



Comments of the Computer & Communications Industry Association: A Renewed Trade Policy for a Stronger Europe Consultation Note

15 November 2020

Via Email trade-policy-review-2020@ec.europa.eu

The Computer & Communications Industry Association (CCIA)¹ is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For nearly fifty years, CCIA has promoted open markets, open systems, and open networks.

CCIA welcomes the opportunity to respond to the European Commission's consultation and supports the efforts to craft a trade strategy equipped for the digital age. The internet remains an integral component to international trade in both goods and services, whether in the business to business context or business to consumers. It is a key driver to development, enabling global supply chains and SMEs to reach new markets as well as serving customers around the world. CCIA encourages the EU to pursue an ambitious trade agenda that includes the strengthening of the multilateral rules-based order to open markets, provide regulatory certainty, and encourage internet-enabled and digital technologies as well as their underlying services and infrastructures to strengthen Europe's competitiveness.

Two decades ago, to participate in international trade, a business needed significant financial resources, complex arrangements with suppliers and distributors, and offices and staff around the world. With the growth of the internet and digital platforms, all of this has changed. Small businesses using online tools are far more likely to export than their offline counterparts. Millions of independent artists, app and software developers, and news publishers can instantly export digital products to foreign markets. Manufacturers and SMEs can become leading exporters of products and services online.

At the same time, global value and supply chains that support modern trade flows cannot exist without modern digital communications services alongside transport, logistics, financial and other professional services (which all use digital services too). Digital IP-based communications services, such as Cloud, IoT, M2M, cybersecurity solutions are essential for every element of the so-called "Smiling Curve" of global value and supply chains.

The EU should accelerate its digital transformation. It should also accelerate the digital transformation of its trade policies, as its trade agreements have not always kept pace with these economic and social changes.² In addition to the long-term trends described above, digital trade

¹ EU Transparency Number: 15987896534-82. For more, visit www.cciagnet.org.

² EUROPEAN INVESTMENT BANK, Who Is Prepared For the New Digital Age? (2020), *available at* <https://www.eib.org/en/publications-research/economics/surveys-data/eibis-digitalisation-report.html>.

will play a key role in economic recovery after the COVID-19 crisis, helping all types of business, small and large ones to restart, rebuild, and grow in local and foreign markets. To facilitate economic recovery, and to promote growth and governance of the digital economy, all modern trade agreements should include a comprehensive set of digital provisions and protections. CCIA's comments provide a summary of key digital measures that can help support digitally-enable European trade while benefiting the businesses and consumers that rely on the Internet.

Two trends, which play a role across all EU legislation, deserve more attention in the formulation of Europe's future trade policy.

First, domestic policies should always be seen in conjunction with international trade, *i.e.* their positive or negative implications on well-functioning trade or risk of creating barriers. Second, there should be a better recognition that the EU's set global standards comes with opportunities, but equally with responsibility. CCIA welcomes the EU's thrust to promote principles of good governance and regulation, such as non-discrimination, transparency, fair licensing and competition in third country markets as well as related to trade and sustainability, like climate change, labour and human rights.

But, if the EU thrives to set global standards, it ought to ensure that these do not bear unintended consequences. This is true with data flows. The EU is uniquely positioned to export values like privacy and data flows through their trade relations but at the same time needs to be vigilant that these values don't allow third countries to misuse those frameworks to advance protectionist policies.

CCIA thanks the European Commission for this opportunity to comment. We stand ready to provide further information in support of your important efforts.

RESPONSE TO QUESTIONS

CCIA's submission responds to questions 1, 3, 4, 10, and 11 asked in the consultation document.

Question 1: How can trade policy help to improve the EU's resilience and build a model of open strategic autonomy?

Recent developments have highlighted essential functions of an open and globally coordinated trading system, unfortunately not only by showing benefits, but more often by demonstrating the damage that go-it-alone trade and economic measures can cause. This is an opportunity for the EU to assert its global leadership as a defender of the international, rules-based trading systems, which has served Europe so well, and lead calls for more open markets, including in the area of digital trade.

