

**Remarks for TABC Conference: Perspectives on the EU's
Digital Single Market Strategy – The Transatlantic Perspective
Tuesday, September 15, 2015, 17:45-18:20
Renaissance Brussels Hotel**

Hugo, thank you for that introduction. And thanks to the superb team at TABC, for the hard work you do to promote transatlantic trade and investment and for your close cooperation both here in Brussels and in Washington.

The Digital Single Market is one of the top three priorities of the US Mission to the EU, and is a topic of great interest at the most senior levels of the US Government as well. We have been closely following the Commission's plans for DSM as they evolved from President Juncker's political guidelines, to his mission letters to Vice President Ansip and Commissioner Oettinger, through a lively public discourse that continued through the spring and culminated in the publication of the DSM strategy in May.

State of the transatlantic digital economy

As a starting point, it's useful to keep in mind that cross-border data flows between the U.S. and Europe are the highest in the world - 50 percent higher than the data flows between the U.S. and Asia in absolute terms, and 400 percent higher on a per capita basis. And with the rapid growth in mobile computing and advent of the Internet of Things, big data analytics, and cloud computing, those flows are projected to grow substantially over the next decade, to

the benefit of new digital companies, established industries, consumers, researchers, and governments on both sides of the Atlantic.

We should recall that in addition to being each other's largest trading partners for digitally deliverable services, the U.S. and the EU are also the two largest net exporters of these services to the world, which represent approximately 75 percent of all products traded and delivered online. The EU, not the U.S., is the world's largest net exporter of digitally deliverable services. And demonstrating the interconnectedness of U.S. and European industries, 53 percent of digitally deliverable services imported from the U.S. (including consulting, engineering, design, and financial services) were used in the production of EU exports, and 62 percent of digitally deliverable services imported from the EU were incorporated into U.S. exports.

The growth of the transatlantic digital economy is impressive. With the right policies in both the United States and Europe, our digital economies can grow even more, particularly if we work together to promote flexible, interoperable standards, efficient cross-border data flows, expanded high-speed Internet access, and Internet-friendly trade rules.

The promise of the DSM

The DSM communication issued on May 6 is an important vision statement. We will closely follow the next steps the Commission takes to realize that vision, first through public consultations and ultimately through the development of specific legislative proposals where appropriate.

We understand the DSM strategy is intended to create the regulatory and market conditions to help companies innovate, collaborate, invest, and grow while better serving and protecting consumers. This is a vision that we, of course, support. That kind of reform coupled with T-TIP would create the proper conditions for a robust transatlantic digital economy in which EU and U.S. businesses will prosper and find new opportunities.

Greater investment in networks and digital skills, digitalization of traditional industries through greater technology uptake, harmonization of regulations, and reduction of barriers to doing business across the EU's internal borders are all important objectives we support because they would benefit consumers and companies, European and American alike.

There were two recent publications on DSM that caught my eye recently. The first was an opinion piece by Carl Bildt in which he wrote: "The right way to bolster European business is not to legislate

to disadvantage their rivals. It is to encourage the culture of innovation and entrepreneurship that has produced the US companies that many now fear...Digital mercantilism – a misguided attempt to regulate away competition, or build up new boundaries to achieve some imaginary sovereignty in cyberspace – can only hurt Europe’s ability to innovate, compete and succeed in this new world.” That, for me, summarizes the philosophy that should guide the DSM.

The second publication was a recent study by the Lisbon Council: it concluded that if France, Germany, Italy and Spain had the same level of digital density [defined as the amount of data used per capita] as the United Kingdom, their level of intangible investment [patents, copyrights, TM, technology, goodwill etc] would rise by roughly 200 billion euro per year, equivalent to a 2 per cent improvement in overall national output. Digital intensity needs to be an important part of the DSM.

Proposals to be considered carefully

As I mentioned, we are following the DSM initiatives as they take shape. The Commission has been open to discussion and input, both from our government and from US business; we welcome this approach. We look forward to engaging with the Commission to clarify the nature of its proposals and to ensure the DSM will not inadvertently impose new market barriers. Some examples of these

areas are Internet platform regulation, the “duty of care” for online intermediaries regarding illegal content, geo-blocking, the promotion of a European cloud, possible changes to copyright rules, and possible revisions to the rules governing audiovisual media services, e-privacy, and telecommunications services.

This is not to say that there might not be useful steps to be taken in these areas, but we believe that broad and robust stakeholder consultations and thorough studies, including impact assessments, are an essential starting point – and we understand the Commission is committed to such a process under its Better Regulation Agenda.

We should all be wary of any proposals that could lead to a more closed and insular model for the digital economy, one that unnecessarily restricts data, stifles innovation and the development of creative works through onerous or complex regulation, or tries to pick national champions and tilt the regulatory playing field against non-European companies.

Partners, not rivals

The United States Government and U.S. technology companies look forward to being partners, not adversaries, as Europe’s governments and companies work to make the DSM a reality.

The phrase “create a level playing field” has too often been used loosely and opportunistically in the public debate to suggest a range of measures against certain companies or types of companies without presenting clear evidence of market distortions and without clearly demonstrating that the proposed remedies would lead to positive outcomes.

