

ITI Response – “A renewed trade policy for a stronger Europe,” Consultation Note

15 September 2020

Introduction

The Information Technology Industry Council (ITI) welcomes the opportunity to provide input in response to the European Commission’s Consultation Note of 16 June 2020, “A renewed trade policy for a stronger Europe.” ITI represents over 70 of the world’s leading information and communications technology (ICT) companies. Our membership comprises companies from all corners of the technology sector, including hardware, software, digital services, semiconductor, network equipment, and internet, as well as technology-enabled companies that rely on ICT to drive their businesses. With a broad membership across Europe, Asia, and North America, we engage with governments and other stakeholders around the globe to share information and advance best practices in technology policy. We work collaboratively with governments to develop effective policy approaches that enhance cybersecurity, protect privacy, and enable businesses to thrive in a dynamic global market.

The last decade has seen a fundamental shift in the way global trade is conducted. Globally competitive companies across all sectors rely on a vast array of data-driven digital technologies to produce, export, market, and sell goods and services. Global cross-border data flows grew by 45 times from 2005 to 2015, and 75 percent of the value created by cross-border data flows accrues to traditional industries. Technology products and services drive growth and job creation in virtually every sector of the economy. EU manufacturers of automobiles and aircraft depend on real-time access to global data as a means of conducting their day-to-day operations, driving innovation in the implementation of new technology, and improving product performance and safety. EU small businesses of all types leverage technology platforms to reach new customers in foreign markets – an impossible feat only a decade ago.

Trade policy has a key role to play in harnessing these benefits for the European economy, and the EU is positioned to further its standing as a champion of multilateralism and open markets through leadership at the World Trade Organisation (WTO), innovative approaches in its bilateral and regional agreements, and forward-thinking domestic policies. It has played an important role in the WTO’s Information Technology Agreement (ITA) and expansion, liberalising trade in productivity-enhancing products, and enabling a boom in global ICT trade that has connected economies around the world. The EU’s open trade policies have supported EU competitiveness and growth, making it the biggest global exporter, importer and investor of services. We applaud the Commission’s commitment to openness and the delivery of global solutions to global challenges.

This commitment is all the more meaningful amid the immense, global economic and public health challenges brought about by the COVID-19 crisis, which have underscored the importance of digital technologies and cross-border digital services for European citizens and industry. Indeed, the sectors and businesses that have embraced digital transformation have been shown to be more resilient. Access to the technologies and services leveraged by those firms – regardless of where they are supplied from – is critical. Likewise, maintaining and augmenting Europe’s ability to develop key

technologies and ensure their availability to the EU in the future is a legitimate concern and an unquestionable aim for any government. Our industry acknowledges the sincere public interest objectives the EU is pursuing, and we want to be an active and constructive partner of the EU in achieving those aims.

In its pursuit of “Open Strategic Autonomy,” ITI encourages the EU to place both digital trade and other ICT- and innovation-promoting policies at the heart of its new trade strategy. In doing so, policymakers should ensure that Member States can readily access modern technologies, adopt new business models, attract foreign investment, and succeed across sectors in a competitive and data-driven global economy. An open EU economy is conducive to furthering Europe’s role as a major exporter of ICT services, as well as a major source of productivity gains and private investment, which in turn foster new technologies, research, and innovation.

As part of its efforts in this regard, we continue to strongly support the development of a structured, transatlantic dialogue on technology and trade that promotes transparent, compatible approaches to digital policy at the global level. More broadly, by pursuing ambitious digital trade policies that align with European values, notably on data privacy and security, the EU can accelerate inclusive and innovation-centric economic growth to the benefit of European citizens and EU international commercial leadership.

In a context of globally integrated markets and value chains, there is no question that Europe will continue to play a leading role in digital and trade policy. Its willingness to do so in collaboration with partners and through the introduction of new and flexible policy approaches will have a tremendous impact on the technology industry, society within and beyond its borders, and the next generation of innovation.

State-of-the-art Trade Policy for an Innovative and Resilient Economy

The EU has already taken innovative strides in the development of new trade provisions that foster inclusive economic growth, including in the areas of sustainable development and digital trade. In the sections that follow, we make specific recommendations aimed at advancing the role of the European Institutions in promoting state-of-the-art trade policies and trade-facilitative domestic policies.

