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# Building tomorrow's global trade ecosystem

## *DIGITALEUROPE's response to the public consultation on the EU Trade Policy Review*

### Executive Summary

Digital trade represents a cross-cutting and growing aspect of the global economy and international commerce. Digital trade is growing 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 both large and small companies in the EU to become leading exporters of products and services online, and to assert their position on the global market. By extension, this will enable the EU to take on the role of global leader in digital trade, which will itself be crucial for the recovery and future prosperity of Europe. This is the promise – and the challenge – for the trade policy of “Open Strategic Autonomy”.

We believe that the EU can lead the way in building the global trade ecosystem of the future, and that this is best achieved through a non-protectionist and diplomatic approach. DIGITALEUROPE looks forward to working together with the European Commission and the wider group of stakeholders to develop the approach of “Open Strategic Autonomy” and provides its answers to the consultation's questions below.

Our contribution below is set around 4 guiding recommendations:

#### **1. GETTING THE PRINCIPLES RIGHT**

“Open Strategic Autonomy” is a key tool to achieving resilience in the European economy, and digital and technological sovereignty – however, it is essential that we properly understand what these concepts mean, and how we can consider them achieved. Europe can continue to champion multilateral, rules-based free trade founded on reciprocity, and build a global consensus against protectionism, and still achieve these goals.

## 2. LEADING THE WAY ON DIGITAL TRADE

As the world's leading trade power, the EU should set the global agenda for digital trade, including through driving alignment on global rules for the data economy. It should use all trade agreements to modernise the international trade system so it supports a digitally-transformed world economy.

## 3. ENSURING COHERENCE ACROSS POLICY AREAS

Trade policy is one among many, and our policymakers should constantly reflect on whether trade policy choices help or hinder Europe's recovery and long-term competitiveness. Identifying and exploiting synergies between trade and other policy areas, such as the post-COVID-19 stimulus plan, will be crucial in achieving Europe's key green, digital, and industrial ambitions.

## 4. BUILDING A TRADE ECOSYSTEM THAT DELIVERS

Once we identify what we need to do, we must not forget how to do it. Europe must strengthen its partnerships bilaterally and position itself as a facilitator of multilateral dialogue and consensus. Taken together, these actions will put Europe in a unique position to defend and reform the structural framework for global trade.



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## 4 RECOMMENDATIONS FOR “OPEN STRATEGIC AUTONOMY”

### GETTING THE PRINCIPLES RIGHT

The digital ecosystem and its supply chains require agility, and rely on specific technologies, components and raw materials coming from abroad. With this in mind, DIGITALEUROPE believes that the constituent parts of “Open Strategic Autonomy” should always be considered together. **Autonomy** can not be achieved – and should not be considered a goal – without **openness** to the global market, and a **strategic** approach to building trade relations and thus diversifying supply chains. Only a coherence between these threads will allow Europe to achieve resilience and digital and technological sovereignty. While a high degree of resilience in system-critical areas of an economy can be necessary, this should only apply to a very carefully selected, manageable number of critical core areas, such as those justified on the grounds of security. (see Answer 1)

### LEADING THE WAY ON DIGITAL TRADE

Be it at the multilateral or bilateral level, in the context of trade negotiations or other forms of cooperation, we outline below the key priorities for digital trade and digitally-transforming industries. Just as with its “Trade for All” strategy, the Commission should consider including a chapter detailing digital trade as a horizontal enabler of European economic growth in “Open Strategic Autonomy” recalling the importance of these issues.

- ▶▶ **International data flows** should be facilitated by prohibiting undue data localisation in bilateral and multilateral trade agreements (e.g. WTO eCommerce). We support a trade policy approach that ensures a high standard of personal data protection and facilitates regulatory compatibility, taking into account relevant international principles and guidelines such as the *OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data* (2013).
- ▶▶ Trade agreements should promote **open digital markets** by including commitments to a continued prohibition on customs duties on electronic transmissions, intermediary liability protection<sup>1</sup>, and the promotion of e-payments. Partners should be encouraged towards ITA expansion and/or signature, and duties on emerging technologies should be eliminated now, and avoided in the future.

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<sup>1</sup> in line with our [position](#) on the Digital Services Act

- ▶ **Access to information** is key: EU trade agreements should promote open and machine-readable data, and allow for permissive text and data mining provisions and copyright laws in line with modern data use (AI, Machine learning, IoT).
- ▶ Trade has a key role in developing **open and secure technical infrastructure** globally, including through open secure procurement of cloud services, the promotion of open and international standards (including commitments to rely on these in domestic legislation), and the prevention of forced disclosure of source code and encryption keys. The EU should also use its trade relationships to define common, interoperable standards and certifications on privacy and security, data standard definitions, and emerging technologies.

## COHERENCE ACROSS POLICY AREAS

While “Open Strategic Autonomy” should remain a concept specific to trade policy, it must also be **coherent with all EU policy areas** (see Answer 13). On the one hand, we must make sure that policy initiatives do not put companies in the EU at a competitive disadvantage compared to their competitors in third countries. In this regard, unilateral measures (both in and outside trade policy) must consider the potential negative economic impact they can have on companies manufacturing and investing in Europe (see Answer 2).

Equally, however, there is great untapped potential in **building synergies between trade policies and other EU actions**. For one, diversifying supply means creating better conditions (e.g. through investment, or regulatory cooperation) for businesses to strengthen Europe’s position in their global supply chains (see Answer 6). Elsewhere, the European commitment to building a greener, fairer and more responsible economy at home and abroad can go hand-in-hand with trade policy. Not only can it act as a vehicle to promote European values, but also to develop and disseminate cutting edge solutions – not least digital – to address shared global challenges (see Answers 8 and 9).

