



LIGHTINGEUROPE
THE VOICE OF THE LIGHTING INDUSTRY

**LightingEurope
Position on the EU-US
Transatlantic Trade
and Investment
Partnership (TTIP)**

0 Executive summary

The existing transatlantic trade and investment relationship continues to account for the largest economic relationship in the world. The economies of the EU and the US account together for about half of the entire world GDP and for nearly a third of world trade flows. LightingEurope, representing the interests of the European lighting industry, recognizes the job creation, economic growth, and international competitiveness advantages on both sides of the Atlantic, which may arise as a result of a strengthened trade and investment relation between the economies of the EU and the US. Therefore, LightingEurope supports the Transatlantic Trade and Investment Partnership (TTIP) proposals from both the EU and the US (dated January 2016) with regards to the elimination of tariffs and the simplification of customs procedures.

LightingEurope, in principal, also recognizes the potency of the TTIP proposals related to the harmonization of the current public procurement, intellectual property and regulatory rules in order to further increase the trade and the investments between the economies of the EU and the US. However, with regard to the harmonization of the public procurement and regulatory rules, LightingEurope emphasizes the need of a prior harmonization of the parent EU and US legislation systems. The lack of a mutually accepted and implemented harmonized legislation system will result in an unequal treatment of the TTIP content in the two regions and will consequently result in an unfair competition between the regions.

In addition LightingEurope wants to keep the management of the intellectual property rules under the roof of the World Intellectual Property Organization (WIPO) and not address them in the TTIP agreement.

For the European lighting industry the most challenging part of the agreement is the necessary harmonization of the public procurement and regulatory rules and associated prior harmonization of the parent EU and US legislation systems, which are very different at the moment. LightingEurope is strongly against a mutual recognition of technical standards, without prior harmonization of the parent legislation systems and associated technical standards.

In conclusion, the European lighting industry believes that business has an important role to play in supporting the high level ambition of TTIP free trade negotiations, currently under discussion. LightingEurope remains supportive of a swift conclusion of a balanced Agreement that will equally benefit both sides of the Atlantic, under the condition of harmonization of the parent legislation systems and associated technical standards.

1 Custom duties

With regard to the customs duties, the European lighting industry is strongly supportive of the elimination of existing customs duties, on all lighting products and components, traded between the US and EU at the entry into force of the agreement

2 Access to public procurement markets

In order to create a level playing field, TTIP should ensure free and equal access to public procurement markets in the US and EU for market players of both regions.

In particular, local measures of public authorities (e.g. local market regulations of individual US states or EU countries) intended to provide advantage to domestic suppliers in public procurement markets should, if possible, be fully dismantled and prohibited, or at least be clearly and strongly discouraged. Corresponding projects should not receive any federal grants.

3 Regulatory cooperation

The possible actions that would be required to achieve regulatory coherence and cooperation are numerous and inherently complex, for three reasons:

First, the current EU and US legislation systems have essential differences with regard to their set-up, conformity assessment and non-conformity handling.

The US set-up is a combination of a government-driven regulations Federal Communication Committee (FCC), Department of Energy (DOE) and a private-sector-driven standards system (e.g. Underwriters Laboratory (UL), whilst the EU set-up is only based on government-driven regulations.

The US conformity assessment is mainly based on third party testing and enforcement, where the EU execution is based on self-declaration by the manufacturer.

The non-conformity handling in the US is based on extreme legal liabilities, where this is not the case in the EU system. Standards and regulations in the EU and the US have been designed in the contexts of these different legislation systems. Because of these differences, the EU & US Lighting Industries do not believe that a mutual recognition of technical standards makes any sense, without prior harmonization of the parent legislation systems, such as of similar set-ups, conformity assessment and non-conformity handling.

Second, any proposed harmonization of the associated technical standards and product requirements should be achieved on the basis of the work of international standardization organizations such as ISO, IEC and ITU, and regional standards initiatives should be dissolved.

LightingEurope Position on TTIP

Third, given the current differences in technical infrastructures, installed bases of existing products, customer preferences, etc. in the EU and US markets, the EU and US Lighting Industries assess a harmonization process of technical standards to be extremely difficult, lengthy, costly and possibly even unfeasible or meaningless.

Based on the above, LightingEurope is strongly against a mutual recognition of technical standards, without prior harmonization of the parent legislation systems and the associated technical standards.

As a result, the regulatory cooperation can only be achieved via the harmonization of the legislation systems, resulting in similar set-ups, conformity assessments and non-conformity handling. Additionally the harmonization of the associated technical standards and product requirements should be achieved on the basis of the work of the international standardization organizations ISO, IEC and ITU.

LightingEurope considers this necessary harmonization process as extremely difficult, lengthy, costly and possibly unfeasible.

4 Investment protection and investor-state dispute settlement

LightingEurope recognizes the need for proper investment protection and understands that the mechanisms which are currently in place are not always sufficient or fully transparent.

Rather than referring exclusively to investor-state arbitration procedures without the possibility to appeal, TTIP should also be used to initiate the development of a fair and consistent international legal system, which might finally be the creation of an international court of justice. Such a court would be able to analyse current fragmented case law and individual decisions and work out standardized rules for investment protection, which could also be used to govern future BITs (bilateral investment treaties).

The US and the EU are leading economies. The establishment of a bilateral tribunal for the settlement of investment disputes (incl. appeal mechanism), in the context of TTIP, would be a first step and strong sign for other countries. The corresponding investment provisions in the EU-Canada free trade agreement CETA may be taken as an example.

5 Intellectual property and geographical indications

There have been repeated attempts to use TTIP as a means of including questions of intellectual property rights in bilateral negotiations. LightingEurope rejects a harmonization of European and US intellectual property rights, by way of decisions at TTIP level.

LightingEurope Position on TTIP

Such harmonization can only be achieved at international level under the auspices of the World Intellectual Property Organization (WIPO).

Therefore LightingEurope demands that use be made of the established World Intellectual Property Organization (WIPO) for a harmonization of the protection of intellectual property rights.

This applies in particular to a harmonization of substantive patent rights, which are currently under multilateral discussion by the so-called B+ Group. In this context we reject the introduction of a grace period (or period preclusive of prejudice to novelty), demanded by the USA during the B+ Group negotiations. It would result in massive legal uncertainty on the part of companies, who could be confronted with the publication of patents only after they had started business activities in a specific technical area. A grace period would at best be acceptable in return for the introduction of a genuine first to file principle and a comprehensive right based on prior use.