

ITI Initial Priorities for U.S.-EU Trade and Technology Council Working Group 10: Global Trade Challenges

Among its many workstreams, the Information Technology Industry Council (ITI) appreciates the focus of the Trade and Technology Council (TTC) on **addressing and avoiding new and unnecessary barriers to trade in technology products and services** as well as **shared, global trade challenges** through Working Group 10 (WG10). Given its objective of promoting common core values including rule of law, non-discrimination, and regulatory transparency, industry believes **it is imperative that the United States and the European Union (EU) define and model approaches for countering problematic policies being advanced by many governments** – both democratic and authoritarian – that restrict the movement of information, goods, and services under the guise of data protection, data sovereignty, cybersecurity, government access to data, or industrial policy. Such policies, which may mandate the localization of data, block market access, or enable internet shutdowns/blocking, are often based on the flawed premise that data restrictions and digital protectionism are necessary to achieve policy objectives. However, these trade restrictions often result in weaker, not stronger, protections, while posing threats to core democratic values including respect for human and labor rights, in-country worker safety, environmental protection, the rule of law, non-discrimination, regulatory transparency, market-based commerce, and the freedom to innovate and to have innovations protected.

As the United States and EU further define topics of engagement in WG10, ITI offers the following list of initial priorities for inclusion in upcoming discussions.

- **Core Principles** - WG10 offers the clearest TTC venue for demonstrating to third countries the importance of open digital markets to innovation, competition, and shared democratic values. The EU and U.S. should use WG10 discussions to **establish bilateral commitments**, including with respect to existing and proposed regulations, **to avoid discrimination on the basis of geography or economic sector; ensure that security and competitiveness objectives are taken into consideration; provide appropriate opportunities for regulatory dialogue; and promote compatible, balanced approaches based on rigorous, objective criteria** to address emerging policy challenges. Such commitments would model a shared dedication to open markets and multilateralism while building on past cooperative efforts such as the *European Union-United States Trade Principles for Information and Communication Technology Services*.¹
- **Holistically Addressing Technical Barriers to Trade in Technology Goods and Services** - Governments are increasingly applying standards-based or technical regulatory governance approaches to advance policies relating to cybersecurity, artificial intelligence (AI), or industrial policy, that create or stand to create **technical barriers to trade**. Therefore, in addition to area- and measure-specific engagement, WG10 should:
 - **Establish a commitment to base regulatory or procurement requirements on international, industry-driven, voluntary technical standards²** – including those for

¹ <https://ustr.gov/sites/default/files/uploads/agreements/morocco/pdfs/2011-04-04%20ICT%20principles%20text%20FINAL.pdf>

² i.e., All those developed in accordance with Annex 2 to Part 1 (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement) in the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.13), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

digital services and green procurement. Such a commitment would complement discussions taking place in WG1 on technology standards and **send a clear message to third countries pursuing the development and reliance on country-unique standards**, which create the risk of discrimination, non-tariff barriers to trade, and unnecessary regulatory divergence and incompatibility. As part of these discussions, ensure that the implementation of the *EU Strategy on Standardisation*³ is pursued in a manner that fully comports with shared World Trade Organization (WTO) Technical Barrier to Trade (TBT) commitments, including those concerning the use of international standards as the basis for technical regulations and those ensuring that standardizing activities are open on a non-discriminatory basis to relevant bodies of at least all WTO Members.

- Similarly, where necessary, facilitate commitment to **accepting test results and/or associated certifications from accredited bodies located in the territory of the other Party** by leveraging international standards and international accreditation schemes, and implementing domestic legislative changes where necessary.
- Support existing and new trade disciplines and best practices **to address discriminatory, unnecessary, and/or non-transparent technical requirements or standards affecting digital goods and services.**
- **Cybersecurity** - WG10 should prioritize **non-discriminatory, proportionate, risk-based approaches to cybersecurity** based on international standards. Specifically, we encourage policymakers to address industry concerns with France's *SecNumCloud* initiative and its possible replication at the European level through the implementation of the European Cybersecurity Cloud Certification Scheme (EUCS).⁴ While ITI appreciates efforts to protect data, systems and infrastructure from anomalous behavior and prevent unauthorized access, several elements of the *SecNumCloud* initiative raise concerns, including sovereignty requirements that sharply limit available providers and stand to undermine security, data localization requirements, and ownership limitations that contravene French and EU commitments under the WTO Agreement on Government Procurement (GPA). At a more systemic level, industry is concerned that the *SecNumCloud* initiative stands to inform comparably restrictive actions in third countries and foster fragmentation within the Single Market by contradicting the objectives of the Cybersecurity Act.
- **Countering Unfair Trade Practices** - Establish a shared position on **strong trade policy disciplines** that address, *inter alia*, **state-owned enterprises and forced technology transfer**, and **prohibit data localization and restrictions on cross-border data flows** while ensuring appropriate protection of personal data; develop a strategy for promoting the international adoption of updated disciplines related to unfair trade practices, including through multilateral engagement.
- **Avoiding Collateral Impact of Domestic Measures** - In keeping with Pittsburgh commitments to consult and coordinate on the use of domestic measures to ensure that trade policy supports market-based economies and the rule of law, pursue engagement to **mitigate collateral consequences for either economy arising from discrete domestic measures**. Two policies immediately relevant for such discussion include **the European Commission's Proposed Regulation on Foreign Subsidies**, which would benefit from tailoring to avoid undermining legitimate commercial activity that benefits the EU and U.S. economies, and **recent and proposed U.S. expansions of domestic content restrictions for government procurement**, which stand to hinder innovation and broader supply chain cooperation.

³ <https://ec.europa.eu/docsroom/documents/48598>

⁴ <https://www.itic.org/dotAsset/3ebec429-50cf-435e-9166-fe48dedf05d0.pdf>

- **Enforcing Multilateral Commitments** - In line with the WG10 objective of promoting multilateral outcomes that benefit U.S. and EU workers and companies, **collaborate to confront systemic contraventions of WTO obligations**, including:
 - **Multiple countries' imposition of tariffs on information and communications technology (ICT) products, in violation of Information Technology Agreement (ITA) commitments.** Such tariffs directly impact EU and U.S. exports, hinder development outcomes, exacerbate supply chain uncertainty, and erode international respect for multilateral commitments.
 - **Non-notification and/or advancement of technical regulations impacting technology where less trade-restrictive means are available**, in contravention of multilateral TBT commitments. In addition to WTO engagement to promote **improved transparency and notification of measures**, both sides should review and, where necessary, amend or withdraw measures in violation of core TBT principles. For example, the European Commission has recently **proposed a revision of the Radio Equipment Directive (RED) to mandate common chargers for mobile phones**, despite the existence of voluntary international standards for USB common charging interoperability that already meet and exceed the regulatory objectives for long term e-waste reduction, end-to-end interoperability across different product categories, and increased user convenience.