

Comments on the Administration's Intention to Enter Into Negotiations for the Transatlantic Trade and Investment Partnership (TTIP) Agreement

Response to Docket No. USTR-2013-0019

Notice of Intent to Testify:

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Introduction

Knowledge Ecology International (KEI) is a non-profit, non-governmental organization that searches for better outcomes, including new solutions to the management of knowledge resources. KEI is drawn to areas where current business models and practices by businesses, governments or other actors fail to adequately address social needs or where there are opportunities for substantial improvements. Among other areas, KEI has expertise in policies of innovation in and access to medicines, medical technologies

and knowledge.

Our comments focus begin with the issues of transparency in the negotiations and intellectual property right issues, and then make proposals for chapters on access to knowledge, the supply of public goods, and miscellaneous topics, including an agreement to curb tax corporate avoidance and to introduce taxes on financial transactions.

Transparency

As a general rule, once the U.S. or the E.U. table a text, the proposal should be made public. If there are exceptions to this general rule, they should be narrow and limited to cases where a lack of transparency is justified in a transparent and persuasive manner. We can foresee no cases where any of the texts having to do with intellectual property rights, drug pricing or investor state dispute resolution should be secret, after shared with both parties in the negotiation.

The current process that permits the several hundred “cleared advisors” on trade advisory committees to have special privileges as regard access to the text should only be used to vet text that has not yet been shared with the other party, or for discussions of strategy.

The current advisory board system focuses too much on big corporate interests, and provides almost no input from consumer and public interest groups. For example, the current advisory committee on intellectual property, ITAC-15, contains only industry representatives, and the addition of a token consumer representative would not solve the problem. (USTR certainly would not considering having a single right holder member of the advisory board).

We note that in the negotiations of the Trans-Pacific Partnership Agreement (TPP), the United States’ proposed text had serious shortcomings that, if accepted, would have negative impacts on those living in the United States as well as in the countries of the other TPP parties. The proposed text for the TPP, made available only through leaks, revealed a number of areas that were either facially, or potentially, inconsistent with current U.S. law. These inconsistencies were not random errors, but rather a persistent bias against consumers.

Without the text being publicly made available, it is almost impossible to provide appropriate feedback for the very proposals that will affect the general public the most. When negotiations are kept secret, the general public is denied access to important information and also denied the opportunity to effectively engage in the democratic process.

The general public should not be forced to rely on leaks in order to access the text. Leaks are not a reliable or predictable source of information, and people should not have to risk jail terms or career ending sanctions just to enable to broader public debate.

Experts, including academics, practitioners working in the public sector, or those working in industries not represented on advisory trade committees could provide critical comments on U.S. proposals.

The current trade advisory committee for intellectual property represents a highly selective group of individuals who represent large corporate interests, thus excluding the viewpoints of academics, consumer interests or the interests of newer industries. The precise working of the provisions, references to other documents or international instruments, and cross-references throughout the text are vitally important to

fully understanding the impacts of the agreement as a whole. Oral briefings, without benefit of the actual text, are therefore inadequate sources of information. The U.S. government is now ignoring the expertise of the plethora of individuals who specialize in particular areas.

Please consider the recommendations submitted to USTR in 2009 by eight public interest, consumer and public health organizations on transparency in free trade agreements, available here:

<http://keionline.org/content/view/246/1>

Transparency of Negotiations in Other Fora

The often asserted notion that disclosure of proposals made in trade agreements make it impossible to negotiate are empirically untrue.

In multilateral institutions, including the World Intellectual Property Organization (WIPO) and the World Health Organization (WHO), negotiating texts are widely distributed to the public, published on the website, or reported in meeting minutes.

In typical WIPO negotiations, drafts of texts are released daily, and sometimes more often. WIPO is now scheduling its second diplomatic conference in a year.

The WHO often provides at least daily drafts of texts, and many other international bodies, like CODEX, the Hague Conference on Private International Law, UNCITRAL, UNESCO and other bodies operate with much transparency.

The Anti-Counterfeiting Trade Agreement (ACTA) formally published a draft text in April 2010, before the agreement was finally negotiated. After the April text was released, trademark owners demanded several changes in the text. In addition to the officially published negotiating text, beginning in January 2010, there were almost monthly leaks of the ACTA negotiating text, none of which stopped the parties from concluding the negotiations. However, the initial secrecy of the ACTA negotiations resulted in de-legitimization of the process.