## A TRADE ECOSYSTEM THAT DELIVERS

Achieving “Open Strategic Autonomy” involves a coherent yet diverse approach to trade policy. Above all, **Europe must lead in defining rules at the multilateral level** (see Answer 3). We believe that global trade rules are better than having dozens of different FTAs, with different rules and different coverages. This is especially true if Europe’s SMEs are to reap the full benefit of trade policy (see Answer 7). The WTO eCommerce work track also contains great promise to truly make digital trade benefit our economy – particularly through its unique opportunity to have Europe lead in setting global rules on cross-border data flows (see Answer 11), which are the lifeblood of the global digital economy, as has been shown especially in industry and citizens’ adjustment to the unique circumstances of the

Covid-19 pandemic. In addition, the expansion of the Information Technology Agreement – and close attention to its implementation – is a key priority for our industries.

**Europe’s bilateral trade agenda is also of great importance** here, and needs to respond to different challenges depending on the partners in question. Opening new markets for European businesses can involve different approaches – from tariff removal and liberalised rules of origin, to the addressing of market access barriers and distortions to the level playing field (see Answer 12), to regulatory alignment with key trade partners. Sometimes, our focus needs to be on capacity building with potential growth markets. In many cases, a mixed approach needs to be taken (see Answers 4 and 5). Throughout, policymakers should work together with those who are engaged in the day-to-day business of international trade, involving industry and trade promotion organisations through meaningful and timely consultation (see Answer 13).

Looking outwards, trade agreements can provide a basis for **economic and regulatory cooperation**, ensuring coherence between trade policies and domestic legislation. Key here is both the avoidance of unilateral and discriminatory rules put in place by our trade partners (e.g. on taxation), while clear substantive and procedural standards (e.g. on competition rules, security, environment) can be developed.



## Our response to the public consultation

### Q1: How can trade policy help to improve EU’s resilience and build a model of open strategic autonomy?

DIGITALEUROPE is committed to work hand-in-hand with the European Commission on developing the concept of “open strategic autonomy” as the leitmotiv for EU trade policy. We believe that some key context points should be borne in mind from the outset:

- In the future, most economic growth will come from outside Europe’s borders. If we want our companies to grow, the EU must remain open to trade and continue to have an open market based on reciprocity and a level playing field.
- Europe has key strength in digitalising sectors such as manufacturing, health, public sector applications and services, green tech, mobility and others. All these sectors are undergoing rapid transformation and have a global scope and reach. Policy—along with EU funds and resources—should support on-the-ground diplomacy and investments driving growth opportunities and collaborations in overseas markets.
- Throughout the economy, and particularly in the digital sector, global supply chains are the rule, rather than the exception. As such, the EU should exercise caution in defining the concept of a “European business”. The origins of a company and supply chains being located in Europe are some aspects of this understanding, but whether the

company is building new capacities and skills, and ascribing to Europe's standards and values, should also be taken into account.

“Open Strategic Autonomy” should be considered as the name of Europe's trade policy specifically, and **its three threads should always be considered together**. “Autonomy” should be achieved through “openness” to the global market, and a strategic approach to building trade relations and thus creating and maintaining diverse and stable supply chains. Similarly, “Strategic” refers not just to defining and defending Europe's strategic interests in critical sectors, but also to the fact that any concept of “autonomy” cannot be achieved through the economic, technical or scientific self-sufficiency of an industrial sector, but needs to be built on open, competitive global market collaboration. The latter is only possible when the concepts of level-playing-field and reciprocity are respected, and when Europe and indeed all players work towards the reduction of global trade barriers, and ensures that trade and foreign policy goals are coordinated. Creating discriminatory access to the European internal market—beyond that which is justified on the grounds of security—has been proven time and again to be counterproductive.

DIGITALEUROPE understands that Open Strategic Autonomy – and indeed all policy areas – should help to ensure Europe's **resilience and European digital and technological sovereignty**.

**Sovereignty here can carry many different meanings.** On the one hand, we may look to a narrow definition of digital sovereignty, strictly related to data. We can also broaden the scope to see sovereignty as relating to availability of technologies more generally (i.e. “technological sovereignty”). These two conceptions also inevitably overlap, for example on the question of cybersecurity. Sovereignty can also be couched in terms of resilience, particularly in the current crisis context. Lastly, it is strongly related to level playing field concepts, especially so at the company level.

Taking all of this into account, DIGITALEUROPE believes that all future policy aimed at digital and technological sovereignty and building resilience should adhere to the **principles** set out below. Above all, digital and technological sovereignty should only be considered achieved when decision-making on their basis creates a net benefit for European societies. Moreover, as with “Open Strategic Autonomy” as a trade policy, these concepts should be without prejudice to Europe's role as a relentless defender of an open, fair, collaborative, rules-based and multilateral global economy.

- Achieving digital and technological sovereignty goes hand-in-hand with the ambition of **making the EU a worldwide hub for innovative technologies, services, platforms, and the data economy** in general. As such, the EU should continue to pursue its strategic interests by investing, building and maintaining its scientific and technological expertise in critical digital capabilities. These enable a competitive and resilient European economy that can contribute to European industrial leadership on a global scale. This will require **heavy investment in**

**areas like digital skills, AI, data and cloud infrastructure and data spaces, and the green transformation of industries**, if internationally competitive digital offerings are to be available in Europe. Such investments will allow both large and small companies to create innovative new solutions with global reach based on EU values and principles. Efforts towards building European ecosystems (e.g. on data and cloud) should not be pursued purely on a political basis, but must make business sense. The ambition to establish European giants in the data economy is understandable, but must not be pursued in a protectionist spirit, or to the detriment of international collaboration.

