

Consultation response

European Commission's renewed trade policy for a stronger Europe

November 2020



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2018, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Building more resilience – internal and external dimensions

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

The COVID-19 crisis has exposed the imperative for European Member States to focus on building greater capabilities and resilience across all sectors of the European economy. The global disruptions created by COVID-19 have highlighted the importance of secure and diverse supply chains, the importance of global collaboration and multilateralism, and continuity of essential services such as education, healthcare, connectivity, and others. By contrast, go-it-alone trade and economic measures can cause grave damage.

The EU has long been a promoter of free trade and multilateralism, and its open trade policies have supported EU competitiveness and growth, making it the biggest global exporter, importer and investor. According to Eurostat statistics¹ the EU's share of imports and exports as part of GDP have increased by almost 10% in the past ten years, demonstrating how deeply integrated in global value chains European businesses are.

However, the EU should be cautious: while AmCham EU understands calls for building and strengthening EU resilience against a future economic crisis and systemic disruptions, we are concerned about the potential adverse effect that resorting to a model of 'open strategic autonomy' could have on trade and investment. It is not clear which criteria would apply to the terms 'open', 'strategic' and 'autonomy', and consequently what they would imply in practice. More explanation and guidance by the Commission will be necessary.

Inward-looking trade policies would be detrimental to the interests of businesses in Europe which compete successfully on global markets. Therefore, the foundations for future resilience, competitiveness and sustainable growth should be built on openness and commitment to the EU's fundamental values – values that we share ourselves.

The new trade strategy is an opportunity for the EU to reassert its leading role as a global, open market, by pursuing ambitious rules-based trade policies that protect European values, while driving innovation and inclusive growth that benefits all citizens. One such example of innovation comes from the COVID-19 crisis, which has underscored the importance of cross-border digital services for European employers, workers and consumers. The EU must place digital trade at the heart of its new trade strategy. This will be crucial to building Europe's capabilities in technology.

When strengthening European capabilities, the EU should draw on the experience of stakeholders who deal in global trade, such as trade operators—regardless of where they are headquartered—that have strong commitments to Europe; have invested in European talent and capacity to help Europe be successful; and have displayed their trustworthiness, stewardship, and security in Europe for decades.

2. What initiatives should the EU take – alone or with other trading partners – to support businesses, including SMEs, to assess risks as well as solidifying and diversifying supply chains?

AmCham EU does not believe that reshoring of production from third countries per se or restricting foreign exporters' or investors' access to the EU market would be the appropriate manner to address the EU's legitimate concerns regarding resilience. This does not exclude changes or updates to the EU legislation or policies that are justified to address unfair commercial practices by third countries. However, the reshoring of economic activities comes with the risk of having to choose sectors, which distorts the market and leads to economic inefficiencies. Moreover, it is questionable whether the shortening of supply chains does result in increased resilience, as EU

¹ Eurostat (2020) <https://ec.europa.eu/eurostat/databrowser/view/tet00004/default/?lang=en>

industries would stand to lose access to raw materials and new technologies and EU consumers would lose in terms of product diversification and market competition.

Maintaining the EU market open for imports ensures that EU businesses are able to source their raw materials from different suppliers instead of becoming dependent on few ones. It provides agility and flexibility to EU businesses, which are key to increase resilience against external shocks, not only in the pandemic context. Moreover, it promotes access to new technologies, which is crucial for industries to remain competitive and innovative.

On the export side, opening new markets to EU exports by reducing tariffs and non-tariff barriers gives EU businesses the opportunity to tap into economic growth taking place in other parts of the world. It expands consumer markets, promoting economies of scale, efficiency gains and, overall, boosting the competitiveness of the EU industry.

Such initiatives always have to be conducted with a sense of proportion and must not lead to a 'fortress Europe'. Moreover, the EU should further its cooperation with like-minded trading partners to address such unfair practices.

Companies of all sizes rely on a stable and predictable business environment. Therefore, the European Union should refrain from any knee-jerk and uncoordinated reactions, especially in the post-crisis economy. The EU's trade system overall has served well businesses, consumers and society in Europe, and rushing into quick changes could be more damaging than helpful.

AmCham EU continues to support the EU's dual approach of pursuing multilateral / plurilateral negotiations in the framework of international organisations such as the WTO or the OECD, and in parallel negotiating bilateral free trade agreements with third countries. Such agreements not only open new market opportunities, but also give companies the possibility to further diversify their supply chains. These agreements should include world-leading provisions that cut red tape and eliminate bureaucracy for companies, particularly at the border. Small companies lack the resources of big companies to overcome the barriers to trade that trade facilitation and expanded market access help to address.

