

Mr Valdis Dombrovskis
Executive Vice President
Commissioner Designate for Trade
European Commission
200, rue de la loi
BE – 1049 – Brussels

Brussels, 14 September 2020

Subject: ESF responses to the Consultation Note of the European Commission “A renewed trade policy for a stronger Europe”

Dear Executive Vice President Dombrovskis,
Dear Commissioner Designate for Trade,

First of all, let us congratulate you for your nomination as Commissioner for trade. As you might know, the European Services Forum (ESF) is a private sector trade association that represent the interests of the European services industry in International Trade Negotiations in Services & Investments. It comprises major European service businesses and European service sector federations covering service sectors including (but not limited to) financial services, telecommunications and IT services, maritime transport, business and professional services, construction, distribution, postal and express delivery, audio-visual and education services. Our membership is formed, directly or indirectly, of businesses of all sizes and associations from all EU member states. ESF will therefore be a regular interlocutor on all trade in services related issues during your tenure, and we look forward to providing you and your administration with our input and expertise.

The European service industries welcome the stakeholder’s consultation that your Commission initiated last June on a “Renewed EU trade policy for a stronger Europe”.

Our mission led us to draft, in preparation for the new European Parliament in June 2019, and for the new European Commission in November 2019, some recommendations related to the future EU Trade Policy. We forwarded these [Recommendations](#)¹ to former Commissioner Hogan as soon as he took office. Furthermore, in reaction to the announcement to the European Parliament Members of the INTA Committee last April of the Commission intention to initiate a review of the Trade Policy, and in anticipation of the Consultation Note, I have sent to former Commissioner

¹ [ESF Recommendations for incoming European Parliament and Commission related to the future EU Trade Policy – 24 May 2019](#)

Hogan a [letter² at the end of April 2020](#) where we highlighted the importance of the essential international services in the fight against the COVID19 outbreak, and we made a substantive contribution in providing the institutions with the European services industries priorities in trade policy for the coming years. Allow me to kindly invite you and your team to take due consideration of these two in-depth contributions.

We would like however to contribute also to the on-going consultation by replying, although in a more succinct way, to the questions that the Consultation Note put to the stakeholders. You will find these responses here below in the format of bullet points after the Commission's questions.

Prior to that exercise, we would like however to make some more general comments. There is no doubt that the world trade policy has dramatically changed in the last five years, and the European Union, as the biggest world exporter, importer and investor – and, as we demonstrated at length in our previous messages, as the world leader in trade in services - has to adapt its own approach. Protectionism is on the rise, and multilateralism that is at the core of the EU trade policy is clearly under threat. The EU must therefore equip itself with sufficient tools to show to its trading partners that access to its so coveted rich single market cannot be without general reciprocal concessions.

The European Services Forum therefore welcomes the adoption of a revised Enforcement Regulation that give power to the European institutions to suspend or withdraw concessions or other obligations under international trade agreements in order to respond to breaches by third countries of international trade rules that affect the EU's commercial interests. We note that the request by the European Parliament will go far beyond the Commission's initial proposal and would lead to a significant change in the EU's approach to enforcement, including possibly to extend the scope of retaliation to services and IPR. We remain concerned that unilateral enforcement actions could lead to counter-retaliation by trading partners, to the detriment of numerous sectors who rely on export markets to compete. ESF will take soon a formal position on that particular issue.

The European Union success has been built upon open trade with the rest of the world while ensuring high level of consumer protection, and high-level respect of labour rights and environment protection. These values have made Europe stronger and have positioned the European Union as a solid and trustful partner that in return provided the Union with tremendous access to other countries' markets, which generated exports, imports and investment that created growth and millions of jobs. The new trade policy must pursue the exercise of supporting rules-based trade with trading partner outside the EU. This will contribute to increase the resilience of the Union, by offering new market access.

