U.S. Chamber of Commerce Response to European Commission Consultation on EU Trade & Investment Policy
Submitted November 13, 2020

The U.S. Chamber of Commerce ("the Chamber") welcomes the opportunity to submit the following comments in response to the consultation undertaken in the context of the European Union's review of its trade and investment policy.

The Chamber is a longtime advocate for strong commercial ties between the United States and the European Union. According to a study commissioned by the Chamber and AmCham EU, the U.S. and EU are jointly responsible for more than one-third of global gross domestic product, and transatlantic trade and investment supports 16 million jobs on both sides of the Atlantic.[1] The Chamber supports trade and investment policies on both sides of the Atlantic that are transparent, non-discriminatory, consistent with international obligations, and do not unduly restrict the free flow of goods, services, data, people, and capital.

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

   Recent developments have highlighted essential functions of a fair and open global trading system, unfortunately not only by showing benefits but more often by demonstrating the damage that unilateral trade and economic measures can cause. This is an opportunity for the EU to reassert its leading role as a global, open market.

   The COVID-19 crisis has shown the importance of digital technologies and services, and those sectors and businesses that have digitally transformed the most have been most resilient. Those technologies and services—regardless of their national origin—have played a critical role, and we urge EU policymakers to maintain an open stance towards digital services. "Open strategic autonomy" should not morph into mercantilist or protectionist ideas; that would make it harder for member states to access modern technologies, adopt new business models, attract foreign investment, promote innovation, and succeed in trade—with adverse implications for economic renewal and global

[1] U.S. Chamber of Commerce & AmCham EU, The Transatlantic Economy 2020.

competitiveness.

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

The EU should work with allies and other trading partners, including the United States, to enhance supply chain resilience and mitigate risks made evident by the pandemic. To achieve these goals, government and industry should devise a set of tailored risk-based approaches for different classes of products based on careful analysis. Broad brush approaches risk imposing needless costs without actually enhancing resilience.

For some products, stockpiling is key. For personal protective equipment (PPE), for example, the COVID-19 pandemic caused demand to rise 40-fold virtually overnight, leading to widespread shortages. There is no question that these alarming shortages arose from this dramatic surge in demand (as opposed to offshoring of production). Indeed, pandemic preparedness experts have warned for years that governments should establish robust strategic stockpiles, and most governments' efforts to fund and execute these initiatives appear woefully inadequate in hindsight.

For other products, geographic diversity of supply is vital. The vast majority of pharmaceutical products have not suffered shortages during the pandemic, and the share of medicines on the market dependent on a single foreign source is very small. This is attributable to the far-flung nature of global pharmaceutical production chains, which have redundancy built in thanks to multiple, major production centers in different regions of the world. By contrast, supply chains that are largely domestic—such as those relating to production of meat, eggs, and poultry—have suffered much more significant strains.

For yet other goods, bespoke solutions are required. Some lawmakers cite antibiotics as a product where Western nations are worryingly dependent on imports from China (at least for active pharmaceutical ingredients, or API), yet the chief concern here is rising antimicrobial resistance (AMR): Indeed, many products such as penicillin are no longer effective against most infections. The private sector has limited incentive to invest in R&D for new antibiotics because overuse erodes their efficacy, so new incentive systems are needed. U.S. pharmaceutical companies recently announced a new AMR Action Fund to invest nearly $1 billion to ensure a robust and diverse pipeline of new medicines to treat drug-resistant infections. More generally, these dynamics illustrate that unique challenges apply in specific sectors.

Just as tailored approaches are needed to address specific goods, countries also should avoid export restrictions, as these do not strengthen supply chains but instead risk limiting access to needed goods and invite retaliation from trading partners.

More broadly, the EU should facilitate cross-border e-commerce by simplifying the VAT system and establishing a mandatory vendor-collection system for e-commerce shipments that would streamline the process for traders and greatly enhance the customer experience.

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

One useful step the EU can take to bolster the WTO is to demonstrate the sincerity of its supportive rhetoric by taking meaningful action to respect its rules and rulings. Unfortunately, WTO rulings against the EU's moratorium on approvals for GMO products or its ban on imports of hormone treated beef produced not compliance but years of delay and continued trade barriers against U.S. farmers and ranchers. The Chamber has also commented on the path ahead in the long-running "EC and certain member States — Large Civil Aircraft" dispute.