Supporting socio-economic recovery and growth

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

The multilateral trading system, underpinned by the World Trade Organization (WTO), has helped to open up international markets and raised standards globally. The WTO continues to act as a guarantee for governments and companies in global markets. However, two of its main functions, namely its dispute resolution mechanism and negotiation function, are now in crisis. As a result, the system requires reform to overcome present challenges and regain its role as centrepiece of the multilateral trading system.

AmCham EU continues to be a strong supporter of the multilateral trading system and believes that the European Commission should play a leading role in reforming the WTO. This is about making the WTO fit for the 21st century. As such, a top priority should be the successful conclusion of the "E-Commerce" plurilateral negotiations. 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. Among other things, 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 global economy has significantly changed since the creation of the WTO in 1995, and so has the level of economic development of its members. AmCham EU supports calls to reform the outdated system of authorising WTO members to characterise their own level of economic development.

More broadly, the WTO should be reformed to make it more efficient at all levels. Its negotiating function needs to be revitalised, notably by allowing countries that are willing to move forward via ‘open’ plurilateral talks to do so (eg, Joint Statement Initiative on E-Commerce, on Services Domestic Regulation, on Investment facilitation, Environmental Goods). Moreover, the monitoring role of the Secretariat has to be reinforced (notifications, trade policy reviews) and the dispute settlement mechanism has to be reformed to restore trust among and respect by all WTO members.

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 can significantly improve market access for EU exporters and investors through multilateral and bilateral trade agreements that are ambitious.

With regard to improving trade in goods, **simplification and harmonisation of FTA provisions concerning rules of origin and origin certification** would help significantly improve market access for EU exporters, especially for SMEs. EU economic operators need to manage a wide range of FTAs with different preferential origin and certification rules to be able to benefit from preferential duty rates in the importing country. This requires the establishment and maintenance of several compliance processes:

- **Product qualification for the same product must be established for each FTA**, according to the applicable rules of origin: in FTA A, the origin criteria is based on ‘ex-works’ price, whereas on FTA B the origin criteria is based on change in the product tariff position.
- In the course of the FTA implementation, **product qualification may change**, depending on sourcing of raw materials and storage conditions.
- **The EU operates with different self-certification systems** - Approved Exporter and Registered Exporter – which also requires maintenance from the EU exporters.
- **The text of the origin statement varies in each FTA**, which makes automation more complicated.
- **Current FTA logistic rules are rigid and do not reflect the way supply chains are organised around the world**. This results in unnecessary additional complexity and costs for businesses. To use the EU FTA network to improve market access for EU businesses, we strongly recommend the European Commission to **simplify and harmonise FTA rules of origin and certification systems**, as follows:
 - Single and uniform text of the origin statement for all FTAs;
 - Harmonisation of the rules of origin: use the same criteria to attribute origin for the same product across different FTAs;
 - Phasing-out of the approved exporter certification and replacement with REX;
 - Provide logistics flexibility: replace provisions of direct transportation with provisions of non-manipulation; allow storage of materials and products with accounting segregation and allow the split of consignments in third countries.

FTAs play a part in getting the EU fit for the digital age. FTAs will also aid in reaching Europe’s green objectives, by using tech as a green ally in tracking, steering and augmenting climate solutions. AmCham EU believes that trade agreements can support the growth, resilience and sustainability of the EU’s economy by:

- **Improving the awareness** of the content of existing FTAs among services exporters and investors, through a specific ‘guide for services exporters’.
- **Highlighting the importance of trade in services**, which are the backbone of our economy. Market access should be expanded and national treatment ensured for companies across the e-commerce space, including within the framework of the plurilateral talks on e-commerce.
- **Including horizontal priorities in EU Trade Agreements**, like sustainable development chapters, and comprehensive market access to public procurement for services, with low thresholds and substantive coverage of all public institutions and entities, at all levels of administration.
- **Initiating regulatory cooperation in services, beyond financial services**, like in telecom services, in professional services (MRA of professional qualifications), and in the field of cross-border data flows.
- Ensuring that current bilateral FTA negotiations, in particular with the UK, Australia, New Zealand, Chile include a **strong digital chapter** with provisions that are ambitious in terms of enabling the flow of data across borders, protecting critical Intellectual Property, prohibiting forced technology transfers, ensuring technology choice and encouraging open digital architectures. These provisions must be underpinned by strong and interoperable privacy and security provisions while effectively tackling issues of data localisation. The EU could revisit its position on data flows in ratified trade agreements to protect, strengthen and grow data flows on a global level.
- Supporting an international digital economy agreement to protect and grow data flows on a global level - conclusion of an agreement of the **WTO e-Commerce negotiations** built on four key principles of digital trade: (1) Permit free cross-border data flows; (2) Prevent data localisation mandates for storage or processing of data; (3) Protect algorithms, source code, encryption keys or other proprietary information relating to cryptography; and (4) Prohibit the imposition of tariffs or customs duties on electronic transmissions.
 - A successful WTO plurilateral negotiation on e-commerce will also include an **advanced trade facilitation chapter** that builds on the TFA and goes beyond the level of ambition provided by the agreement. Internationalising customs procedures in the context of e-commerce would help to take advantage of the extraordinary rise of e-commerce, which is transforming the way we trade.
- Supporting **innovation in technology**, and further deploying existing technologies such as IoT systems to track, steer and augment climate solutions to reach Europe’s green objectives. We believe that trade policy should support innovation and technology, but, it is important that trade policy remains **technology neutral** to avoid market distortions. For additional proposals in the field of digital trade, please refer to our answers to Question 10 and 11.

5. With which partners and regions should the EU prioritise its engagement? In particular, how can we strengthen our trade and investment relationships with the neighbouring countries and Africa to our mutual benefit?

Relations with the United States

AmCham EU supports the EU’s continued engagement with the US and its work to promote a positive trade agenda, starting with deals on regulatory cooperation and on a reduction of tariffs on a broad number of products. While the recent announcement to eliminate tariffs on a limited number of goods was a positive first step, it is important that this breakthrough serves as intended as a springboard for much deeper discussions. Thus, the transatlantic dialogue needs to focus on areas where both parties could create gold standards for the

global economy, areas such as industrial subsidies, developing country status within the WTO, eliminating barriers to digital trade including data localisation and forced technology transfers, and advanced trade facilitation measures which reduce the costs of doing business.

Like-minded countries such as the EU and US should also enhance regulatory cooperation, especially in the field of emerging technologies, to benefit all sectors and companies. We fully agree with the Commission's renewed assessment that the EU-US trade relations are the central pillar of the world economy and are critical for the EU. It is noteworthy that, despite a number of trade irritants, the transatlantic trade continued to grow before the outbreak of COVID-19. Global threats like climate change, geopolitical instability and pandemics can only be tackled collectively, and the need for a strong transatlantic partnership has become ever more obvious as these issues come to the fore. In parallel to negotiations on a limited trade deal, both sides should turn their energy to settle long-running disputes, such as the EU-US WTO dispute over Measures Affecting Trade in Large Civil Aircraft.

Relations with the United Kingdom

Considering the economic importance of trade relations with the UK and the strong integration of both economies it will be critical for the economic recovery to ensure continuity in EU-UK relations. AmCham EU continues to urge both sides to reach an ambitious EU-UK agreement, and we hope that this can be delivered by the end of 2020. The future agreement needs to be more than a standard, comprehensive FTA. Apart from the basic elements of an FTA, such as duty-free and quota-free trade, the FTA needs to cover areas of strategic priorities for both the EU and the UK such as an adequacy agreement. Close economic ties and engagement with the UK must remain high on the EU's agenda, irrespective if the current negotiations succeed or not.

Relations with China

AmCham EU welcomes the decision by the EU to engage with China in a reciprocal and conditional manner, based on the respect of fundamental principles, such as a commitment to free trade, fair competition and the rule-of-law. The EU should keep engaging with China at different levels. First at bilateral level, by continuing to build a stronger and fairer economic relationship in order to resolve trade and investment barriers through bilateral agreements. Second at multilateral level, by working with like-minded partners to strengthen global governance. Through collaboration, the EU can address the implications of a state-led economy and promote raising the global level playing field.

Bilateral trade agreements

AmCham EU welcomes the continued focus of the EU on bilateral trade agreements. The recently ratified Free Trade Agreements (FTAs) are important milestones of EU trade policy and have tangible benefits for EU business, including SMEs. Trade negotiations that are already far advanced, such as those with Indonesia, Australia, New Zealand and Chile should also be brought to a swift conclusion.

The European Commission should continue its efforts to ratify recently agreed FTAs such as with Mexico, MERCOSUR, and the investment chapter of CETA.