Digital Trade

Where data flows, growth and innovation follow. Cross-border data flows and access to digital services and technologies enable “born global” small and medium-sized enterprises (SMEs) by offering them new ways to reach customers. New technologies, powered by data, have been a game-changer for small businesses, significantly contributing to integrating SMEs into global supply chains, increasing their access to overseas customers, and enabling them to more efficiently promote their products and services and process payments.¹ Access to cloud-based digital services allows SMEs to access the same cutting-edge technologies and solutions as major multinational firms. More broadly, digital trade has apportioned immense benefits and opportunities to small enterprises – increasingly so when in-person commercial engagement is restricted – and played a meaningful equalising role for enterprises of different sizes across different markets. Indeed, the rise of services in international

¹ https://www.accenture.com/_acnmedia/PDF-29/Accenture-Data-The-Fuel-Of-The-Digital-Economy-And-SME-Growth.pdf

cross-border trade is closely linked to rapid technological developments. However, the clear benefits of digitalisation risk being derailed by existing and emerging barriers to trade that restrict innovation and create obstacles to the movement of digitally enabled services across borders.²

Strong digital trade provisions are therefore essential to provide both small and large businesses with certainty and a level playing field in conducting business in an online environment predicated on the movement of data across borders, and countering or preventing the emergence of barriers to digital trade with increasingly far-reaching economic impacts. Moreover, key trading partners, including the United States, Japan, Canada, Australia, New Zealand and Singapore are integrating cutting-edge and ambitious digital provisions in new trade agreements. The import of such commitments is far from limited to trade in services. A renewed industrial policy will only succeed if it is complemented by an ambitious digital trade agenda designed to increase Europe's competitiveness at a global level. We therefore strongly encourage the EU to craft its domestic policies in a manner reflective of the Commission's emphasis on open markets and conducive to Europe's leadership in global technology-driven innovation, and to incorporate the essential foundational principles of digital trade in its bilateral, regional and multilateral negotiating efforts, including those that:

- ***Enable cross-border data flows and prohibit data localisation;***
- ***Prohibit tariffs and customs formalities on electronic transmissions and enshrine non-discriminatory treatment of digital products;***
- ***Ensure protection of personal data, taking into account best international practices for privacy and interoperability;***
- ***Strengthen and expand good regulatory practices for digital trade, in accordance with OECD principles, as a means to promote new technologies like Artificial Intelligence (AI), machine learning and additive manufacturing;***
- ***Promote governmental cooperation and risk-based approaches to cybersecurity;***
- ***Prohibit requirements to disclose source code, algorithms, and proprietary information relating to cryptography;***
- ***Advance policies and provisions that forge a balanced framework preserving rules limiting the liability of intermediaries and rights of third parties;***
- ***Facilitate access to and use of open public data in minable, machine-readable formats to spur adoption of AI and other emerging technologies; and***
- ***Enshrine acceptance of electronic contracts, signatures and authentication.***

European policymakers have key opportunities in particular as concerns:

Enabling international data flows and prohibiting data localisation. The cross-border movement of data is the lifeblood of all industries and all sectors. Data-related trade commitments must be strong enough to counter protectionist measures, many of which may be put forward under the auspices of legitimate public policy objectives by economies whose visions of access to information and technology differ sharply from those of the EU, while ensuring appropriate protection of EU citizens' personal information. We strongly encourage the EU to revisit its current position on data flows in trade agreements with a view to reaching a shared commitment with like-minded governments that achieves this balance. Doing so is necessary for the EU to advance its standing as a leader in modern international trade policy, and to provide firms in the EU with the certainty that they will be able to

² See, for instance, the OECD Digital Services Trade Restrictiveness Index: https://www.oecd-ilibrary.org/trade/the-oecd-digital-services-trade-restrictiveness-index_16ed2d78-en

continue to move and store data, including financial data, in the markets in which they do business. Furthermore, in doing so, the EU can chart a path conclusively demonstrating that strong protections for privacy and cybersecurity go hand-in-hand with the transparent, non-discriminatory transfer of data across borders. It can also ensure the development and functionality of frontier technologies used for tracking, steering, and augmenting climate and other tools to reach Europe's green and broader social objectives.

Prohibiting tariffs and customs formalities on electronic transmissions and enshrining non-discriminatory treatment of digital products. We applaud the EU's leadership in seeking a permanent moratorium on customs duties on electronic transmissions and urge its continued role in driving forward constructive engagement on this issue both in the context of WTO E-Commerce negotiations and more broadly. In its ongoing and future engagements, we also encourage the incorporations of provisions that codify the non-discriminatory treatment of digital products as a means of fortifying market access commitments and countering and preventing the emergence of barriers to trade.

