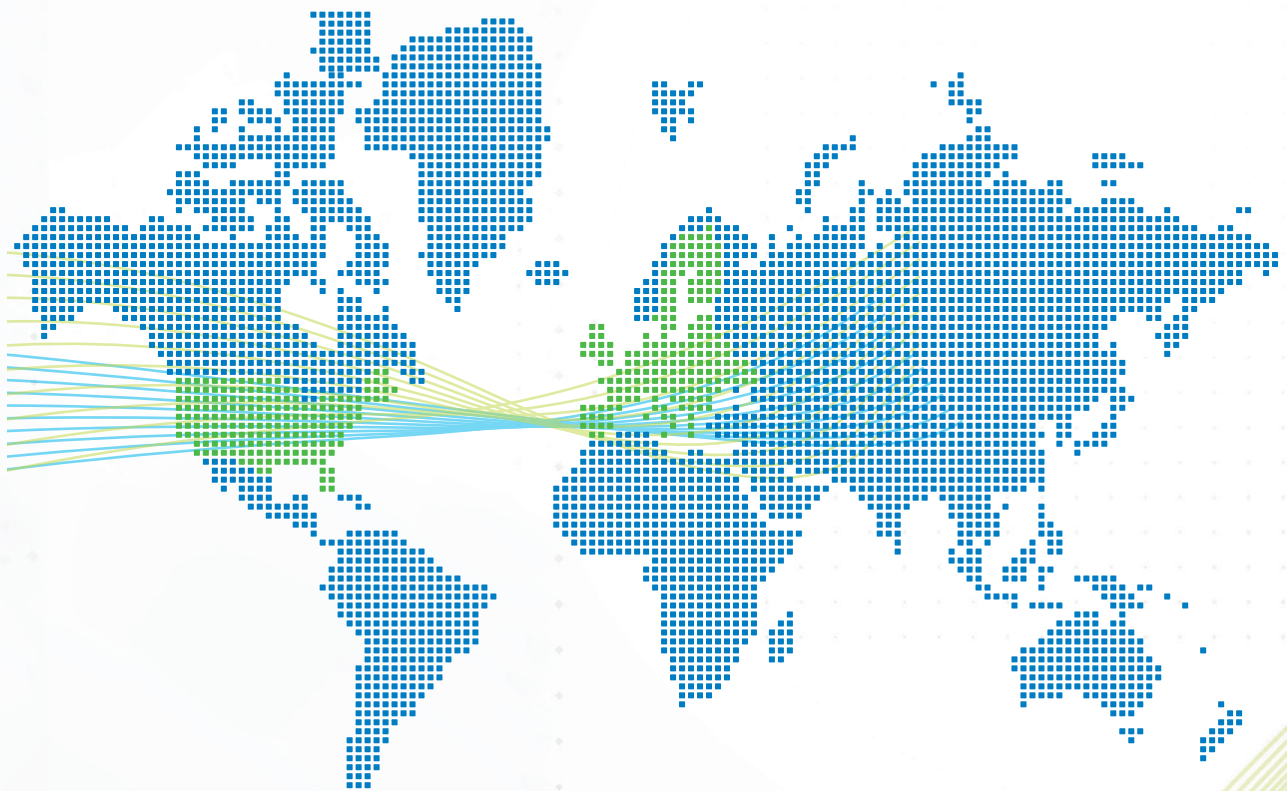


Hacer del componente digital una  
ventaja para la negociación del proyecto  
de Asociación Transatlántica  
de Comercio e Inversiones



April 2014

**Consulta del Ministerio  
de Comercio Exterior de Francia,  
al Consejo Nacional del Sector Digital**

Strengthening EU's negotiation strategy to make TTIP a sustainable  
blueprint for the digital economy and society





**El componente digital del proyecto de Asociación Transatlántica de Comercio e Inversiones reviste una importancia crucial para el futuro de la sociedad y la economía.**

**La Unión Europea y sus Estados Miembros deben reforzar su capacidad de negociación en lo que respecta al componente digital y desarrollar una estrategia específica.**

#### Síntesis de las recomendaciones del Consejo Nacional del Sector Digital

- 1) Los valores de la Unión Europea son instrumentos motores esenciales para la elaboración de una estrategia de negociación sobre el componente digital ;
- 2) La estructuración del mercado digital europeo debe apoyarse en garantías duraderas, entre ellas, el derecho a regular, la capacidad de reglamentar en el futuro y el respeto de la soberanía y las libertades competitivas de la Unión Europea. Dichas garantías deben entrar en juego en la negociación del componente digital del proyecto de Asociación ;
- 3) La Unión Europea está en condiciones de enriquecer la apertura y el despliegue de su mercado digital estableciendo relaciones comerciales con nuevos socios, como los países asiáticos o africanos;
- 4) Con un mercado de 500 millones de consumidores, la movilización de los actores privados y públicos es prioritaria: la elaboración de una estrategia digital y la consolidación de alianzas entre los Estados Miembros constituyen instrumentos motores positivos para el éxito de la negociación comercial.

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# Preámbulo

El 25 de julio de 2013, la Ministra de Comercio Exterior de Francia, Nicole Bricq, pidió al Consejo Nacional del Sector Digital (CNNum) que formulara recomendaciones sobre el componente digital del proyecto de Asociación Transatlántica de Comercio e Inversiones (ATCI), denominado en inglés *Transatlantic Trade and Investment Partnership* (TTIP), que actualmente está siendo objeto de negociaciones entre la Unión Europea y los Estados Unidos. También se invitó al Consejo Nacional del Sector Digital a participar en el comité de seguimiento estratégico de la asociación transatlántica establecido por la Ministra.

Fleur Pellerin, Secretaria de Estado al Comercio Exterior, la Promoción del Turismo y a los expatriados franceses en el Ministro de Asuntos Exteriores y Desarrollo Internacional, está ahora encargada de preparar y dirigir negociaciones europeas e internacionales, entre ellas la del Acuerdo Transatlántico sobre Comercio e Inversión.

Por sus objetivos ambiciosos en el ámbito del sector digital, este proyecto de asociación bilateral es el más importante de los que han existido hasta ahora. El Consejo ha trabajado a partir de diferentes documentos oficiales publicados por los organismos negociadores (Comisión Europea y Office of the United States Trade Representative), contando con la ayuda de los servicios administrativos nacionales encargados de coordinar la negociación (Dirección General del Tesoro, Servicio Económico Regional de Washington y Secretaría General de Asuntos Europeos) y utilizando también documentos difundidos por protagonistas de la sociedad civil que, en un principio, tenían un carácter confidencial. El Consejo ha podido comprobar las grandes proporciones que están cobrando las múltiples disposiciones encaminadas a facilitar las inversiones e intercambios transfronterizos en el ámbito digital. La convergencia de las reglamentaciones es, por ejemplo, una de las metas ambicionadas —y proclamadas— por el proyecto de asociación y sus repercusiones son determinantes para las industrias en lo que respecta al derecho de propiedad intelectual, el derecho de competencia, la seguridad cibernética, las reglas relativas a la explotación de datos, etc.

El grupo de trabajo ha efectuado una serie de entrevistas, en las que han participado diversas partes interesadas en la negociación. Dirigido por Benoît Thieulin, Presidente del Consejo Nacional del Sector Digital, el grupo está integrado por Godefroy Beauvallet y Tariq Krim, Vicepresidentes; Stéphane Distinguin, Marie Ekeland, Audrey Harris, Nathalie Pujo y Marc Tessier, Vocales, miembros del CNNum; Jean-Baptiste Soufron, Secretario General; así como Yann Bonnet, Relator General, Mathilde Bras, Relatora Adjunta, y Samira Anfi, Relatora Adjunta (en periodo de prácticas).

Es preciso constatar que algunas organizaciones representativas del sector digital en Francia no han estado en condiciones de responder a nuestras peticiones, a pesar de



la voluntad de apertura del Consejo, que se mostró partidario de una concertación lo más amplia posible. Esto ha obedecido a una serie de motivos tan numerosos como preocupantes: falta de estructuración del ecosistema francés, falta de madurez de los protagonistas en lo que se refiere a la amplitud de las negociaciones comerciales internacionales, falta de visión a largo plazo y, sobre todo, existencia de una gran asimetría de ambiciones, conocimientos especializados y coordinación entre la Unión Europea y los Estados Unidos en lo que se refiere al componente digital. Es urgente realizar una labor de movilización del ecosistema y promover la transparencia en éste.

En cambio, las personas que han participado en las entrevistas han estimado a veces que la movilización de los negociadores oficiales es insuficiente. Los protagonistas de la sociedad civil, los del mundo industrial, las pymes, las empresas innovadoras emergentes, las autoridades encargadas de la reglamentación, los expertos y los observadores tienen percepciones distintas del grado de implicación de los negociadores oficiales.

Tras seis meses de entrevistas y trabajos exploratorios, el Consejo deplora que se haya subestimado el componente digital del proyecto de asociación de comercio e inversiones. La relación de fuerzas es desfavorable para la Unión Europea y se debe compensar y reequilibrar, con la mayor rapidez posible, mediante el establecimiento de una estrategia de negociación coherente y coordinada con el conjunto de los Estados Miembros. Esa estrategia debe descansar en los siguientes ejes : **hacer de los valores de la Unión Europea un instrumento para impulsar el mercado digital europeo; garantizar la soberanía de la Unión y su capacidad para reglamentar el sector digital en el futuro; no encerrarse en una óptica transatlántica y abordar el sector digital con una perspectiva internacional; y retrasar la negociación para construir una estrategia digital europea.**

El presente dictamen del CNNum constituye un primer balance. El Consejo está dispuesto a proseguir su contribución a más largo plazo, junto con las administraciones interesadas por las negociaciones.



# Dictamen del Consejo Nacional del Sector Digital :

## Considerando que,

El proyecto de asociación transatlántica de comercio e inversiones ambiciona estructurar a largo plazo las relaciones comerciales entre dos potencias económicas en plena transformación industrial, en la era digital.<sup>1</sup> El objetivo de ese proyecto de asociación es acelerar los intercambios y definir nuevas fuentes de crecimiento, de internacionalización de las empresas y de renovación del tejido industrial y del empleo.

La industria digital es internacional por su origen mismo. La creación de normas y procedimientos de regulación en esta industria trasciende a menudo las dimensiones de los Estados. La gobernanza de esta industria se debe aprehender lo más directamente posible a nivel multilateral. Esta gobernanza debe ir acompañada de garantías suficientes para fomentar los valores de la Unión Europea y sus Estados Miembros, así como su soberanía y estabilidad económica, y para dinamizar la innovación en el nuevo entorno comercial. No es deseable que la gobernanza internacional del sector digital esté dominada por uno o varios protagonistas del sector privado o del público. La Unión Europea, sus Estados Miembros y sus protagonistas del sector digital deben estar presentes en la correlación de fuerzas en este ámbito, y más concretamente en los procesos de elaboración de normas y estandarización de reglamentaciones, tecnologías y usos.

El sector digital es uno de los pilares de la reactivación económica. Es un factor de diferenciación económica y competitividad que transforma los modos de producción y distribución. El sistema de datos representa por sí solo un instrumento impulsor del crecimiento y de la producción de riquezas.<sup>2</sup> Para lograr que el sector digital se convierta en un factor de ventaja decisivo para Europa, un enfoque centrado exclusivamente en el consumo no es suficiente y debe ir forzosamente acompañado de una ambición industrial.