- Digital and technological sovereignty should be considered achieved when the **EU has a choice in the development of, and reliance upon, technological or digital capabilities** in cooperation with qualified international partners who respect European rules and values. Any companies adhering to concrete European rules and values should be considered as potential partners to the EU, irrespective of the location of their headquarters or manufacturing. While Europe may choose to rely solely on home-grown technologies for highly critical applications (e.g. military communications), such critical applications (and safeguards in place to ensure their “Europeanness”) should be defined narrowly, and a multi-sourcing strategy should remain the approach for all other applications. The best way to ensure that the latter remains possible is for Europe to continue to champion multilateral, rules-based free trade.
- Resilience of European industry requires collaborative leadership by Europe beyond its borders and effective scenario planning, with the end result being **the ability to avoid, withstand and recover from economic shocks**. It does not require cutting ties with the very ecosystems and value chains that have enabled fast and efficient responses in the current crisis. In fact, we believe that diverse and digitally-enabled value chains provide a necessary foundation for the European economy to bounce back and stay resilient and flexible during a period of prolonged uncertainty. Collaborative leadership allows our industrial players to assert their position and to promote open markets, European values, and high international standards reflecting those values. Indeed, promoting a united European position in international standardisation processes has the potential to build resilience into our economy that will strengthen European industry for decades to come.

## **Q2: What other 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?**

The Digital industry is a global Industry. While we understand the sensitivities and geopolitical interests around Europe’s digital economy, the **digital ecosystem and its supply chains require agility, and rely on specific technologies,**



**components and raw materials coming from abroad.** For manufacturers in the EU to remain attractive, they need to get access to state-of-the-art technologies and materials that will differentiate them in a very competitive market.

With this in mind, **export control measures, tax policies, and trade defence instruments should be applied with caution**, and with a view to the potential negative economic impact such measures on companies manufacturing and investing in Europe. Measures taken should not put companies in the EU at a competitive disadvantage compared to their competitors in third countries. Controls should be adequate, specific, and narrow, and they need to be developed and adopted at international level (through the Wassenaar list) as it is only then that they will be effective. Furthermore, foreign availability and open source nature of specific technologies should be also assessed to determine effectiveness of controls.

Europe could also support diversification of supply chains by working on creating **better conditions for businesses to include Europe** in their supply chains.

As these measures are often in Member States' hands, we urge the Commission to ensure **alignment of the various national measures** to avoid fragmentation within the Single Market, and to furthermore seek a multilateral understanding on these issues to create a fair and competitive environment globally. Whenever possible, we encourage the Commission and Member States to coordinate closely with trade partners on such actions to ensure the policy objectives are achieved, while establishing a level playing field.

In particular, DIGITALEUROPE would like to point towards the recently-agreed European dual use recast. Our Industry has been engaged since the beginning of these discussions and is committed to anticipating and ensuring compliance once the new Regulation enters into force. **Due diligence and catch-all provisions—notably for cyber technologies—should be reasonable and appropriate** and should not put European industry at a competitive disadvantage. Indeed, the EU should ensure that such measures do not impede Europe's ability to become a digital export hub.

We also underline the importance of the new legislation being **legally clear and unambiguous** in order to minimise the risk of export control authorities in Member States diverging in their implementation, something which would undermine the objective of a level playing field for industry in the Union. Thus, the EU should intensify efforts in implementation of EU-wide export licensing simplifications for dual-use items, and also to simplify procedures for import of equipment for the purpose of R&D being carried out within the EU. These simplifications should furthermore be continuously measured and reviewed to identify any potential changes needed to ensure that solutions meet their objectives. In addition, we remind the Commission to continue supporting European companies in avoiding becoming collateral damage of trade wars by being captured by extraterritorial measures of third country export control measures or broad sanctions regimes.

There is also a strong need for enhancing the benefits available to Authorised Economic Operators (AEOs), expanding AEO mutual recognition agreements, and further development of the Smart and Secure Trade Lanes initiative.

Furthermore, the EU and its Member States have both the budgets as well as the instruments to support business in becoming international players. The different Trade Promotion Organisations of the Member States, some of which now cooperate within a pan-European organisation, are important partners of the European Commission in explaining trade agreements and their benefits. We call on the Commission to support them and complement their efforts and to **create broad and coordinated European trade promotion**. An optimised use of the existing funds and instruments would get the EU a long way in improving the use of its existing and updated FTAs.

Also, **European Chambers of Commerce in third countries**, including in key markets, play a key role not only in promoting European business and trade interests abroad, but also in helping to identify potential and existing trade barriers which jeopardise European business' competitiveness abroad – the Commission should continue to strengthen ties with this network.

Finally, the Commission should continue to **seek input from Industry and the wider civil society** through established fora such as the Civil Society Dialogue, the Trade Contact Group, the Market Access Advisory Committee, and the Expert Group on Trade Agreements. Bilateral and multilateral dialogues held between the EU and its trade partners should also seek to engage the voice of Industry in a timely and efficient manner.

### **Q3: 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?**

DIGITALEUROPE welcomes the pro-active approach taken by the EU so far in support of the rule based system. We remain a strong believer in the multilateral system, and are of the opinion that **global trade rules are better than having dozens of different FTAs**, with different rules and different coverages.

Considering the global dimension of our Industry, the WTO is key to international coordination and cooperation and should be strengthened and reformed to better respond to today's challenges, such as Covid-19 and protectionism.

The **Information Technology Agreement (ITA) and its expansion have proved incredibly successful** for our Industry as a whole and in supporting the digitisation of other industries. The next steps at WTO level should be to expand the global participation in this agreement and to ensure that current participants are living up to their commitments. The EU should include commitments to join ITA and ITA expansion in all future FTAs. This is not only an opportunity to address

non-tariff barriers to the ICT sector, but should go hand-in-hand with progress towards ambitious new disciplines under the WTO eCommerce work track.