The EU must also of course look inward and assess what are the best policies to ensure strong competitiveness and level playing field conditions for all businesses, i.e. EU businesses and foreign competitors in the EU single market. To keep a high level of innovation and competition the EU must remain open to foreign direct investment, but indeed these investors must abide by the EU rules and principles. Therefore, ESF takes note of the various tools that the EU institutions and EU member states want to establish or finetune, such as a) foreign direct investment screening mechanisms to ensure the protection of the EU security and public order; b) the international public procurement instrument to ensure some reciprocity in accessing procurement markets of

² [ESF Recommendations to the European Commission on new EU Trade Policy](#) – 29 April 2020

trading partners; c) the monitoring of foreign subsidies of any kind, including in services sectors, to prevent unfair practices. The implementation and enforcement of these new tools will have to be managed in a careful and balanced way so as to not put into question the level of openness of the European Union, that might trigger a reduction of investment which would be detrimental to the EU economy.

The European Services Forum made various calls upon decision makers about the need to support the functioning of essential services in the fight against the Covid-19 pandemic. This includes the logistics of essential medical equipment and pharmaceutical treatments. Such services will also need to be central to any global initiative on healthcare products in case of future crisis. The difficulties on the ground to keep the supply chains running in time of emergencies showed the importance of transport, delivery, logistics' and customs' brokerage services.

The COVID-19 crisis underscored the importance of secure and diverse supply chains, global collaboration and multilateralism, and continuity of essential services, but also invited the European Member States to focus on building greater capabilities and resilience across all sectors of the European economy. Hence, regarding the concept of "open strategic autonomy", ESF believes that the EU resilience lies in keeping world markets open with fair and non-discriminatory conditions. Talking about autonomy has a potential downside on EU's contribution to international trade. The EU economy is the largest player in global trade and its resilience depends on continuing to export and import, and to invest abroad and keep foreign investors innovating into the EU.

ESF and its members remain at your disposal to discuss our recommendations and comments, and wish to work constructively towards the building of the new EU trade policy.

Yours sincerely,



Noel Clehane
ESF Chairman

ESF Replies to Commission Consultation Note

□ Building more resilience –internal and external dimensions

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

- The COVID-19 crisis has exposed the imperative for European Member States to focus on building greater capabilities and resilience across all sectors of the European economy. The global disruptions created by COVID-19 underscore the importance of secure and diverse supply chains, global collaboration and multilateralism, and continuity of essential services such as logistics and supply chain, transport, delivery, education, healthcare, connectivity, and others.
- The EU has long been a promoter of free trade and multilateralism, and its open trade policies have supported EU competitiveness and growth, making it the biggest global exporter, importer and investor of services.
- The new trade strategy is an opportunity for the EU to reassert its leading role as a global, open market. The COVID-19 crisis has underscored how important cross border digital, transport of goods, logistics’ and other services are for European citizens and businesses. This emphasizes the need for the **EU to place digital trade**, which is crucial to building Europe’s capabilities, **at the heart of its new trade strategy**. At the same time, physical and other aspects of digital trade should not be overlooked: goods & services still need to be paid, which highlights the role of financial services as enablers of trade, goods need to be transported, customs’ cleared and delivered across border through relevant services.
- The EU’s open trade policy has also afforded the diversification of our supply chains and greatly improved EU’s capabilities to supply essential goods and services. As such, an open trade policy has been the backbone of the EU’s resilience, and will continue to be so moving forward, as long as the EU continues to pursue even closer cooperation with current trade partners, and work to open new markets by bringing down barriers to trade in both goods and services.
- EU is the main global trade player, and trade policy is a tool to ensure that its openness to its attractive single market is reciprocated by other trading partners openness.
- In its pursuit of an ambitious trade agenda, the EU should deploy a proactive rather than reactive trade agenda, based on the sound and balanced use of investments and policy frameworks, remaining open for trade and investment, while mitigating potential risks arising from foreign investments for security or public order.
- By pursuing ambitious digital trade policies that protect European values, notably on data privacy and security, the EU can drive innovation and inclusive growth that benefits all citizens. This should not mean a “buy European” policy, but rather encouraging businesses who have a deep commitment to Europe to abide to such values.
- For example, innovative companies should be able to utilize the technology that works best and suits their needs. The use of closed architectures can prevent interoperability and competition, limiting the ability of companies to use the best, most cost-effective, secure, and innovative technologies. Requirements to utilize local technologies similarly restricts the ability of companies to take advantage of best-in-class technologies.