No cabe ignorar la asimetría que se da entre los Estados Unidos y la Unión Europea en el ámbito digital. Aunque la Unión domina la totalidad de las tecnologías digitales, e incluso ha creado una gran parte de ellas, los Estados Unidos le sacan ventaja en el plano comercial e intelectual porque poseen una visión a largo plazo. Esa visión la elaboraron hace ya mucho tiempo y la apoyaron con créditos –militares, en particular–, mientras que la Unión Europea

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<sup>1</sup> Esas dos potencias agrupan a algo más del 10 % de la población mundial y representan un 45 % del PIB mundial aproximadamente. Datos del Banco Mundial en dólares (2012): PIB de la Unión Europea: 16,687 billones, esto es, un 23% aproximadamente del PIB mundial; PIB de los Estados Unidos de América: 16,245 billones, esto es, un 22% aproximadamente del PIB mundial. Véase: <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries/1W-US-FR-EU?display=default>

<sup>2</sup> Los primeros estudios de impacto estiman, por ejemplo, que el potencial de la explotación de datos personales con fines comerciales podría alcanzar la cifra de un billón de euros de aquí a 2020, lo cual representaría el 8% del PIB de los países del G20 en ese mismo año.

*The Value of Our Digital Identity* [El valor de nuestra identidad digital], estudio efectuado por el Boston Consulting Group y Liberty Global en noviembre 2012. Se puede consultar y descargar en: <http://www.libertyglobal.com/PDF/public-policy/The-Value-of-Our-Digital-Identity.pdf>





adoptó una actitud de seguidismo que le ha causado graves perjuicios. Los Estados Unidos sacan provecho de la fuerte sinergia existente con las instituciones políticas y administrativas del país. La industrialización del sector digital estadounidense está más desarrollada que la del sector digital europeo. En los Estados Unidos, las capacidades de inversión en este sector se movilizan mejor que en Europa y la ambición de hacer del sector un factor de potencia nacional es un objetivo abiertamente proclamado. Además, los protagonistas del mercado digital norteamericano cuentan con medios de desarrollo comercial y de inversión más importantes que sus homólogos europeos.

Al mismo tiempo, los servicios digitales intensivos de explotación de datos están penetrando de forma duradera determinados ámbitos en los que el respeto de la soberanía nacional y de las libertades fundamentales no admite derogación alguna. Algunos sectores como el de la salud, el financiero (bancos y compañías de seguros) y el energético están desarrollando servicios destinados a los ciudadanos e intensificando, a la vez, la explotación de datos e identidades digitales. Es necesario adoptar una actitud especialmente vigilante para reglamentar todas esas prácticas.

La construcción de la Unión Europea se ha cimentado en los valores que entrañan el respeto de la dignidad humana, la libertad, la democracia y el Estado de derecho.<sup>3</sup> Estas libertades competitivas constituyen la base del mercado interior y garantizan la libertad de empresa y el crecimiento económico.<sup>4</sup> El proyecto de asociación transatlántica de comercio e inversiones tiene que reforzarlas. La Unión Europea se puede apoyar en la movilización de aquellos de sus Estados Miembros que se muestren activos y creativos para ser portadores de esos valores.

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<sup>3</sup> Artículo 1 bis del Tratado de la Unión Europea

<sup>4</sup> Artículo 2 del Tratado de la Unión Europea



## Teniendo en cuenta todos esos considerandos, el Consejo recomienda :

### 1) Basarse en los valores de la Unión Europea para impulsar la estrategia de negociación

En lo referente al acceso al mercado, la promoción y la protección de las inversiones, el acuerdo debe dar prioridad a la reciprocidad, la igualdad de tratamiento y el mantenimiento de la soberanía

- La Unión Europea y Francia deben adoptar una posición ofensiva para abrir a las empresas europeas el acceso a los mercados públicos de los Estados Unidos y exigir un máximo de reciprocidad entre las dos partes, que hoy no se da a causa de la existencia de barreras reglamentarias a la entrada en el mercado estadounidense (en particular, las leyes *Buy American Act* y *Small Business Act*).

- > La apertura de los mercados públicos estadounidenses a las empresas europeas constituiría un adelanto para la Unión Europea. Se podrían introducir cláusulas específicas sobre los umbrales de mercado para las pymes, dado que todavía son muy poco numerosas las que se atreven a aventurarse en solitario en los mercados públicos ;

- > En cambio, el acuerdo podrá comprender excepciones cuyo alcance tendrá que estudiarse individualmente, caso por caso (seguridad nacional, salud, educación, etc.).

- Para conseguir que las pymes con fuerte potencial de crecimiento aceleren su internacionalización y que los ciudadanos franceses y europeos con talento en el ámbito digital puedan instalarse fácilmente en los Estados Unidos, la Unión Europea debe conseguir un aumento del número de visados concedidos a sus ciudadanos por las autoridades estadounidenses, y viceversa.

- El establecimiento de un mecanismo específico para la solución de litigios entre los inversionistas y los Estados plantea problemas y puede representar un riesgo para la soberanía, si impide que los Estados puedan establecer en el futuro reglamentaciones en el sector digital :

- > El desarrollo de las inversiones en el plano internacional exige la existencia de garantías en lo referente a la estabilidad y la igualdad de tratamiento, si bien es indispensable garantizar la soberanía de la Unión Europea y los Estados Unidos en materia de reglamentación. Este imperativo tiene una importancia decisiva en el ámbito digital, si se tiene en cuenta que la temática del sector es joven, que sus ciclos de innovación son cortos y que las necesidades en materia de reglamentación evolucionan continuamente ;

- >El Consejo estima que se debe excluir de las negociaciones el establecimiento de un mecanismo de este tipo y que se deben tener en cuenta los resultados futuros de la consulta que la Comisión Europea ha iniciado sobre este tema ;

- >Suponiendo que se llegue a adoptar un mecanismo de ese tipo, lo que se debe conseguir



como mínimo es que no entrañe un riesgo financiero para el ejercicio de la soberanía y que no hipoteque la capacidad de los Estados Miembros y de la Unión Europea para reglamentar en el futuro un sector de tan gran importancia estratégica como el digital.

**En lo referente al acercamiento de las reglamentaciones en materia de servicios de telecomunicaciones, comercio electrónico y otros servicios digitales, la Unión Europea debe mantener una posición ofensiva y adoptar disposiciones que no sólo respeten los principios europeos en materia de competencia, sino que también garanticen a los ciudadanos y las empresas el respeto de sus libertades en un entorno propicio al desarrollo de la economía y la sociedad digitales.**

**El mantenimiento de esas libertades competitivas exigirá en particular :**

- **La imposición de obligaciones en materia de no discriminación, neutralidad, portabilidad e interoperabilidad a los servicios de telecomunicaciones y las plataformas digitales**, a fin de evitar que se creen distorsiones en la competencia.<sup>5</sup> Estas obligaciones constituyen una condición *sine qua non* para el mantenimiento de un alto nivel de innovación.
- **El mantenimiento de la exclusión de los servicios audiovisuales sobre la base de la neutralidad tecnológica.** No se debe admitir que la cuestión de la inclusión de los servicios audiovisuales haga su reaparición por conducto de conceptos alternativos aplicables a servicios digitales como la música o los vídeos en línea, que forman parte integrante de la diversidad cultural. Los servicios audiovisuales se deben definir sistemáticamente por su contenido y no por su modo de difusión.<sup>6</sup>
- **La exclusión de las cuestiones relativas a la seguridad cibernética**, cuya reglamentación trasciende el marco de la asociación transatlántica y atañe directamente a la soberanía de los Estados Miembros.

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<sup>5</sup> Los recientes cambios introducidos el 14 de enero de 2014 por la Corte de Apelaciones de los Estados Unidos para el Distrito de Columbia en los principios de neutralidad de Internet definidos por la Comisión Federal de Comunicaciones deben atraer la atención de los negociadores europeos sobre la necesidad de aplicar reglas de neutralidad claras al conjunto de la cadena de valor (telecomunicaciones, proveedores de acceso, operadores de cable, etc.).

<sup>6</sup> Con arreglo a las reglas aplicables en el marco de la Directiva europea de servicios de comunicación audiovisual y del Acuerdo General sobre el Comercio de Servicios de la OMC. Véase la Directiva 2010/13/UE del Parlamento Europeo y del Consejo, del 10 de marzo de 2010, sobre la coordinación de determinadas disposiciones legales, reglamentarias y administrativas de los Estados Miembros relativas a la prestación de servicios de comunicación audiovisual. La Directiva europea se puede consultar en: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:ES:PDF> El Acuerdo de Marrakech - Anexo 1B: Acuerdo General sobre el Comercio de Servicios (1994) se puede consultar en: [http://www.wto.org/spanish/docs\\_s/legal\\_s/26-gats\\_02\\_s.htm#top](http://www.wto.org/spanish/docs_s/legal_s/26-gats_02_s.htm#top)



**Para responder a esas exigencias, la Unión Europea debe intensificar sus esfuerzos en materia de transparencia con respecto a las partes interesadas y elaborar una estrategia común con ayuda de expertos y de sus Estados Miembros. Para ello :**

- **Europa tiene que intensificar su acción en materia de concertación y transparencia :**
  - > Oficializando la función de un negociador europeo, encargado específicamente de tratar las cuestiones relativas al sector digital, y reforzando su misión de intermediario con el ecosistema ;
  - > Apoyándose en una red de expertos que se inspire en la organización adoptada en los Estados Unidos ;
  - > Sistematizando las consultas con la sociedad civil y los protagonistas económicos acerca de las posiciones que se han de adoptar en el ámbito digital.
  
- **En Francia se debe perennizar y mejorar el comité de seguimiento estratégico, dotándole con una estructura más operativa** (expertos, juristas, asociaciones, etc.) que permita establecer una interacción directa con el ecosistema, comprendidas las industrias tradicionales. El objetivo concreto de esta medida es incrementar la transparencia y permitir la toma de decisiones sobre la forma de convergencia reglamentaria en lo referente a normas y estándares.
  
- **Se debe promover la creación de una red digital a nivel europeo para lograr una unificación de las posiciones de los Estados Miembros, y más concretamente de las posiciones de Francia y Alemania, y contribuir al desarrollo de una estrategia digital.**



## **2) Que es esencial que la Unión Europea conserve su capacidad para reglamentar y estructurar el mercado digital en el futuro, y se esfuerce por conseguir, en la negociación del tratado, todas las garantías necesarias para ese fin :**

**El régimen de los datos es una cuestión de competitividad industrial. La problemática en este ámbito trasciende la cuestión de la protección de los datos personales y engloba las cuestiones relacionadas con el archivo, uso y transferencia de toda clase de datos :**

- **La liberalización de los flujos de datos es una reivindicación periódicamente planteada por los Estados Unidos en sus proyectos de acuerdos comerciales.** Para lograr el éxito de una negociación en este ámbito, son necesarias dos condiciones previas: haber adoptado una estrategia industrial coherente y haber firmado un acuerdo sobre la reglamentación de los datos de carácter personal.
- **La liberalización incondicional de los flujos de datos en sectores “delicados” como la seguridad, la salud, los servicios financieros o la energía presenta riesgos,** sobre todo cuando va acompañada por disposiciones de convergencia reglamentaria que vayan en contra de los principios de protección de las libertades. Para acompañar la transición de las industrias tradicionales al universo digital y para garantizar el respeto de las libertades fundamentales, se requieren condiciones que circunscriban la liberalización de los flujos de datos.
- **En la Unión Europea se están registrando avances conceptuales sobre los datos,** por ejemplo en lo que respecta a su carácter comercial y grado de personalización. El enfoque alemán, que diferencia los datos comerciales y los datos identificadores, abre una vía exploratoria que merece ser profundizada. También merecen un examen atento los sistemas de cartas de conformidad acompañados de dispositivos de control y de recurso efectivo. Es necesario tener en cuenta esos avances para poder definir los equilibrios adecuados.