More recently, several EU member states have adopted or are considering Digital Services Taxes (DST) that represent a straightforward violation of WTO obligations, despite an earlier consensus that the issue called for a solution based on the ongoing multilateral talks at the Organization for Economic Cooperation and Development (OECD). The EU and its member states should abjure these unilateral and discriminatory measures and redouble efforts to secure a multilateral solution.

For the WTO, putting some points on the board is essential. One near-term goal is to secure an agreement on fisheries subsidies, which is the one truly multilateral negotiation now underway in Geneva. Overfishing and depletion of global fish stocks are a widely recognized problem that is made measurably worse by extensive subsidies afforded to fishing fleets worldwide, which have the unfortunate effect of increasing illegal fishing. Negotiations at the WTO for a multilateral agreement to limit those subsidies could ameliorate the problem of overfishing and illegal fishing, but talks have dragged on for about two decades. It is rare for the nexus between a possible trade agreement and a specific environmental problem to be so clearly identified and recognized, but converting goodwill into action has proven difficult. The EU should demonstrate its environmental and multilateral bona fides by committing to concluding these negotiations at the next WTO ministerial.

Separately, reviving negotiations to end or reduce tariffs on environmental goods would be a worthy goal. According to the OECD, global trade in environmental goods exceeds $1 trillion annually. This includes such products as catalytic converters, clean-running turbines, and products to control air pollution and treat wastewater — in sum, technologies that help keep clean the air we breathe, the water we drink, and the land we farm. Despite the obvious benefits of trade in environmental goods, some countries apply tariffs as high as 35% to these goods, discouraging their use. Negotiations at the WTO for a multilateral trade agreement to eliminate tariffs on environmental goods were launched in 2014. At one point, 44 countries representing nearly 90% of global trade in environmental goods were taking part, but the negotiations came to a halt in 2016. The EU should champion the reinvigoration of these plurilateral negotiations or should help develop another approach to eliminate tariffs as broad a list of environmental products, materials and technologies as possible.

Successful conclusion of the ongoing e-commerce negotiations is also important. Among other things, the EU should support strong outcomes to ensure open cross-border data flows while enabling governments to protect personal privacy in the least trade-restrictive manner.

Finally, reviving the WTO's Appellate Body (AB) is imperative. While the Chamber has not supported the Trump Administration's moves to render the AB inoperative, its criticisms about AB overreach and shortcomings in its operations (e.g., missed deadlines) are widely recognized in Geneva as well founded. The Chamber encourages the EU and other parties to continue to engage substantively to find solutions that address these legitimate complaints.

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 maximize their potential?

The EU's network of FTAs and similar trade agreements is without peer, and the disciplines afforded are, generally, high quality. From the vantage of the United States, however, the EU is a timid giant when it comes to digital trade, and its lack of ambition in these disciplines is surprising given that no other area has such promise to drive growth and job creation in Europe and elsewhere.

Worldwide, half of all services exports can now be delivered to customers abroad digitally, according to a report by UNCTAD. McKinsey notes that this digital trade revolution is one reason why services trade is expanding 60% more rapidly than trade in goods. The United States is doing well in this regard: 63% of its services exports can now be delivered to customers overseas digitally, according to a report by the U.S. International Trade Commission.

But euro for euro, the EU takes the crown. Its extra-EU exports of services, which approach €1 trillion annually, include about €550 billion in services exports that are now or could potentially be delivered digitally to customers abroad. This new frontier for digital trade includes sectors from insurance and financial services to telecommunications, software and computer services, and a host of other business services in which European firms excel.

The EU's digital trade policies do not adequately recognize European businesses' outsized strengths in the digital economy and international trade in services. The EU's approach to disciplines on data flows and data localization reflect this shortcoming, as the Commission continues to propose a counterproductive "self-judging" standard that would find even strict data localization regimes in China and Russia compliant. The EU maintains that a weak standard is necessary to maintain a conditional data transfer regime such as the one included in the *General Data Protection Regulation.* This is in stark contrast to the experience of countries with similar privacy regimes. Japan, for example, has embraced high-standard disciplines in the *U.S.-Japan Digital Trade Agreement* and in the *Comprehensive & Progressive Agreement for Trans-Pacific Partnership,* and sets conditions on cross-border data transfers in the *Act on the Protection of Personal Information.* By adopting policies that do not adequately reflect its formidable strengths in this area, the EU risks allowing other governments to write the rules of trade for the digital era that will cede advantages to firms based elsewhere.