The COVID-19 crisis has shown the importance of digital technologies and services, with digitally transformed sectors appearing to be the most resilient. Those technologies and services – regardless of where they are supplied from – have played a critical role in keeping Europe open

for business.³ EU policymakers should maintain frameworks that continue to allow for an open market of digital services. “Open strategic autonomy” should not lead to mercantilism or protectionism ideas; that would make it harder for many Member States to access modern technologies, adopt new business models, attract foreign investment and succeed in trade – with adverse implications on future global competitiveness, economic renewal and economic convergence.

“Open Strategic Autonomy” should be anchored in resilience by openness where European industries, SMEs and consumers should maintain the opportunity to take advantage of the best digital tools, whether from Europe or outside the Union. Similarly, European exporters should be able to supply their products and services to third countries that the EU has an open trading relationship with. The EU itself is a major exporter of digitally-enabled services trade that embodies that increases the success of the EU as an exporter as well.⁴ Such an approach would resonate with the EU’s role exporting standards such as the GDPR and other standards and would support their uptake and implementation globally.

Question 3: How should the multilateral trade framework (WTO) be strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment?

A critical way to strengthen the WTO framework is to ensure that its rules address today’s economy and are relevant to the most pressing trade issues. As such, a top priority should be the successful conclusion of Joint Statement Initiative on Electronic Commerce. A strong multilateral framework that promotes open, rules-based digital trade would build confidence in the WTO and ensure that it remains relevant to the most pressing trade issues of the day.

The EU continues to have a major role in these negotiations. The EU should press for strong outcomes to ensure the open cross-border flow of data while enabling governments to protect personal privacy in the least trade-restrictive manner. The EU is also encouraged to support rules on source code protection, promote cybersecurity cooperation, address internet censorship, and discrimination in access to communications networks. The EU’s proposed text makes a number of strong recommendations that would benefit digital trade. These include a helpful revision of the 1997 Telecommunications Reference Paper with text that would improve market access and the level-playing field for communication services. Innovative telecommunications services underpin the digital economy. A permanent extension of the moratorium on duties for electronic transmissions is also an important commitment to retain in the final rules.

The EU should also ensure that domestic regulations regarding trade enforcement or the single market do not conflict with its ambition toward multilateral trade and demonstrate similar ambition towards open, rule-based and non-discriminatory economic policy. In particular, the

³ MCKINSEY, Europe’s Digital Migration During COVID-19 (2020), <https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/McKinsey%20Digital/Our%20Insights/Europes%20digital%20migration%20during%20COVID%2019/Europes-digital-migration-during-COVID-19.pdf> (showing that average digital adoption rate jumped from 81 percent to 94 percent during the pandemic).

⁴ Daniel Hamilton, The Transatlantic Digital Economy (2020), https://transatlanticrelations.org/wp-content/uploads/2020/03/Chapter3_TA_economy_2020.pdf.

EU should defend its trade interests and ensure that other governments maintain open markets, without itself adopting a protectionist or unilateralist approach.

Question 4: How can we use our broad network of existing FTAs or new FTAs to improve market access for EU exporters and investors, and promote international regulatory cooperation—particularly in relation to digital and green technologies and standards in order to maximise their potential?

The EU is encouraged to (1) continue to include commitments on digital trade and telecommunications in future FTAs and where appropriate update FTAs and pursue work at the WTO on the JSI to craft global standards on digital that other EU agreements can build upon and (2) pursue regulatory cooperation in areas such as artificial intelligence and cybersecurity.

(1) Pursuing Strong Digital Rules in EU FTAs and Multilateral Agreements

Network of existing FTAs are valuable and represent a great advantage for European traders, especially SMEs. The EU should continue following the strategy to adopt more FTAs to increase the benefits of trade in the EU and globally. Digital trade represents a cross-cutting and growing aspect of the economy and trade, in fact digital trade grows faster than trade in goods and approximately 60% of global goods trade is in some way facilitated by digital tools. Setting the right framework will allow EU exporters to trade more globally and enable the EU to take a global leadership role in digital trade.