**Con respecto a la cuestión de la propiedad intelectual, cabe señalar que el enfoque estadounidense sobre la patentabilidad del software no concuerda con el europeo, que promueve el derecho de autor y el software libre, defiende la importancia del dominio público y presta atención a las cuestiones relacionadas con la patentabilidad de la información. Son condiciones previas para toda negociación: la estabilización de la evolución actual de las reglamentaciones en el seno de la Unión Europea, el respeto de los modelos jurídicos y la preservación de la cadena de valor.**

**Actualmente hay otras reglamentaciones en curso de consolidación que podrían verse alteradas si se adoptan principios contrarios a ellas en el marco del proyecto ATCI. Una condición previa para cualquier negociación es la existencia de una reglamentación europea modernizada y coherente.**



### **3) No encerrarse exclusivamente en la óptica de la relación entre los Estados Unidos y Europa :**

El sector digital se está desarrollando en muchos países de otros continentes (Asia, África, etc.). Esos países pueden constituir una fuente de inspiración y sería preciso anudar con estos nuevos socios más relaciones –bilaterales o multilaterales– que abarcaran la cuestión de la política en materia de estándares.

**Las negociaciones comerciales en curso deben estar presididas por la idea de que el mercado digital es un mercado directamente internacional.**

### **4) En definitiva, el Consejo preconiza retrasar las negociaciones, acelerar la construcción de la estrategia digital europea y reforzar las capacidades de negociación de la Unión Europea :**

Si no se movilizan los medios necesarios, es de temer que el proyecto ATCI pueda convertirse no sólo en un obstáculo para el auge de un mercado global transformado por el sector digital, sino también en un freno para el desarrollo de una sociedad y una economía digitales sostenibles.

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In addition to its opinion, the French Digital Council has made a number of recommendations concerning the various parts of the Transatlantic Trade and Investment Partnership. These recommendations cover digital issues across all sectors and are grouped together into eight fact sheets.

An explanatory note on the negotiating process, a list of sources and a detailed list of organisations approached and interviewed are attached to this document. This information is part of the open, informative approach that underpins the French Digital Council's working practices.

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# Intellectual property

## Intellectual property, digital technology and the Transatlantic Trade and Investment Partnership (TTIP)

Intellectual property law and the protection that it provides for content and software are of particular concern for the digital industry and innovation.

Bilateral strengthening of intellectual property rights is one of the objectives for TTIP announced by the United States<sup>7</sup> and the European Union<sup>8</sup>. Intellectual property protection is considered to be “one of the driving forces of innovation and creation and a pillar of the knowledge-based economy”<sup>9</sup>. The future treaty excludes criminal sanctions<sup>10</sup>. This exclusion is all the more necessary since intellectual property is a sensitive area: the previous Anti-Counterfeiting Trade Agreement (ACTA) was rejected by the European Parliament in July 2012<sup>11</sup>, which proves that including provisions for criminal sanctions is bound to jeopardise the adoption of a trade treaty. Civil society is very vigilant with regard to intellectual property because of the restrictions that it imposes to protect the exclusive rights of the property owners. The right balance must be struck between protecting the owners’ rights and society’s demands for freedom of expression and protection of the public domain.

### What’s at stake for the European Union, and the French Digital Council’s recommendations

#### a) Protection of the public domain

**.....  
Recommendation : Make sure that any strengthening of intellectual property rights is not achieved at the expense of protection of the public domain, which is critical for innovation, creativity and the public interest.**

The knowledge-based society cannot be created without effective protection of the public domain. For example, repeated extensions of the exclusive rights period conferred by copyright, which certain industrial groups call for on a regular basis, undermine protection for the public domain.

<sup>7</sup> Notification of the United States Trade Representative to Congress on 20 March 2013

<sup>8</sup> Resolution of the European Parliament of 23 May 2013:  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0227+0+DOC+XML+V0//EN>

<sup>9</sup> Resolution of the European Parliament of 23 May 2013:  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0227+0+DOC+XML+V0//EN>

<sup>10</sup> Article 30 of the European Commission negotiating mandate: “The Agreement shall not include provisions on criminal sanctions.”

<sup>11</sup> <http://www.europarl.europa.eu/news/en/news-room/content/20120217BKG38488/html/ACTA-before-the-European-Parliament>



## b) Intellectual property and software protection

European intellectual property law theoretically excludes "computer programs" from the scope of patentable inventions<sup>12</sup>. In contrast, the United States awards patents for software and is promoting the export of this type of protection to make it enforceable in other countries. The European Union has taken a stand against the adoption of such regulations, as can be seen in the European Parliament's rejection of a proposed Directive that would have introduced software patents in 2005. Furthermore, the European Union has launched various initiatives to adapt copyright to the digital age<sup>13</sup>. We must be very vigilant about the models for financing creation.

.....  
**Recommendation : Preserve Europe's capacity to regulate intellectual property matters in the future and, at the very least, preserve European regulations on software protection through copyright.**

Copyright already provides effective protection for various software elements, such as source code lines, object code, aesthetic components, interfaces, program architecture and preparatory design work. Furthermore, European law and the patentability practices of the European Patent Office exclude only computer programs as such. Inventions of a technical nature that are (or can be) run by a computer program are not excluded from patentability.

From an economic point of view, patents theoretically promote investment in research and development, thus boosting innovation. On the other hand, the inherent patent costs are barriers to entry on the software market and have a negative effect on competition in this market. Furthermore, the cumulative and incremental nature of innovation in this area makes patent protection particularly inappropriate. The emergence of patent trolls in the English-speaking countries' patent systems, particularly in the United States, exploiting the secrecy of patents (submarine patents) testifies to the abuse of this type of protection.

Finally, it is not in the European Union member states' best interests to have TTIP include substantive patent law, which is discussed by other bodies (Tegernsee Group, European Patent Organisation, and the World Intellectual Property Organisation).

## c) Patenting scientific discoveries

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**Recommendation : Uphold the principle of not patenting fundamental scientific discoveries, despite technological developments in this area.**

Patenting genes raises bioethical issues, particularly in the case of genes produced through synthetic biology. Gene identification constitutes a scientific discovery that is not patentable. The fact that such discoveries are made with computers and by synthesising DNA should not alter this fundamental principle. Once again, we must safeguard the public domain, which is necessary for scientific and technological development.

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<sup>12</sup> Article 52 of the European Patent Convention

<sup>13</sup> The European Commission initiated public consultations on copyright in the internal market with a view to revising Directive 2001/29/EC in order to adapt it to the digital age.



#### d) Geographical indications and domain names

Geographical indications, like trademarks, are distinctive signs. These signs “identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”<sup>14</sup>. The economic value attaching to geographical indications, and the information that they provide to consumers, justify legal protection.

At global level, geographical indications promote exports, since the places where the products are consumed are far away from the places where they are produced. Consequently, geographical indications are of considerable economic importance for the European Union and constitute a vector for its economic development. In France for example, geographical indications for wines and spirits (e.g. champagne) generated a value of 19 billion euros in 2005 and covered nearly 140,000 French agricultural holdings<sup>15</sup>.

The TTIP negotiations must lead to recognition of geographical indications by the United States. Ultimately, such recognition could facilitate resolution of the domain names issue. The Internet Corporation for Assigned Names and Numbers (ICANN), a California-based corporation that regulates domain names on the Internet worldwide, is planning to introduce the domain names *.vin* and *.wine*. While this could be a vector for additional growth, there are concerns about the risk of misleading consumers, counterfeiting, passing off or cybersquatting. The European Commission asked ICANN management not to assign *.vin* and *.wine* until rules are drawn up to protect geographical indications. Such a plan by ICANN could eventually be extended to many other protected European geographical indications.

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#### **Recommendation : Strengthen the protection of geographical indications to make the roll-out of domain names smoother at a later stage.**

This calls for prior strengthening of legal protection for geographical indications, in the United States in particular. This is a prerequisite to ensure effective protection for geographical indications before introducing domain names that include them.

More generally, the French Digital Council is in favour of developing a transparent multilateral regulatory framework for domain names, through the creation of an independent governance structure under international law.

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<sup>14</sup> Article 22-1 of the TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights) appended to the Agreement Establishing the WTO.

<sup>15</sup>World Intellectual Property Organisation Seminar on Geographical Indications held in Beirut, 23 and 24 May 2005.

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## Investment promotion

### Investment, digital technology and TTIP

One of the objectives of TTIP is to open up investment, by facilitating market access opportunities between the European Union and the United States. This trade and investment partnership is a major opportunity for the development of SMEs, mid-tier enterprises and start-ups in both markets. TTIP also presents an opportunity to create an advantageous environment for risk-taking by investors by strengthening the protection of their investments.

Even though the financing models of the United States (where venture capital is more developed) and the European Union (where French players rely on bank loans) differ, this trade agreement may be a means of striking a new balance between investment models and promoting private non-banking investment in the European Union.

Generally speaking, the provisions on investment protection are backed up by an execution mechanism that investors suffering losses from confiscatory, unfair, arbitrary or even discriminatory measures taken by a State can use to instigate proceedings in domestic courts or international investor-State dispute settlement proceedings. TTIP provides for such a mechanism. In the view of the United States, this mechanism must be expeditious, fair and transparent, and it must protect a wide array of investments, particularly in the digital sphere.

Starting with an agreement signed between Germany and Pakistan in 1959, the number of international agreements referring to standards of investment protection (protection against expropriation, equal treatment for foreign and domestic investors, compensation in the event of armed conflict, etc.) has grown substantially. More than 3,000 such treaties are currently in force. France ranks fourth worldwide, with more than 90 bilateral investment protection agreements in force. These agreements provide recourse to an arbitration tribunal if an investor sustains damages. The International Centre for Settlement of Investment Disputes (ICSID), which is part of the World Bank, is the designated tribunal under most French agreements.

For actors supporting international arbitration models, this type of dispute settlement procedure provides a safeguard for investors by ensuring a neutral means of recourse when they cannot refer their case to local courts, or if the local courts are unable to give them a proper hearing.

Furthermore, France supports the European Union's determination to modernise investment protection agreements, with the aim of striking a better balance between investor protection and the right of States to regulate, which means protecting their sovereign capacity to draft and implement legitimate public policy. This balance can be found in:

- a better definition of standards of investment protection that are compatible with preserving the policy-making capacity mentioned above;
- an improved dispute settlement system, particularly with regard to transparency, coordination with domestic legal remedies and alternative dispute settlement procedures.