AmCham EU welcomes the increased efforts to improve implementation of existing FTAs in order to ensure that the benefits reach European business.

The recently concluded agreements with Singapore and Vietnam, and the ongoing talks with Indonesia, could set the platform for a long-envisioned EU-ASEAN agreement which holds enormous potential for businesses. We firmly believe that there is increased potential for an EU-ASEAN FTA, considering the bilateral FTAs with ASEAN members having entered into force, and the evolving geopolitical background in the region.

Moreover, the EU has a continued obligation to support developing countries through trade, and especially through the EU's Generalised Scheme of Preferences (GSP). The EU's GSP acts as a stepping stone to negotiating FTAs with developing countries. As such, the EU's GSP should remain the crown jewel of the EU's trade policy, remaining open, rules-based and purpose-driven.

Finally, bilateral agreements are the most effective way to advance the sustainable development agenda. We are conscious that some of the trading partners do not currently have the same ambitions as the EU in relation to climate protection and sustainability. However, the EU has more avenues to drive change for the better when a trade agreement is in place, through its market access provisions as well as other provisions, like the sustainability chapters.

Relations with neighbouring countries

The EU should continue its engagement also with trading partners such as Russia, Turkey and Uzbekistan and keep trade corridors open whilst being mindful of political difficulties and blockages that may exist. In view of China's growing influence in the EU's neighbourhood along the Belt and Road Initiative, it is critical for the EU to be pragmatic and maintain its positive influence in the region.

When it comes to the EU's neighbourhood, there is still a lot of untapped potential with the six Euro-Med countries Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia. As we outlined in our position paper², the region remains one of the least economically integrated in the world, representing only about five percent of total global trade flows while having a quickly growing population. It would be important for the region to better integrate in the world. The EU could support this development through strengthened trade relations.

Relations with Switzerland

The EU should strive to finalise the negotiations on the EU-Switzerland Institutional Framework Agreement. Once agreed, it should be implemented as soon as possible. This would help strengthen bilateral ties while also facilitating seamless trade exchange.

6. How can trade policy support the European renewed industrial policy?

AmCham EU recognises that by promoting a model of 'open strategic autonomy', the European Commission aims for the EU to continue reaping the benefits of international trade while protecting itself from unfair trading practices. Nonetheless and as highlighted in our answer to question 1, it is not clear what is meant by the terms 'open', 'strategic' and 'autonomy', and consequently what they would imply in practice.

AmCham EU continues to believe that it is important to provide for efficient global trade flows and recognise the complexity of global supply chains. Even if lessons can be learned from the COVID-19 crisis, it should remain clear that supply chains are complex, inherently global and cannot exist without a solid basis of trade agreements facilitating exchange both at bilateral and multilateral level.

In this context, continued **enhanced customs facilitation is essential** to allow for the cross-border export and import of goods and it is proving to be key to in helping EU companies getting back to business in the current economic recovery phase. An ambitious trade facilitation chapter in any EU trade agreement should include the following:

- Maintaining commercially meaningful *de minimis* levels, generating economic benefits by refocusing public revenue collection on more efficient revenue sources and reducing complicated procedures;
- Separating the physical release of goods from duty and tax collection to improve the processing times at the border and allow customs authorities to focus on safety and security;
- Simplifying documentation, harmonising data requirements and providing for paperless customs procedures to reduce costs for business and authorities;
- Establishing binding rules on expedited shipments;

² AmCham EU (2019). [Response to the European Commission consultation on the Evaluation of the EU's FTAs with six Euro-Med countries](#)

- Developing a Single Window portal to facilitate the submission and processing of electronic documentation;
- Continuing to develop the EU Trade Helpdesk [online portal](#), to ensure the availability and transparency of information for traders; and
- Supporting capacity-building and training to enhance the customs infrastructure and capabilities, notably in agreements with emerging countries.

We believe the European Commission should **pursue greater coherence between the different trade policy instruments**, to properly support EU industrial policy. In fact, when adopting trade defence or compensatory measures, the European Commission should avoid imposing additional tariffs on imported goods that constitute feedstocks or inputs to the downstream EU industry. Applying additional tariffs on imported goods would offset other initiatives to boost the competitiveness of the EU industry. Enforcement of trade rules should not come at the cost of undermining EU competitiveness.

Likewise, the EU should take into account the **aggregate effect of similar measures** adopted by trading partners on global supply chains. In the current international environment, marked by a trade war between major importers and exporters, it is not uncommon that the same product is subject to additional import restrictions in different countries. For an effective trade policy, one that supports the industrial policy to build and to consolidate a resilient EU, there should be greater coherence between the goal of enforcing trade obligations and the goal of promoting the competitiveness of EU industry.