The EU has included provisions relevant to digital services in its trade agreements, recently evidenced in the Canada– European Union Comprehensive Economic and Trade Agreement,⁵ the EU-Japan Economic Partnership Agreement,⁶ and the EU-Mexico Trade Agreement.⁷ These commitments outline a number of important digital trade priorities including the protection of source code, prohibitions on customs duties for electronic transmissions, strengthening competition in telecommunications and other trade facilitation measures.

However, there are a number of additions that could be made in future agreements that would further open up trade and reduce relative uncertainties surrounding the operation of digital-delivered goods and services, as noted in CCIA’s response to Question 10 in these comments.⁸

The new U.S. Administration offers an opportunity for a re-set of the transatlantic relationship. CCIA encourages lawmakers in the EU, and in the U.S., to pursue regulatory dialogue and

⁵ Text of the Comprehensive Economic and Trade Agreement, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/16.aspx?lang=eng>.

⁶ EU-Japan Economic Partnership Agreement, Art. 8.70-8.81
http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc_157228.pdf#page=185.

⁷ Modernisation of the Trade part of the EU-Mexico Global Agreement,
https://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156811.pdf.

⁸ For instance, in the EU-Japan Economic Partnership Agreement there is a commitment under Art. 8.81 for parties to reevaluate the need to include provisions on data flows. CCIA would encourage the EU to include text on data flows akin to provisions in the digital trade chapters of agreements such as the Comprehensive Partnership and Transpacific Partnership (CPTPP) and the U.S.-Mexico Canada Agreement (USMCA).

cooperation but also the removal of trade barriers to transatlantic and global trade.

These efforts should expand opportunities for internet, telecommunications and other technology services by committing parties to pursue regulatory frameworks that encourage digital and ICT services exports and fair competition in both markets.

In the multilateral context, as noted in response to Question 3, the EU should continue its participation in the Joint Statement Initiative on Electronic Commerce at the WTO.

One area that the EU should consider revising concerns cross-border data flows. It is important that countries on the one hand ensure a high level of protection of personal data while on the other, ensure that businesses can operate in the global economy. Recognising the current environment where countries have different approaches to protecting privacy in the digital age, there needs to be a mechanism that removes flagrant data-related protectionism while ensuring that companies can comply with different regimes. Absent this mechanism, fragmentation of internet services will continue.⁹ The EU should discourage regimes from data localisation requirements which not only can lead to increased compliance costs and other inefficiencies, but could also pose security risks and restrict access to information globally.¹⁰ The EU should therefore lead by example and refrain from adopting data localisation requirements in domestic legislation that could contravene the EU's trade commitments and undermine the European Commission's efforts to remove unjustified data localisation requirements abroad.

With an interoperable framework that lowers trade barriers and facilitates transfers of data while maintaining privacy safeguards, firms of all sizes, regardless of their location, can join global commerce streams that are driven by the Internet and digital services.¹¹

The Commission's text on data flows inadvertently risks justifying more data localisation requirements globally, rather than removing them.¹² Under Art. 2.8 the text allows for parties to "adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy." This is essentially a *carte blanche* for non-EU countries to introduce data protectionism under the guise of "data protection". The text also does not require parties to demonstrate that such laws are necessary and done in the least trade restrictive way, as under

⁹ See WEF White Paper on Data Free Flow with Trust (DFFT) (June 2020), *available at* <https://www.weforum.org/whitepapers/data-free-flow-with-trust-dfft-paths-towards-free-and-trusted-data-flows>.

¹⁰ See generally Anupam Chander & Uyên P. Lê, Data Nationalism, 64 EMORY L.J. 677, 718-19 (2015), http://law.emory.edu/elj/_documents/volumes/64/3/articles/chander-le.pdf.