## Issues for the European Union, and the French Digital

### The investor-State dispute settlement mechanism raises concerns about the right of States to regulate

By the end of March, the European Commission will launch a three-month public consultation on including such a mechanism in TTIP<sup>16</sup>. In addition, the Minister for Foreign Trade stated that France did not want an investor-State dispute settlement mechanism included in TTIP<sup>17</sup>.

Such a dispute settlement mechanism raises concerns within the European Union. Some Member States fear that governments will have to compensate companies for the negative impact that new laws and regulations have on their investment. Companies would have the option of recourse to an arbitration body, rather than the domestic courts.

For example, France Telecom used this mechanism against Argentina in 2006, Lebanon in 2005 and Poland in 1996. The disputes involved service concessions in the first two cases and a minority interest in a mobile telephony company in the latter case. Argentina and Poland agreed to directly negotiated settlements and Lebanon was ordered to pay damages to France Telecom. In 2011, Vivendi Universal S.A. also had recourse to this mechanism in a dispute with Poland involving mobile telephony. Once again, a negotiated settlement was reached.

However, some pending cases have shown how this mechanism could be a threat to States' capacity to regulate. Two high-profile cases involve health and the environment:

- Philip Morris has initiated arbitration proceedings against Australia because of an anti-tobacco law that imposes plain packaging for cigarettes, thus depriving Philip Morris of the ability to use all of the attributes of its trademarks, which are protected as intellectual property.
- Between 2009 and 2012, the Swedish company, Vattenfall, initiated two arbitration proceedings against Germany before the ICSID tribunal, seeking damages of 1.4 billion euros and 3.7 billion euros<sup>18</sup> from the State for measures adopted following the decision to phase out nuclear power.

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### **Recommendation : Domestic courts should be the preferred means of recourse for investor-State disputes.**

International arbitration of investor-State disputes was introduced to increase international investment flows by providing appropriate legal protection for companies investing in countries where institutions - and courts in particular - do not present every assurance of independence, impartiality and diligence. Yet, the European Union and the United States have effective justice systems. This means that there is no clear need for such a mechanism to safeguard French and European companies' investments.

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<sup>16</sup> Statement by Karel de Gucht, European Trade Commissioner, 22 January 2014: [http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc\\_152075.pdf](http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc_152075.pdf)

<sup>17</sup> Statement by the French Minister for Foreign Trade Nicole Bricq, *La Tribune*, 30 January 2014.

<sup>18</sup> The amount of damages actually awarded was much smaller on average, standing at \$10.3 million. In 2012, the largest financial award ever made was \$1.77 billion granted to an American investor (Occidental Petroleum) against Ecuador. The dispute concerned the unilateral termination of a concession contract by the Ecuadorian government.



# Public procurement

## Public procurement, digital technology and TTIP

According to the World Trade Organisation, public procurement accounts for between 15% and 20% of GDP in most countries. As is the case for private-sector procurement, public procurement markets offer growth prospects for companies providing digital goods and services.

Establishing real mutual and reciprocal access to American and European public procurement markets for companies is one of the objectives of TTIP announced by both parties. Non-discriminatory and transparent access to these markets is a key issue for this trade partnership.

## Issues for the European Union, and the French Digital Council's recommendations

### Reciprocity of access to public procurement markets

Reciprocal opening up of public procurement markets to companies is a priority for the European Union. On 15 January 2014, the European Parliament adopted a Regulation promoting reciprocal trade in public procurement at first reading. This provision, if the Council adopts it, will enable the European Union to restrict access to the European market for companies from third countries whose public procurement markets are closed to European companies by rejecting any bids they might make. Even though the European Union has the world's most open market, this instrument will help put it back on an equal footing with its trading partners.

There is currently a major imbalance between the European Union and the United States with regard to access to public procurement markets: 85% of European public procurement contracts are open, de facto or de jure, to bids from American companies, whereas European companies are allowed to bid for only 32% of public procurement contracts in the United States.

.....  
**Recommendation : Institute reciprocity of access to American and European public procurement markets.**

### The *Buy American Act* is a barrier to entry for European and foreign goods

The European Union would like to address the issue of barriers to entry to American public procurement markets during the negotiations. More specifically, the provisions of the Buy American Act are one of the main barriers to be removed. This federal act requires the Federal Government to give preferential treatment to goods mined or manufactured in the United States, such as micro-computers<sup>19</sup>, telecommunications equipment and connected objects in the future, for its direct purchases of supplies and construction contracts. The Buy American Act does not concern services. On the other hand, if a service contract also covers the supply of goods, the provisions of the Act do apply. There is no European equivalent to the Buy American Act. This Act favours domestic manufacturers by penalising companies supplying foreign goods, and, more particularly, European goods, as is the case for many European companies.

<sup>19</sup> Example from *Bull* in 1989: <https://fr.wikipedia.org/wiki/Protectionnisme#.C3.89tats-Unis>





.....  
**Recommendation : Ensure that provisions are adopted to allow European companies to supply foreign goods when bidding for procurement contracts put out to tender by the American Federal Government.**

American public procurement contracts are subject to restrictive regulations that ultimately limit access for European companies. The Buy American Act is a "national preference" mechanism that constitutes a barrier to the business growth of European companies and to exports of European goods. It runs counter to the principle of reciprocal opening up of trade in goods and services that is the basis of TTIP.

### **Le *Small Business Act* a barrier to entry for European companies**

Offering small and medium-sized enterprises access to public procurement contracts is one of the European Union's objectives for TTIP. Small and medium-sized enterprises account for 99% of European companies and provide 70% of the jobs in Europe's private sector. Yet, some of the current American legislation, such as the Small Business Act, restricts European small and medium-sized enterprises' access to American public procurement contracts. This federal legislation reserves certain public procurement contracts for American small businesses. There is no European equivalent to the Small Business Act, which constitutes a barrier to entry to public procurement markets for European companies.

.....  
**Recommendation : Extend the American mechanism that promotes access to public procurement markets for American small businesses to European small and medium-sized enterprises. Failing that, the European Union should reserve the right to introduce an equivalent arrangement in favour of European small and medium-sized enterprises (a European Union Small Business Act).**

The Small Business Act is a helpful tool for promoting growth of small and medium-sized enterprises. However, as long as this mechanism is closed to European small and medium-sized businesses, this federal legislation will constitute an obstacle to their business development in the United States. Therefore, the French Digital Council recommends extending this mechanism to European small and medium-sized enterprises.



# Competition

## Competition, digital technology and TTIP

It is critical for the various digital players to respect the principle of a level playing field and for competition rules to apply to every link in the digital value chain.

Strengthening and readjusting competitive conditions between the various economic players from the public and private sectors constitutes a crosscutting issue for TTIP. The assurance of a level playing field for these players is a mutual objective for both parties to the agreement.

## Issues and recommendations

### Ensuring a level playing field for telecommunications operators

In contrast to the United States, telecommunications operators in the European Union are subject to strict regulations, which help make the market more open and more competitive. The oligopolistic structure of the American telecommunications market means that it is closed off to new entrants, including European telecommunications operators.

Furthermore, capacity sales on the wholesale market in the European Union are regulated and open to foreign companies. The European Union would like to establish reciprocal access to this market with the United States. This is an important issue for European companies in the corporate network market that want to develop their business in the United States.

Levelling the playing field calls for regulatory reciprocity between European and American telecommunications operators and opening up capacity sales on the American wholesale market to European telecommunications operators.

.....  
**Recommendation : Ensure regulatory convergence that levels the playing field for telecommunications operators.**

### Levelling the playing field for telecommunications operators and OTT content providers

Inside the European Union, telecommunications operators invest in infrastructure and are subject to a series of obligations under strict regulations, in contrast to OTT (over-the-top) content providers that do not always contribute their full share to financing the infrastructures that they use. Consequently, the value chain is distorted in their favour. In addition, OTT content providers are mainly American companies, some of whom are very large intermediation platforms. This situation is particularly advantageous for the American economy.



**Recommendation : Uphold the capacity of the United States and the European Union to adapt regulations concerning digital players, and OTT content providers in particular, to establish a level playing field along the entire value chain.**

The United States and the European Union must retain their capacity to regulate and, where necessary, impose new constraints on digital players, particularly OTT content providers, to ensure a level playing field. This could include their capacity to:

**i) Adapt current and future concepts of competition law to deal with specific intermediation platform issues, such as:**

- > methods for demarcation of the relevant markets;
- > criteria for defining dominant market positions (e.g. switching from the market share criterion to the exclusionary power criterion, and control over visibility nodes, access or critical information).

**ii) Define specific obligations for dominant platforms that have exclusionary market power by :**

- > adapting the concept of essential facilities to take into account platforms that have become competitive bottlenecks and unavoidable for many companies;
- > upholding the principle of equal access for partners that have become direct competitors of these bottleneck platforms (availability of preferential listing arrangements and economic terms for access);
- > requiring data portability (see: focus below);
- > defining the concept of interoperability and its implications;
- > maintaining the option of requiring local servers in some cases (at least in the cases provided for in Article 14 of GATS: security, personal data protection, etc.)
- > maintaining the option of adjusting concentration notification thresholds.

**iii) Strengthening supervision of business concentrations and requiring, for example, behavioural and structural undertakings;**

**iv) Upholding the prerogatives of the authorities with responsibility for enforcing these rules;**

**v) Focus on data portability:**

The point is to ensure that personal data are less systematically moved out of the country and that they can be returned easily if they have already been moved. The point is also to ensure that users and players do not suffer the consequences of conflicts between APIs and competing platforms.

Portability is the key in this case, even though it is not the only solution (interoperability, clarification of the legal status of personal data, taxation, etc.) If there are no precise criteria defining portability, it will be very easy to circumvent this obligation.

The fundamental requirements for portability seem to be :

- > Providing data in open standard and machine-readable formats. (i.e.: JSON or CSV rather than PDF) ;
- > Accessibility via a web interface AND an API ;
- > Data must be complete with no "premium" options for a price (i.e.: data must be provided 100% free of charge) ;



> A “delta” mode must be available (i.e. providing only the data that have changed since the last export).

If these four requirements are not met, then the cost for the user of switching to another service is too high and the user will be locked in. On the other hand, if all four requirements are met, new services can develop and gradually attract data away from the mainstream services.

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# Data

## Data, digital technology and TTIP

Data are a critical issue for the digital economy and competitiveness. Certain segments of the digital economy are based primarily on collecting, storing, processing and transferring data, such as cloud computing, big data (processing large volumes of data) and connected objects. These new commercial uses of data, and the broad scope of their operations (targeting advertising, etc.), make the current data regulation models pointless. **Data circulation rules are of key importance for economic players (e-commerce, banking services, health services, etc.) since their business models and markets depend on them.**

Even though the issue of data is not mentioned in the European negotiating mandate for TTIP, the United States is pushing for freer movement of data between companies inside the European Union and the United States (“cross-border data flows”). Liberalising data flows will require lifting regulatory barriers. Such barriers are mainly to be found in Europe's controls and restrictions on the transmission of personal data to third countries. Differences between legislation in the European Union and in the United States mean that companies incur adaptation costs that hamper trade flows between the two parties.

Recent free-trade agreements signed by the European Union and the United States include sections on electronic commerce that contain provisions dealing with the free movement of data. For example, the agreement between the United States and South Korea contains a chapter on e-commerce that stipulates that the two States “*shall endeavour to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders*”<sup>20</sup>. This chapter does not mention protection of personal data, unlike the chapters negotiated by the European Union.