The European Commission should also consider **liberalising tariffs on all goods considered as essential** and helping to ensure that global supply chains can operate freely for the most critical industries. This effort would help to build the economic resilience that the EU aims to achieve.

Equally important are **fair, reciprocal public procurement practices** that protect a level playing field for companies from like-minded trading partners.

The EU should embrace the **services dimension of the new manufacturing world** in the post-COVID-19 era. One of the major elements that increases the competitiveness of EU industrial products is the efficiency of the services provided around the products. Ensuring stable access to these services is a must in EU trade policy (research and development services; certification, testing and analysis services; maintenance and repair services; transport and logistic services; storage and warehouses services; etc).

Across Europe, traditional industry sectors are also being fundamentally transformed by technology and digitisation. The intersection of big data and machine learning, or Artificial Intelligence, coupled with new and powerful analytics tools, are allowing companies of all sizes and in all sectors to understand and harness vast amounts of data in new and innovative ways.

Countries that can harness the Internet for the benefit of companies of all sizes, particularly in traditional industries, will experience greater economic growth, productivity gains, innovation and job creation. An Industrial Policy must, then, recognise the transformative power of digitisation and Industry 4.0 in protecting the competitiveness of European companies across traditional industry sectors.

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. A renewed industrial policy will succeed if it is complemented by an ambitious digital trade agenda designed to increase Europe's competitiveness on a global level.

Finally, the full benefits of trade can only be reaped if there is a **suitable international environment** which encourages openness, cooperation and coordination, in a stable and transparent legal environment. Openness and rules-based trade can in fact increase the competitiveness of the EU business ecosystem and of the Single Market, therefore supporting the EU's renewed industrial policy.

We urge the European Commission to step-up efforts and engage with like-minded trade partners to agree on international rules to discipline foreign subsidies that distort competition. We welcome the joint initiative by the EU, the U.S. and Japan to develop proposals to address this issue³ and we encourage the European Commission to bring these proposals to the WTO, with the aim of including them in the Agreement on Subsidies and Countervailing Measures (ASCM).

Supporting SMEs

7. What more can be done to help SMEs benefit from the opportunities of international trade and investment? Where do they have specific needs or particular challenges that could be addressed by trade and investment policy measures and support?

SMEs represent more than 99% of companies operating in Europe and they are the backbone of the EU economy, as they provide more than 60% of employment and play a key role in driving innovation and ensuring economic stability.

AmCham EU believes that in order for SMEs to benefit even more from the opportunities of international trade and investment, the EU should consider to adopting specific substantial measures.

First of all, the EU's FTAs should include a comprehensive SME business chapter as the standard in all future agreements. This chapter should include concrete measures to facilitate trade for SMEs by providing solutions to the main tariff and non-tariff barriers that SMEs faces when opening up to trade. For instance, by raising the customs duty and VAT *de minimis* threshold, it would be possible to reduce export costs for SMEs. Moreover, the chapter could also be informed by conducting impact assessment studies having a specific focus on impact for trading SMEs.

Additionally, enhanced trade facilitation chapters should be included that focus on eliminating bureaucratic hurdles at the border and take advantage of the latest technologies to facilitate customs clearance. The Organization for Economic Co-Operation and Development (OECD)'s work shows that while trade facilitation provides benefits to all businesses, it benefits MSMEs the most, as trade facilitation reduces fixed and variable costs. These improvements help MSMEs become importers and exporters, but also helps those MSMEs that already export and import increase their volumes.

On a more practical level, the EU should instead consider to adopt the following actions:

- The EU should develop a guide for both goods and services exporters/investors that will provide practical information, per trading partners, on licensing and authorisation procedures by sectors, on whom to contact, on what documents are needed, on the related the costs, etc. Such a tool should play an important role in raising SMEs' interest in the new business opportunities that the EU's FTAs offer.
- Moreover, the EU could also develop a guide on the issue of business travel and temporary entry requirements, and general procedures for getting a business visa and work permit (Mode 4 GATS).
- In addition, the EU should improve the utilisation rate and take-up of FTAs among SMEs by building the capacity of representative SME organisations to inform their members about the trading possibilities that FTAs offer to SMEs. Practical measures could include organising dedicated workshops and improving the access to and content of databases like the Market Access Database (MADB). Such steps would help SMEs understand the requirements in importing countries.

³ Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union.

- The EU should continue to advocate in favour of the implementation of the Trade Facilitation Agreement and maintain capacity building programmes to help countries implement the agreement. In doing so, the EU would simplify and expedite the movement of goods across borders and reduce the costs of international trade. This would benefit all companies, but especially SMEs.

We would invite the European Commission to organise SME-related trade missions in foreign markets and encourage local EU representations in foreign markets to support EU SMEs when they want to do business with those markets (eg, set-up of an SMEs desk).

Supporting the green transition and making trade more sustainable and responsible

8. How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?

Responsible trade can incentivise the scale of sustained investment and innovation that is required to support the transition of the economic, social and environmental dimensions of development, and also to prioritise the management of natural resources for sustainable production and consumption. Of course, there are many variables that must be considered including the logistics and transport footprint, fair labour, the value to parties of goods traded in both economic and environmental terms and in some cases, weighing the benefits with the costs of displaced local production due to imports that are more competitive.

As responsible businesses, AmCham EU Members strive to ensure trade, labour and environmental impacts are fair and equitably distribute value to all parties in the chain and the global community as a whole. At no other time have these guiding principles been more pertinent as the world continues to suffer from the impacts of the COVID-19 pandemic and economies are hit hard. The temptation of some to lean towards protectionist measures limits not only free and fair trade, but also our ability to collaborate in bringing about scalable, innovative and transformative global solutions for supporting a recovery.

As we have seen in the Green Deal and associated strategies, the European Union has great ambition. We agree it can be a strong enabler of sustainable development through its policies. However, we urge caution on the unilateral imposition of EU trade policies that disrupt the flow of commodities or attempt to impose EU approaches through tariff or non-tariff barriers, trade defence instruments or a departure from agreed international approaches at the WTO.

We encourage the EU to pursue mutual recognition of different domestic regulations that achieve the same levels of protection of human health and the environment as the ones practiced in the EU. The EU should fight for the harmonisation of international standards, calling on trading partners to use international standards as a basis in the development of new domestic technical regulations.

Enhanced trade can support the attainment of many SDGs including putting an end to poverty, ending hunger and providing food security for all, sustained economic growth and employment for all, resilient infrastructure and innovation, reducing inequality and taking action to reduce climate impact.

9. How can trade policy help to foster more responsible business conduct? What role should trade policy play in promoting transparent, responsible and sustainable supply chains?

N/A.

Supporting the digital transition and technological development

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 (eg, block chain, AI, big data flows)?

Digitalisation has supported the significant expansion of trade and cross-border business activities, especially in services, where approximately half of cross-border trade is enabled by digital connectivity. In particular, digital trade has allowed micro, small and medium sized enterprises to export through greater visibility, easier market access and less costly distribution.⁴

Digital trade is a great equaliser. Access to cloud-based digital services allows SMEs to access to the same cutting-edge technologies and solutions as major multinational companies. The internet, based on cross-border data flows, has revolutionised international business and SMEs have been the greatest beneficiaries.

Harmonised rules to support the uptake of emerging technologies, open cloud systems, cross-border data flows as well as investment in infrastructure and technology companies can all help European companies contribute to a stronger digital economy and more competitive industrial and tech sectors. More precisely, the EU should:

- **Create a global level playing field** – ensure that third countries do not misuse legitimate privacy exceptions for protectionist measures. Foreign and local goods and services providers should be subject to the same rules, especially for new and innovative digital products and services. This would create certainty for European companies engaged in international trade that they are not subject to forced localisation of data or forced access to source code and encryption issues.
- **Ensure technology neutrality** – encourage the widespread use of open architectures and drive innovation in key technologies, including cloud computing, AI and 5G telecommunications by allowing companies to choose their suppliers of choice irrespective of headquarters' location without prejudice to national security.
- **Prohibit digital customs duties** – support a permanent moratorium within the WTO to provide greater certainty to consumers and business, including SMEs, and facilitate their engagement in global e-commerce. The inclusion of tariffs on electronic transmissions would otherwise raise prices, slow consumption and create a slow-down of economic growth.⁵
- **Promote open access to government-generated public data and information** – expanding access to and use of government data that has been made public can enhance and generate business opportunities if shared in machine-readable and accessible forms for use by the public, especially for

⁴ World Economic Forum. (2020). Data Free Flow with Trust (DFFT): Paths towards Free and Trusted Data Flows.

⁵ Makiyama, H.-L., & Narayanan, B. (2019). The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions. ECIPE Policy Brief.