Strengthening and expanding good regulatory practices for digital trade. Through its noteworthy efforts to expand transparent, evidence-based decision-making processes through Better Regulation, the EU is well-positioned to strengthen and expand the application of state-of-the-art good regulatory practices (GRPs) as pertains to digital and ICT policies that may impact trade. To the extent the EU wishes to explore novel approaches to address specific issues with regard to new and innovative services, these should be targeted, proportionate, and developed in a fit-to-purpose manner that facilitates trade, innovation, and strong protections. Such approaches must also ensure: ample opportunity for broad stakeholder input; reliance on global, industry-driven, voluntary consensus standards; due consideration of the technical and economic feasibility of requirements; and publication of an impact assessment encompassing a range of considerations to ensure the appropriateness, efficiency, and effectiveness of a direct regulatory approach. As part of these efforts, the EU could also explore creating innovative approaches to test new technologies using data (e.g., sandboxes).

By broadening application of these and other GRPs, the EU and its trading partners can leverage the maximum range of existing tools to address legitimate public policy objectives in a manner that prevents unnecessary policy fragmentation, avoids new non-tariff barriers to trade, minimises conflicts of laws for companies engaged in digital trade, establishes a framework worthy of emulation around the world, facilitates the implementation of new technologies, and maintains EU leadership in the modern global economy.

Promoting new technologies like AI and machine learning. As the Commission has acknowledged, new technologies like AI and machine learning are increasingly prevalent in the way companies do business, including small businesses that use AI tools to increase productivity and find new markets abroad, and industries that build and export AI technologies across borders. ITI provided substantive input³ into the European Commission's recent consultations on AI, stressing, among other things, Europe's opportunity to take an international leadership role on AI by building trust in the era of digital transformation while preserving an enabling environment for innovation to ensure its global competitiveness and security. To strengthen public trust in AI and enable next-generation innovation

³ *Requirements for Artificial Intelligence: ITI Views on the European Commission Inception Impact Assessment* (10 September 2020),

<https://www.itic.org/policy/1009ITIViewsonIIARequirementsforArtificialIntelligence.pdf>; *ITI Views on the European Commission White Paper on Artificial Intelligence* (12 June 2020),

<https://www.itic.org/policy/ITIresponsetoECAIWhitePaper12062020FINAL.pdf>

to flourish, it is important to develop responsible and internationally aligned AI governance frameworks and, where appropriate, risk-based regulatory approaches that are sufficiently flexible to account for new opportunities and challenges.

Accordingly, consistent with OECD principles on AI, we encourage the EU to promote the adoption of targeted, risk-based, technology neutral, sector-specific approaches to the governance and potential regulation of AI, while recognising the extent to which potential risks can be mitigated or addressed using existing instruments and regulatory frameworks. Through its trade agreements, the EU should pursue opportunities to advance the non-discriminatory regulation of AI applications while promoting interoperability, including through reliance on global, industry-driven, voluntary consensus standards. In addition, the EU can use trade commitments to promote the development and deployment of AI through bilateral, regional, and international cooperation. Such cooperation on AI deployments could be undertaken with a view to collaboratively addressing global challenges in areas such as public health, humanitarian assistance, and disaster response.

Promoting governmental cooperation and risk-based approaches to cybersecurity. The EU is pursuing an ambitious policy agenda as concerns governance approaches to cybersecurity, including in the development of voluntary certification schemes under the EU Cybersecurity Act, as well as through the development and amendment of vertical legislation. That other economies will look to the legislative example set by the EU underscores the imperative of both domestic and international policy approaches that facilitate trade, interoperability, and robust protections.

To this end, we strongly encourage the EU to pursue trade policy commitments that encourage Parties to use risk management approaches to cybersecurity that rely on global, industry-led, voluntary consensus standards – including services standards – and best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events. The EU can use ongoing and future negotiations to build the capabilities of domestic entities responsible for cybersecurity incident response and require the Parties to build the capabilities of their national entities responsible for coordinated vulnerability disclosure and handling. This should include, but not be limited to, developing voluntary processes for coordinated disclosure of both known and unknown (“zero-day”) security vulnerabilities to private sector organisations and other governments (i.e., CERT-CERT cooperation) for the purpose of improving the likelihood of mitigation, in alignment with international standards and best practices. With regard to Internet of Things (IoT) devices, we encourage the EU to collaborate on IoT baseline security through aligned approaches to global baseline cybersecurity standards, rather than pursuing regional solutions.