- A robust digital trade agenda is, therefore, critical to European innovation and prosperity.
- The foundations for future resilience, competitiveness and growth should be built on **openness and like-minded values**, to position the EU as a global leader in technology-driven innovation.
- When strengthening European capabilities, governments would be best served by working with businesses - regardless of where they are headquartered - that have strong commitments to Europe; have invested in European talent and capacity to help Europe be successful; and have displayed their trustworthiness, stewardship, and security in Europe for decades.
- Trade Policy main purpose is to negotiate trade agreements that provide legal certainty for businesses across all services sectors in their international activities, in accordance with the European industrial policy objectives.

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

- ➔ There is no chain to supply without transport and logistics' services, without payment and financial services, without ICT infrastructure and services, and many other services. The EU needs to solidify the global supply chain by signing multilateral, plurilateral agreements and FTAs, as to open up new markets, as to legally bind commitments, notably in services, and by ensuring a proper implementation of these deals, helping SMEs to better know the new opportunities.
- ➔ The role of trade finance is often not well understood but essential to the day-to-day functioning of trade and, in particular, de-risking trade for smaller companies in emerging markets. This role should be better reflected in EU Trade Policy.

Supporting socio-economic recovery and growth

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

- ➔ Since the collapse of the Doha Round, reaching an ambitious, multilateral trade agreement in the WTO has proven difficult. But the successful negotiation of the Trade Facilitation Agreement demonstrates that WTO members are capable of reaching consensus, even if a final agreement lacks the ambition of previous global trade negotiations. Europe can and should lead an effort to identify and negotiate a post-Doha agenda for the WTO that is both achievable and meaningful.
- ➔ The WTO must be reformed to make it more efficient at all levels: A) The negotiating function must be revitalised, notably through allowing countries of the willing to move forward via “open” plurilateral talks (e.g. Joint Statement Initiatives – JSI - on E-Commerce, on Services Domestic Regulation, on Investment facilitation). B) The monitoring role of the Secretariat must be reinforced (notifications, trade policy reviews); c) The dispute settlement mechanism must be reformed to restore trust among and respect by all members.
- ➔ As noted in this contribution and other ESF submission, digital protectionism is rising and fundamental conflicts between major partners risks fragmenting the global digital economy. Through the JSI on E-Commerce, the EU can serve as a key arbiter between competing approaches to digital trade and shepherd the JSI negotiations to a successful conclusion.

→ We also encourage the EU to lead efforts to resurrect the Trade in Services Agreement (TiSA) negotiations. Launched in April 2013, TiSA is a plurilateral trade negotiation with the objective of liberalizing trade in services. Drawing on best practices from around the world, TiSA was designed to include state-of-the-art trade rules and disciplines around key service sectors, including banking and insurance, express delivery, telecommunications, retail and IT. The agreement would also cover digital trade as a horizontal issue across all sectors. The 23 economies involved in previous TiSA negotiations represented 75 percent of the world's \$44 trillion services market. Unfortunately, in 2016 TiSA negotiations stalled and, since then, have remained moribund. In the absence of a comprehensive WTO agreement, we urge the EU to work with its TiSA partners to revive this important plurilateral agreement to deepen and expand global services trade.