The proposed text of the intellectual property chapter of TTIP should be made public to encourage public comment and engagement and to ensure a more legitimate, democratic process.

KEI is conducting a poll, asking “Why are trade negotiations so secret.” As of May 9, 2013, the results were as follows:

Why do people think trade negotiations are secret?

- | | |
|---|-----|
| 1. There is nothing at stake that would concern the general public | 2% |
| 2. Always useful to have special access to dole out to industry friends | 9% |
| 3. Democracy and transparency make it impossible to conclude deals | 13% |
| 4. No one can remember how this secrecy tradition got started, but there must be a reason | 4% |
| 5. Governments and industry lobbies have contempt for the public, and prefer unaccountable secret negotiations. | 71% |

Comments on Intellectual Property

The remainder of our comments will focus on specific areas of concern with regard to the intellectual property chapter.

We note that previous trade agreements negotiated by the E.U and other countries, as well as the agreements negotiated between the U.S. and other countries (including the currently negotiated Trans-Pacific Partnership Agreement) have sought to increase the rights of intellectual property rightholders at the expense of users. This imbalance results in limitations on free expression, greater difficulties in accessing educational materials, barriers to the use of creative works to create new works, higher prices for medicines and less access to lifesaving medical technologies, among other concerns.

We oppose efforts to use the TTIP to create higher norms for intellectual property rights, and argue that the TTIP should be focused on areas where intellectual property rights should be weakened, and/or the public's rights as users be made stronger.

We note that the general public in both the U.S. and E.U. have objected to attempts to increase the rights of patent or copyright holders, particularly where they have negative impacts on the public interest. For example, in early 2012, with two bills looming in Congress that would impact internet service providers, known as the Stop Online Piracy Act (SOPA) and the PROTECT IP Act (PIPA) numerous websites collaborated on a day of action that resulted in blacked out webpages, where either portions of the sites were blocked or, in some cases, in their entirety. Among those participating in the website blackouts included the popular sites Google and Wikipedia, leading to the loss of traction for these bills. Similarly, the public in the E.U. objected to the Anti-Counterfeiting Trade Agreement (ACTA) and voiced their concerns through protests in the streets of Europe, ultimately resulting in the European Parliament's rejection of the agreement.

Medical Technologies

In a time where the economies of the U.S. and E.U. are facing budget crises, it is important that governments have the freedom to curb abuses of intellectual property rights, and in some cases, to limit those rights.

Scope of Patentability

There is no reason to expand the scope of patentability, particularly where courts are currently determining the appropriate application of patent rights and considering limitations on certain categories. For example, in the highly controversial patents over the BRCA1 and BRCA2 genes, associated with an individual's susceptibility to breast cancer, the Supreme Court of the United States is considering whether these isolated DNA are patent eligible or more properly excluded from patentability; in certain European countries, new laws on compulsory licenses were adopted to weaken patents on these genes. Patenting of genes has been highly controversial due to the fact that such practices greatly reduces the availability of more accurate tests, secondary or confirmatory testing, and access to diagnostics in addition to future research on diseases associated with the patented genes.

Furthermore, permitting or, even worse, mandating evergreening patents in a chapter of a trade agreement is highly inappropriate. We note that the FTC has asserted that evergreening of patents has been

problematic and that antitrust issues arise as a result of inadequate standards in the granting of a patent, resulting in numerous patents being approved by USPTO despite failing to satisfy a non-obviousness/inventive step requirement. Requiring patents to be made available even absent any showing of enhanced therapeutic value results in over-patenting and extending monopolies on life saving drugs. Large pharmaceutical companies can make minor modifications, including to dosing or route of intake, and obtain an evergreening patent, preventing generics of that particular medicine. In the context of biologics, President Obama's recent budget proposal recommends the prohibition of evergreening on biologics in order to save money. The TTIP agreement should seek to prohibit, not mandate evergreening patents, and should also ensure that the scope of patentability is not inappropriately expanded.

Patent Term Extensions

Patent term extensions should not be a mandatory part of a trade agreement.