Prohibiting requirements to disclose source code, algorithms, and proprietary information relating to cryptography. Innovation depends on the ability to develop and use proprietary software, and to secure products and systems with private encryption keys. Some economies have unfairly advantaged their domestic industry by demanding that foreign companies transfer source code, algorithms, or proprietary cryptographic information as a condition for doing business in their territory. In other scenarios, concerns around government access to encrypted data have led to requirements that firms build “back doors” to digital products that can put intellectual property at risk. These kinds of measures reduce competition and close markets, and often undermine key government policy objectives in cybersecurity and other areas without meaningfully advancing legitimate law enforcement actions. To incentivise continued private-sector innovation and ensure a level playing field, we encourage the EU to further advance trade provisions that prohibit the transfer of source code, algorithms, and proprietary information related to cryptography.

Advance policies and provisions that forge a balanced framework preserving rules limiting the liability of intermediaries and rights of third parties. As noted in our recent submission in response to the

Commission's public consultations concerning the Digital Services Act,⁴ ITI is committed to working with the European Institutions to forge a balanced framework preserving rules limiting the liability of intermediaries and rights for third parties while providing more legal certainty. Consistent with this approach, and as a means both of promoting best practices internationally and preventing the emergence of barriers to digital trade, we encourage the European Commission to pursue policy approaches ensuring that intermediaries can continue to enable engagement and transactions for a healthy online ecosystem under a liability regime in line with the European framework. Such commitments would not prevent governments' work to combat illegal activity and could, for example, also encourage companies to work with public authorities to ensure a safe online environment.

Facilitating access to and use of open public data. Small and large companies can build innovative commercial applications and services based on government data. By making government data available in an open, machine-readable format, governments spur the inclusive adoption of AI and other emerging technologies and encourage innovative new uses that bring about positive economic and social impacts. The EU is already pursuing valuable initiatives to make this kind of public data available. As part of current and upcoming negotiations, we urge the EU leverage the benefits of emerging technology by committing to facilitate public access to and usage of government data.

Taxation

Our members rely on clear and established international tax rules to innovate and grow their operations. However, we are seeing governments introduce measures that deviate from longstanding international tax principles such as neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility. In particular, the increasingly widespread application of targeted, unilateral taxes – which continue to significantly expand in scope as they are introduced in markets such as India and Indonesia – stands to undermine a functioning international tax system and compromise the predictability that system has afforded companies in Europe and beyond to conduct business globally. We acknowledge the rationale that drives the OECD's work to update existing tax frameworks to reflect the contours of the 21st century economy, and we have actively supported ongoing negotiations at the OECD from their inception. We welcome the Commission's commitment to reach a multilateral, consensus solution to the tax challenges arising from the digitalisation of the global economy, and encourage the Commission to continue to promote multilateral engagement as the means to address the underlying tax policy challenges identified by governments participating in the OECD's Inclusive Framework project.

Regulatory Compatibility and Technical Barriers to Trade

We appreciate the Consultation Note's emphasis on the importance of regulatory cooperation as a means of mitigating any potential trade impacts from divergent approaches to shared public policy objectives. Certainly past trade commitments in this regard have facilitated beneficial government-to-government engagement, and we support in particular the use of trade agreements as a channel to promote cooperation between EU and third-country data protection authorities and advance the interoperability of privacy regimes. In addition to government-to-government engagement between trade and regulatory authorities, we encourage the Commission to leverage international

⁴ *The EU Digital Services Act: ITI Views on the Public Consultation* (7 September 2020), <https://www.itic.org/policy/ITIViewsEUDigitalServicesActConsultation.pdf>; *The Digital Services Act – ITI Views on the Inception Impact Assessments: Responsibilities, Gatekeepers Regulation and Competition Tools* (30 June 2020), <https://www.itic.org/policy/ITIViewsontheEUDigitalServicesActInceptionImpactAssessments30June2020.pdf>

mechanisms and global, industry-driven, voluntary consensus standards as a means to prevent the emergence of both technical barriers to trade and barriers to services trade, as well as to facilitate future regulatory convergence toward high-standard outcomes in areas including data privacy, consumer safety, and environmental protection.

Good Regulatory Practices

As the EU has underscored through continuing advancements in its Better Regulation agenda, regulatory transparency is essential in facilitating trade and fostering strong regulatory outcomes. Communication between regulators and a broad range of stakeholders on the approach and objectives of new regulatory requirements eliminates regulatory uncertainty and can prevent the emergence of technical barriers to trade. Similarly, early and consistent notification to the WTO of both technical regulations and voluntary measures provides a necessary channel for government and stakeholder input. Beyond the more specific applications referenced in the context of digital trade above, in its trade agreements we encourage the EU to incorporate more general, state-of-the-art commitments on GRPs that facilitate compatibility and transparency by broadening reliance on open, evidence-based approaches to the development of policy, legal frameworks, and regulation.