## Issues for the European Union, and the French Digital Council's recommendations

### Data flows raise concerns that extend beyond the digital sphere

Any choices regarding data processing that are incorporated into the specific provisions of the TTIP treaty will have a lasting impact on the digital industry and, more generally, on the American and European economies. Introducing the principle of free movement of data between the United States and the European Union could prevent the EU from restricting such movements to protect its industrial interests, as well as to protect its non-economic interests (privacy, public safety, etc.)

Data are not ordinary commodities and they can be dealt with only in terms of their free movement for commercial purposes.

The very notion of data can refer to very different types of data that raise a variety of concerns. Some data lead to threats regarding the protection of individual privacy, in the healthcare sector, and to public safety. Furthermore, the distinction between personal data and commercial data has limitations with regard to protection of individual privacy. What could be considered commercial data at first, such as information about a household's energy consumption, may provide information about the private life of the household (how many people live in the household, their personal activities, etc.) if the data are recorded and analysed minute by minute, or even second by second.

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<sup>20</sup> Article 15.9 Chapter 15 “Electronic Commerce” of the United States-South Korea Free Trade Agreement (KORUS FTA) of 30 June 2007.



**Consequently, the European Union takes a very vigilant approach to freer data flows and has always refused to negotiate on issues relating to data protection as part of trade agreements**

The 1995 Directive on personal data (95/46/EC) defines the current legal framework for data protection in the European Union. The Directive stipulates that data cannot be transferred to a third country, unless that country provides an “adequate level of protection” for the data. The adequacy of the level of protection provided by a third party may be assessed by the Member States or by the European Commission.

- The Commission has already acknowledged that the following countries and entities provide an adequate level of protection: Andorra, Argentina, Australia, Canada, Switzerland and Israel.
- As for the United States, an original arrangement was made in 2000 to allow American companies to transfer data out of the European Union. **This “Safe Harbor” arrangement is a set of principles defined by the United States Department of Commerce that incorporates the principles from the European Directive. American companies and entities can opt into this programme.** The American system for protecting personal data relies more on private-sector self-regulation. Companies that opt into the programme are presumed to offer an “adequate level of protection”. More than one thousand American companies have signed the agreement, including Microsoft, General Motors, Amazon.com, Hewlett-Packard and Facebook.

**On 25 January 2012, the European Commission put forward a proposal to reform European legislation dealing with personal data with a new Regulation and a Directive.**

The purpose is to provide better protection of individuals’ rights over their personal data and to harmonise the applicable regulations at the European level. This proposed reform is now being discussed by the Council and the European Parliament. The European Parliament took a vote at the first reading of the proposed package in March 2014. Since the Council has not yet made any pronouncements about the package, it cannot be adopted definitively before the next European elections. In its Conclusions of 24 and 25 October 2013, the European Council stated that the package should be adopted by 2015.

Finally, revelations of massive surveillance of European citizens by the United States triggered a crisis of confidence within the European Union<sup>21</sup> that is not favourable for a smooth transition to freer movement of data. The Snowden affair has highlighted the need to strengthen the protection of European data. But, freer movement of data would not be a step in that direction.

**As stated in Article XIV of the General Agreement on Trade in Services (“GATS”) appended to the agreement establishing the WTO, measures liberalising the movement of data must be backed up by provisions that allow for restrictions to protect individual privacy and public safety. These provisions will enable the European Union to adopt the laws and regulations aimed at achieving these objectives.**

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<sup>21</sup><http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE526.085+02+DOC+PDF+V0//FR&language=FR>



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**Recommendations :**

- **Focus at first on drafting a European framework for the free movement of data that provides for effective protection for personal data.**
- **Maintain the European Union's capacity to enact data regulation legislation.**
- **If the principle of free “cross-border data flows” is adopted, stipulate exceptions to the free movement of data that are equivalent to the provisions of Article XIV of GATS and exemptions for sensitive data relating to health, cybersecurity and finance.**



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# Regulatory convergence

## Regulatory convergence, digital technology and TTIP

Removing non-tariff barriers through regulatory convergence is likely to boost trade in digital goods and services by making flows between the different parties more fluid and more transparent.

Differences in standards are barriers to the interoperability of products. They hinder trade by fragmenting markets and favouring the emergence of monopolies. Nevertheless, regulatory convergence may take place in different ways that might be more or less favourable to the European Union and to the United States:

- **First of all, regulatory convergence may be achieved through mutual recognition of the standards in force** in the European Union and in the United States. A distinguishing characteristic of the digital industry is its reliance on standards or technical specifications promoted by forums and consortiums (i.e. private-sector regulatory bodies), which play a major role in the digital market. Mutual recognition of American and European digital standards, which are adopted according to the prevailing requirements in their respective markets, will lead to de facto recognition of compliance on both markets.
- **Regulatory convergence may also be achieved by harmonising European and American regulations.** In most cases, this means choosing the standard of one party or the other, after weighing up the different levels of regulatory requirements in a given field.

**Regulatory convergence is a mutual objective for both parties because of its major consequences for the various digital sectors** (electronic commerce, telecommunications services, etc.) Such convergence is also likely to shape the growth of new digital markets, such as the market for connected objects. The issues raised by such convergence involve much more than just the digital sphere; they also concern the protection of personal data, intellectual property, etc.

## Issues for the European Union, and the French Digital Council's recommendations

### Regulatory convergence within the European Union

In many areas related to the digital sphere, the European Union lacks a common strategy and regulations or it is still in the process of developing them. Such is the case for the free movement of data, for example. For many European economic players, the priority is to achieve harmonisation and convergence of European regulations. These players see the potential for growth of European e-commerce and want to ensure a level playing field within Europe.

In the current negotiations, divisions between European countries and the lack of internal convergence put the European Union at a disadvantage when faced with the strong regulatory unity of the United States.

.....  
**Recommendation : Focus on regulatory convergence within the European Union to strengthen the market and to be able to negotiate a transatlantic partnership from a position that is more favourable to our interests.**



## Regulatory convergence with regard to standards

American players in the digital market enjoy a dominant position and a large say in forums and consortiums. Consequently, they have very strong influence over the standards applied. Furthermore, most of these forums and consortiums are incorporated under American law (e.g. OASIS, IEEE). These players are also represented in European industry bodies and standards organisations.

The diverse range of European standards weakens the influence of the European Union in the face of the common standards that American players manage to adopt. Europe has more influence in regional and international standards bodies (e.g. ISO, CEI). These transparent and consensus-based bodies are more favourable for Europe, despite the links to private-sector standard-setting bodies. The risk incurred in regulatory convergence is an aggressive move by the United States to impose technical standards promoted by American manufacturers, rather than harmonising standards, on the grounds that the market already applies American standards.

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### Recommendations :

- **Strengthen cooperation between European and American standards organisations ;**
- **Focus on harmonisation of regulations through stronger international standards bodies rather than mutual recognition ;**
- **However, if the negotiations result in some mutual recognition, we recommend the following requirements :**
  - **case-by-case and strictly supervised mutual recognition ;**
  - **recognition of compliance assessment processes ;**
  - **improving the level of standards (no levelling down)**

The weak position of the European Union in the digital market means that its interests would best be served by the adoption of international standards through international bodies, even if that involves adopting the standards produced by consortiums. On the other hand, relying on mutual recognition would consolidate the dominant position of American players to the detriment of European innovation and know-how.

## Regulatory convergence in sensitive areas

The European Union's interest lies in making a push to establish common regulations, or at least to maintain the possibility of adopting future legislation regarding certain critical issues for the digital economy. Intense discussions are under way on such issues as the location of servers of companies that use and process data from the European Union or the supervision of digital platforms. These discussions could conclude that these matters require legislation.

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**Recommendation : Maintain the option to adopt legislation on critical issues relating to the digital economy.**



### Regulatory convergence with regard to working visas

Legal restrictions on the movement of people between the United States and the European Union constitute a major non-tariff barrier to companies' business development. Many European companies, especially SMEs and start-ups that wish to develop their business in the United States, are confronted with problems obtaining temporary working visas for their employees. Facilitating the visa process would boost the mobility of American and European players and, consequently, enhance their economic cooperation.

.....  
**Recommendation : Facilitate the temporary working visa process in order to ease the mobility and cooperation of American and European players as part of their business development.**

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## e-Commerce

### Electronic commerce, digital technology and TTIP

The “electronic commerce” chapters of trade agreements between the European Union and the United States have been fairly underdeveloped up until now. However, the European Union and the United States have recently published ten trade-related information and communications technology principles<sup>22</sup>.

The principles includes principles related to the following subjects :

- **That governments must not prevent suppliers or consumers of services from other countries from transferring electronic information**, including cross-border transfers, or from gaining access to information that they have stored in another country (cross-border information flows) ;
- **Nor must governments require ICT services suppliers to use local infrastructures or to set up a local company or branch to provide services.**

It should be noted that these trade-related principles, which incorporate many American demands, are non-binding, unlike other instruments such as the WTO’s General Agreement on Trade in Services (GATS). In contrast, the e-commerce chapter of TTIP will set out legally binding obligations. Therefore, the incorporation of some or all of these trade-related principles must be carried out with due consideration for French and European interests. This means including the necessary exemptions to certain provisions.

The joint questions identified in the e-commerce chapter by the European Union and the United States include:

- The ban on customs duties on electronic deliveries<sup>23</sup>;
- Recognition of electronic signature certificates ;
- Consumer protection ;
- Digital contracts.

The European Union would also like to address the treatment of unsolicited e-mail (spam) and the facilitation of cross-border certification services.

The United States has been particularly aggressive about freer cross-border data flows<sup>24</sup> (see “Data”), a ban on requirements about having local infrastructure<sup>25</sup>, and non-discriminatory

<sup>22</sup> [http://www.ustr.gov/webfm\\_send/2780](http://www.ustr.gov/webfm_send/2780); [http://europa.eu/rapid/press-release\\_IP-11-402\\_en.htm](http://europa.eu/rapid/press-release_IP-11-402_en.htm)

<sup>23</sup> The WTO has already adopted this ban and it was included in the agreement between the European Union and South Korea. The ban on customs duties concerns only electronic deliveries; merchandise shipped to fill an order made through a foreign website is subject to customs duties above a certain threshold (€150 in the EU; \$800 in the United States). Postal companies would like to see these thresholds harmonised under TTIP.

<sup>24</sup> By upholding the exemption for adopting or enforcing any measures necessary to ensure compliance with laws on protecting individual privacy.



treatment of digital products. Furthermore, it could be noted that the United States proposed an article in the Trans-Pacific Partnership treaty on the notion of “software security code”<sup>26</sup>.

## Issues for the European Union, and the French Digital Council's recommendations

### Dynamic e-commerce and consumer protection

France's e-commerce market is the sixth largest in the world, worth 50 billion euros in 2013. Growth of this sector stood at 13.5% in 2013<sup>27</sup>. Some 56% of France's e-commerce players are already doing business on international markets. However, complete elimination of trade barriers between the European Union and the United States would not be in France's best interests. It could lead to a strengthening of the American e-commerce players that already dominate the European market, whereas the priority for French e-commerce players is to target this same market, which has huge growth potential. The European e-commerce market is the largest in the world, with 230 million online buyers and more than 550,000 merchant sites. The dynamic growth of the market is backed up by highly advanced European regulatory harmonisation concerning e-commerce and consumer protection. This has been achieved by means of the Electronic Commerce Directive of 8 June 2000<sup>28</sup> and the Consumer Protection Directive of 25 October 2011<sup>29</sup>.