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

- By significantly improving market access for EU exporters and investors through multilateral and bilateral trade agreements that are ambitious, and most importantly, through a Trade Policy fit for the digital age. For SMEs and European companies in general to benefit from digital trade, the EU needs a future oriented and positive approach to emerging technologies in its FTAs and support both their development, as well as their implementation on the ground. This will also aid in reaching Europe's green objectives, by using tech as a 'green ally' in tracking, steering and augmenting climate solutions. Ambitious agreements on digital trade would reflect the transformative role of technology in supporting the growth, resiliency and sustainability of EU's economy.
- By improving the awareness of the content of the existing FTAs by services exporters and investors, through "guide to services exporters"
- By initiating proper regulatory cooperation in services, beyond financial services, like in telecom services, in professional services (MRA of professional qualifications), and in the field of cross-border data flows. So far, the regulatory cooperation in the EU FTAs are essentially focussed on goods standards. Including regulatory cooperation mechanisms between services regulators in EU FTAs will be a tool to promote EU regulatory standards.
- By ensuring access to environmental services in all trading partners.
- By ensuring that FTAs are future-proof and technology-neutral, as a way to prevent unjustified trade restrictions in particular in the field of emerging technology.
- By **improving cross border data flows provisions in multilateral and bilateral trade agreements to protect and facilitate data flows on a global level.** The EU, supported by key leading economies such as Australia and Japan, could help remove digital trade barriers in third countries. The EU should therefore ensure that free flow of non-personal data is included in the digital trade chapter of FTAs;
- By ensuring that current bilateral FTA negotiations with the UK, Australia, New Zealand, Chile include a **strong digital chapter** with provisions that are ambitious in terms of enabling the flow of data across borders, protecting critical Intellectual Property, prohibiting forced technology transfers, ensuring technology choice and encouraging open digital architectures. These provisions must be underpinned by strong privacy and security provisions while effectively tackling issues of data localization.
- By promoting trust in artificial intelligence and emerging technologies. Mechanisms that facilitate cross-border cooperation in the pursuit of harmonizing governance of such technologies;

- By using trade agreements as another channel **to promote regulatory cooperation between EU and third countries' data protection authorities to further the interoperability of privacy regimes**. Regulatory Cooperation is one area with huge potential, especially in the digital sector in areas such as cybersecurity and artificial intelligence, to avoid further fragmentation and instead set global standards.
- **By including technology choice provisions in trade agreements** to ensure that companies are not required to purchase and utilize local technology. Agreements should also encourage the widespread use of open architectures to drive innovation in key technologies, including cloud computing, Artificial Intelligence and 5G telecommunications;
- By supporting innovation in technology, and further deploying existing technologies such as IoT systems to track, steer and augment climate solutions **to reach Europe's green objectives**. Technology can serve as the ally that will help address the global challenge of climate change, helping businesses and society at large to combat and prepare for its effects, and to transition towards a low carbon future.
- **By supporting the conclusion of an agreement of the WTO eCommerce negotiations built on five key principles of digital trade:**
 - Permit free flows of data across borders.
 - Prevent data localization mandates for storage or processing of data.
 - Protect algorithms, source code, encryption keys or other proprietary information relating to cryptography
 - Prohibit imposition of tariffs or customs duties on electronic transmissions.
 - Support the physical movement of goods across border by trade facilitation measures and by market access commitments for supporting services such as transport, logistics and delivery services.

□ Supporting socio-economic recovery and growth

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

- ➔ The EU is a global player and must engage with all partners that are willing to engage. ESF already described its priorities in previous positions listed here above. One can summarise them as follows:

A full deal with the UK must include deep services commitments, and the EU must provide legal certainty to EU businesses in services sectors in all scenarios, including in case of no-deal. In addition, the future agreement with the UK should include robust digital trade provisions, such as prohibiting data localization requirements across all sectors and the forced transfer of, or access to, software source code or algorithms. An ambitious agreement on digital trade would reflect the transformative role of technology in supporting the growth and resiliency of both economies and could serve as a standard for future negotiations with other nations around the world. Furthermore, separate data adequacy decisions must be granted by the two sides to guarantee smooth cross border data flows in full respect of data privacy.