International Standards

As a matter of trade policy as well as domestic standardisation policy, we encourage the EU to revisit elements of its existing policies with a view to ensuring that European harmonised legislation is trade- and innovation-facilitative, and able to keep pace with technological advances. To that end, we recommend that policymakers explore innovative and transparent mechanisms that allow industry and regulators alike to consistently rely on global, industry-driven, voluntary consensus standards – including services standards – as a means of demonstrating conformance with harmonised regulatory requirements. Such policy advancements would not only enable necessary regulatory compatibility in areas of new technologies going forward, but would equip regulatory authorities with the broadest range of tools to pursue innovation-friendly, fit-to-purpose solutions and would align with the EU's outward-facing policies advocating for reliance on international standards, rather than country or region-unique standards or technical specifications. Both domestic and trade policy commitments advancing consideration of global, industry-driven, voluntary consensus standards would serve the dual purposes of fostering greater openness and innovation in the markets of European trading partners and directly countering restrictive, country-unique standardisation policy approaches.

In line with these recommendations, we encourage the Commission to expand on past efforts such as the ICT Multi-Stakeholder Platform (MSP) for public procurement in enabling reliance on global, industry-driven, voluntary consensus standards as a means of demonstrating compliance with harmonised European requirements for emerging technology.

Harmonised Standards Consultants. ITI members have noted concerns in the context of the European system of Harmonised Standards (HAS) consultants. We understand the review of harmonised European standards is intended to ensure their alignment with corresponding harmonised Essential Requirements; however, the increased legal scrutiny, reflected in part by the intervention of HAS consultants, is having a detrimental impact on the ability of industry to rely on harmonised standards to place products on the Single Market. Implementation of these checks on standards has inadvertently slowed the process of European standards development, and in certain cases created inconsistencies between European harmonised standards and widely-used international standards. The absence of readily available harmonised standards requires industry to rely on other means to demonstrate compliance with applicable regulatory requirements, thereby undermining the

predictability afforded by the New Legislative Framework and disincentivising industry participation in the development of harmonised standards. Manufacturers must have a high degree of certainty regarding when a standard may be implemented to meet certain regulatory requirements, especially in an international and competitive market. In addition to the broader standardisation policy recommendations above, we therefore encourage the European Commission to review its current policies to ensure that the review of harmonised standards by HAS consultants does not unduly delay their development and publication, or create divergences with international standards that could unintentionally create market access barriers.

[Conformity Assessment and International Accreditation Schemes](#)

Where governments deem it necessary to consider the use of conformity assessment as a component of regulatory approaches to emerging technologies, the EU has an opportunity – both in its domestic and trade policies – to lead globally in the development of strengthened provisions that counter localised testing requirements and facilitate the acceptance of test results and certifications through reliance on existing international schemes, including the International Laboratory Accreditation Collaboration (ILAC) Mutual Recognition Arrangement (MRA) and International Accreditation Forum (IAF) Multilateral Recognition Arrangement (MLA). Each of these schemes provides for a rigorous peer-review process that ensures the quality of test results produced by conformity assessment bodies (CABs) and certification bodies accredited by MLA and MRA members. The IEC System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) CB Scheme is another example of a successful international system for mutual acceptance of test reports and certificates that has yielded global benefits for the ICT industry. Expanding reliance on these would not only facilitate increased trade in regulated areas where testing and certification is necessary, but would have positive ramifications for safety, quality, and consistency, both by broadening the range of acceptable, trustworthy results, and allowing regulators and market surveillance authorities to concentrate resources in the most efficient and effective manner possible.

[Supplier's declaration of conformity](#)

The ICT industry has a proven, global track record in leading in the development of safe, high-quality, and state-of-the-art products. As such, in product areas where third-party testing requirements are unlikely to lead to improved regulatory outcomes, we promote supplier's declaration of conformity (SDoC) as the ideal attestation choice both for the satisfaction of regulatory requirements and the facilitation of trade. This model is already used for a wide variety of products in the EU and its trading partners. A greater reliance on SDoC in the marketing of ICT products would maintain regulatory and market surveillance assurances on the quality and safety of products while allowing for a focus on those classes of products with the greatest risk profiles. Bilateral negotiations should further explore where SDoC can be implemented as an effective means to ensure that products meet regulatory requirements while minimising delays and impediments to market access.