¹¹ See Communication of the United States to the WTO, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=255027,255028,254954,254931,254926,254888,254866,254874,254846,254826&CurrentCatalogueIdIndex=1&FullTextHash=237161575&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False (suggesting that working to "ensure that such mechanisms have a recognized status under trade rules – similar to the status of standards and mutual recognition arrangements" could advance the discussion on facilitating cross-border data flows. They also encourage countries to "examine the mechanisms being developed that address privacy issues in a manner that is least trade restrictive, allowing trade to flourish while preserving legitimate public policy objectives." As the paper notes, "access to free or competitively priced online business services contributes to their competitiveness, helping SMEs overcome traditional barriers to engaging in international trade.").

¹² *How the EU's New Trade Provision Could End Up Justifying More Data Localisation Globally*, DISRUPTIVE COMPETITION PROJECT (May 14, 2018), <http://www.project-disco.org/european-union/051418eus-new-trade-provision-end-justifying-data-localisation-globally>.

existing international trade law, which the EU has long been a party to. It is possible to maintain the EU's high level of data protection, e.g. as part of GDPR, while pushing back on the increase in data protectionism European companies increasingly are faced with abroad.

As noted by the consultation Note, *“In addition to provisions on data flows in trade agreements, the instruments provided by the EU’s General Data Protection Regulation (GDPR) for international data transfers facilitate safe data flows ensuring a high level of data protection.”* The EU’s trade agenda must allow for data transfer mechanisms that enable companies to remain compliant with national and EU privacy laws, and transfer commercial data when necessary for day to day business activities.

In July 2020 the CJEU invalidated the European Commission’s decision on the EU-US Privacy Shield framework which more than 5,000 companies relied on for the transatlantic commercial data transfer. The ruling created immediate legal uncertainty for thousands of companies, a majority of which are SMEs. CCIA encourages the European Commission and the U.S. Administration to quickly develop a durable new framework, fully in line with EU law, to enable the data flows between the world’s most important trading partners.¹³ In the short and medium term, consistent enforcement and practical guidance for companies transferring data to countries which do not benefit from an “adequacy” status is essential. As far as future guidance is concerned, CCIA encourages the Commission to consider issuing guidance on the presence of foreign legislation which may constitute an “unnecessary and disproportionate” interference into EU citizens’ privacy and data protection rights. Unlike companies, especially SMEs, the European Commission has the institutional credibility to make such assessment. This guidance would provide significant assistance to companies when assessing, in light of all the circumstances, the risk of interference of the transfer to third countries and whether supplementary measures are needed to ensure an adequate level of protection.

(2) Regulatory Cooperation

Recognizing that the current EU-U.S. negotiations are ongoing and limited to certain regulatory cooperation under the EU’s mandate, CCIA believes that there are still opportunities to achieve commitments in this narrower context that will benefit the digital economy regarding cybersecurity cooperation.

Last year, DG CNECT and the U.S. NIST agreed to intensify cooperation as part of talks on regulatory cooperation. The EU also noted that “globally relevant standards, including where applicable standards and technical specifications developed by US-domiciled standards development organisations, may be taken into consideration in the future development of standards and voluntary certification schemes in the EU.”

This can be achieved through supporting risk-based cybersecurity frameworks, such as the standards developed by the National Institute for Standards and Technology (NIST).¹⁴ The NIST framework is “based on existing standards, guidelines, and practices for organizations to better

¹³ Press Release, EU Top Court Strikes Down Privacy Shield, CCIA Calls for Urgent Legal Certainty and Solutions, Jul. 16, 2020, *available at* <https://www.cciagnet.org/2020/07/916160/>.

¹⁴ NIST, Cybersecurity Framework, <https://www.nist.gov/cyberframework> (last visited Sep. 15, 2020).

manage and reduce cybersecurity risk.” Per NIST, “[i]n addition to helping organizations manage and reduce risks, it was designed to foster risk and cybersecurity management communications amongst both internal and external organizational stakeholders.”