Indeed, as Covid-19 lockdowns across the world have also incentivized companies to shift their offline business online, the **need for progress on the WTO eCommerce work track** is clearer than ever. A successful conclusion to these talks can bring benefit to all industries from a horizontal perspective, including manufacturers of technologies, by removing barriers to digital trade and customs duties on electronic transactions. In this regard, we advocate for a permanent moratorium on customs duties on electronic transactions. Above all, it is a unique opportunity to address the need for a **framework facilitating cross-border data-flows**, and prohibiting undue restrictions on the latter. We address this topic in more detail in Answer 11 below.

Our other trade priorities include working with other key WTO members to **update the rulebook of the WTO**, bringing more transparency on regulations adopted by trade partners, preventing the forced transfer of technology or IPR/trade secrets, tackling trade distortions related to SOEs and subsidisation, and **reviving the Appellate Body**.

Looking further ahead, a reformed WTO could play a better role in pointing out protectionist tendencies and policies and unfair practices (relying always on an evidence-based approach), for example by listing barriers to trade based on a set of objective criteria.

#### **Q4: 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?**

First of all, DIGITALEUROPE would like to thank DG Trade for its outstanding work on the bilateral agenda in the past 5 years. The **network of existing FTAs are valuable** and represent a great advantage for European traders, including SMEs.

Five years ago, the European Commission created a new chapter in its “Trade for All” strategy with digital trade as an horizontal enabler for European businesses. Recently, Covid-19 has accelerated the shift from offline to online business. Europe now has unique momentum to take the lead in setting the standard for these rules.

Even if our priority remains on a new multilateral dynamic, we also hope to see new agreements concluded with partners such as the UK, the USA, China and

India. **Reciprocity in terms of market access and having a true “Level playing field” should be horizontal objectives** for the EU when negotiating these agreements.

We invite the EU to continue following the strategy to **adopt more FTAs to increase the benefits of trade in the EU and globally**. FTAs and Investment Treaties should look not only at opening markets to EU companies, but also at ensuring they can compete in a fair manner on these markets.

The EU digital Industry has benefitted from EU FTAs by their tariff reductions, simplified rules of origin and smooth customs procedures (e.g. extension of the application of REX). However, if we want to boost European trade in goods, it is equally important to **remove non-tariff barriers and look for regulatory alignment on rules and standards** in areas such as testing and conformity assessment, consumers, energy efficiency and environment. As we mentioned above, our Industry is a global one. Having a similar set of rules between trade partners would greatly support our member companies when entering new markets.

However FTAs ought to reflect the economies they aim to connect and **the lack of digital trade chapters has been a missed opportunity** in past FTAs. Digital trade is far from being only a slice of the economy, rather representing 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 the role of global leader in digital trade**. Standard setting in digital trade globally has already begun and addressing digital trade more directly in its FTAs will also strengthen the EU's standing on the world stage and enable the EU to export values more effectively.

**Exporting values like data protection and environmental standards** should however come with an understanding that the EU should equally assert its role in preventing standards being perverted and used to justify protectionist policies, as has been the case with data protection laws being used to restrict the free flow of data.

The EU should also clarify the **capacity of trade agreements in terms of international standards**, as they may in some cases be the right tools to work towards international cohesion and raising of standards. However, the power of trade agreements should not be overestimated, and these should not be used to address non-trade issues.

In addition, we strongly recommend to continue promoting the new ICS for dispute settlement in future FTAs.

Finally, we cannot emphasise enough the need for more enforcement of trade agreements to make sure EU companies can truly benefit from these FTAs but

also to ensure they will not be put at a competitive disadvantage with more stringent rules than their competitors.

We would also welcome **enhanced regulatory cooperation** in the above areas, through dedicated EU dialogues with third countries as well as in global fora, to ensure harmonisation and convergence of policy approaches relevant for the digital economy across the regions.

### **Q5: With which partners and regions should the EU prioritize its engagement? In particular, how can we strengthen our trade and investment relationships with the neighbouring countries and Africa to our mutual benefit?**

As we mentioned above, the digital industry is global, with each company having its own complex supply chain system. Therefore, the task of drawing up a list of priority partners and regions is a challenging task.

- DIGITALEUROPE members face **regulatory barriers in numerous markets, most notably China, India, Russia and the ASEAN region** (Vietnam, Indonesia, Philippines), where we believe the EU should be engaging actively. It should also be recalled that regulatory barriers can also appear in third countries where trade agreements are in place with the EU.
- As well as engagement to address regulatory barriers as they occur, the **EU should cooperate with trade partners - particularly likeminded countries such as Japan, Canada, Australia and the USA** - through global platforms such as the WTO or bilateral dialogues (e.g. the EU-US Trade and Technology Council) to advance coherent digital policies across borders.
- We strongly support the **current set of bilateral discussions, particularly those with the UK, US, China, and India**. We hope to see also the revival of the discussions for an EU-ASEAN agreement once the time will be right, as well as ambition to open negotiations on strengthening the trade and investment relationship with Taiwan.
- We also emphasise the need to **revise as soon as possible the scope of the customs union agreement with Turkey** to ensure more enforcement, but also to extend it to services. In modernising the customs union, the EU and Turkey can reduce vulnerabilities for future shocks in their interconnected supply chains, promote alignment on regulatory issues, ensure alignment on approaches to global challenges such as climate change, and capitalise on growth potential for both partners.
- As long-standing supporters of the **EU-Japan bilateral relationship**, we also stand ready to provide suggestions once the review clause in the EU-Japan FTA will be activated.
- With respect to the US, **the EU and the US not only remain each other's largest trade and investment partners but are two powers with**

**common interests, common principles and common values** which when pulled together can build something greater than the sum of their parts. DIGITALEUROPE recognises and regrets the increase in tariff disputes between the two parties and welcomes efforts from the European Commission and Member States to find workable compromises. We strongly encourage a continued deep engagement to ensure the transatlantic partnership can remain strong and together find shared solutions on bilateral as well as global trade challenges.

