



Computer & Communications Industry Association (CCIA) Recommendations on U.S.-EU Trade & Tech Council

September 2021

The Internet and technology sector is supportive of efforts under the U.S.-EU Trade & Tech Council (TTC) to serve as a platform for transatlantic dialogue to address key digital priorities. This document outlines recommendations regarding (1) the structure, working group mandates, and consultation process for stakeholders; and (2) subject matter issues for key transatlantic digital trade issues.

Resetting the Transatlantic Trade Agenda

CCIA welcomes the opportunity to strengthen the U.S.-EU alliance, grow transatlantic trade, and work together on a variety of critical challenges related to the digital economy. These recommendations outline key areas for enhanced cooperation and topics for a structured dialogue to promote consistent approaches to digital challenges on a global basis.¹

The EU-U.S. relationship represents one of the world's largest bilateral trading relationships.² To maintain transatlantic economic growth and technological leadership, it is critical that these two governments engage in open and constructive dialogue on key issues. The creation of the EU-U.S. Trade and Technology Council presents an important opportunity to reinforce and build upon a shared commitment to open digital markets and rules-based international trade. To accomplish these goals, it will be critical to address the harmful impacts of national policies while the EU and the U.S. concurrently agree on proactive measures to address shared external trade risks.

Parties must engage on shared priorities in the tech space that will enable innovation and strengthen trust in digital services. By tackling these challenges together, the EU and the U.S. can not only provide certainty for digital exporters and deter trade conflicts, but also work together to combat security challenges from China and other countries pursuing regulation and practices that pose threats to the open Internet. Further, technical coordination will be important for the ongoing COVID-19 response and economic recovery.

Topics and commitments related to this dialogue are addressed in more detail below.

¹ This document builds off prior CCIA recommendations for the relaunched transatlantic digital economy. CCIA, *Recommendations for a Relaunched Transatlantic Regulatory Agenda* (April 2021), available at <https://www.cciagnet.org/wp-content/uploads/2021/04/2021-04-08-CCIA-Recommendations-for-a-Relaunched-Transatlantic-Regulatory-Agenda.pdf>. This document was released prior to the formal announcement of the TTC.

² Daniel S. Hamilton & Joseph P. Quinlan, *The Transatlantic Economy 2021*, available at http://www.amchameu.eu/sites/default/files/publications/files/transatlanticeconomy2021_fullreporthr.pdf.



I. Recommendations on the Proposed Structure of the TTC Working Groups

The EU and the U.S. have announced 10 Working Groups (WGs) as part of the TTC.³ It will be important to ensure these Working Groups are optimized to address both current and future conflicts between transatlantic approaches to regulation of digital services. They should also address diverging approaches to tech regulation, such as the EU's Digital Markets Act (DMA) proposal which, as currently drafted, discriminates against U.S. companies.⁴

Below are some considerations for several of the WGs, **with an overall recommendation that certain cross-cutting issues should be addressed within multiple WGs, as appropriate, and not siloed into one specific WG.**

Global Trade Challenges

The "Global trade challenges" WG will be critical to ensuring that discriminatory and other national measures are assessed from a trade perspective, and enable the U.S. and EU to avoid discriminatory or unilateral outcomes, and develop measures that are consistent with WTO commitments. The WG should also assess emerging and shared challenges arising from authoritarian regimes, and discuss coordinated approaches to addressing these challenges.

Data Governance and Technology Platforms

In the "Data governance and technology platforms" WG, leaders should agree on key principles and shared values covering issues such as due process, non-discrimination, privacy and security, countering authoritarian surveillance, and the rule of law that would guide future engagement and outcomes under the TTC. The WG should address proposed platform regulation measures, with particular attention to discriminatory aspects of national legislation. The WG should also support efforts to restore EU-U.S. commercial data flows and avoid new data restrictions that undermine transatlantic trade, while encouraging the development of U.S. federal privacy legislation.