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### Recommendation : Lobby for the adoption of a European Regulation on consumer protection for e-commerce customers.

The European Union recently harmonised and modernised its legislation protecting European consumers in distance selling and e-commerce. The new Regulation, which was transposed into French law in February 2014 by the Consumer Act<sup>30</sup>, reinforces consumers' rights by adapting them to the rapid growth of new commercial practices relating to e-commerce in recent years. The effectiveness of this consumer protection should be safeguarded as e-commerce between the European Union and the United States is liberalised further.

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<sup>25</sup> By upholding the option of requiring local infrastructure for security reasons, for the protection of individual privacy (Article XIV of GATS) or for prudential reasons (prudential exemption).

<sup>26</sup> Australia, Singapore, Malaysia and Vietnam have reservations about this proposal.

<sup>27</sup> FEVAD survey: [http://www.fevad.com/uploads/files/Publications/Chiffres\\_Cles\\_2013%281%29.pdf](http://www.fevad.com/uploads/files/Publications/Chiffres_Cles_2013%281%29.pdf)

<sup>27</sup> <http://www.fevad.com/espace-presse/the-state-of-e-commerce-in-france-online-sales-passed-the-e50-billion-mark-in-2013#topContent>

<sup>28</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0031&from=FR>

<sup>29</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:FR:PDF>.

<sup>30</sup> [http://www.assemblee-nationale.fr/14/dossiers/projet\\_de\\_loi\\_consommation.asp](http://www.assemblee-nationale.fr/14/dossiers/projet_de_loi_consommation.asp)



### **The concept of “digital products” may be a new attempt to include cultural content in the TTIP**

The United States is calling for the introduction of a “non-discrimination” principle for “digital products”. This is a new notion in terms of trade relations between the European Union and the United States, but it covers audiovisual products according to the Free Trade Agreement between the United States and South Korea<sup>31</sup>. Therefore, the introduction of this notion could enable the United States to challenge the discriminatory policies of the European Union in the audiovisual sector insofar as they apply to the digital sector. An absolute must that is non-negotiable for the French government in these talks is upholding these policies, particularly in the digital sector, by excluding the audiovisual sector from the scope of the agreement.

.....  
**Recommendation : Reject any introduction of the notion of “digital products” under TTIP.**

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<sup>31</sup> Articles 15.3 and 15.9 of the United States-South Korea FTA of 30 June 2007: <http://www.ustr.gov/about-us/press-office/fact-sheets/2009/april/summary-us-korea-fta>



Strengthening EU's negotiation strategy to make TTIP a sustainable  
blueprint for the digital economy and society





# Cybersecurity

## Cybersecurity, digital technology and TTIP

Cybersecurity is a key component of customer confidence in e-commerce, but, most importantly, it is a critical issue for governments and citizens when it comes to protecting the information systems used by at-risk infrastructures and/or preventing cyber attacks that may disrupt the movement of information or allow intruders direct control of networks (risk of outages, etc.) serving such vital sectors as nuclear power, hospitals, banks, telecommunications, etc. These systems face various threats, including espionage, intrusion, destabilisation, sabotage, etc.

The current development of connected objects, such as smart grids, relies on the observable nature of networks and more communication between them. Smart grids use a distribution system that can be observed and controlled from any point in the network. The grid communicates through secure interfaces with the various players in the electrical system: electricity providers and demand-side management operators<sup>32</sup> who could become the Internet giants of tomorrow. This entails greater exposure to cyber-attacks aimed at disrupting the flow of information, or malicious action (such as attacks that shut off power to an area or to a transformer station).

The European Union and the United States are both calling for a joint approach to cybersecurity so that the measures taken do not become a means of erecting trade barriers. The Snowden affair weakens the United States' position on the subject of cybersecurity in these trade negotiations. The affair highlighted the need to enhance the security of European systems. Such a position does not point to the inclusion of cybersecurity in a free trade agreement.

## Issues for the European Union, and the French Digital Council's recommendations

### Cybersecurity is a sovereignty issue

Protection of information systems calls for confidence in their components. A combination of two elements is required to create such confidence:

- > access to all of the technology in order to observe it ;
- > confidence in the person supplying the technology.

We need to have European and national industries to ensure that these two components can be obtained. But free competition on this segment risks depriving us of these industries because of the European Union's weak position in digital matters. Technological dependency on foreign players for cybersecurity could undermine the sovereignty of France and the European Union.

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### Recommendation : Exclude cybersecurity from the TTIP.

<sup>32</sup> Demand reduction is a new market in France. It involves reducing customers' consumption by switching off their electrical appliances and equipment. Nest, which was taken over by Google, deals in remote control of household appliances. It is a typical player in the demand reduction market.

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## Anexos



## Anexo 1 – Nota explicativa sobre el proceso de negociación de la Asociación Transatlántica de Comercio e Inversiones

### 1. NEGOTIATING PROCEDURES FOR FRANCE AND THE EUROPEAN UNION

Trade policy falls exclusively within the sphere of the European Union according to Article 3 of the Treaty on the Functioning of the European Union.<sup>33</sup>

#### A. EU PROCEDURE

The European Council and the European Commission are at the top of the hierarchy in negotiations with non-member countries. The European Parliament is included in such negotiations, and any trade agreement must ultimately be submitted for its approval.<sup>34</sup>

The European Commission is responsible for establishing and managing trade policy and makes recommendations to the Council of the European Union. The Council decides by itself (i.e. without European Parliament consent) to authorise the European Commission to open negotiations and establishes its negotiating mandate. It may subsequently send directives to the Commission.

#### Launch of negotiations

On 14 June 2013 the Council of Member State Trade Ministers adopted the European Commission's negotiating mandate for the Transatlantic Trade and Investment Partnership.<sup>35</sup> **Negotiations were launched officially on 17 June 2013 at the G8 summit.**<sup>36</sup>

- The Council and the European Commission voted to open these negotiations<sup>37</sup> on the basis of impact studies showing that a free-trade agreement between the European Union and the United States could add 0.5% to the EU's annual economic output.<sup>38</sup>
- The launch of these negotiations to adopt a comprehensive free-trade agreement was

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<sup>33</sup> Article 3: '1. The Union shall have exclusive competence in the following areas: [...] e) common commercial policy. 2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.'

<sup>34</sup> <http://www.rpfrance.eu/Le-Comite-de-Politique-Commerciale>

<sup>35</sup> <http://ue.eu.int/homepage/showfocus?focusName=council-gives-the-green-light-to-launch-free-trade-talks-with-the-united-states&lang=en>

<sup>36</sup> Statement by José Manuel Barroso, President of the European Commission with United States President Barack Obama, President of the European Council Herman Van Rompuy and UK Prime Minister David Cameron: [http://europa.eu/rapid/press-release\\_SPEECH-13-544\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-544_en.htm)

<sup>37</sup> Joint statement from United States President Barack Obama, President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso announcing the launch of negotiations: [http://europa.eu/rapid/press-release\\_MEMO-13-94\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-94_en.htm); [http://europa.eu/rapid/press-release\\_MEMO-13-95\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-95_en.htm) and [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/135324.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/135324.pdf)

<sup>38</sup> [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/507504/IPOL-JOIN\\_NT%282013%29507504\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/507504/IPOL-JOIN_NT%282013%29507504_EN.pdf)  
[http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\\_150737.pdf](http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf)  
[http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc\\_145613.pdf](http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145613.pdf)



recommended in particular by the **High Level Working Group on Jobs and Growth**<sup>39</sup> established in November 2011 at an EU-US summit in Washington DC in connection with the Transatlantic Economic Council.

- **The Trade Policy Committee was designated by the Council to assist the European Commission in these transatlantic negotiations.** Once a month the Committee convenes Member State directors-general responsible for trade to discuss the approach suggested by the Commission and, if necessary, to decide on certain points. The Committee also convenes the deputies of these directors-general weekly.

### The European Parliament's role

The European Commission reports regularly to the European Parliament on progress of negotiations. **The European Parliament's Committee on International Trade (INTA) is responsible for matters relating to the establishment and implementation of the European Union's common commercial policy.**<sup>40</sup> As such, it has supervisory power over the European Commission. In addition, the Chair of INTA is regularly invited to discussions with the Council's Trade Policy Committee.

INTA has an important role:

- It scrutinises trade agreements negotiated by the Commission and recommends whether or not they should be approved by the European Parliament.
- INTA's work is submitted to members of the European Parliament for official approval at plenary sessions. Non-legislative resolutions passed by the European Parliament, on a proposal by INTA where appropriate, are not binding.

### Three TTIP-related resolutions passed:

- 1) A resolution calling for transatlantic partnership negotiations to be launched in the first half of 2013,<sup>41</sup> on the basis of an INTA report;<sup>42</sup>
- 2) A resolution for opening of transatlantic negotiations, tabled on INTA's initiative<sup>43</sup> ;
- 3) A resolution subsequent to the PRISM revelations, aimed at ensuring that EU data protection standards would not be undermined as a result of the transatlantic partnership and refusing to defer negotiations despite the diplomatic scandal.<sup>44</sup>

**Once negotiations are completed, the trade agreement upon which the parties have agreed will be submitted for approval by the European Parliament and by the Council, which will use qualified-majority voting.**

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<sup>39</sup> [http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\\_150519.pdf](http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf)

<sup>40</sup> <http://www.rpfrance.eu/La-Commission-du-commerce.html>

<sup>41</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0388+0+DOC+XML+V0//EN>

<sup>42</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2012-0321+0+DOC+XML+V0//EN>

<sup>43</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0227+0+DOC+XML+V0//FR>

<sup>44</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2013-0336+0+DOC+XML+V0//EN>



## EU representatives

<b>EU Commissioner for Trade</b>	<b>Karel De Gucht</b>
<b>European Parliament INTA Chair</b>	<b>Vital Moreira</b>

## EU lead negotiators (European Commission)<sup>45</sup>

<b>Chief negotiator</b>	<b>Ignacio Garcia Bercero</b> Director, DG Trade
<b>Investor-state dispute settlement negotiator</b>	<b>Colin Brown</b> Deputy Head, Legal Aspects of Trade Policy Unit WTO, Legal Affairs and Trade in Goods Directorate DG Trade
<b>Services negotiator</b>	<b>Marco Dueerkop</b> Deputy Head, Services Unit Services and Investment, Intellectual Property and Public Procurement Directorate DG Trade
<b>Intellectual property negotiator</b>	<b>Pedro Velasco Martins</b> Deputy Head, Intellectual Property and Public Procurement Unit Services and Investment, Intellectual Property and Public Procurement Directorate DG Trade
<b>Public procurement negotiator</b>	<b>Anders Jessen</b> Head, Intellectual Property and Public Procurement Unit Services and Investment, Intellectual Property and Public Procurement Directorate DG Trade
<b>Small and medium-sized enterprises negotiator</b>	<b>Denis Redonnet</b> Head, Trade Strategy Unit Trade Strategy and Analysis, Market Access Directorate

<sup>45</sup> Complete list of EU negotiators: [http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151668.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151668.pdf)



	DG Trade
<b>Machinery and electronics negotiator</b>	<p><b>Birgit Weigel</b></p> <p>Deputy Head, Engineering Industries Unit</p> <p>Resources-Based, Manufacturing and Consumer Goods Industries Directorate</p> <p>DG Enterprise and Industry</p>
<b>Technical barriers to trade negotiator</b>	<p><b>Paul de Lusignan</b></p> <p>Head, Tariff and Non-Tariff Negotiations, Rules of Origin Unit</p> <p>WTO, Legal Affairs and Trade in Goods Directorate</p> <p>DG Trade</p>

## Transparency and consultation

The European Commission has stepped up dialogue and transparency with civil society and EU stakeholders on progress of negotiations. This work includes:

- Establishment of a dialogue with civil society after each round of negotiations;<sup>46</sup>
- A consultation on investor-state dispute settlement provisions.<sup>47</sup>

The TTIP Advisory Group is an informal interim group consisting of 14 non-remunerated outside experts representing a range of interests. This Advisory Group was set up by the European Commission on 24 January 2014.<sup>48</sup> The group's first official meeting took place on 25 February 2014 in the presence of the European Union's Chief Negotiator, Ignacio Garcia Bercero.