[E-Labeling](#)

As ICT products are shipped and sold across the world, manufacturers face the logistical challenge of including proper conformity marking on their products to demonstrate to regulators that their products are in line with all regulatory and certification requirements. Allowing the display of regulatory and other product information via electronic means, otherwise known as e-labeling, provides a practical solution that ensures labels will not inhibit product innovation while helping to minimise manufacturers' logistical burden and allowing compliant products to move freely without additional administrative barriers. Other benefits of increased reliance on e-labeling include

facilitated consumer access to compliance information, reduced environmental impact, and faster updating of conformity marking. A wide range of economies, including Australia, Canada, Singapore, Japan, New Zealand, South Korea, and the United States have already adopted e-labeling as an innovation-facilitating policy. We encourage the Commission to take the necessary steps to facilitate the acceptance of e-labeling for ICT products within the EU, without extending the compulsory content of labeling beyond what is currently required by existing legislation. Furthermore, we strongly encourage alignment with the international standard ISO/IEC 22603 on e-labelling, which, as of September 2020, is in the final draft stages before publication (FDIS).

Customs and Trade Facilitation

E-commerce has played a revolutionary role in opening new opportunities for SMEs to sell goods across borders. In its current and future trade negotiations, we strongly encourage the EU to build on and strengthen customs and trade facilitation provisions in the WTO Trade Facilitation Agreement (TFA). Further simplifying customs clearance procedures – including through establishment of commercially meaningful *de minimis* levels, as well as informal clearance thresholds – would enable greater EU SME participation in international trade and send a clear message about the unambiguous economic benefits of such commitments.

Furthermore, the advanced digitalisation of operational trade activities such as customs clearance or export licensing is inevitable. With these developments in mind, we would welcome increased focus on deployment of new technologies (e.g. blockchain) for customs clearance activities and e-licensing initiative for export license applications submitted across the EU. We also encourage the EU to enhance benefits available to Authorised Economic Operators (AEO), expanding AEO mutual recognition agreements, and further developing the Smart and Secure Trade Lanes initiative.

Services and Goods Market Access

The EU is a global leader in services trade, consistently ranking as both the largest exporter and importer of services in the world. As the Commission has noted, the services sector contributes considerably more than the industrial economy to gross domestic product and employment within the EU, accounting for approximately three quarters of total economic activity.⁵

As a means of complementing and giving effect to the modern, rules-based digital commitments described above, in its trade negotiations we encourage the EU to enshrine market openness through full liberalisation of services market access on a negative list basis, with minimal non-conforming measures. Consistent with a negative list approach and in the interest of facilitating trade in emerging services sectors, these commitments should ensure that new sectors benefit from market access commitments without further negotiation. Beyond the facilitation of services trade across the board, liberalisation in key sectors including computer-related services, data processing, electronic payments services, advertising services, telecommunication services, audiovisual services, research and development services, and logistics and distribution services will have significant positive repercussions for EU digital trade and the broader economy. We applaud the EU's leadership in conversations around services market access in the context of the WTO E-Commerce Joint Statement Initiative (JSI), and encourage further engagement toward services market access liberalisation in that and other negotiating contexts.

⁵ [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=World_trade_in_services&oldid=452146#:~:text=The%20EU%2D28%20is%20the,20.2%20%25\)%20of%20global%20imports.](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=World_trade_in_services&oldid=452146#:~:text=The%20EU%2D28%20is%20the,20.2%20%25)%20of%20global%20imports.)

With respect to goods trade, we would emphasise the productivity and economic growth gains of increased access to and use of ICT goods. The EU should continue to encourage its trading partners to liberalise trade in these products, including through accession to, and continued product and country expansion of, the WTO ITA and its expansion, to ensure that existing commitments to not impose tariffs on ICT goods remain in force. In addition, we note that the COVID-19 crisis has highlighted the importance of supply chain resilience, and additive manufacturing has further stepped in to complement traditional manufacturing. Additive manufacturing enables local production, quick turnaround, and flexible response, and will be an important contributor to EU competitiveness as a sustainable manufacturing method. As such, we encourage EU trade policy to enact duty-free treatment and seek zero duties with trading partners on additive manufacturing equipment and components. Rules of origin should be flexible and subject to reasonable content thresholds to enable technology producers to readily make use of them.

Export Controls

In order to ensure their effectiveness, export controls, which may in the future apply to certain emerging technologies (including AI), should be adopted at the international level (Wassenaar). We appreciate and support ongoing EU discussions with the United States and Japan in this area and believe that global coordination at Wassenaar level is essential before controls are implemented. We would further stress that export controls on emerging technologies be adequate, specific, and narrow; not overlap with the existing Wassenaar controls; and not create unnecessary barriers affecting the development and export of such technologies. ITI further recommends that foreign availability and the open source nature of specific technologies also be assessed to determine if controls will be effective.