But in the DSM strategy communication, the Commission wrote, “Platforms have proven to be innovators in the digital economy helping smaller businesses to move online and reach new markets.” We agree that, beyond delivering value to EU consumers, many of these platforms have made important contributions to economic growth and job creation in Europe.

The discussion about platforms tends to focus on U.S. tech companies. They have built a strong ecosystem with European partners, suppliers and distributors; made major investments in Europe; promoted entrepreneurship and innovation; fostered research and digital skills training; and created jobs for Europeans.

The launch of the iTunes App Store in 2008 created an industry from scratch. According to a report prepared for the European Commission, EU app developers took in 17.5 billion euros in revenue in 2013. That figure is forecast to increase to 63 billion euros by 2018. That same report predicted that the EU app developer

workforce will grow from 1 million to 2.8 million over the same period.

Amazon is another example. It has enabled many European SMEs to sell their goods on the Internet, including across borders and even across the Atlantic, for the first time. In the past year, businesses selling on Amazon's EU websites earned a record 2.8 billion euros in revenue from exports within the EU. This is in addition to the billions of euros EU sellers earned from purchases made by Amazon customers living in their home countries (French seller to French customer) and outside of Europe (German seller to U.S. customer).

At the same time, thousands of micro-entrepreneurs have launched their own YouTube channels that are now making six-figures annually. Meanwhile, Facebook recently announced that its social network generated 44 billion euros and enabled 783,000 jobs in Europe in 2014.

Europe is already a global leader in technology

Success in the digital economy is not, however, only about maintaining strong positions in the markets for search, e-commerce, and social networking. While these are high-profile, consumer-facing parts of the value chain, industrial, business-to-business, and back

office digital services, and the hardware and infrastructure that support them, are no less important.

Unfortunately, in the distorted and generally unhelpful public debate over whether the United States or Europe is further ahead in the global digital marketplace, Europe hasn't gotten enough credit for its noteworthy successes at both the front and back ends of the value chain. The truth is that technology is already one of the most dynamic sectors of the European economy.

According to a study published in 2014, Europe has produced 30 technology companies worth more than \$1 billion since 2000 – the so-called “unicorns,” comparing well with the United States, which produced 39 billion-dollar companies between 2003 and 2013. Some of these are becoming household names, like Sweden's Spotify, France's Deezer, the UK's King Digital, and Germany's Zalando.

Europe is also seizing on the huge opportunities that digitalization offers in financial services, insurance, healthcare, manufacturing, heavy industry, design, and engineering. Many of Europe's most prominent companies -- including BMW, Daimler, Carrefour, Deutsche Post, the Financial Times, Deutsche Bank, Allianz, Maersk, BASF, and Axel Springer -- are growing stronger through their embrace of digital technologies. Meanwhile in the pure ICT sector,

companies like Ericsson, SAP, Nokia, Orange, and Deutsche Telekom are world leaders building and enhancing the infrastructure that enables the global digital economy.

The German government, like the European Commission, has clearly recognized the economic growth potential of digitalizing traditional industries in the development of its Industry 4.0 strategy, which will apply advancements in the Internet of Things and Big Data Analytics to manufacturing, engineering, and logistics, driving growth and productivity gains both in Germany's industrial champions and the SMEs that support them. Industry in Europe has tremendous technological assets to build on, including leadership in industrial robotics and factory automation, embedded digital systems, enterprise and design software and 3D- and laser-based manufacturing.

Success through openness, not barriers

The calls from some Member States, however, to promote so-called digital sovereignty, discriminatory regulation, or forced data localization will not help Europe to maintain and extend its leadership in the global digital economy. We have thus far been encouraged to see the Commission resist such proposals. Governments and regulators should be wary of creating import

substitution models in the digital economy. Such an approach would treat Europe as a defensive and inward-looking consumer of technology, rather than a strong and outward-facing Digital Union that promotes both domestic and inward investment to create and harness new technologies, to increase both its digital and traditional exports to the rest of the world.

The creation of new barriers to the free flow of data both within and across Europe's borders, whether intentional or inadvertent, could squander the potentially enormous benefits of Big Data analytics, the Internet of Things, digitalization of industry, cloud computing, and the preservation of an open, dynamic, and interoperable Internet.

Commissioner Oettinger has rightly warned against "national silos." But in our rapidly developing world of hyper-connectivity, regional silos are no better. The global, open nature of the Internet is under threat from many countries and institutions around the world.

Maintaining a regulatory environment that protects the current openness of the Internet will ensure the continued growth of transatlantic data flows that are of critical importance to our economies and our societies and help to set a high global standard for Internet governance.

More progress on privacy and data protection

Privacy and data protection are, of course, also key to the long-term success of the Digital Single Market. Consumers will only have the confidence to use digital services if they trust the Internet and believe that their data is protected. Restoring public trust is also essential to ensure that U.S. technology companies do not continue to suffer negative commercial consequences abroad.