## B. FRENCH PROCEDURE

### An interministerial procedure

**The Ministry for Foreign Trade** is responsible for preparing and implementing government policy on foreign trade. This includes managing bilateral economic and trade relations in liaison with the Ministry for the Economy and Finance. In this capacity it is involved in preparing and conducting international economic and trade negotiations, including those relating to the transatlantic partnership.

**The Directorate General of the Treasury represents France in the Trade Policy Committee**, the body in which the European Commission reports to Member States on progress of negotiations. It is the Directorate General of the Treasury that is responsible for communicating the French position to EU institutions.

**A weekly briefing to prepare for the Trade Policy Committee is held at the General Secretariat for European Affairs**, at which the various ministries make their positions known. Differences are settled by the Prime Minister's Cabinet, since the head of the General Secretariat for European Affairs is European Affairs Advisor to the head of government. Once approved,

<sup>46</sup> See report on dialogue dated 10 January 2014

<sup>47</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1015>

<sup>48</sup> List of 14 experts belonging to the Advisory Group: [http://europa.eu/rapid/press-release\\_IP-14-79\\_en.htm](http://europa.eu/rapid/press-release_IP-14-79_en.htm)





instructions serving as the basis for the negotiations are sent to France's permanent delegation in Brussels and implemented by the Directorate General of the Treasury.

### **Ongoing consultation from the outset of negotiations**

In the first half of 2013 the Ministry for Trade launched a public consultation on the proposed free-trade agreement.<sup>49</sup> This consultation found that the majority of French businesses supported the proposal.<sup>50</sup>

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<sup>49</sup> <http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/14109.pdf>

<sup>50</sup> <http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/14598.pdf#page=3>



## Key French figures in charge of negotiations

<b>France's representative to the EU Foreign Affairs Council (Common Commercial Policy)</b>	<b>Nicole Bricq</b> , Minister for Foreign Trade
<b>France's full member of the EU Trade Policy Committee</b>	<b>Etienne Oudot de Dainville</b> , Head of Division General Directorate of the Treasury Multilateral Affairs, Trade and Development Policies Department Trade Policy and Investment Division
<b>France's alternate member of the EU Trade Policy Committee</b>	<b>Aymeric Pontvianne</b> , Head of Bureau General Directorate of the Treasury Multilateral Affairs, Trade and Development Policies Department Trade Policy and Investment Division Trade Policy, WTO and EU Trade Agreements Bureau

## 2. NEGOTIATING PROCEDURE FOR THE UNITED STATES

Trade negotiations are coordinated by the **Office of the United States Trade Representative (USTR)**, which reports directly to the White House.

To establish negotiation objectives, USTR consults other government agencies on trade policy matters by means of a three-tier structure<sup>51</sup> :

- **The Trade Policy Staff Committee (TPSC)** comprises over 90 subcommittees and is the primary consultation body, with representation at the senior civil service level. The subcommittees work in specialised areas and set up task forces on particular issues;
- **The Trade Policy Review Group (TPRG)** consists of 21 members from various Federal agencies and offices and takes up issues upon which no agreement has been reached in the TPSC;
- **The National Economic Council (NEC)**, chaired by the President and reporting directly to the White House, consists of senior civil servants and advises the President on final positions, particularly for controversial issues.

### Renewal of fast-track procedure

Once negotiations are completed, the trade agreement must be submitted to Congress for approval. In this connection, the President of the United States can obtain authority from Congress to negotiate trade agreements without Congress being able subsequently to amend or obstruct them. Congress is nevertheless consulted with a final vote.

**This option, known as trade promotion authority (TPA)** – or fast-track negotiating authority – makes trade negotiations conducted by the United States more predictable, since this is an

<sup>51</sup> Member agencies of the TPSC and TPRG: <http://www.ustr.gov/about-us/executive-branch-agencies-trade-policy-staff-committee-and-trade-policy-review-group>



overall authority given to the President. The fast-track negotiating authority establishes the United States' remit, objectives and priorities for international trade negotiations, lays down consulting requirements for the US President during the negotiation process and sets a deadline for Congress to consider trade agreements. **First adopted in 1974, this procedure was last renewed in 2002 and expired in January 2007.**

**The current US Administration, led by President Barack Obama, wishes Congress to renew TPA so as to expedite adoption of the TTIP. The Democrat majority in the Senate, led by Senator Harry Reid, has so far refused such renewal.**

### US representatives and negotiators<sup>52</sup>

<b>United States Trade Representative</b>	Michael Froman
<b>Senior Trade Representative to the EU</b>	Elena Bryan
<b>Chief negotiator</b>	Dan Mullaney
<b>Competition negotiator</b>	Mary Ryckman
<b>Electronic commerce and telecommunications negotiator</b>	Robb Tanner
<b>Intellectual property rights negotiator</b>	George York
<b>Investment negotiator</b>	Jai Motwane

### US ambitions

On 11 March 2014 USTR published the US objectives for the TTIP.<sup>53</sup> These objectives are presented as the result of a consultation process launched in March 2013 with relevant domestic stakeholders.

**With respect to electronic commerce and information and communication technology services, the stated ambitions are clear :**

- The United States seeks *'to develop appropriate provisions to facilitate the use of electronic commerce to support goods and services trade, including through commitments not to impose customs duties on digital products or unjustifiably discriminate among products delivered electronically'*;
- The United States seeks to include in the TTIP *'provisions that facilitate the movement of cross-border data flows'*.

**In the field of goods and services, reference is made to liberalisation of 'digital products'** (films, music, video games) in the transatlantic marketplace, including no customs duties or other barriers to entry (such as quotas), based on the principle of non-discrimination. Here the US

<sup>52</sup> <http://www.ustr.gov/sites/default/files/lead%20negotiators%20list%20TTIP.pdf>

<sup>53</sup> <http://www.ustr.gov/about-us/press-office/press-releases/2014/March/US-Objectives-US-Benefits-In-the-TTIP-a-Detailed-View>



position is clear: cultural products in digital form should not be disadvantaged just because they are delivered over the Internet instead of by CD or DVD.

**As regards free movement of cross-border data flows**, the US position is based on the fact that free flows are a critical component of the business model for service and manufacturing companies and are key to their global competitiveness.

### 3. KEY DATES IN TTIP NEGOTIATION

#### Launching of negotiation

- **28 November 2011:** EU-US summit in Washington DC in connection with the Transatlantic Economic Council and establishment of a High Level Working Group on Jobs and Growth co-chaired by the US Trade Representative, Ron Kirk, and the EU Commissioner for Trade, Karel De Gucht.
- **18 and 19 October 2012:** At the European Council, EU leaders committed to 'working towards the goal of launching in 2013 of negotiations on a comprehensive transatlantic trade and investment agreement'.<sup>54</sup>
- **30 January 2013:** Nationwide consultation launched by Ministry for Foreign Trade on proposed EU-US free-trade agreement.
- **8 February 2013:** The European Council voted for a comprehensive trade agreement between the European Union and the United States.
- **11 February 2013:** Publication of Working Group's final report recommending introduction of a comprehensive free-trade agreement between the European Union and the United States.
- **13 February 2013:** Joint statement from United States President Barack Obama, President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso announcing the launch of transatlantic negotiations.
- **23 May 2013:** Resolution of European Parliament on negotiations for a trade and investment agreement between the European Union and the United States.
- **14 June 2013:** Adoption by the Council of the European Union of the European Commission's mandate for negotiating the future trade and investment partnership with the United States. France obtained exclusion of audiovisual services from this mandate.

#### Other key dates

- **9 January 2014:** Debate in the French Senate on TTIP negotiations
- **21 January 2014:** Announcement of opening of a public consultation, planned for March 2014, on investor-to-state dispute settlement

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<sup>54</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ec/133004.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/133004.pdf)



- **11 February 2014:** Hearing by the European Parliament's Legal Affairs Committee (JURI) on 'Regulatory coherence and the implementation of EU law in the context of the Transatlantic Trade and Investment Partnership'
- **17 February 2014:** Meeting between Karel De Gucht and Michael Froman
- **11 March 2014:** Publication of US digital economy objectives by US Department of Commerce.

#### **Past negotiating rounds**

- **10-14 March 2014:** Fourth round of negotiations in Brussels
- **16-21 December 2013:** Third round of negotiations in Washington
- **11-15 November 2013:** Second round of negotiations in Brussels
- **7-12 July 2013:** First round of negotiations in Washington



## Anexo 2 - Consulta de la Ministra



LA MINISTRE

Nos Réf. : CE/2013/54237/C

Paris, le **25 JUIL. 2013**

Monsieur le Président,

A l'heure où l'Union Européenne et les Etats-Unis s'engagent dans la négociation d'un partenariat transatlantique qui marquera durablement le commerce international, il est important que le Gouvernement puisse disposer de votre avis sur l'impact de ce partenariat dans le domaine du numérique où la France dispose de nombreux atouts.

Si la protection des données personnelles est exclue du mandat, une partie importante de ce partenariat portera sur la convergence réglementaire (harmonisation ou rapprochement des législations, reconnaissance mutuelle des normes...) qui concerne directement le secteur du numérique. Si elle est conduite de manière ambitieuse, elle peut permettre à nos entreprises – et notamment aux PME- d'accroître leurs parts de marché aux Etats-Unis. En revanche, un alignement des normes sur les standards américains pourrait remettre en cause la neutralité des plateformes et la compétitivité de nos entreprises.

C'est pourquoi, conformément aux dispositions du décret du 13 décembre 2012, je souhaite que vous me fassiez part, en tant que de besoin, de vos recommandations tout au long de la négociation qui débute. Le prochain round de négociation se tiendra en octobre et portera sur la feuille de route proposée par la Commission dont vous trouverez le volet numérique en annexe.

Par ailleurs, je vous invite à participer au comité de suivi du partenariat transatlantique que je mets en place.

Je vous prie de croire, Monsieur le Président, à l'assurance de ma meilleure considération.