An urgent agreement is needed with China (CAI). Better market access is necessary in ASEAN, where the growth is. The signature and ratification of the deals with Mexico & Mercosur are urgent. The conclusion of the on-going talks with Australia, New-Zealand &

Chile are welcomed. The EU trade policy towards Africa needs to be totally renewed as to take into consideration the services dimension of the development of the African continent.

Finally, trust in the transatlantic trade must be restored: Global threats like climate change, nuclear proliferation and pandemics can be tackled only collectively, and the need for a strong transatlantic partnership has become ever more obvious as these issues come to the fore. Commissioner Hogan's assessment that the EU-US trade relations are a central pillar of the world economy and are critical for the EU only reiterate that the EU and the US should continue their engagement to promote a positive trade agenda. With the Trans-Atlantic Trade and Investment Partnership (TTIP) negotiations currently on hold, the European Union should look to negotiate ambitious, sector-specific agreements with the United States where appropriate. Like-minded countries like the EU and US should enhance regulatory cooperation especially in the field of emerging technologies to benefit all sectors and companies. Given the recent European Court of Justice case invalidating the US-EU Privacy Shield, a digital trade agreement should be a top priority between the two economies.

Question 6: How can trade policy support the European renewed industrial policy?

- ➔ By finally embracing the services dimension of the new manufacturing world. One of the major elements that increases competitiveness of EU industrial products are the efficiency of the services provided around the products. More than 30% of the value added of EU manufacturing exports are services (OECD TiVA 2016). Ensuring stable access to these services is a must in EU trade policy ("Research & development services; services incidental to manufacturing; management consulting; certification, testing & analysis services; maintenance & repair services; transport & logistic services; storage and warehouses services; international data flows; etc.
- ➔ By reinforcing the mechanisms which help secure the global supply chains for European businesses. In particular the EU should ensure that strategic sectors and just-in-time economy have access to goods and services that are available for the development of the EU digital, industrial and economic sovereignty.
 - Across Europe, traditional industry sectors are being fundamentally transformed by technology and digitization. The intersection of big data and machine learning, or Artificial Intelligence (AI), coupled with new and powerful analytics tools, are allowing companies of all sizes and in all sectors to understand and harness vast amounts of data in new and innovative ways.
 - Countries that can harness the internet for the benefit of companies of all sizes, particularly in traditional industries, will experience greater economic growth, productivity gains, innovation and job creation.
 - An Industrial Policy must, then, recognize the transformative power of digitization and Industry 4.0 in protecting the competitiveness of European companies across traditional industry sectors.
 - Key trading partners, including the United States, Japan, Canada, Australia, New Zealand and Singapore are integrating cutting-edge and ambitious digital provisions in new trade agreements.
 - A renewed industrial policy will only succeed if it is complemented by an ambitious digital trade agenda designed to increase Europe's competitiveness a global level.

□ Supporting SMEs

Question 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?

- ➔ 40% of EU services SMEs are exporting. This figure should be bigger. Many of them do not even know that they export, as they welcome the consumers in their own market (Mode 2 GATS: tourism services like hotels, restaurants, bars & cafés, education services, etc.). There is a need to do more to help European services SMEs to export & invest abroad.
- ➔ The EU should develop a Guide for services exporters & investors that will provide practical information, per trading partners, on licensing & authorisation procedures by sectors, who to contact, what documents are needed, the costs, etc.
- ➔ Such a tool should play an important role in raising SMEs interest in the new business opportunities that the EU FTAs offer.
- ➔ A Guide could also be developed on the issue of business travel and temporary entry requirements, and general procedures for getting a business visa and work permit (Mode 4 GATS).
- ➔ As the vast majority of professional services providers are SMEs, trade policy in this area should focus on even better market access and regulatory cooperation, like easing and fast-tracking the negotiation and enforcement of Mutual Recognition Agreements of professional qualifications (MRAs).