ICT Security and Competitiveness

In the "ICT security and competitiveness" WG, leaders should analyze the current global landscape and emerging threats to the security and competitiveness of U.S. and EU companies and workers, including areas where regulatory proposals in the U.S. or EU would inadvertently weaken transatlantic security or strengthen the position of authoritarian rivals.

³ These include: Technology standards cooperation; Climate and green tech; Secure supply chains, including semiconductors; ICT security and competitiveness; Data governance and technology platforms; The misuse of technology threatening security and human rights; Export controls; Investment screening; and Promoting SME access to and use of digital technologies; and Global trade challenges.

⁴ See *US Warns EU Against Anti-American Tech Policy*, Financial Times (June 2021), <https://www.ft.com/content/2036d7e9-daa2-445d-8f88-6fcee745a259>; Rachael Stelly & Christian Borggreen, *The EU-U.S. Trade & Technology Council Is An Opportunity to Discuss Platform Regulations*, Disruptive Competition Project (July 8, 2021), <https://www.project-disco.org/21st-century-trade/070821-the-eu-u-s-trade-and-technology-council-is-an-opportunity-to-discuss-platform-regulation/>.



Promoting SME Access to and Use of Digital Technologies

In the “Promoting SME access to and use of digital technologies” WG, leaders should highlight the benefits digital trade and technologies provide to small and medium-sized enterprises (SMEs) and consumers in the U.S. and EU, and seek to incentivize significant public-private commitments to expand digital trade and export tools.

Further, as part of broader confidence-building measures, leaders should make positive commitments on broadband access, digital inclusion, digitally-driven sustainability, technological accessibility, and gender equity that are preconditions to building a transatlantic digital ecosystem that works for everyone.

II. Recommendations on Establishing a Consultation Process under the TTC

A key step in elevating the TTC beyond a regulatory dialogue will be to ensure that there is a meaningful consultation process on digital measures for Parties to raise concerns. The U.S. and EU should both have the ability to request a consultation or issue questions regarding a digital measure that the other jurisdiction has proposed or enacted.

The recipient of this request should agree to (1) approach the request in good faith and (2) give full and sympathetic consideration to the concerns of the requesting Party. In the event that Parties are unable to arrive at a satisfactory resolution of a matter through these consultations, the dispute should be escalated to a higher-level political leader. As the TTC develops, more informal and formal mechanisms should be developed for resolving disputes between the Parties.

Further, for the TTC to have the greatest chance of delivering practical and economically beneficial outcomes, there must be a meaningful process for stakeholders to provide input into the working process of the TTC, consistent with international good regulatory practices. CCIA has outlined further, more specific recommendations on incorporating stakeholder input into the TTC in a separate document.⁵

III. Recommendations on Key Transatlantic Digital Priorities the TTC Should Address

(1) Ensuring Procedural Safeguards in Regulation of Digital Economy

The EU and the U.S. are both engaged in ongoing policy discussions domestically, and at the bilateral and multilateral levels, regarding regulatory action across a variety of digital issues

⁵ See CCIA, *Recommendations - Incorporating Stakeholder Input Within International Regulatory Cooperation* (Sept. 2021), <https://www.cciainet.org/wp-content/uploads/2021/09/CCIA-TTC-Recommendations-Incorporating-Stakeholder-Input-within-International-Regulatory-Cooperation-2021.pdf>.



including, but not limited to, artificial intelligence, data governance, taxation, content moderation, and competition.

It is critical that both sides commit to ensure that regulatory measures impacting digital services do not discriminate against or provide less favorable treatment to service suppliers on the basis of national origin, and do not disproportionately impact service suppliers that are solely or primarily located in one region. It is also important to set common principles and standards across regulations impacting the digital sector. Where there are conflicting or discriminatory proposals, it is important that the U.S. and EU seek to resolve such differences, to ensure markets and trade remain open and to set a standard for open digital markets with respect to non-Parties that look to Parties for regulatory inspiration.