Nicole BRICQ

Monsieur Benoit THIEULIN  
Président du Conseil national du numérique  
Bercy international – 14 place des Vins-de-France  
75573 Paris cedex 12



139 rue de Bercy - Télédéc 151 - 75572 Paris cedex 12



### **Anexo 3 – Lista de personas consultadas**

Stéphane ALISSE, Managing Director, Technology and Services Practice for North America, Ubifrance

Benjamin ANDRE, CEO & Co-Fondateur, Cozycloud

Elisabeth BARGES, Public Policy Manager Innovation, GOOGLE France

Anton’Maria BATTESTI, Public Policy Manager, Affaires Publiques, Facebook France

Pierre BELLANGER, fondateur et PDG de la radio Skyrock

François BLANC, Directeur de Projet – Relations aux acteurs du système électrique (Utilities and Market Stakeholder Relation), ErDF

Nathalie BRAT, chef du pôle numérique à la direction des entreprises et de l’environnement international, Ministère des Affaires étrangères

Jérôme BROUILLET, Adjoint au chef de bureau politique commerciale, Porte-parole au comité politique commerciale « services », Bureau Politique commerciale, OMC et accords commerciaux de l’UE – Multicom 1, Direction générale du Trésor

Christian BUCHEL, Directeur Général Adjoint, Appui Pilotage et relations aux énergéticiens, Vice-Président de l’association des distributeurs européens EDSO for smart grids, ErDF

Ludovic BUTEL, adjoint au chef de bureau, Bureau Politique commerciale, OMC et accords commerciaux de l’UE – Multicom 1, Direction générale du Trésor

François COMET, Adjoint au directeur de la réglementation groupe, Orange

Alain COSTES, Directeur, AFNOR NORMALISATION

Jean-Marie DANJOU, Directeur Général Délégué au Collège Mobile, Fédération Française des Télécoms

Christian DAVIOT, Chargé de mission stratégie, Autorité Nationale de la sécurité des systèmes d’information

Olivier DE BAILLENX, Directeur des relations institutionnelles, ILIAD FREE

Marc DELANDRE, Directeur Services – Direction Stratégie et Grands Projets, Secrétaire général de l’Alliance G3-PLC1, ErDF

François DONNAT, Senior Policy Counsel, Head of Policy France, GOOGLE France

Mélanie DULONG DE ROSNAY, Visiting Fellow at London School of Economics and Permanent Researcher at CNRS, CREATIVE COMMONS FRANCE

Joris DUMAZER, secteur JUR, propriété intellectuelle, Secrétariat général des affaires européennes

Remi FERRAND, Chargé de la commission internationale, SYNTEC NUMERIQUE

Clara GAYMARD, Présidente et CEO de General Electrics France, Présidente de l’American Chamber of Commerce, Membre de la Mission Marque France



Edouard GEFFRAY, Secrétaire général, Commission Nationale Informatiques et Libertés

Sybil de GEOFFROY, Directrice du département nouvelles technologies - Direction stratégique et du développement, SNCF

Florent GOURLAY, Chargé de mission OMC – Europe et Partenariats internationaux, Direction générale de la compétitivité, de l'industrie et des services

Philippe HUBERDEAU, Sous-directeur de l'économie internationale, Ministère des Affaires étrangères

Marc JAMET, Adjoint au chef du secteur ITEC, Télécommunications, société de l'information, recherche, espace et postes, Secrétariat général des affaires européennes

Isabelle JEGOUZO, Secrétaire générale adjointe, magistrate (JAI, protection des données personnelles), Secrétariat général des affaires européennes

Aurélien LAPIDUS, Conseillère auprès du Secrétaire Général, Secrétariat général des affaires européennes

Philippe LAULANIE, Head of Distribution Retail Banking, BNP Paribas

Yves LE MOUËL, Directeur Général, Fédération Française des Télécoms

Marc LOLLIVIER, Délégué général, Fédération e-commerce et vente à distance

David MARTINON, Représentant spécial pour les négociations internationales concernant la société de l'information et le développement numérique, Ministère des Affaires étrangères

Lionel MAUREL, conservateur à la BDIC (Bibliothèque de Documentation Internationale Contemporaine) et co-fondateur de l'initiative Savoirs Com1, La Quadrature du Net

Sandrine MONDIN-SIMON, Juriste Nouvelles Technologies et PI - Département Technologies de l'Information et de la Communication, Direction Juridique, Direction Stratégique et du Développement, SNCF

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Stéphane MOULIERE, Responsable du département transport, énergie et communication, AFNOR NORMALISATION

Alexis NORMAND, Business Developer chargé des relations avec les professionnels de la santé, Withings

Patrick PAILLOUX, Directeur général, Autorité Nationale de la Sécurité des systèmes d'informations

Rodolphe PELLE, Chef du secteur Relations extérieures de l'Union européenne, Secrétariat général des affaires européennes, Secrétariat général des affaires européennes

Aymeric PONTVIANNE, Chef de bureau Bureau de la politique commerciale, de l'OMC et des accords commerciaux de l'Union européenne, Direction générale du Trésor

Marine POUYAT, Affaires juridiques-environnementales, Fédération e-commerce et vente à distance

Christophe RAVIER, Adjoint au Chef de service – Service des Technologies de l'Information et de la Communication, Direction générale de la compétitivité, de l'industrie et des services





Delphine REYRE, Director of Policy, France and Southern Europe, Facebook France

Maurice RONAI, expert des politiques numériques publiques, auteur de documentaires et ingénieur de recherche français, commissaire à la Commission nationale de l'informatique et des libertés

Jean-Renaud ROY, Délégué aux relations institutionnelles, SYNTEC numérique

Alain VIALIX, Directeur, Public Affairs strategic initiatives, ALCATEL-LUCENT

Yoann SPICHER, en charge des campagnes et de la communication, La Quadrature du net

Yves TYRODE, Directeur général de VOYAGES-SNCF.COM

Estelle WERTH, Global Privacy Officer, CRITEO

Jérémie ZIMMERMANN, porte-parole à plein-temps de l'association, anciennement ingénieur-consultant en technologies collaboratives, La Quadrature du Net



## Anexo 4 – Miembros del grupo de trabajo del Consejo Nacional del Sector Digital (CNNum)



### **Leader**

Benoît THIEULIN, Chairman  
*Founder and CEO of La Netscouade*



Godefroy BEAUVALLET, Vice-Chairman  
*Head of the AXA Research Fund and lecturer  
at Telecom ParisTech*



Stéphane DISTINGUIN

*Founder and CEO of FaberNovel and head of  
the Cap Digital Paris Région competitiveness  
cluster*



Marie EKELAND

*Partner at Elaia Partners and Co-President of  
France Digitale*



Audrey HARRIS  
*CEO of Soubis*



Tariq KRIM, Vice-Chair  
*founder and CEO of Jolicloud*



Nathalie PUJO  
*Director of Hachette Tourisme*



Marc TESSIER  
*Director of VidéoFutur and and President of  
the Forum des Images*



## General Secretary



Samira Anfi, *Deputy rapporteur (trainee)*



Yann Bonnet, *General rapporteur*



Mathilde Bras, *Deputy rapporteur*



Jean-Baptiste Soufron, *Secretary General*



## Anexo 5 – Fuentes y documentación

### 1. Documents and official websites

European Commission: <http://ec.europa.eu/trade/policy/in-focus/ttip/>

European Parliament: [http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/index\\_fr.htm](http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/index_fr.htm)

French Ministry for Foreign Trade: <http://www.commerce-exterieur.gouv.fr/projet-partenariat-transatlantique>

Office of the U.S. Representative : <http://www.ustr.gov/ttip>

*Trade Promotion Authority Bill Text* (or “Bipartisan Congressional Trade Priorities act of 2014”). 113e Congrès. Seconde session : <http://www.finance.senate.gov/imo/media/doc/TPA%20bill%20text.pdf>

Notification du Représentant au commerce des Etats-Unis adressée au Congrès américain le 20 mars 2013. [http://www.laquadrature.net/wiki/images/6/66/TAFTA\\_-\\_US\\_Gov\\_Notification\\_Letter.pdf](http://www.laquadrature.net/wiki/images/6/66/TAFTA_-_US_Gov_Notification_Letter.pdf)

*U.S. Objectives, U.S. Benefits In the Transatlantic Trade and Investment Partnership: A Detailed View..* March 2014. <http://www.ustr.gov/about-us/press-office/press-releases/2014/March/US-Objectives-US-Benefits-In-the-TTIP-a-Detailed-View>

### 2. International agreements

Accord général sur le commerce des services (Annexe 1B de l'Accord de Marrakech instituant l'Organisation mondiale du commerce) : [http://www.wto.org/french/docs\\_f/legal\\_f/26-gats.pdf](http://www.wto.org/french/docs_f/legal_f/26-gats.pdf).

Accord de libre-échange entre la Corée du Sud et les Etats-Unis : <http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text>.

Accord commercial anti-contrefaçon (rejeté par le Parlement européen le 4 juillet 2012) : [http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc\\_147937.pdf](http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147937.pdf).

### 3. Studies and reports

Recommandations du Groupe de travail à haut niveau sur l'emploi et la croissance du 11 février 2013. [http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\\_150519.pdf](http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf)



Consultation des entreprises françaises en vue de l'ouverture des négociations relatives au TTIP lancée par le Ministère du commerce extérieur. 25 mars 2013.

<http://proxypubminefi.diffusion.finances.gouv.fr/pub/document/18/14598.pdf#page=3>

Etude d'impact du TTIP diligentée par la Commission : *Reducing Transatlantic Barriers to Trade and Investment. An Economic Assessment*. Center for Economic Policy Research, London. Mars 2013.

[http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\\_150737.pdf](http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf)

Evaluation de l'analyse d'impact de la Commission par le Parlement européen. Direction Générale des politiques internes de l'Union européenne. Avril 2013.

[http://www.europarl.europa.eu/RegData/etudes/note/join/2013/507504/IPOL-  
JOIN\\_NT%282013%29507504\\_FR.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/507504/IPOL-JOIN_NT%282013%29507504_FR.pdf)

*Regards croisés sur le développement international de l'e-commerce*. Fédération du e-commerce et de la vente à distance (FEVAD). Conférence plénière - Monaco. 20 et 21 mars 2013.

Rapport de Claude Revel. *Développer une influence normative internationale stratégique pour la France*. 31 janvier 2013. <http://proxypubminefi.diffusion.finances.gouv.fr/pub/document/18/14133.pdf>

*Promoting cross-border data flow : priorities for the business community*. Google, Microsoft, Citi, IBM, Intel, MasterCard, Oracle, Verizon, Visa, NFTC (National Foreign Trade Council), ACLI (American Council of Life Insurers), etc.

<http://www.nftc.org/default/Innovation/PromotingCrossBorderDataFlowsNFTC.pdf>

*Digital Economy and Cross-Border Trade: The value of Digitally-Deliverable Services*. U.S. Department of Commerce's Economics and Statistics Agency (ESA). 27 janvier 2014.

*No Transfer, No Trade - the Importance of Cross-Border Data Transfers for Companies Based in Sweden*. Kommerskollegium - National Board of Trade. Janvier 2014.

[http://www.kommers.se/Documents/dokumentarkiv/publikationer/2014/No\\_Transfer\\_No\\_Trade\\_webb.pdf](http://www.kommers.se/Documents/dokumentarkiv/publikationer/2014/No_Transfer_No_Trade_webb.pdf)

[www.cnnumerique.fr/en/ttq](http://www.cnnumerique.fr/en/ttq)

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