We view the avoidance of autonomous controls on emerging technologies as complementary to broader European industrial policy aims, including as concerns ensuring an environment conducive to the development of new technologies inside the EU. As we have conveyed in other jurisdictions, the pursuit of autonomous controls also stands to undermine the importance of international export control regimes such as Wassenaar arrangement. Global collaboration in this area is therefore critical, as only a globally coordinated control list can ensure effectiveness of control measures for emerging or any other technologies.

Finally, we encourage the EU to intensify its efforts in implementing EU-wide export licensing simplifications for dual-use items. It should be noted that similar solutions have been implemented in other jurisdictions, including the United States, and EU action in this regard would eliminate a competitive disadvantage for EU exporters, encourage similar beneficial modernisation by other governments, and help to level the playing field globally. Once simplifications are implemented, their effectiveness should be continuously measured and reviewed to identify any potential changes needed to ensure that solutions meet their objectives.

Strategic Engagement

EU-U.S. Engagement

We fully agree with the Consultation Note's assertion that the transatlantic relationship "will be of particular importance, as it remains the central artery of the world economy and reflects a broader alliance of interests and fundamental values." Indeed, the transatlantic commercial relationship remains the largest bilateral trade and investment relationship in the world, and digital and ICT products and services are a key underpinning for that relationship. More importantly, global threats like climate change, geopolitical instability, and pandemics must be tackled through collective action,

and the need for a strong transatlantic partnership has become more apparent in the face of these and other inherently international challenges.

Beyond continued engagement on standards, conformity assessment, and other specific areas for voluntary regulatory cooperation, ITI also supports the pursuit of a comprehensive EU-U.S. agreement that will reduce market access barriers and address services and digital trade, as well as goods. Renewed efforts toward a comprehensive trade agreement between the EU and the United States would create an opportunity for both sides to define high-standard rules for conducting commerce in the 21st century. As the EU, United States, and a wide range of other WTO Members advance negotiations toward an agreement on e-commerce, EU-U.S. agreement on strong digital trade commitments would advance mutual economic priorities and help mark the direction for discussions in the WTO and other international fora.

Strong bilateral engagement is particularly important in respect of cross-border data flows between the United States and Europe. Transatlantic data flows account for over one-half of Europe's data flows and about half of U.S. data flows. With regard to personal data in particular, the EU-U.S. Privacy Shield and SCCs have both played an important role for international business operations, allowing firms around the world to provide robust assurances on the protection of personal information and enabling the transparent and necessary movement of data seamlessly across borders. The invalidation of Privacy Shield by the recent "Schrems II" ruling has disrupted transatlantic data flows that are central to the U.S. and European economies, and has created legal uncertainty for the more than 5,300 signatories to the EU-U.S. Privacy Shield agreement as well as their commercial partners, including many SMEs from various European industries. We therefore urge policymakers and government stakeholders on both sides of the Atlantic to quickly advance discussions on a successor agreement that provides a solid legal framework to enable seamless transatlantic data flows consistent with fundamental rights and avoid trade disruptions to EU-U.S. data flows.

More broadly, building on the European Commission's proposal for the establishment of a Transatlantic Council on Trade, Technology, and Security, we strongly encourage the European Commission and the United States to engage and quickly establish a structured bilateral dialogue to discuss, in regular meetings, digital trade matters of interest to either Party, including open, trade-facilitative approaches to data governance and the regulation of new and emerging technologies. This structured dialogue could supplement ongoing discussions on standardisation policy and provide a forum for engagement on issues including, but not limited to, AI, data governance and data-sharing, platform regulation, digital competition measures, and digital trade commitments in either Party's trade agreements. It could also provide opportunity for meaningful stakeholder engagement in accordance with GRPs in both markets. We believe that this kind of dialogue would be beneficial both in strengthening values-based, strategic bilateral cooperation on approaches to digital policy and preventing the emergence of potential damaging barriers to digital trade in goods and services.

EU-UK Engagement

In engagement with the UK on the terms of the EU-UK future economic relationship, we encourage the EU to pursue a mutually beneficial, forward-looking bilateral arrangement that prioritises the continued cross-channel movement of data, as well as pragmatic, flexible approaches to regulatory compatibility that facilitate innovation, the open exchange of goods and services, and strong protections for privacy, security, safety, and the environment. The future EU-UK agreement should include the robust digital trade provisions noted above, such as those prohibiting data localisation

requirements across all sectors and forced transfers of, or access to, source code, algorithms, and proprietary cryptographic information. An ambitious agreement on digital trade should reflect the transformative role of technology in supporting the growth and resiliency of both economies and could serve as a standard for future negotiations with other nations around the world.