Patent Linkage

Although patent linkage exists in the United States, it is not implemented in most European countries and is, in fact, a controversial measure, which has been abused in a number of cases where weak or non-germane patents have been asserted in the linkage process. Patent linkage is highly controversial and numerous drug regulatory authorities have conceded that they are not equipped to make patent determinations. The U.S. Food and Drug Administration (FDA) has stated that it “does not have the expertise to review patent information. The agency believes that its resources would be better utilized in reviewing applications rather than reviewing patent claims.”

Exclusive Rights Over Test Data

In some bilateral trade agreements between the E.U. and other countries, proposals and final text have emerged to protect vertebrate animals from duplicative testing for data used to register agricultural products. Instead of exclusive rights in this area, the E.U. has included measures that use cost-sharing to compensate the originator of the test data. We note that exclusive rights over test data is not only wasteful as it requires duplication of tests, but in the context of testing on humans is also unethical. The Declaration of Helsinki on the Ethical Principles for Medical Research Involving Human Subjects provides standards that are inconsistent with a system of exclusive in test data. The WHO Global Strategy and Plan of Application includes reference to the Helsinki standards.

The U.S. should embrace the model of cost sharing that the E.U. proposes to protect vertebrate animals, and extend this to tests involving human subjects. Such a model exists not only in the E.U. trade agreements with respect to agricultural products, but also in Senator Sanders' Ethical Pathways Act, which has been introduced in Congress twice.

The Doha Declaration

The TTIP should incorporate by reference the Doha Declaration on the TRIPS Agreement and Public Health. The full text of the Doha Declaration should be respected, rather than piecemeal inclusion of certain portions of the Declaration. Any reference to the Doha Declaration should not seek to limit its application to a limited set of diseases or to emergencies, but should be clear that its purpose is to promote “access to medicines for all.”

Copyright

Previous trade agreement negotiations, including the currently negotiated TPP, highlight efforts by the

U.S. to extend copyright terms and provide new rights to rightholders.

In several agreements the United States has restricted the use of exceptions to copyright, by requiring that exceptions to rights be subject to a restrictive three-step test. In some agreements, the three-step-test is nuanced, and in others, it is not. One example of the three-step test is the US-Korea FTA, which requires that exceptions be limited to:

- (1) certain special cases,
- (2) not conflict with a normal exploitation of the work, performance of phonograph, and
- (3) do not unreasonably prejudice the legitimate interests of the right holder.

In the US/Korea agreement, even “fair use must be subject to this 3-step test:

ARTICLE 18.4: COPYRIGHT AND RELATED RIGHTS

1. Each Party shall provide/7/ that authors, performers, and producers of phonograms/8/ have the right to authorize or prohibit/9/ all reproductions of their works, performances,/10/ and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form)./ 11/

Footnote 11. Each Party shall confine limitations or exceptions to the rights described in paragraph 1 to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.

The U.S. laws on exceptions are extensive and sometimes nuanced, and some may fail a rigorous application of the 3-step test. For example, in the United States, compulsory licenses are granted automatically for all musical compositions. This is not a “special case.” However, the exception to exclusive rights is anticipated in Article 13 of the Berne Convention, which provides for exceptions to exclusive rights in such cases, so long as there is “equitable remuneration.” In fact, several of the so-called “Berne Exceptions” provide very different standards than the super restrictive three-step test favored by some copyright lobby groups. For example, in education, the standard for the exception is “to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.” These “particular” Berne exceptions cover many of the core areas of U.S. fair use law.

The specific exceptions provided for the Berne Convention cover a wide range of issues, including:

- Article 2(4,7 and 8) - Protected Works:
- Article 2bis - Possible Limitation of Protection of Certain Works:

- Article 10 - Certain Free Uses of Works:
- Article 10bis - Further Possible Free Uses of Works:
- Article 11bis, 2 and 3
- Article 13(1) - Possible Limitation of the Right of Recording of Musical Works and Any Words Pertaining Thereto:

The issue of which exceptions are subject to the three-step-test and which are not is complex, and controversial. It is doubtful current U.S. fair use practice is consistent with the three-step test. Certainly the U.S. limits of remedies for government use (28 USC 1498), limits on state sovereign immunity, and our liberal first sale doctrine would not survive a strict three-step-test. Given the fact that the U.S. and the E.U. are already subject to certain 3-step test obligations in the WTO and the WCT, there is no need to expand the scope of the 3-step test in this agreement.