□ Supporting the green transition and making trade more sustainable and responsible

Question 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?

- ➔ The adoption of the Trade & Sustainable development chapter in the EU FTAs is a good tool to facilitate and foster among trading partners the transition to greener, fairer and more responsible economy. Commitments however must be linked to trade aspects, and respect domestic right to regulate.
- ➔ COVID-19 has made clear that countries, sectors and information are all connected—communication technologies have an important role to play in accelerating solutions. These technologies can help build innovative tools, capabilities and services, which can significantly accelerate the necessary shift towards a low carbon economy by supporting businesses in this transition.
- ➔ By ensuring a continuous free flow of data, promoting open access to government-generated public data and pursuing ambitious digital trade chapters, the EU can ensure that frontier technologies are used for tracking, steering and augmenting climate solutions to reach Europe's green objectives and promote reaching the UN SDGs.
- ➔ EU must work with its partners towards more commitments and regulatory cooperation in trade agreements in environmental services, towards cleaner water and sanitation (SDG 6 and CPC Chapter 6), better waste management and recycling policies (SDG 12), and energy saving (SDG 9).
- ➔ The EU should strive to resolve the political stalemate pertaining to the negotiations on the "Environmental Goods Agreement" (EGA), and simultaneously work towards having services included in a future agreement, so that trade in green goods and their associated services can be liberalized for the benefit of the climate, as well as European exporters.

Question 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?

- ➔ Provisions in TSD Chapter of FTAs related to corporate social responsibility (CSR) and implementation efforts and close monitoring should promote such responsible business conduct and discourage unfair practices.
- ➔ Negotiators should consider codes of conducts and best practices for responsible supply chain and procurement strategies for the private sector. A code of conduct should be voluntary, and the Commission should work proactively with companies of all sizes to help develop and implement a comprehensive supply chain and procurement system that is transparent and responsible.
- ➔ Supporting the digital transition and technological development.
- ➔ In addition, the European Commission should make an impact assessment and communicate on the contribution of the European businesses to the UN sustainable development goals, highlighting their engagement and actions.

□ Supporting the digital transition and technological development

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)?

- ➔ Digitalization has supported the significant expansion of trade and cross border business activities, especially in services, where approximately half of cross border trade is enabled by digital connectivity. In particular, digital trade has allowed developing countries and micro, small and medium sized enterprises to export through greater visibility, easier market access and less costly distribution.³
- ➔ Setting up international digital trade rules will allow EU Businesses, incl. SMEs, to be able to compete on a level playing field on a world scale, to know that similar rules apply to consumer protection, to spam and undesirable communications, to electronic signature and contract, that no duties are applicable to electronic transmissions, that their source codes and algorithms are protected, etc. A WTO Agreement on e-commerce with an as larger number of signatories as possible would be a tool to spread the digital transition and create disciplines that enable trust and security online. Strong digital trade chapters in EU FTAs are another efficient venue. Developing county trade partners will join the digital revolution only if and when the conditions will be ripe and secure for investors in ICT infrastructure and services providers of key digital technologies. The protectionist stance that is developing in various countries around the world is worrying and will only lead to an even greater digital divide.

Therefore, harmonized rules to support the uptake of emerging technologies, open cloud systems, cross border data flows and investment in infrastructure, can all help European businesses, including SMEs, contribute to a stronger digital economy and more competitive industrial and tech sectors. More precisely, the EU should:

³ World Economic Forum. (2020). Data Free Flow with Trust (DFFT): Paths towards Free and Trusted Data Flows.