- The EU's **economic relationship with China** is growing faster than with any other major economy. China is the second most important trade partner for the EU, and the EU is China's biggest trading partner. While China is becoming an important partner in addressing global challenges, it is also a competitor in the technology marketplace. In this context, one of the key areas of friction is enabling market access, and China's focus on indigenous approaches has led to unequal access to the marketplace. Thus, the EU-China relationship at once offers opportunities and challenges for EU companies, and Europe's trade policy should aim to reflect this multifaceted bilateral relationship.
- DIGITALEUROPE also welcomes **more engagement with the African continent** and the African Union as such. Our member companies have been active on the continent for many years and have been leading many projects there, including in relation to skills and digital trainings. We believe that trade in this context could be a real win-win on both sides and we encourage DG Trade to provide more expertise to its partners, notably on digital trade.
- However, our industry continues to experience **market access issues on the African continent**, notably related to conformity assessment, testing, entry to the market, cross-border data transfers and forced localisation. We support further alignment with partners such as South Africa, Nigeria, Uganda, Egypt and Morocco to tackle such issues.
- Our Industry would welcome a **high level economic and trade dialogue with the African Union**, as well as an ICT Dialogue where DG Trade, DG Grow, DG Justice and DG Connect would be represented. This should be aligned with the Digital4Development strategy, which we support.
- DIGITALEUROPE looks forward to continuing the discussion with DG Trade and DG Connect – and indeed, all Commission departments concerned – on all of these matters through **established and potentially bespoke channels**. We also look forward to contributing our thoughts on the Global Digital Cooperation Strategy, which can play an important part in bringing coherence to the approach taken across all EU trade partners.

## Q6: How can trade policy support the European renewed Industrial policy?

DIGITALEUROPE recently published a paper entitled “After Covid-19: Digital technologies and trade for a resilient European Industry” available here. We would like to present below a summary of this paper:

- With an estimated 9,2% drop in extra-EU27 exports of goods and services due to the Covid-19 lockdowns, **Europe's economy urgently needs to grow capacities internally** and to expand again on international markets in order to recover swiftly.
- The current crisis has shown that **digital technologies and e-commerce are vital elements of the Single Market** to ensure:
  - the successful digital transformation of businesses and business models of European companies;
  - the sustained growth of the global economy, creation of jobs, and the ability of companies to innovate in Europe;
  - the right levers to drive a digitally enabled Green Deal, and
  - the future competitiveness of Europe in global markets.
- **Trade policy is a powerful tool to achieve European objectives on industrial and competition policies**, using instruments and initiatives like FDI screening, the proposed instrument on foreign subsidies, the International Procurement Instrument, the Green Deal and the upcoming enforcement package. However, these instruments should look first at ensuring reciprocity and a level playing field, and not be used as restrictive and discriminatory measures, beyond those required in the interest of security.
- To **support industry to recover and conquer new markets** we call for European leaders to (among others):
  - Foster collaboration to boost technological capacity, notably by seeking geopolitical alliances with like-minded partners at the WTO (including an expanded ITA), through Free Trade Agreements (FTAs) and Investment Protection Agreements (IPAs);
  - Maintain an "open for business" Europe;
  - Set the standard for digital trade globally;
  - Refrain from introducing unilateral export control measures, and to the greatest extent possible rely on multilateral regimes and best practices;
  - Lead on international standards and certification schemes to ensure flexibility in supply chains;
  - Continue to promote a business-friendly approach to taxation policy and support OECD efforts;
  - Use economic diplomacy to ensure an external dimension of EU industrial policy in the spirit of the EU Single Market.

**Q7: What can be done to help SMEs benefit from the opportunities of international trade and investment? Where do they have specific needs or particular challenges but could be addressed by trade and investment policy measures and support?**

First, SMEs are companies with a **limited amount of financial as well as human resources**. Their focus is on their product and they lack time and resources to study FTAs. Digital trade is a facilitator for SMEs and – especially in a post-Covid era – digital trade will support SME growth and resilience. More than ever digital trade should be at the forefront of Europe’s trade strategy. Cross-border data flows and e-commerce should be improved aiming at facilitating trade for SMEs across and beyond Europe’s borders. The exchange and optimal protection of intellectual property rights will be a key determinant of Europe’s future economic success since the budgets for fast, smart and economic viable innovation requires cross-border cooperation. Also, due to limited resources, **SMEs in particular benefit from a multilateral framework, rather than a grid of FTAs** which are difficult to navigate, and lead to a complex web of rules of origin. Therefore, international and bilateral alignment of digital policies and regulation (from data privacy and governance, to access to data, to cybersecurity rules) will be essential in allowing SMEs grow in foreign markets, and to avoid the need to navigate fundamentally different sets of rules when providing globally scalable services.

Second, given that SMEs have limited financial and human resources, **SMEs benefit overall more than multinationals from the removal of behind-the-border barriers to trade** (i.e. NTBs, TBTs, SPS, etc.) since multinationals can negotiate the minefield of trade barriers better than SMEs can. Therefore, DIGITALEUROPE requests the European Commission to:

- make tackling illegal behind-the-border barriers to trade a top priority of the Chief Trade Enforcement Officer;
- go beyond specific SME chapters (though these are a welcome development) and develop a true “**SME reflex**” in all chapters of trade agreements;
- consider structural summer internships in Europe’s SMEs for the Commission’s negotiating teams in order to improve their grasp of SMEs’ business, practices and challenges.

Third, SMEs suffer from trade barriers hampering investment in third country markets. **New generation investment protection procedures** must be agreed in which access to remedies for SMEs is of primary concern.