It is also essential for all EU FTAs to include high standard intellectual property provisions. The EU continues to play a leadership role in promoting the economic benefits of intellectual property rights (IPR) protection in multilateral fora such as the WTO TRIPS Council, and the EU itself is, of course, a world leader in this area[2]. Yet this core strength is rarely a major focus of European trade policy, and indeed it appears IPR is often treated as an afterthought, including in some of the EU's newest and most advanced trade agreements, such as with Mercosur. Moving forward, the EU should negotiate and expect a higher level of intellectual property protection from its trading partners.

That said, we remain very concerned by reports that the European Parliament is promoting an expanded trade sanctions regime that could include the targeting of companies' intellectual property. Such an approach, if adopted, would clearly communicate that the EU does not value IP and other property rights, and would invite other countries to threaten IP rights and thereby undermine the significant economic benefits that they engender.

Finally, it bears noting that negotiated agreements are only as effective as the enforcement of their terms. Consistent engagement to ensure that trading partners fulfill their commitments — and a willingness to respond to stakeholder concerns about implementation — are vitally important.

5. **With which partners and regions should the EU prioritize its engagement?**

As noted, the EU's network of FTAs and other trade agreements is so extensive that the United States is one of the only major economies with whom the EU has no broad trade agreement. This is incongruous. The Chamber has been critical of the U.S. application of Sec. 232 tariffs on steel and aluminum from the EU and the threat to apply such tariffs on autos and auto parts, and we advocate for their swift removal and for additional efforts to overcome transatlantic trade disputes. At the same time, we continue to urge the EU also to make new efforts to reset the transatlantic commercial relationship.

At the negotiating table, the EU approach to the United States in transatlantic trade talks on agriculture and procurement provide examples of areas where new thinking in Brussels would be helpful. The EU showed a willingness to

[2] U.S. Chamber International IP Index - https://www.uschamber.com/report/2020-international-ip-index

enter into a trade pact with the agricultural powerhouse of Mercosur—as well as Canada, Japan, and Mexico—but not the United States. At the same time, U.S. agricultural products face significant trade barriers in the EU. U.S. farm exports to Canada are nearly twice as large, even though EU citizens outnumber Canadians by 13 to 1. Japan, with its notoriously high agricultural tariffs and much smaller population, makes agricultural purchases from the United States that are nearly equal to those of the EU.

Surprisingly, EU officials tie agriculture to procurement, insisting that the United States must agree to further open its government procurement markets as part of such a deal. However, the United States has already opened a huge swath of its government procurement markets to European companies through the WTO Government Procurement Agreement (GPA). Under this agreement, EU-based companies are free to bid on more than $800 billion in government procurement opportunities on an equal footing with U.S. firms. These opportunities apply to a large share of U.S. federal government procurements and procurements made by 40 state governments.

The GPA was expanded substantially just five years ago (2014), and the United States and the EU were the major players in that negotiation. While the GPA doesn't cover every federal government agency or every state government, U.S. commitments cover a universe of procurement opportunities that is *more than twice as large* as those opened up by the EU and its member states, according to a 2017 GAO report. Against that backdrop, the EU's linkage of agriculture to procurement makes little sense and underscores the need for new thinking.

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

Historically, protectionist barriers such as tariffs have been a principal tool of industrial policy. Yet the record of such measures is extremely poor, and the notion that a large, generally open, and trade-dependent economy such as that of the EU should raise new tariff barriers to foster "infant industries" or protect existing ones is highly questionable. Today, large exporting firms in the EU are among those offering their employees high wages and benefits, but it is notable that such firms tend to be highly import reliant as well. Further, high tariffs tend to be associated with favoritism and crony capitalism that entrenches large, well-connected firms while putting smaller businesses at a disadvantage. While the COVID-19 pandemic has indeed made clear that new public policies are required to address specific market failures such as PPE shortages, protectionism is too blunt an instrument to be particularly helpful in providing general solutions.