Bringing global cybersecurity regulations into alignment would have a number of benefits to secure global trade. First, it would increase the ability for firms to respond *en masse* and provide a more cohesive approach to securing services and infrastructure across the global Internet. Second, a ‘risk management’ approach that relies on consensus-based standards and best practices rather than a compliance approach better equips firms to identify and protect against risks and detect, respond, and recover from cyber incidents in a more agile and efficient way. Third, risk-based voluntary approaches are more effective than prescriptive regulations by reducing the risk of mandatory standards or detailed compliance rules. Both the U.S. and the EU face an ever-evolving cybersecurity threat landscape, and trade discussions are a unique opportunity for both blocs to develop a shared understanding on how to address this common challenge.

Question 10: How can digital trade rules benefit EU businesses, including SMEs? How could the digital transition, within the EU but also in developing country trade partners, be supported by trade policy, in particular when it comes to key digital technologies and major developments (e.g. block chain, artificial intelligence, big data flows)?

Internet services continue to play a key role in driving global exporters of all sizes including SMEs. Studies show that small businesses are exporting at an increasing rate, harnessing the capabilities of global internet services.¹⁵ Data collected through the Future of Business Survey, a project between Facebook, the OECD, and the World Bank, shows how social media platforms enable exports.¹⁶ The data shows that businesses, particularly small businesses, utilizing online platforms have a higher propensity to engage in international trade than traditional firms.¹⁷ Digital trade rules can best benefit EU businesses if they reflect the economy they operate in. Digital tools have become the more than important elements of successful exporting businesses and during the covid-19 pandemic often a lifeline for business.

¹⁵ Growing Small Business Exports, *available at* https://americaninnovators.com/wp-content/uploads/2019/10/CTEC_GoogleReport_v7-DIGITAL-opt.pdf (The study surveyed a number of small businesses on their exporting data. 92 percent of those SMEs surveyed reported that they use digital tools such as online payment processing tools, online productivity tools, e-commerce websites, and online marketing. Additionally, 61 percent of all small businesses surveyed believe that technology is key to overcoming top barriers to trade including foreign regulations.)

¹⁶ OECD, The Future of Business Survey, <http://www.oecd.org/sdd/business-stats/the-future-of-business-survey.htm> (last visited Sep. 15, 2020).

¹⁷ Utilizing this data, the Mercatus Center has a series of policy briefs released earlier this year breaking down these numbers and highlighting that firms using Facebook have a higher propensity to export. 6.75 percent of U.S. small and medium-sized businesses (SMBs) on Facebook engage in international trade, compared to 4.33 percent of SMBs not on Facebook. In other reporting countries, the share of businesses who were engaged in trade was up to 30.9 percent (Bangladesh), with other high shares were reported in businesses located in Nigeria, Egypt, Portugal, Pakistan, and the Czech Republic. *See* <https://www.mercatus.org/publications/trade-and-immigration/businesses-facebook-and-propensity-export-united-states>.

CCIA outlines the following key principles EU trade policy should reflect to encourage growth of all digital services (1) Cross-Border Data Flows and Data Governance; (2) Open Digital Markets; (3) Access to Information; (4) Economic Cooperation; (5) Promoting Emerging Technologies; and (6) Promoting Sound Principles for the Regulation of Telecommunication Services.

(1) Cross-Border Data Flows and Data Governance

Cross-border data flows are critical to digital trade and forced data localization mandates make it difficult for EU exporters to expand into new markets. As noted by 17 European countries in a letter to the Commission in January:

Data have become the backbone of economic activity, trade and competitiveness, as well as a vital element throughout many companies' value chains. Businesses of all sizes across all sectors need to access, use and transfer data. Examples of such sectors are artificial intelligence, information technologies, food industry, manufacturing, resource extraction, transport and logistics, and the medical industry. It is crucial to establish a cross-border trustworthy space for data flows, access to data and data sharing partnership.

It is important to continue discussing future rules on cross-border data flows based on the needs and interests of European economic operators and consumers. We need effective tools to address digital protectionism in third countries while ensuring the protection of personal data. In this context, we would like to emphasise the importance of including rules on data flows in the EU's trade policy, its trade agreements and in particular in the ongoing plurilateral e-commerce negotiations in the WTO.¹⁸

European exports and jobs are increasingly harmed by the rise of forced data localisation measures around the world. As the world's main exporter of manufactured goods and services, and as an emerging leader in connected cars and the Internet of Things, Europe's economy increasingly relies on the ability to move data across borders. Interestingly, the EU has strong data protection laws that have coexisted with its trade commitments on data flows for decades. The EU could seek to ensure commercial data flows while promoting its high data protection standards globally.

