in the machine to machine (M2M) communications may result in reducing market access.

Some work is already on-going and could serve as a positive benchmark should it be included in the agreement. Specifically in the area of **e-Health** both the EU and the US are currently working to encourage more effective use of ICT and ICT in general, in delivery of health services, including disease prevention and health promotion. They will collaborate through the promotion of interoperability of health related information and communication technology (e-Health/Health IT) products and services, gaining improved mobility and consistent proficiency recognition for professional workforce, and by helping to prevent unnecessary regulatory divergences.

While it is clear that much of issues relating to standards would be dealt within a TBT framework in the TTIP, it would be essential that standard setting is also partly covered through some form of cooperation framework (ICT specific). This framework should be more "light-touch" than the one used for enforcement of regulation, as standard setting remains largely a private industry matter.

As indicated above, more issues will emerge as the negotiations progress and both sides should be ready to address further topics not yet included in the present paper.