Additional Bilateral Trade Negotiations

We urge the EU to ensure that additional current and future bilateral trade negotiations, including with Australia, New Zealand, and Chile, include a strong digital trade chapter as well as other forward-looking commitments described in this submission and contained in agreements already concluded by the EU and these and other like-minded trading partners. These FTA negotiations also provide an excellent opportunity for the EU to drive responsible and sustainable business practices with third countries.

Confronting Unfair Trade Practices

In collaboration with industry and like-minded governments, we encourage the EU to continue to work through both its domestic and trade policies toward addressing policies and practices of third countries (e.g. China, Vietnam, South Korea, India, Indonesia) that unjustifiably restrict the movement of data, disregard intellectual property protections, create unfair competitive conditions and hinder the development and use of innovative technologies, including market-distorting subsidies, forced data localisation measures, and other requirements to use local servers and software, rather than best available technology. In addition, working with the United States, Japan and others, the EU can build on recent successes⁶ by fostering consensus on new rules to address unfair trading practices. We recognise the challenges associated with the broader socialisation of such rules and stand ready to support ambitious EU efforts in this regard, including through direct engagement with other like-minded governments. We maintain that international cooperation is essential in ensuring that a necessary, coordinated response can effectively counter the impact and proliferation of harmful and distortionary unfair trading practices.

Leadership at the WTO

The WTO, and the rules-based international order it reflects, is central to European innovation, economic growth, and international leadership in a modern, global economy. At the same time, after a generation of being tested against a rapidly evolving economic environment, the WTO has struggled to keep pace, showing the need for reform. Amid turbulence in the international trading system, the EU is positioned to further its standing as a champion of multilateralism and open markets through leadership both at the WTO and in its domestic policies. Through political prioritisation and continued intergovernmental cooperation, we encourage the EU to continue and strengthen its efforts to safeguard and revitalise a multilateral trading system that provides a stable, predictable, and effective framework for companies of all sizes across the world. This stability is all the more imperative as economies seek to recover from the current economic crisis.

In its engagement in the WTO E-Commerce JSI, the EU should seek to secure the strongest possible commitments for eliminating or reducing barriers to trade and facilitating the development of strong, interoperable regulatory frameworks in areas like privacy and cybersecurity. These include commitments to enact a permanent duty moratorium on electronic transmissions; prohibit

⁶ For instance, the [Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union](#) (14 January 2020)

localisation of data and forced disclosure of source code, algorithms, and proprietary cryptographic information; expand market access commitments in sectors key to e-commerce, and simplify and expedite customs clearance procedures.⁷ As it continues its active engagement in the WTO E-Commerce JSI negotiations, we encourage the EU to think creatively about structural legal frameworks that would allow for adoption of strong, commercially meaningful digital trade commitments by a plurality of WTO members.

Conclusion

In describing a vision of “Open Strategic Autonomy,” the Consultation Note appropriately recognises globalisation’s contribution to European success – economic and otherwise. Certainly, the Single Market is itself a shining example of the positive impacts of economic openness. As the economy becomes increasingly globalised and digitalised, we encourage the EU to further embrace openness as a key driver of innovation. The European Commission, and DG Trade in particular, have an essential role to play in ensuring that ideas around technological sovereignty are implemented in ways that are compatible with Europe’s longstanding commitments to multilateralism and open markets, and are not based on the false premise that excluding or otherwise treating foreign entities differently will strengthen Europe’s technological autonomy. When strengthening European capabilities, EU Institutions and Member State governments are best served by working with partners—regardless of where they are headquartered—that have strong commitments to Europe; have invested in European talent and data center capacity to help Europe be successful; and have displayed their trustworthiness, data stewardship, and security in Europe for decades.

The COVID-19 crisis has accelerated technology disruption and digitalisation, which were already transforming the way European companies manufacture, operate supply chains, innovate, and reach customers in global markets. As these trends accelerate, we agree with the imperative for European Member States to focus on building greater capabilities and resilience across all sectors of the European economy. To position the EU as a global leader in technology-driven innovation, the foundations for future resilience, competitiveness and growth must be built on openness and like-minded values.

We appreciate the opportunity to provide a response to the Consultation Note, and stand ready to work with policymakers in the European Institutions and Member State governments to further the Commission’s objectives of strengthening European interests through trade policy while continuing to work with partners around the world to deliver global solutions to global challenges.

⁷ Working with over 20 global industry partners, in October 2019 ITI released the following position paper concerning global industry priorities in the WTO E-Commerce JSI negotiations:
<https://www.itic.org/dotAsset/f2de6c22-e286-47d2-aca7-ba34830e462c.pdf>