Recommendations:

- Parties shall ensure that regulatory measures impacting digital services do not discriminate against or provide less favorable treatment to service suppliers of either Party on the basis of national origin, and shall not adopt or maintain digital measures that disproportionately impact service suppliers that are solely or primarily located in the territory of one Party.
- Recognizing that generally applicable and established principles should shape the development of digital measures globally, Parties shall avoid the development of regulatory standards that result in differential or discriminatory treatment of digital and non-digital services or products.
- In developing measures impacting digital services, Parties shall ensure that they have considered a range of possible options to accomplish a given policy objective, and shall not adopt a measure if there is a reasonably available and less trade-restrictive alternative measure to accomplish the policy objective.
- Parties agree to promote evidence-based policies that include procedural safeguards to ensure that policymakers weigh potential harms associated with a particular digital technology or digital business practice against potential economic, innovation, safety, and consumer benefits.

(2) Cooperation on Competition Rules

Regional and international cooperation and coordination among national competition authorities is important to foster effective antitrust enforcement and lower indirect trade barriers. Robust antitrust enforcement and clear rules should be pursued with the goal to ensure a vibrant and



competitive digital market in the interest of users and SMEs, rather than to protect national firms from fair competition, or to disadvantage foreign competitors.

Recommendations:

- Parties recognize the importance of regional and international cooperation and coordination between their respective national competition authorities to foster effective competition law enforcement globally.
- Parties recognize that generally applicable and established principles should shape competition policy, and that competition policy should continue to focus on harms to consumers and the competitive process rather than being used as a tool to advance other policy goals, which would otherwise create the potential for discretionary or discriminatory enforcement.
- Each Party shall ensure that its competition-related measures treat firms based in the other Party's territory no less favorably than firms based in the Party's territory. For greater certainty, no Party shall adopt or maintain a competition-related measure that applies primarily to firms located in the other Party's territory and excludes firms located in the Party's territory with similar business practices.
- Parties' national competition authorities shall cooperate in relation to their enforcement laws and policies, including through investigative assistance, notification, consultation, and exchange of information. Parties acknowledge the importance of cooperation and coordination internationally and the work of multilateral organizations in this area, including the Competition Committee of the Organisation for Economic Co-operation and Development (OECD), and the International Competition Network.

(3) Reaching Long-Term Solution on Taxation Challenges

The U.S. and EU must support a multilateral, consensus-based solution for addressing the challenges of taxation in the digital age at the OECD. Unilateral measures like those pursued by the European Commission and EU Member States are likely to trigger further trade conflicts and harm the prospects for multilateral agreement on taxation. Work should continue at the OECD to achieve global non-discriminatory consensus on global tax reform. To facilitate those negotiations, countries should agree to immediately withdraw unilateral or discriminatory digital taxes. The U.S. should continue to utilize enforcement tools at its disposal when countries pursue discriminatory measures.



Recommendations:

- Parties shall maintain a commitment to reach a multilateral solution to the challenges of taxation posed by digitalization of the global economy, including through negotiations at the OECD.
- Neither Party shall adopt or maintain a unilateral or discriminatory digital services tax measure, including at a Member State level, during the course of such negotiations. Discriminatory digital tax measures include taxes or levies that discriminate on a *de facto* basis, for example, by using size or certain digital business model thresholds to primarily cover foreign service suppliers.
- Parties shall cooperate with non-Parties to ensure that non-Parties do not adopt or maintain unreasonable or discriminatory unilateral digital services tax measures during the course of OECD negotiations.

(4) Promoting Free Flow of Information with Safeguards

There should be a stronger commitment to facilitate cross-border data flows and refrain from imposing *de jure* localization measures, a worrying increasing trend in many parts of the world. The EU and U.S. should develop a reciprocal data transfer framework based upon shared standards and values to promote secure and unencumbered free flow of information. Transatlantic cooperation on these issues can be built upon at the multilateral level to encourage global standards on data governance.

Recommendations:

- Parties shall promote a durable framework for data transfers and agreement on common standards for government access to data to ensure continued equivalence in data protection standards for transfers. In addition, Parties agree to cooperate on privacy and data protection standards.
- Parties shall not restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of the business of a covered person. In addition, neither Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory. To that end, Parties shall ensure that any measures related to digital or technological sovereignty do not result in the imposition of *de facto* or *de jure* data localization requirements or restrictions on data flows.