I want to assure you that we are making every effort to address this issue. We are very pleased to have successfully concluded our negotiations with the European Commission on the Umbrella Agreement for the exchange of data between law enforcement authorities. And we are close to concluding our joint efforts to enhance and preserve the U.S.-EU Safe Harbor Framework.

Actions by the U.S. Congress are also making a significant contribution to restoring trust. According to the Judicial Redress Act of 2015, which has been introduced but not yet voted on in Congress, citizens of designated partners countries, especially EU member states, will be able to avail themselves of the core benefits that Americans enjoy under the U.S. Privacy Act with regard to information shared for law enforcement purposes, in particular the ability to ensure that information is accurate and seek judicial recourse when it is not. The entry into force of the Umbrella

Agreement is contingent upon the Congress' passage of this important legislation.

And in June, the Congress overwhelmingly approved the USA Freedom Act, which ends the government's bulk collection of calling records, or so-called metadata, under Section 215 of the Patriot Act by limiting collection to instances where there is "reasonable, articulable suspicion" that a "specific selection term" is associated with international terrorism.

U.S.-EU Information Society Dialogue – an important channel for collaboration

One of our mechanisms to collaborate in developing policies to grow the digital economy is the U.S - EU Information Society Dialogue; we held the thirteenth annual meeting in April. In this dialogue, we had vibrant discussions on topics including the Digital Single Market strategy; support for innovation, web entrepreneurship and digital skills; and fostering the right environment for the data-driven economy to flourish. We also compared notes on our policies regarding net neutrality and agreed that we share the same underlying approaches and intent in safeguarding the open Internet.

Big data, the Internet of things, and cloud computing, all built on the free flow of data, are perceived by both EU and U.S. policy-makers as

engines for economic growth, major advances in research, and tremendous benefits to society, so we agreed to explore opportunities for enhanced collaboration and information sharing. We also agreed on the importance of standards to the digital economy. We encouraged our EU partners to allow the private sector to lead the development of standards through open, transparent, consensus-based processes.

Finally, we committed to expand our cooperation to support an inclusive, open, and multi-stakeholder approach to Internet governance to further develop the global economy, to allow more people around the world to connect and communicate, and to protect their freedom online.

We have a long record of cooperation and dialogue with the European Commission, not only on digital policy but also across a range of regulatory issues including competition, where our Federal Trade Commission and Department of Justice consult regularly with DG COMP. Competition authorities on both sides of the Atlantic agree that it is important that the process of identifying competitive harms, market barriers and potential remedies be based on objective and impartial findings and not politicized. I've urged my friends in the European Parliament to adopt the same philosophy.

International trade and the digital economy

In the context of T-TIP, it should be clear to all of us that a 21st century trade agreement cannot neglect the importance of the free flow of data to industry, trade, and investment. U.S. and EU companies have built the most robust cross-border data network in the world, a network that is a critical pillar of both American and European competitiveness. We have a shared interest in ensuring that T-TIP strengthens this critical dimension of our economies. Legitimate public policy goals, such as protecting personal data, can be achieved without creating unnecessary barriers to trade.

Importantly, the 2015 Trade Promotion Authority (TPA) legislation also reflects the U.S. Congress' desire to ensure that our future trade agreements recognize the importance of the Internet as a fundamental international trading platform. In addition, it provides specific negotiating objectives to secure cross-border data flows, ensure non-discriminatory treatment for digital products, and combat mandatory directives for local storage and processing of data. For a more detailed look at our digital trade policy, I would encourage you to visit USTR's website and look at Deputy USTR Robert Holleyman's May 1 speech on Digital Economy and Trade.

Improve and elevate the public discourse on the DSM

As we cooperate to grow the transatlantic digital economy, it is in our shared interest to eliminate the us versus them tone that has crept into the public narrative and put the emphasis back where it belongs, on promoting jobs and growth and helping consumers and businesses by lowering barriers, creating the right conditions for networks and services to flourish, and maximizing the growth potential of the economy through openness.

The section of the DSM communication entitled “International Dimension” says, “The scale provided by a completed Digital Single Market will help companies to grow beyond the EU internal market and make the EU an even more attractive location for global companies.”

That is our hope as well, and I also wholeheartedly endorse the next line, which reads, “The openness of the European market should be maintained and developed in the digital sphere.”

CUT:

I'd like to conclude by reading you a few lines from an op-ed that Secretary of Commerce Penny Pritzker wrote following her visit here at the end of July:

Our shared values have long-shaped the rules of the global economy—from our commitment to free and fair trade, to our adherence to the rule of law and our protection of intellectual property.

During my visit, Europe's leaders expressed their commitment to digital policies that lead to job creation and growth on both sides of the Atlantic and preserve a level playing field for American companies competing in Europe.

American government and industry are watching the development of specific policies under the DSM to ensure that their effects will encourage stronger commercial ties between the U.S. and Europe while setting high standards for the global digital economy. A DSM that facilitates the flow of information and services worldwide will send a clear message to the rest of the world: an open Internet is essential to 21st century competitiveness.

Thank you again for organizing this useful opportunity for us to exchange views on the DSM. I look forward to continuing the discussion.