SMEs. Digital trade chapters can further promote the use of permissive text and data mining provisions and promote alignment between copyright laws and modern use of data, for example in machine learning and the Internet of Things.

- **Promote trust in AI and emerging technology** – adapt legislation to a specific problem or sector by deploying regulatory mechanisms that promote trustworthy AI and facilitate cross-border cooperation. The EU should develop reasonable and balanced regulations that prioritise risk-based frameworks to govern particular uses of AI that are transparent, explainable and fair.
- **Enhance interoperable privacy and cybersecurity to engender consumer trust** – endeavour to build the capabilities of European cybersecurity entities by strengthening existing collaboration mechanisms and using them to swiftly address cybersecurity incidents. Given the evolving nature of cybersecurity threats, the EU should promote industry best practices, and encourage enterprises within its jurisdiction to use risk-based approaches that rely on consensus-based standards and risk management best practices.
- **Continue discussions at the Organisation for Economic Co-operation and Development (OECD) rather than taking unilateral measures on digital taxation** – AmCham EU understands the public and political interest in ensuring that multinational groups pay taxes in the countries where they operate. AmCham EU supports the overarching principle of ensuring that tax should be levied where value is created. However, we are concerned that the EU is considering departing from existing agreed international principles at a time when there is commitment from 113 countries to examine solutions together. AmCham EU therefore endorses the continuation of talks at OECD level rather than unilateral measures.

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?

Cross-border data flows have become the dominant mode by which services are traded cross-border. Approximately 56% of EU services exports, or €495 billion are enabled by and depending on connectivity, without which the EU would enter into a severe payment deficit. Services revenues are 3.5 times larger than Europe's largest export industry – the motor vehicle industry.⁶ Already in 2014, McKinsey noted in a report that data flows accounted for \$2.3 trillion of global GDP and generated more economic value than traditional flows of traded goods.⁷

As noted in Question 10, cross-border data flows have enabled the 'globalisation' of SMEs and start-ups, by offering them new ways to remotely reach new customers. The continued facilitation of Europe's digital transformation is thus a prerequisite for European competitiveness, job creation and growth across all sectors.

However, digital protectionism is growing globally, and significant barriers to the free flow of data remain. The World Economic Forum indicates that the number of data-restrictive policies has doubled in the last ten years.⁸

Description of such barriers and suggestions for easing trade practices for European companies are as follows:

- **Create a replacement for the Privacy Shield mechanism.** Following the decision by the European Court of Justice to invalidate the Privacy Shield mechanism, AmCham EU urges the EU to work with the US Administration in developing a stable and sustainable mechanism for companies to transfer data

⁶ Makiyama, H.-L. (2018). Briefing Note: AI & Trade Policy. ECIPE. Tallinn Digital Summit

⁷ Bughin, J and Lund, S (2017). [The ascendancy of international data flows.](#)

⁸ World Economic Forum (2020). [A Roadmap for Cross-Border Data Flows: Future-Proofing Readiness and Cooperation in the New Data Economy](#)

between the EU and the US. Today, over 5,000 small and large companies from all sectors rely on the Privacy Shield to transfer personal data across the Atlantic. SMEs account for more than 70% of Privacy Shield participants.

- **Laws that restrict the movement of data, or require data or data centres to be localised, undermine the prosperity and competitiveness of the very countries implementing these restrictions.** Such measures are often based on or labelled as personal data protection considerations, making non-personal data flows, which now form the bulk of international data flows, collateral damage of mandated localisation.
 - The EU should ensure that companies are not obliged to localise or build expensive and redundant physical infrastructure as a condition of doing business in third countries. Data security depends on how, not where, data is stored and processed. With provisions that allow businesses to move data securely across borders, companies can reduce risks of physical attacks, enable reduction in network latency, and maintain redundancy and resilience for critical data in the wake of physical damage to a storage location.
- **Laws that mandate companies to transfer technology know-how make it difficult for firms to recoup their investments, decrease incentives to innovate and reduce their competitive advantage.**
 - The EU should ensure that third countries are prohibited from requiring companies to transfer their technology, IP, production processes, or other proprietary information as a condition for accessing the market. It should also foster innovative encryption products and other instruments that would allow its companies to protect and prevent sharing their source code, algorithms, or trade secrets.
- **Support the creation of a digital level playing field.** Many countries have designated specific transfer mechanisms where personal information may flow overseas under certain conditions or instruments. We welcome the European Commission's forward-looking approach to data flows, based on trust and openness. It aims at preventing restrictions to the free flow of data, considering that protection of personal data and privacy shall not be affected by provisions in EU's FTAs. However, the European Commission's proposal offers no instruments to tackle digital barriers to trade in third countries as long as these are framed as privacy measures.
 - The EU should ensure that third countries are not given the chance to misuse what should be legitimate privacy exceptions for protectionist measures. We would support the idea outlined in ECIPE's report⁹ to create a legitimacy test, under which it would assess a third country's enforcement of the exception, based on a legitimate justification that is not greater than required to achieve the public policy objective.
 - It is also vital that businesses, especially SMEs, are able to rely on a range of data transfer mechanisms, which may include, where relevant and appropriate, adequacy decisions, certifications, codes of conduct, Binding Corporate Rules (BCRs), Standard Contractual Clauses (SCCs) and bilateral agreements. Where differences exist among data protection regimes, the EU should also promote regulatory cooperation with third countries' data protection authorities to further interoperability of privacy regimes.