(5) Cooperation on Law Enforcement and Security

International cooperation is necessary to resolve conflict of law challenges raised when law enforcement seeks access to data stored in global cloud computing networks. The EU and U.S. should work closely to support modern frameworks and principles to facilitate law enforcement access to digital evidence in lawful and legitimate criminal proceedings that are consistent with shared values and commitments to human rights and privacy.

Recommendations:

- Recognizing the need to establish a transatlantic framework on law enforcement and security cooperation that strengthens user rights and due process, while mitigating the risk of conflicts between the U.S. and EU regarding laws on cross-border data issues, Parties shall engage in dialogue to facilitate effective law enforcement cooperation on issues related to digital evidence.
- Recognizing that bilateral and multilateral agreements with like-minded partners facilitate modernized and efficient law enforcement access to criminal investigative information across borders, Parties shall prioritize the negotiation of a U.S.-EU agreement for cross-border law enforcement access to electronic evidence.
- Parties should support multilateral efforts at the OECD to establish a set of common practices and legal processes for ensuring trusted law enforcement and national security access to data that provides adequate privacy protections and certainty for businesses.

(6) Fostering Innovation Environment for New Technologies

New technologies, such as artificial intelligence (AI), will be key to support economic recovery, the green transition, and to offer societal benefits, e.g., through improved healthcare. EU and U.S. regulators should engage in early dialogue to promote public trust in AI and incentivize investments and use of new technologies. As like-minded trade partners, the EU and the U.S. should support interoperable risk-based regulatory frameworks and push back against authoritarian misuse of new technologies.

Recommendations:

- Parties shall seek to increase alignment and coherence of regulatory frameworks governing AI applications, including by cooperating on the development of regional and international standards on safety, interoperability, and responsible AI. Each Party shall ensure that its AI regulatory framework reflects risk-based approaches that are sufficiently flexible to account for new challenges.



- Parties should promote technical standards that allow for interoperability, support customer choice across a wide variety of products, and drive technological progress. Parties agree to work together in international, government, and industry-driven fora to develop useful standards, benchmarks, and resources for new technologies.
- Parties should explore opportunities to invest jointly in public-funded research of common interests in emerging technologies.

(7) Working Together to Combat Unfair Trade Practices from Third Countries

The U.S. and the EU should develop a shared strategic vision for innovation and governance of digital society that prioritizes our shared values of human dignity, individual rights, market-based innovation, and democratic principles and prevents rival systems from undermining these values around the world, including through standard setting.

There should be a transatlantic approach to address practices by third-party countries that violate trade rules, restrict open trade and investment, and undermine security. National approaches that undermine the spirit of cooperation to accomplish this goal should be discouraged.

Recommendations:

- Parties should establish a joint action plan that articulates a shared democratic approach to governance of digital society consistent with universal human rights principles.
- Parties must develop a coordinated strategy to combat the rise of digital authoritarianism and threats to the open Internet with an emphasis on enhancing international diplomacy.
- Parties should assess where regulatory proposals would threaten transatlantic security or strengthen the position of authoritarian rivals.
- Parties should ensure that measures to improve national competitiveness, including those targeted at addressing perceived distortions caused by foreign subsidies and rules on supply chain security, have clear and consistent rules that do not pose egregious market access barriers for trading partners.



(8) Aligning Export Control Policies

There is a genuine need to modernize and harmonize the application of export controls to intangible transfers. A lack of alignment between the U.S. and the EU's approach to export control rules, and ambiguities within each Party's regimes, create differing interpretations and regulatory requirements for intangible transfer of assets within the EU, and between the U.S. and EU and global allies. Further, it creates unnecessary complexity and costs for exporters in the U.S. and EU, placing them at a competitive disadvantage to other trading partners.

Recommendations:

- Parties should align export control rules applicable to intangible transfers of software and technology, and ensure coherent application of these rules across their jurisdictions.
- Parties should ensure that export controls do not undermine transatlantic research efforts and inhibit movement of talent.