EU trade policy and existing privacy mechanisms should recognize the importance of interoperability of data transfer regimes. Data needs to move in all directions: from the EU to third countries, to the EU from third countries and between third countries. The EU should provide all industries with clear requirements for transfer of data outside the EU. Trading partners should work towards common solutions to achieve interoperability between differing privacy and data transfer regimes. Those could be based on transfer tools, which are available for instance in the GDPR and the APEC privacy framework. This way, countries can ensure if they want to, that personal data remains protected when transferred to another country. As noted, it is unfortunate that the EU's proposed text for trade agreements to facilitate cross-border

¹⁸ Letter to Commission, 23 Jan 2020, *available at* <https://www.gov.pl/attachment/f62fbd40-9000-4042-bc3e-6d0b8b4fbefb>.

data flows and digital trade includes provisions that would increase the likelihood of data localization rather than reduce barriers due to the text of the exceptions.

The invalidation of the EU-US Privacy Shield framework which more than 5,000 companies relied on for the transatlantic commercial data transfer, creates immediate legal uncertainty for thousands of companies, a majority of which are SMEs. We encourage the European Commission and the U.S. Administration to quickly develop a durable new framework, fully in line with EU law, to enable the data flows between the world's most important trading partners.¹⁹

(2) Open Digital Markets

Internet services need regulatory certainty to operate abroad. Numerous conflicting liability regimes undermine this certainty and unpredictable liability rules for online intermediaries represent a considerable barrier to international Internet commerce. Guaranteeing minimum standards for the protection of Internet services from liability for third-party content is critical to advancing global growth in digital services.

Further, countries should be prohibited from imposing customs duties on electronic transmissions. Departure from this practice has the problem of technical feasibility due to the difficulty and burden of determining the specific amount and value of electronic transmissions – a task that many economists still struggle with.

(3) Access to Information

A robust intellectual property regime must reflect the needs of all stakeholders in the innovation ecosystem, including rights holders, civil society, the technology sector, and users.²⁰ The EU should pursue trade rules that strike the correct balance. Critical to the development of next generation technologies are relevant limitations and exceptions to copyright law, consistent with the EU's international commitments. The EU should promote open and machine-readable data, and allow for permission text and data mining provisions. This will allow for innovation in machine learning and AI related technologies, as well as safeguards for online users and creators.

(4) Economic Cooperation

To reduce trade barriers and conflicts, economic cooperation among the EU and trading partners is critical. Most relevant at this time are in the areas of corporate taxation and competition regulation and enforcement.

With regards to taxation, CCIA encourages the EU and member states to remain committed to the multilateral work taking place at the OECD to achieve a long lasting, consensus-based solution to challenges regarding international taxation in light of the digitalized global economy.

¹⁹ *Supra* note 13.

²⁰ Tech organisations including CCIA have stressed the importance of all stakeholders in a healthy and fair copyright regime when the EU engages with third party countries on domestic copyright reform. See Letter to European Commission, available at <https://www.politico.eu/wp-content/uploads/2020/07/Industry-Coalition-EC%E2%80%99s-involvement-in-South-Africa%E2%80%99s-copyright-reform.pdf>.

A collaborative approach, rather than unilateral measures that introduce uncertainty and risk triggering trade disputes, remains the best approach to update taxation rules and encourage digital trade.

With regards to competition, CCIA supports the promotion of clear, substantive, and procedural standards in competition rules enforced in pursuit of economic efficiency and consumer welfare objectives. CCIA would caution against any competition-related proposals that inadvertently would target foreign companies as any perceived European protectionism would harm the EU's trade relations.