Fourth, DIGITALEUROPE wishes to **highlight the dual role of DG Trade**, and the importance of aligning all relevant Commission policy and resources with its work. Recent developments in European legislation, in which the EU takes a unilateral approach to multilateral issues, will have negative consequences, not least for SMEs. It is therefore not just essential that the EU aims at improved market access for digitally traded products, industrial goods, energy, raw materials and other resources and in public procurement markets at national and sub-national level; the EU now has to look into how it is drafting its internal legislation so that the burden of proof is not continuously falling onto business. Especially SMEs will be unable to deal with the heavy burdens, which in turn slows their internationalisation. In addition the retaliation from trade partners will hit first and foremost the smallest international players. Knowing that 80% of Europe’s economy consists of SMEs and that Europe’s share in global GDP is likely to fall



from 12% now to 7% by 2040, it would be self-destructive for the EU not to take the outward as well as extraterritorial effects of its internal legislation into account.

Finally, when it comes to enforcement and implementation of FTAs, European SMEs often cannot really benefit from the FTAs in practice, due to the shortage in resources to complete the whole application procedure to profit from, for example, customs duty elimination. Therefore, the **SMEs export helpdesk remains an essential and very helpful tool** for European SMEs to go overseas. Also, roadshows and seminars both at EU and MS level, targeting European SMEs, can help European businesses a lot in actually knowing how to benefit from FTAs step-by-step in practice.

### **Q8: 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?**

There is no doubt that **trade policy already plays an important role in the green transition and that this role can be enhanced**. Well-defined legislation that is based on international frameworks (UNGPs, OECD, ILO), within which compliance and enforcement is efficient and straightforward, is the way forward.

However, legislation can never solve all societal and environmental challenges. **Collaborative public-private partnerships (SDG17) are crucial** to assemble stakeholders such as governments, industry and civil society to accompany or complement laws. For example, a 'smart mix' of regulation has been applied to minerals supply chains. Regulation (EU) 2017/821 imposes legal obligations on the importers of tin, tungsten, tantalum and gold (3TG) based on the OECD due diligence guidance on minerals supply chains. This legislation is accompanied by the highly successful [European Partnership for Responsible Minerals](#) (EPRM) that is helping to achieve the Union's objectives by increasing the demand for and supply of responsibly-sourced minerals from conflict-affected and high risk areas (CAHRAs). The EPRM is not only operational but is finding projects that are having positive impacts on local communities in CAHRAs across the world, from Colombia and Indonesia to the DRC and Rwanda. Concrete examples include giving women access to credit and introducing responsible mining practices to reduce the use of toxic substances like mercury.

It is also necessary to **not only include European countries and interests in such regulation but also third countries and interests**, for example, 'producer' or 'transforming' countries in the minerals context. In order to address complex challenges, a global level playing field with the Union demonstrating global leadership is important. As with trade measures, the EU must ensure that its

companies are not disadvantaged on the global markets in terms of competitiveness, by not holding foreign companies to the same standards.

In the interests of legal certainty – and a level playing field in the Single Market – the EU should also aim to **avoid fragmentation through national initiatives** on human rights due diligence in supply chains.

The EU should also consider **using its bilateral trade agreements to advance national laws and enforcement that protect vulnerable workers** (particularly migrant workers) and advance environmental responsibility in those countries outside of the EU where there are known risks and/or lack of implementation. The USA has done this with their country Trafficking in Persons reports, country risk rankings, and applying pressure to countries where known risks occur (examples include Thailand and Malaysia).

Of course, **Europe's contribution to the SDGs is also a matter of using trade policy** to promote the uptake of cutting-edge solutions to achieve them. There is an important role for tariff liberalisation on IT products (particularly through the ITA, as described above) that can help achieve the SDGs. For example:

- SDG 9.5 – Enhance scientific research, upgrade the technological capabilities of industrial sectors in all countries by 2030.
- SDG 9.c – Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries.
- SDG 3 – greater access to and lower costs of the medical technologies covered by the ITA and ITA expansion can help to promote good health and well-being.
- SDG 5.b – Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.
- SDG 7.b. – By 2030, expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, in particular least developed countries, small island developing States and landlocked developing countries, in accordance with their respective programmes of support.
- SDG 17.8 – Enhance the use of enabling technology, in particular information and communications technology

### **Q9: 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?**

Understanding a global level playing field and European leadership as key objectives of “Open Strategic Autonomy”, it is increasingly relevant and valid as

we exit from Covid-19 that trade policy contributes to tackling ongoing global societal and environmental challenges.

**Trade policy can and should play an important role in promoting transparent, responsible and sustainable supply chains.** This includes chapters on CSR and responsible business conduct in FTAs and export controls rules, with the latter based on international regimes and best practices.

Well-defined legislation—in line with global standards (e.g. UNGP, ILO, OECD)—should be accompanied by the **encouragement of collaborative public-private partnerships and capacity building support to drive change.** As noted above, digital technologies also have the potential to bring more sustainability in trade and achieve EU and Paris agreement goals on climate change. As the minerals example cited in Answer 8 shows, it is possible for governments to work hand in hand with supply chain actors (downstream, midstream and upstream), civil society and other stakeholders to achieve significant and meaningful results across the world.

### **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)?**

International trade of digital technologies can provide the global community with sustainable jobs, better health, better public services, and effective solutions to tackle climate change. **Digitalisation also boosts opportunities to participate in global trade for small players,** for example through e-commerce, remote delivery of services, reduced costs of reaching a global audience through digital platforms, digital facilitation of trade in the form of digital customs declarations, new means to build verifiable online transaction records with blockchain, and more efficient logistics.

Better access to digital tools (and removal of barriers to trade in those) is particularly important to supporting economic recovery post Covid-19, which has disrupted supply chains of physical goods, while digital services kept flowing. **The movement of data will be ever more important going forward,** with advancements in Artificial Intelligence, Blockchain, Big Data, and Internet of Things.