For more on this topic, see:

- “Why do U.S. and E.U. trade negotiators hate the Berne Copyright Limitations and Exceptions?”
<http://keionline.org/node/1655>
- “United States Four Fair Use Factors and the WTO Three-Step Test”
<http://keionline.org/node/1597>.)

Copyright terms

The U.S. should not seek to require copyright terms beyond what is required by international law. Although the currently copyright term in the U.S. is a period of the life of the author plus an additional seventy years (which is also proposed in the TPP, along with 95 or 120 years, in certain cases, for corporate works/works for hire), this term is excessive. The Register of Copyrights, Maria Pallante, recently testified before Congress advocating for revisions to the U.S. Copyright Law, including reduction of the term of copyright:

“Congress . . . may want to consider alleviating some of the pressure and gridlock brought about by the long copyright term – for example, by reverting works to the public domain after a period of life plus fifty years unless heirs or successors register their interests with the Copyright Office.”

The independent report commissioned by the United Kingdom and primarily authored by Ian Hargreaves called for an economic evidence basis in implementing copyright laws. The report noted that economic evidence supports the elimination of copyright term extensions:

“Economic evidence is clear that the likely deadweight loss to the economy exceeds any additional incentivising effect which might result from the extension of copyright term beyond its present levels. This is doubly clear for retrospective extension to copyright term, given the impossibility of incentivising the creation of already existing works, or work from artists already dead. Despite this, there are frequent proposals to increase term . . . The UK Government assessment found it to be economically detrimental. An international study found term extension to have no impact on output.”

Lengthy copyright terms shrink the public domain, harming access to knowledge and limiting the number of

works that can be relied upon for new creative endeavors. It increases the cost for search for authors and can contribute to the “orphan works” problem where the rightholder is difficult, if not impossible, to identify and locate. The TTIP should not include any requirement that copyright terms extend beyond the minimum international requirements.

Orphan Works

Where a work is still under copyright protection, a costly search for the rightholder must be undertaken before that work can be used (unless the use falls under a limitation or exception). Often, the rightholder cannot be located, resulting in an “orphan works” problem where the potential user of the work cannot do so because he cannot gain permission of the rightholder. Several proposals have been made to address the orphan works problem, including a proposal that would limit the remedies on the use of orphan works. The 2008 proposal in the Senate, known as the Shawn Bentley Orphan Works Act, would have eliminated the possibility of the reward of court fees or attorneys’ fees, provided for reasonable compensation as the measure of damages (as opposed to actual or statutory damages), and also provided for the complete remittance of damages in certain cases, as well as limits on injunctions.

The E.U. has also worked to find a solution to the orphan works problem and the European Parliament set out Directive 2012/28/EU in October of 2012. The directive set out permitted uses of orphan works for certain organizations, with an effort toward digitization and online cross-border access for works in these organizations’ collections.

Any proposals made regarding copyright in the TTIP should take care to protect efforts to solve the orphan works problem.

Cross-border sharing of accessible format works

As noted above, a WIPO diplomatic conference to negotiate a treaty for persons who are visually impaired or have other disabilities is scheduled for June 2013. The lack of accessible format works—often estimated at less than 5-percent in developed countries and less than 1-percent in developing countries—has led to a “book famine” for those who are visually impaired or have other disabilities. One critical feature of this treaty will be to allow for the cross-border sharing of accessible format works. Under current systems, it is difficult to import or export accessible format works, thus requiring the costly and unnecessary duplication of accessible works in multiple countries, even where these countries share a common language. As an example, the popular series, Harry Potter, had to be created in accessible format work in the U.S., the U.K., Australia, New Zealand, Canada, and other English speaking countries rather than being made once then shared with these other countries. Also problematic is the fact that accessible format works made in languages other than the primary language of the particular country are extremely rare. Permitting robust limitations and exceptions to allow for the creation of accessible format works in conjunction with the ability to share these works across borders will help reduce the book famine and benefit those who are blind or have other disabilities.

The TTIP should include a provision to permit the cross-border sharing of accessible format works with our trading partners in Europe.

Economic Importance of Limitations and Exceptions

Robust limitations and exceptions should be feasible, and in some cases, even required.