⁹ Makiyama, H.-L. (2018). Briefing Note: AI & Trade Policy. ECIPE. Tallinn Digital Summit

Ensuring fairness and a level playing field

12. In addition to existing instruments, such as trade defence, how should the EU address coercive, distortive and unfair trading practices by third countries? Should existing instruments be further improved or additional instruments be considered?

When it comes to international trade disputes, **fire cannot be fought with fire**. The EU must resist urges to make its trade policies more protectionist. Protectionism hurts trade, business and prosperity. The European Union and its Member States have benefitted immensely from foreign investments and international trade in the past decades. It is important that foreign investments from allied nations, and imports of products necessary for manufacturing activities in the EU and demanded by EU consumers be allowed to continue as freely as they have in the past.

By **aligning with like-minded countries and coordinating policy**, trade and diplomatic efforts, Europe stands a much better chance in successfully addressing discriminatory market access barriers. For example, Europe should increase cooperation with Japan and the United States through the Trilateral Trade Ministers talks. This important cooperative mechanism has a successful track record of reversing discriminatory policies in key markets, such as the Preferential Market Access Policy in India and a number of Chinese industrial and investment policies designed to disadvantage foreign companies.

The WTO is one of the greatest achievements of the twentieth century in the field of international trade. Yet, for the sake of its long-term relevance, **it is important that the WTO be reformed**. Re-energising the WTO is critical, as solving disputes via a predictable and impartial arbiter of rules agreed at a multilateral level is essential to create an environment where international trade and investment can flourish. With this in mind, AmCham EU supports the Commission's efforts to create a temporary appeal mechanism meant to address the paralysis of the WTO's appellate body. However, this temporary solution cannot cause the EU to lose sight of the need to reform the WTO, which requires strong joint efforts to address the concerns that the United States has with respect to the WTO dispute settlement mechanism.

Trade defence measures always disrupt supply chains and adversely affect traders. It is of paramount importance that such measures should not exceed what is strictly necessary to offset unfair trade practices and be imposed after the interests of downstream industries and users of the targeted goods. Before adopting any measures, **the interest of companies, both multilateral corporations and SMEs, active in downstream industries should be taken into account better than is currently the Commission's practice**. The Court of Auditors itself recommended in its 17th Special Report of 30 June 2020 that the Commission should improve its Union interest test and how it assesses the impact of its measures on competition. This could be done by holding public consultations, creating separate teams in charge of assessing Union interest, and allowing downstream industries to comment on the potential impacts of measures on their businesses even after the imposition of provisional measures.

Likewise, when adopting **trade defence or compensatory measures**, the EU should take into account the aggregate effect of other trade restrictive measures adopted by trading partners on global supply chains. If the same products are subject to restrictive measures in different parts of the world at the same time, it is very likely that additional restrictions from the EU would further disrupt global supply chains and have a significant negative impact on the ability of EU companies to diversify suppliers.

We note with some concern that the **rebalancing duties** that the Commission imposed on the United States in 2018 were adopted with minimal consultation with stakeholders. No questionnaire (with the exception of a minimal online form), no verification, no hearing, yet very high duties were imposed in record time. The intensity of consultations with affected parties pale in comparison with what exists under the EU's trade defence regime, resulting in a rash decision supported by a lack of consultation with stakeholders. Such expedited investigations

and absence of due process should not become the standard for the EU to protect its market against unfair trade in the future.

General question

13. What other important topics not covered by the questions above should the Trade Policy Review address?

N/A.