(5) Promoting Emerging Technologies

The EU and its main trading partners are all analysing and discussing policy frameworks for benefitting from emerging technologies, such as AI, blockchain and big data. The EU should continue to engage in dialogue with like-minded partners, like the United States, UK, Japan and South Korea and in organisations such as the OECD and initiatives like the Global Partnership on Artificial Intelligence (GPAI), before enacting possible EU legislation. This would help develop regulatory convergence and interoperability to avoid future trade barriers and give the EU a voice to inspire policy solutions globally. Future EU FTAs can further “export” value-based regulatory solutions to other markets.

(6) Promoting Sound Principles for the Regulation of Telecommunications Services

Telecommunication services are essential for the digital economy, and trade agreements should continue to seek high standards in telecommunications chapters. CCIA recommends that the following features should be incorporated into any telecommunications chapter:

- Transparent regulatory frameworks monitored by evidence-based independent regulators;
- Consistent, pro-competitive regulation of business grade wholesale access to telecommunications networks that prevents discrimination by major suppliers, whether in favor of their own downstream businesses or others; and
- Elimination of foreign ownership restrictions.

In particular, independent regulatory institutions that ensure the application and enforcement of competition rules in telecommunication infrastructure markets that are dominated by major suppliers.

Question 11: What are the biggest barriers and opportunities for European businesses engaging in digital trade in third countries or for consumers when engaging in e-commerce? How important are the international transfers of data for EU business activity?

The EU continues to create innovative tech successes such as Allegro, Bolt, Booking.com, Wolt, Delivery Hero, Spotify, TransferWise, and Zalando. Approximately 10,000 platforms and

marketplaces operate in the EU Single Market.²¹ Europe has a large diversity of online platforms, with 9700 high-growth hosting services in the EU.²² It also has a strong telecommunications industry.²³ Online services, managed ICT services, telecommunications and digital solutions enable European business to engage in digital trade globally.²⁴ Also during the current health crisis, they empower businesses and staff to stay connected locally and around the world as telecommuting is commonplace.

However, this European digitally-enabled trade is increasingly threatened by laws and regulations in third countries or by regulatory practices that stifle competition and favour domestic incumbents. When countries fail to craft a regulatory framework that does not reflect the principles and priorities as outlined in the responses to Questions 4 and 10 above, export opportunities for emerging European services are lost.

In particular and in response to Question 11, international transfers of data are essential for EU business activities. In addition to the European tech services mentioned above, data transfers are regular business activity for a wide variety of services. Nearly all services sectors (e.g. logistics, retail, professional or financial services) as well as many manufacturing industries (e.g. motor vehicles, machinery, medical and scientific equipment) generate or transmit some form of data, which is routinely stored at one central location globally or regionally.²⁵

Data localization mandates increase costs and harms GDP growth and exports. In the past the EU has, on occasions, shown support for the interests of EU exporters in third countries by sharing expertise and taking a stand for principles like the free flow of data. CCIA encourages the EU to more proactively engage with third countries to uphold the interests of EU exporters, especially in instances where concerns are only used as a pretext to limit data flows or otherwise discriminate against certain sectors or non-domestic firms such as the case in India and Indonesia.

²¹ European Commission's presentation, European Parliament IMCO workshop on "e-commerce rules, fit for the digital age", 19 February 2020, 17:35:33-17:36:25, *available at* <https://www.europarl.europa.eu/ep-live/en/committees/video?event=20200218-1600 -COMMITTEE-IMCO>.

²² Digital Services Act Package (2020), *available at* <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=41347>

²³ See Digital Economy and Society Index (DESI) (2020) <https://ec.europa.eu/digital-single-market/en/news/digital-economy-and-society-index-desi-2020>.

²⁴ eBay Main Street, Global Trade At a Glance, <https://www.ebaymainstreet.com/issues/global-trade> (last visited Sep. 15, 2020).

²⁵ WORLD ECONOMIC FORUM, Data Free Flow With Trust: Paths Towards Free and Trusted Data Flows (2020), http://www3.weforum.org/docs/WEF_Paths_Towards_Free_and_Trusted_Data%20Flows_2020.pdf.