Any language on limitations and exceptions should take care to protect those exceptions that fall outside

the three-step test, including the specifically enumerated exceptions found in the Berne Convention such as those for news reporting; works of speeches, addresses and lectures; the quotation right; use for teaching; legal texts; compulsory licensing for music; use for translations; and broadcasting exceptions. These categories of limitations and exceptions are not subject to the confines of the three-step test, and in some cases are mandatory.

Limitations and exceptions are not only important from the perspective of access to knowledge and information, but also greatly contribute to the U.S. economy. A number of “fair use” industries including, for example, manufacturers of certain consumer devices, programmers, software developers, internet search and web hosting providers, and educational institutions depend on limitations and exceptions to properly function. A report by CCIA noted that in 2008-2009, “fair use industries generated revenue of an average of \$4.6 trillion, a 35 percent increase over 2002 revenue of \$3.5 trillion,” and in 2006 represented one-sixth of the total U.S. GDP. Export for fair use industries have also become increasingly important as exports increased 64% between 2002 and 2008.

The success of Google, Facebook and other U.S. businesses has generated some responses in Europe that are trade restrictive and appear to fall outside of the framework for copyright created by the Berne Convention. For example, the Berne Convention requires that copyright “shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information” (Berne, Article 2.8), and mandates exceptions for “quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.” (Berne Article 10.1) Based on press reports, recent legislation in Germany appears to have undermined these important mandatory copyright exceptions.

Copyright in the Digital Environment

KEI objects to an inflexible requirement in a trade agreement that circumvention of a technological protection measure (TPM) be a separate and independent cause of action, separate from any underlying copyright protection. In the more than 12 years of existence of the Digital Millennium Copyright Act (DMCA) in the U.S., it is evident that TPMs have been greatly abused and can also prevent legitimate uses of a work that would be permitted if applied in a non-digital format. Given the expansive way some companies have sought to use legal measures on TPMs, there are not only risks to legitimate uses of information, but also anticompetitive actions in markets as diverse as printer ink cartridges and mobile phones.

Overprotection of TPMs can result not only in harm to consumer access, but may also hamper further innovations. As noted in the Hargreaves report:

Copyright law was never intended to be an instrument for regulating the development of consumer technology. But where it can block or permit developments or applications of technology that is precisely what it becomes. When this happens, copyright’s significant economic benefits as a mechanism to incentivise individual creativity need to be measured against their negative impact in impeding innovation elsewhere in the economy. Copyright holders have a long history of resisting the emergence of technologies which threaten their interests, including audio tape recorders and VHS recorders. When the first sound recording technologies emerged, some music rights holders opposed the recording of the music. At that time, it was the recorded music industry who were seen as dangerous innovators.

Therefore, care must be taken to ensure that the development of consumer technology is not hampered and does not provide a roadblock to other innovations.

Robust limitations and exceptions are necessary for TPMs. Under our current system that required a burdensome administrative rulemaking process every three years is costly, time-consuming and unnecessary. Even where there are clear ongoing needs for a limitation or exception to the rule prohibiting circumvention of a TPM, permanent exceptions and limitations may not be permitted under closed list systems, such as has been proposed in the TPP.

Furthermore, the U.S. should not try to increase liability for internet service providers (ISP), either by expanding the class of persons or entities that can be considered an ISP or by reducing the limitations on liability that currently exist. Furthermore, the U.S. should carefully consider whether our current system of notice and takedown remains the best method for enforcing copyright in the digital environment. We note that, according to data reported by Google, there has been an exponential rise in takedown requests. Google reported that in May 2012, there were over 250,000 takedown requests per week, representing a greater number of requests than the entire calendar year of 2009. By October 2012, that figure had increased more than six-fold to 1.7 million requests per week. The most recent data provided for by Google reports that by April 1, 2013, the figure is now over 4 million takedown requests per week. Google has also reported a number of abusive takedown requests submitted by rightholders where no copyright violations occurred and the request was targeted at competing business or curbing negative reviews of a movie. The U.S. notice and takedown procedure has been heavily criticized not only because of the potential for abuse, but also because of the lack of due process involved in such a system.

Standards Essential Patents

KEI suggests the policy set out in the January 8, 2013 joint statement by USDOJ and USPTO on standards-essential patents be considered as a norm as regards injunctions, damages and other remedies in the TTIP.