While the EU should continue to be a relentless defender of open, rules-based, and fair trade worldwide, **trade policy should also consider Europe's strategic and competitive advantages,** opening up opportunities for sectors in which it has the prospects to lead globally (e.g. digital and sustainable technologies, additive

manufacturing, 5G/6G, industrial AI and Internet of Things). To support European industry on global markets, the EU should increase efforts to improve the level playing field, globally as well as internally in the EU Single Market. It should also seek to address more forcefully market access barriers, and the lack of reciprocity in trading with partners. The EU's economic interests should be promoted abroad by economic diplomacy and by using EU soft power to bring about better internal coordination.

Considering the central role of data in the digital era, data policies will strongly define the future trade landscape. **Europe should drive the WTO negotiations on eCommerce** and continue supporting the moratorium on duties on electronic transmissions. Further conditions that would support a leading EU role in global supply chains based on flows of data include: availability of skills, state of the art digital infrastructure, high standards in cybersecurity and IP protection.

Almost real time adjustments to supply flows are made possible by industrial automation and digitalisation. To make best use of this, the **multilateral system is a must**, and the EU should spare no efforts on reforming and reinforcing the WTO system.

### **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 Internet and ICT are driving the development of new business models transforming how and where goods and services are produced and traded. It has been projected that **digital technologies such as blockchain, IoT and AI could boost overall trade by 6 to 11 percent by 2030** by reducing frictions in the free flow of goods.<sup>2</sup> Furthermore, e-commerce may lead to an increase of \$1.3-\$2.1 trillion in global trade by 2030, boosting trade in manufactured goods by 6 to 10 percent.<sup>3</sup> Digital technologies and e-commerce are thus vital to ensure:

- the successful digital transformation of businesses and business models of companies in Europe;
- the growth of the global economy, creation of jobs, and the ability of companies to innovate in Europe; and
- the future competitiveness of Europe in the world market.

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<sup>2</sup> "Globalization in transition: the future of trade and value chains" (2019). Report by the McKinsey Global Institute, accessed at <https://www.mckinsey.com/featured-insights/innovation-and-growth/globalization-in-transition-the-future-of-trade-and-value-chains> on 9 November 2020.

<sup>3</sup> *Ibid.*

DIGITALEUROPE would like to place particular emphasis on the WTO eCommerce negotiations (especially as they relate to international data flows – see below) and the necessity for a permanent moratorium on the imposition of customs duties on electronic transmissions.

Across all agreements and policy areas, the **following goals should be pursued in order to address barriers to e-commerce:**

- 1) Prohibit internet tariffs and customs formalities on electronic transmissions;
- 2) Facilitate the flow of data across borders;
- 3) Prohibit undue requirements to localise the storage and processing of data;
- 4) Ensure the protection of personal data;
- 5) Prohibit requirements to disclose source code, algorithms, or encryption keys;
- 6) Promote government cooperation and regulatory best practices for cybersecurity;
- 7) Promote state-of-the-art good regulatory practices in the regulation of digital services;
- 8) Pursue “TFA-plus” provisions that facilitate e-commerce, including through increasing *de minimis* levels and simplifying customs clearance for low-value shipments;
- 9) Promote acceptance of electronic contracts, signatures and authentication;
- 10) Promote the adoption of non-IP intermediary liability protections (this is without prejudice to DIGITALEUROPE’s [position](#) on the Digital Services Act).
- 11) Expand market access for services;
- 12) Expand market access for ICT goods through accession to the WTO Information Technology Agreement and the expansion of the latter; and,
- 13) Facilitate access to and use of government data.

On the specific point of international transfers of data, the ability of companies to locate data storage and processing centres where it makes the most technical and commercial sense has been an enabling factor in the growth in digital trade and technologies, and in the corresponding benefits across all sectors of the economy.

Notwithstanding the broad recognition of the importance of data flows to the global economy—especially in light of the adjustments required across society during the Covid-19 pandemic—**economies are increasingly pursuing measures that inhibit the ability of companies and individuals to transfer data across borders**, with no demonstrable justification for doing so. Companies take advantage of the economies of scale that the internet provides to serve large customer groups around the world in a seamless, secure and cost-effective manner. The forced local storage and/or processing of data minimises the ability of companies to do this by significantly increasing the cost of doing business,

without improving—and in some cases jeopardising—data security and service reliability.

The **WTO eCommerce negotiations provide an opportunity to reach global agreement on provisions that meaningfully combat barriers to data flows**, including those affecting financial data, without challenging regulatory frameworks that allow for the transparent and non-discriminatory transfer of data across borders. Put simply, the WTO eCommerce disciplines need to be designed in such a way that national regulations dealing with data protection and privacy cannot be exploited by third countries for protectionist purposes.

Existing provisions in regional free trade agreements that prohibit unnecessary and discriminatory restrictions on data flows provide governments with examples of tools to enable the flow of data across borders. **Strong data protection must go hand in hand with the flow, storage, and processing of data.** Recognising there is no one-size-fits-all approach to privacy, we support a trade policy approach that ensures high-standard protection and facilitates regulatory compatibility, without detracting from a government's ability to pursue the public interest. To this end, countries should commit to adopting or maintaining a legal framework that provides for the protection of personal information, taking into account relevant international principles and guidelines such as the *OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013)*.

Finally, another key barrier for European businesses engaging in digital trade is **third countries' public procurement systems**. These systems and processes are often opaque, meaning that European businesses often fail in obtaining an equal footing when participating in foreign governments' tenders for digital business project and opportunities. In third markets, there is often an explicit, or implicit, preferential treatment for domestic digital companies, whilst we should aim at advocating a more fair and transparent public procurement system, which enables European businesses to participate in tenders abroad on an equal footing.

### **Q 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?**

The EU should be addressing unfair trade practices and lack of reciprocity in market access by using all of the tools at its disposal. As mentioned above, this includes the channels provided by multilateral organisations such as the WTO, and in bilateral dialogues with trade partners.