- **Create a global level playing field** by ensuring that third countries do not misuse legitimate privacy exceptions for protectionist measures. Foreign and local goods and services providers should be subject to the same rules, especially for new and innovative digital products and services. This would create certainty for European businesses engaged in international trade that they are not subject to forced localisation of data or forced access to source code and encryption issues.
 - **Ensure technology choice by encouraging the widespread use of open architectures** and driving innovation in key technologies, including cloud computing, AI and 5G telecommunications. Businesses should be able to choose their suppliers of choice irrespective of headquarters' location.
 - **Promote trust in artificial intelligence and emerging technology** by facilitating cross-border cooperation and promoting trustworthy AI.
 - **Prohibit digital customs duties** by supporting a permanent moratorium within the WTO to provide greater certainty to consumers and business, including SMEs, and facilitate their engagement in global e-commerce. The inclusion of tariffs on electronic transmissions would otherwise raise prices, slow consumption and create a slow-down of economic growth.
 - **Promote open access to government-generated public data** by expanding access to and use of government data that has been made public. If shared in machine-readable and accessible forms for use by the public, it can enhance and generate business opportunities, especially for SMEs.
 - **Enhance privacy and cybersecurity** to engender consumer trust by strengthening existing collaboration mechanisms and promote internationally accepted industry best practices that rely on consensus-based standards and risk management.
- ➔ For SMEs, and European businesses in general to benefit from digital trade, the EU needs a future oriented and positive approach to emerging technologies in its FTAs and support both their development, as well as their implementation on the ground.

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?

- ➔ We all saw the importance of a well-functioning digital services economy during the COVID19 crisis and there is no doubt that digital trade will be essential to Europe's economic recovery post-COVID-19. There is no more international trade in goods & services without cross border transfer of data. Cross-border data flows have effectively become the dominant mode by which services are traded cross border.
- Trade economists estimate that 56% of EU services exports (or 495 billion euros) in retailing, banking, professional or engineering services are enabled by and depending on connectivity. The EU would enter into a severe balance of payment deficit without these revenues, which are 3.5 times larger than the motor vehicle exports – Europe's largest export industry.⁴ And as noted in Question 10, SMEs benefit enormously from the ability to access new markets overseas remotely.
 - EU Trade Policy must ensure that international transfers of data will be allowed on a reciprocal basis, so that data can also flow into the EU coming from EU's trading partners, be stored and handled by EU firms, in compliance with privacy rules.

⁴ Makiyama, H.-L. (2018). Briefing Note: AI & Trade Policy. ECIPE. Tallinn Digital Summit

- Strong digital trade rules must contribute to the building of an open but fair digital world economy. Digital trade chapters in EU trade agreements must include clear provisions banning data localisation requirements, with few limited negotiated exceptions, and provided that personal data is protected (see ESF Letter to former Commissioner Hogan on that particular issue [here](#)). Localisation requirements prevent the benefit of scaling up the heavy investments; increase data security risks; set up protectionist behaviour that adverse foreign investors and their new technologies and innovations. The EU should lead the way to prevent such localization barriers and enforce specific provisions that allow business to be able to move data securely across borders and not be forced to localize data or build expensive and redundant physical infrastructure or use local infrastructure as a condition of doing business. Data security depends on how data is stored and processed, not where it is stored and processed.
- The EU should ensure that third countries are prohibited from requiring companies to transfer their technology, IP, production processes, or other proprietary information as a condition for accessing the market. It should also create instruments that allow its companies to protect source code and algorithms and ensure that they are not required to share those, or trade secrets. This could also be achieved by fostering innovative encryption products. Encryption is an important tool to protect privacy and security in the digital ecosystem. The EU should protect innovation in encryption products to meet consumer and business demand for product features that protect security and privacy while allowing law enforcement access to communications consistent with applicable law.
- In addition, the EU should ensure that third countries are not given the chance to misuse what should be legitimate privacy exceptions for protectionist measures. We welcome European Commission's forward-looking commitment and international approach to data flows, based on trust and openness, which aims at preventing restrictions to the free flow of data, while reiterating that the legitimate protection of personal data and privacy shall not be affected by respective provisions in EU trade agreements. However, the proposal should be revised to offer an instrument that would allow the EU to ensure that the privacy exception raised by a third country is indeed legitimate and the enforced actions are not greater in scope than what it is required to reach the public policy objective.