UNITED STATES DEPARTMENT OF JUSTICE AND UNITED STATES PATENT &
TRADEMARK OFFICE

POLICY STATEMENT ON REMEDIES FOR STANDARDS-ESSENTIAL PATENTS
SUBJECT TO VOLUNTARY F/RAND COMMITMENTS

January 8, 2013

Voluntary consensus standards serve the public interest in a variety of ways, from helping protect public health and safety to promoting efficient resource allocation and production by facilitating

interoperability among complementary products. 8 . . .

However, collaborative standards setting does not come without some risks. For example, when a standard incorporates patented technology owned by a participant in the standards-setting process, and the standard becomes established, it may be prohibitively difficult and expensive to switch to a different technology within the established standard or to a different standard entirely. As a result, the owner of that patented technology may gain market power and potentially take advantage of it by engaging in patent hold-up, which entails asserting the patent to exclude a competitor from a market or obtain a higher price for its use than would have been possible before the standard was set, when alternative technologies could have been chosen. This type of patent hold-up can cause other problems as well. For example, it may induce prospective implementers to postpone or avoid making commitments to a standardized technology or to make inefficient investments in developing and implementing a standard in an effort to protect themselves. Consumers of products implementing the standard could also be harmed to the extent that the hold-up generates unwarranted higher royalties and those royalties are passed on to consumers in the form of higher prices. 10

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The DOJ is the executive-branch agency charged with protecting U.S. consumers by promoting and protecting competition. The USPTO, an agency of the Department of Commerce, is the executive-branch agency charged with responsibility for examining patent applications, issuing patents, and—through the Secretary of Commerce—advising the President on domestic and certain international issues of intellectual property policy. 16 The DOJ and USPTO are concerned about the potential impact of exclusion orders on “competitive conditions in the United States” and “United States consumers” in some cases involving F/RAND-encumbered patents that are essential to a standard, and the conditions under which they may be denied. 17 Although, as described above, an exclusion order for infringement of F/RAND-encumbered patents essential to a standard may be appropriate in some circumstances, we believe that, depending on the facts of individual cases, the public interest may preclude the issuance of an exclusion order in cases where the infringer is acting within the scope of the patent holder’s F/RAND commitment and is able, and has not refused, to license on F/RAND terms.

Chapter on Access to Knowledge

There should be a chapter on access to knowledge in the TTIP. This should include basic provisions on transparency, obligations as regards public access to government funded research (such as the NIH policy), requirements that clinical trials for drugs be included in clinicaltrials.gov, greater disclosure of data

from trials (subject to appropriate privacy protections), sharing of information between states on such issues as prices of pharmaceutical goods, costs of research and development for drugs and vaccines, and other relevant matters. We are confident this would be a great chapter to negotiate.

Supply of Public Goods

The United States and the European Union are both leading suppliers of public sector research and development, humanitarian and development aid, and other public goods.

We suggest there be a chapter in the TTIP agreement on the supply of public goods. The chapter should include a mechanism for a schedule for the supply of public goods, that would provide the opportunity to make “voluntary binding” offers to supply certain public goods. For more details on this proposal, see, in a possible WTO context, the proposal for an agreement on the supply of public goods (<http://keionline.org/wtoandpublicgoods>).

Tax Avoidance

Our inability to tax corporate income fairly creates a number of fiscal problems in the U.S. and the E.U.

U.S. Corporate federal income tax receipts as a share of GDP

1970	3.16%
1980	2.32%
1990	1.61%
2000	2.08%
2010	1.32%

A trade agreement between the U.S. and the E.U. provides an unique opportunity to put into place better mechanisms to tax large businesses that currently shelter their incomes in low tax jurisdictions. A model for this may be the Multistate Tax Compact, which provides for common methods of reporting and allocating profits among different states for purposes of collecting income taxes.

Financial Transactions Tax

One of the barriers to the introduction of a financial transaction tax is the fear that financial institutions in one country will operate at a competitive disadvantage to financial institutions in other countries. An agreement between the U.S. and the E.U. provides a unique opportunity to move forward of such a tax. A first step might be a joint U.S. and E.U. committee to consider proposals for such taxes, and to identify projects that could be funded from such a tax.