**New instruments are welcomed where gaps are identified** (e.g. areas not covered by WTO; the International Procurement Instrument to create leverage on

trading partners to open up their markets, the FDI screening tool to respond to national security concerns, or the proposed instrument on foreign subsidies to address any distortive effects of the latter) but should be introduced in such a way that economic operators have legal certainty, and have built-in safeguards to avoid misuse.

We encourage the **use of improved trade defence instruments (TDI) in a qualitative way**, after careful consideration of possible harmful side-effects on other sectors, and always in line with WTO compliance. The TBR tool could also be used to tackle market barriers in third countries.

In addition, the EU should seek to **remove barriers through FTAs and IPAs**. These create transparency, require reciprocity, and support the creation of a global level playing field.

DIGITALEUROPE also **welcomes the appointment of a new Chief Trade Enforcement Officer**. We are looking forward to working with him and his team on ensuring that provisions in trade agreements are duly enforced. Further, with the current WTO Appellate Body stalemate we support an ambitious enforcement package that will allow Europe to respond more effectively to aggressive and unjustified sanctions or measures. However, we strongly discourage the adoption of unilateral, “first-strike” measures that would create considerable uncertainty and potential loss of markets for businesses operating within the European Union.

### **Q13: What other important topics not covered by the questions above should the Trade Policy Review address?**

As we mention above, digital is far more than a slice of the economy, and at no time has this been clearer than during the ongoing Covid-19 pandemic. Digital solutions – and digital trade – have played an essential role in keeping economic and societal activity going, and will be crucial in ensuring a robust recovery. Unfortunately, the EU has tended to lag behind in modernising its trade agreements to keep pace with digitalisation and technological developments. We have described our asks in terms of content above, but a different structural approach to defining our trade policy—and designing “Open Strategic Autonomy”—can help to address this disconnect more generally.

- First of all, the EU should recognise that **domestic policies should always be seen in conjunction with international trade**, i.e. their positive or negative implications on trade flows and the risk of creating barriers, including through trade retaliation. Examples here include the EU’s plans for a carbon border adjustment mechanism or unilateral digital services taxes.
- Secondly, there should be a **better recognition that the EU’s unique power in setting global standards, “the Brussels Effect”, comes with power but equally with responsibility**. If the EU strives to set global standards, it ought to ensure that these do not bear unintended

consequences. Data flows are a good example: the EU is uniquely positioned to export values such as privacy and openness through its trade relations but at the same time needs to be vigilant if third countries advance policies justified in terms of privacy, but clearly driven by a protectionist agenda.

Therefore, **coherence is key**—across the EU policymaking landscape, it is key that new initiatives (from digital, to industrial, to development policy) take the trade impact into account. This can be achieved through effective coordination across Commission departments, and we look forward to the publication of the Global Digital Cooperation Strategy as an important step in the right direction.

Of course, this coherence also extends to **engagement with businesses**—those actually engaged in the day-to-day business of international trade. Whether it be about creating the best conditions for the uptake of ICT solutions, the openness of markets, or the existence of reciprocity and a global level playing field, EU industry has a wealth of knowledge and experience that can feed into trade policymaking. **DIGITALEUROPE is therefore committed to serving as a trusted adviser** to the European Commission, Member States, and the European Parliament in developing the understanding of “Open Strategic Autonomy”, and putting it into practice.

FOR MORE INFORMATION, PLEASE CONTACT:



Tsai-wei Chao-Müller

**Policy Director, Digital Technology, Innovation and Trade**

[tsai-wei.chao@digitaleurope.org](mailto:tsai-wei.chao@digitaleurope.org)



Barry McKeon

**Senior Policy Manager – Trade and Competition**

[barry.mckeon@digitaleurope.org](mailto:barry.mckeon@digitaleurope.org)



## About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

# DIGITALEUROPE Membership

## Corporate Members

Accenture, Airbus, Amazon, AMD, Apple, Arçelik, Bayer, Bidao, Bosch, Bose, Bristol-Myers Squibb, Brother, Canon, Cisco, DATEV, Dell, Dropbox, Eli Lilly and Company, Epson, Ericsson, Facebook, Fujitsu, Google, Graphcore, Hewlett Packard Enterprise, Hitachi, HP Inc., HSBC, Huawei, Intel, Johnson & Johnson, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Mastercard, METRO, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe Inc., NEC, Nokia, Nvidia Ltd., Oki, OPPO, Oracle, Palo Alto Networks, Panasonic Europe, Philips, Qualcomm, Red Hat, Ricoh, Roche, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Sony, Swatch Group, Tata Consultancy Services, Technicolor, Texas Instruments, Toshiba, TP Vision, UnitedHealth Group, Visa, VMware, Workday, Xerox.

## National Trade Associations

**Austria:** IOÖ

**Belarus:** INFOPARK

**Belgium:** AGORIA

**Croatia:** Croatian Chamber of Economy

**Cyprus:** CITEA

**Denmark:** DI Digital, IT BRANCHEN, Dansk Erhverv

**Estonia:** ITL

**Finland:** TIF

**France:** AFNUM, Syntec Numérique, Tech in France

**Germany:** BITKOM, ZVEI

**Greece:** SEPE

**Hungary:** IVSZ

**Ireland:** Technology Ireland

**Italy:** Anitec-Assinform

**Lithuania:** INFOBALT

**Luxembourg:** APSI

**Netherlands:** NLdigital, FIAR

**Norway:** Abelia

**Poland:** KIGEIT, PIIT, ZIPSEE

**Portugal:** AGEFE

**Romania:** ANIS, APDETIC

**Slovakia:** ITAS

**Slovenia:** GZS

**Spain:** AMETIC

**Sweden:** Teknikföretagen, IT&Telekomföretagen

**Switzerland:** SWICO

**Turkey:** Digital Turkey Platform, ECID

**Ukraine:** IT UKRAINE

**United Kingdom:** techUK