Thus, the EU's ambition to facilitate European companies' cross-border growth and integration into global supply chains, should build on addressing unjustified barriers and digital restrictions, addressing important concerns about privacy and data security without crippling economic growth, promoting international convergence and interoperability of trade and policy frameworks that would accommodate for a similar objective – seamless data flows with strong privacy safeguards.

- ➔ The EU Trade Policy Review has also to reflect on the consequences of the recent European Court of Justice case “Schrems II” of 16 July 2020. The ESF calls the EU to pursue its commitment to cross-border data flows with adequate protection, and hence ensure that trade agreements provide better legal certainty through agreed transfer mechanisms (like for instance Standard Contractual Clauses – SCC) that would allow data transfers in all directions. The EU should already engage in negotiations to develop a successor to the Privacy Shield that will enable companies to serve clients on both sides of the Atlantic with trust and security, and without interruption;
- ➔ As telecommunications services underpin the digital economy and digital trade, welcome the European Commission's initiative to improve existing WTO telecoms rules in the context

of the WTO ecommerce negotiations and call the WTO members to adopt and implement the telecommunication Reference Paper and improve market access commitments. Along the same lines, we also call for a successful and swift conclusion of electronic commerce negotiations.

□ Ensuring fairness and a level playing field

Question 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 services industries are more focussed on offensive issues than on defensive ones, but welcome the attention of possible unfair foreign subsidies that might discriminate European companies on their domestic markets. We also call on the EU institutions to ensure that access to public procurement under the GPA should be on a strictly reciprocal basis.
- ➔ Multilateral cooperation with like-minded trading partners is an important component to any comprehensive strategy to address unfair market access barriers. By aligning with like-minded countries and coordinating policy, trade and diplomatic efforts, Europe stands a much better chance in successfully addressing discriminatory market access barriers. For example, Europe should increase cooperation with Japan and the United States through the “Trilateral Trade Ministers”, an important cooperative mechanism that has a successful track record of reversing discriminatory policies in key markets, such as the Preferential Market Access Policy in India and a number of Chinese industrial and investment policies designed to disadvantage foreign companies.

□ General question

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

- ➔ The servicification of the economy should be better taken into consideration by the Trade Policy Review. Negotiators are still working in silo and don’t anticipate the impact of lack of progress in other fields. Trade is much bigger than trade in goods, and the new trade policy must include at the political level the understanding of the interaction and integration of all issues (goods, services, IPR, public procurement, SMEs, Sustainable development, State Owned Enterprises (SOEs) & protecting national champions, etc.). Too often, the political level of trade policy restrict itself to trade in sensitive goods, like agriculture, losing the broader perspective that would benefit the EU.

List of ESF Members Supporting the above Position

- Amfori
- Apple
- Architects' Council of Europe –ACE
- British Telecom Plc
- BDO
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- BSA The Software Alliance – BSA
- Conseil des barreaux de la Communauté Européenne – CCBE
- Danish Shipping
- Deutsche Post DHL
- DI – Confederation of Danish Industries
- Digital Europe
- EK - Confederation of Finnish Industries
- EuroCommerce
- European Banking Federation - EBF
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- European Federation of Engineering and Consultancy Associations – EFCA
- European Public Telecom Network – ETNO
- European Satellite Operators Association – ESOA
- European University Association – EUA
- Fédération de l'Industrie Européenne de la Construction – FIEC
- FratiniVergano European Lawyers
- Google
- HSBC Group
- IBM Europe, Middle East & Africa
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Inmarsat
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des entreprises de France – MEDEF
- Oracle Europe, Middle East & Africa
- Orange
- PostEurop
- Prudential Plc.
- Standard Chartered Bank
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- TechUK
- Telenor Group
- TheCityUK
- UPS
- Vodafone
- Zurich Insurance