In addition to encouraging inward investment, the EU should also pursue ambitious trade facilitation measures with global partners that build on the latest technological developments and take advantage of the extraordinary rise of e-commerce. Promoting modern customs chapters in FTAs will help facilitate EU exporters' ability to access foreign markets. The EU also should prioritize the liberalization of trade in services in FTAs, specifically with regards to transportation and logistics, which will help maintain the efficient functioning of supply chains.

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?

While some critics argue that trade principally benefits large multinationals, the truth could hardly be more different. Trade agreements require foreign governments to eliminate the tariffs that too often shut out exports ranging from apples to zucchini and airplanes to x-ray equipment. These tariffs may be small change to multinationals, but they are a big deal to small businesses. Also, multinationals can rejigger their supply chains and shift some parts of their production to other countries to route around tariff walls—which small businesses cannot do.

The Organization for Economic Co-Operation and Development (OECD) has demonstrated that while trade facilitation provides benefits to all businesses, it benefits micro-, small and medium- sized enterprises (MSMEs) the most by reducing fixed and variable costs. These improvements help MSMEs become importers and exporters, and also helps those MSMEs that already engage in trade to boost their sales.

Trade agreements should also prioritize measures to benefit micro-, small, and medium-sized firms by including measures to:

- Cut red tape and make customs procedures in foreign ports more efficient and transparent;
- Require fair and transparent regulatory procedures for the development of product and technical standards;

- Avoid duplicative testing and certification requirements;
- Boost the potential of e-commerce to allow thousands of smaller firms to easily reach foreign customers through online portals;
- Promote paperless trading by allowing electronic authentication and signatures;
- Make it easier for businesses to search, register, and protect intellectual property; and
- Criminalize bribery and the theft of trade secrets while ensuring transparency in bids for foreign bidding for government contracts.

The EU also should work with its counterparts to build on the WTO Trade Facilitation Agreement. Finally, the EU should increase its *de minimis* duty level. As per the OECD, this would enable border agencies to manage expanding workloads and avoid delays and would enable MSMEs to reach more customers around the world.

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?

Trade can be an engine of sustainable growth. The competition and choice that trade delivers need to integrate science-based environmental practices in ways that allows sustainable goods to reach the consumer and command a fair price that reflects the higher environmental quality of the good. Our response to question 3 above—addressing WTO negotiations on fisheries subsidies and a possible environmental goods agreement—is relevant here as well. In addition, we offer the following:

Remanufactured Goods: The value embodied in capital goods and other products must be retained in productive use in order to reduce the environmental costs of material inputs. Remanufacturing, refurbishing, remaking and recycling are well recognized methods of value retention. Companies should be allowed to compete internationally based on their life cycle product management. Specifically, remanufacturing helps reduce owning and operating costs by providing quality components and equipment at a fraction of the cost of a new product, and it also reduces waste and minimizes the need for raw materials. Such products have a life expectancy similar to a new product. Countries should open their borders to trade in remanufactured parts and products as well as ancillary services, including maintenance and training. New trade agreements such as the USMCA include commitments to ensure nondiscriminatory market access for remanufactured products that should be adopted worldwide as a direct and tangible support to sustainability. Countries should promote efficient and streamlined regulatory approvals for innovative products made with recycled materials.

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?**

Like EU trade agreements, recent U.S. trade agreements have included anti-corruption chapters (e.g., USMCA and the trade protocol recently agreed by the United States and Brazil). These chapters serve as a useful reference point, and officials would do well to examine the existing body of work internationally to identify best practices. In addition, these agreements include transparency requirements to post online all procurement opportunities to tamp down on cronyism and provide taxpayers with better value.

In addition to supporting these anti-corruption measures in trade agreements, the Chamber has advocated for additional countries to approve and effectively implement the OECD Anti-Bribery Convention. Including commitments relating to that convention in EU trade agreements would broaden support for this multilateral instrument.

On supply chains, our response to Question 2 above is partly relevant here as well: Careful analysis and a tailored approach to different products is needed before taking public policy measures that will interrupt or impose new costs on supply chains.

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)?**

By lowering transaction costs, the digital economy has opened up countless opportunities for businesses of all sizes to connect with customers and clients, whether they are across town or across continents. As the COVID-19 pandemic has made clear, our economies are increasingly reliant on digital services for connectivity, communication, innovation, and commerce. The EU should ensure that its trade policy enables European citizens and companies to take advantage of the many benefits of the growing global digital economy. We encourage the Commission to embrace high-standard provisions on digital trade, such as those outlined in the *United States-Mexico-Canada Agreement* and the *United States-Japan Digital Trade Agreement* to address trade barriers to European exports abroad. If replicated in the EU's bilateral agreements and at the WTO's Joint Statement Initiative, these provisions will effectively address protectionist policies such as data localization.

We welcome the Commission's well-founded attention to integrating its own Digital Single Market among the EU27. This should include a focus on providing high-speed internet access for all Europeans along with developing citizens' digital skills. In light of a fast-changing global economy, the EU must avoid an overly prescriptive regulatory approach for emerging technologies, including artificial intelligence—or risk losing its competitive edge. Similarly, EU policy should encourage voluntary data sharing, including between business and governments, without mandating it, since the latter would undermine legitimate intellectual property rights. As the EU considers its future regulatory framework for emerging technologies, including Artificial Intelligence, it should work closely in concert with other like-minded democratic countries, including the United States. This will help minimize any unnecessary and unintended regulatory barriers to trade and investment and will encourage shared economic competitiveness and innovation.

Furthermore to ensure the future competitiveness of European industry—and maintain the EU's attractiveness as a destination for foreign direct investment—it is essential that companies' ability to transmit personal data across border is maintained, as outlined in the *General Data Protection Regulation*. As part of its digital trade agenda, the Commission should endeavor to finalize additional data adequacy agreements with global partners, including with the United Kingdom and revising and updating its agreement with the United States in the aftermath of the recent *Schrems II* decision of the European Court of Justice.

We also encourage the Commission to continue working with the United States and other like-minded partners to maintain the ongoing prohibition on the imposition of customs duties on electronic transmissions.

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?**

Globally, it is essential that the EU play a helpful role in advancing the e-Commerce negotiations at the WTO, taking into account the large and growing share of trade that is digitally enabled. Further, the EU should take an ambitious approach to digital trade disciplines with its own future trade agreements, including a focus on enabling the free flow of data for companies across all sectors.

Quite simply, it is impossible to conduct business in today's globalized economy without the ability to swiftly and securely move data across borders. This is as true for advanced manufacturers as it is for innovative biotechnology firms or telecommunications providers. European companies face major challenges from countries like China, Russia, and India which impose draconian data localization requirements that undermine global interconnectivity and impose significant and duplicative compliance costs. The need to run separate data centers in disparate markets also is an environmentally unsustainable solution. The EU should resist calls for all data to remain in Europe for storage and processing. European moves in that direction surely would result in a "race to localize" data globally, undermining European companies' ability to do business globally.

EU trade policy should focus on assuring the ability of personal data to flow across borders. In the aftermath of the recent *Schrems II* decision by the European Court of Justice, instruments provided by the EU's *General Data Protection Regulation* for international data transfers face substantial legal uncertainty which must be addressed. The Commission should work urgently with its international counterparts, including the United States, to provide companies legal certainty that the methods they use to transfer personal data from Europe will be protected.

12. **In addition to existing instruments, such as trade defense, 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 U.S. Chamber supports the judicious use of trade remedies such as anti-dumping (AD) and countervailing duties (CVD), which provide relief from unfairly priced or subsidized imports. However, governments have increasingly employed trade remedies, and the resulting proliferation of AD and CVD cases around the globe risks undermining the competitive position of EU (and U.S.) producers. For this reason, U.S. Chamber policy argues that U.S. trade remedy law should be administered in a way that avoids any "unduly protectionist interpretation or implementation which would impair the healthy expansion of trade or invite damaging retaliation by other countries."

More broadly, however, China's state capitalist model—characterized by forced technology transfer, industrial subsidies, state enterprises, and excess capacity—has introduced serious distortions to the world economy. The work by the EU, the United States, and Japan to strengthen existing WTO rules on industrial subsidies is laudable and should be continued and operationalized either multilaterally or in the form of a plurilateral agreement. Additional efforts should be made to coordinate policies related to export controls and investment screening as well. The Chamber strongly supports enhanced cooperation between the EU and the United States to devise appropriate responses to China's state capitalist model.

Thank you for considering our feedback on the consultation. We are ready to answer any additional questions you may have.

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