WRITTEN SUBMISSION OF THE NATIONAL FOREIGN TRADE COUNCIL

Request for Comments on the

US – EU Trade and Technology Council —Trade Working Group (WG 10)

Docket Number USTR-2024-0017
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INTRODUCTION

This submission by the National Foreign Trade Council (NFTC) is in response to the request for comments on the U.S.-EU Trade and Technology Council (TTC) Global Trade Challenges Working Group published on September 5, 2024 (89 FR 72696) ("the Notice").

About NFTC

NFTC is the premier association for leadership and expertise on international tax and trade policy issues. We believe trade and tax policies should foster fair access to the opportunities of the global economy and advance global commerce for good. NFTC serves as a nimble and effective forum for businesses to engage critical and complex issues together and to foster trust with governments to improve policy outcomes in the U.S. and around the world. Leveraging its broad membership and expertise, the NFTC contributes to a greater understanding of the critical role that an open, rules-based international economy plays in the success of American businesses, entrepreneurs and workers, and shared global prosperity.

ANALYSIS

I. GENERAL COMMENTS

On June 15, 2021, the United States and the European Union (EU) announced the creation of the TTC with goals, among other things, of growing the bilateral trade and investment relationship, avoiding new unnecessary technical barriers to trade, and strengthening cooperation on technology, digital issues, and supply chains.

The Global Trade Challenges Working Group ("Trade Working Group") has been tasked with three broad categories of cooperation:

1. Enhancing inclusive and sustainable bilateral U.S.-EU trade in goods and services, including digital technology;
2. Addressing and countering non-market policies and practices that unfairly undermine the competitiveness of U.S and EU workers and firms; and
3. Addressing trade and labor issues, including through the tripartite transatlantic Trade and Labor Dialogue (TALD).

NFTC shares that vision and has long supported efforts to deepen the Trans-Atlantic trade relationship, including the TTC and its predecessor efforts such as the Transatlantic Economic Council and Trans-Atlantic Trade and Investment Partnership (TTIP) negotiations. We continue to believe that durable agreements that provide predictable and transparent rules and generate meaningful commercial opportunities are the best way to address important priorities such as supply chain resilience and economic security.

Indeed, the EU continues to aggressively pursue free trade agreements with other countries, which places U.S. producers at a disadvantage in the EU market and enables the EU to spread EU-style regulations, most notably in the digital sector, to trade partners. NFTC remains concerned that work announced at the Fourth Ministerial in Sweden on exchanging information on non-market policies and practices affecting digital trade and on U.S. and EU policies linked to risks stemming from digital firms from non-market economies remains on hold. Failure to launch substantive work on this critical initiative is a missed opportunity for the TTC to take on a critically important commercial issue and is enabling ongoing harm to U.S. economic and national security interests and undermines the United States and EU's shared interest.

USTR and DG Trade should take this opportunity to refresh the TTC mandate and look for strategic and targeted areas where deeper economic ties through formal bilateral agreements could support shared priorities. Negotiating agreements such as those that ensure sustained access to medical supply chains as envisioned in the Medical Supply Chain Resilience Act or promote the green transition through improved access for clean energy goods and services would leverage the power of trade to advance these important policy outcomes.

NFTC appreciates the opportunity to provide USTR with input on areas where TTC cooperation can provide and lay the groundwork for a more ambitious future trade agenda that enables deeper and more meaningful commercial ties across the Atlantic. As we will detail further below, while we believe in the importance of the TTC as a mechanism for bilateral cooperation, we think that there needs to be significant improvement in its substantive agenda, particularly when it comes to how to address EU digital sovereignty measures, nonmarket economy practices, supply chain, as well as in its process, such as with methods of seeking stakeholder feedback.

II. SPECIFIC COMMENTS

A. Expanding Cooperation on Issues to Enhance Inclusive and Sustainable Trade in Goods and Services

1. Bilateral Concerns

The U.S. and EU are two of the largest economies in the world and should have a robust, formal mechanism for discussing bilateral trade irritants. Discussions that do take place on these issues are ad hoc and reactive, focused on crisis management (large civil aircraft, 232, privacy shield). Too often we hear officials on both sides (but mainly EU) saying that “pending legislation is off the table.” This attitude prevents the two sides from bringing to the table emerging concerns that could portend and prevent future trade disputes.

To fill this void, the U.S. and EU should expand the TTC Trade Working Group to create a new work stream that allows the two sides to identify and seek to resolve bilateral trade concerns. A continuous, structured, and Minister-supervised process will help avoid potential trade irritants before they arise and encourage industry on both sides to invest in the TTC process.

A selection of issues that would benefit from meaningful collaboration between the U.S. and EU are discussed below. In some instances, the TTC provides an opportunity for USTR to push back against unreasonable, discriminatory, or protectionist regulations (much like the EU did in response to elements of the Inflation Reduction Act). In other areas, the TTC can provide a forum for a collaborative approach that seeks balance between ambitious, well-intentioned regulations and what is possible for importers to achieve. In either event, failing to take advantage of the TTC to have difficult conversations on these issues has been a missed opportunity, which we hope can be remedied in future TTC agendas.

EU “Technology Sovereignty”

Notably, over the past three years, EU leaders have actively promoted an aggressive, multi-pronged approach towards “technology sovereignty” as one of the two main policy objectives to be pursued by the current EU Commission. Under this new policy umbrella, the EU has enacted a sweeping Digital Markets Act that applies almost exclusively to U.S. companies and has pursued new restrictions on U.S. cloud services, artificial intelligence, and data. EU officials have stated that the purpose of digital sovereignty is to create a “new empire” of European industrial powerhouses to resist American rivals. These unilateral regulations discriminate against U.S. companies and appear designed to transfer a portion of the $517 billion U.S. digital export market to their EU competitors. The European Commission’s own report from Mario Draghi highlights the costs of European over-regulation which creates opportunities to engage on EU digital policies.

Unilateral and Discriminatory Digital Services Taxes

Unilateral digital services taxes (DSTs) unfairly target U.S. companies for discriminatory taxation. Several EU member states were among the early adopters of DSTs. While EU member states have suspended their DSTs as the Organization for Economic Cooperation and Development (OECD) attempts to negotiate a consensus approach on taxing digital services, there is no guarantee the OECD will succeed in this effort. Moreover, amendments have been proposed as part of France's budget process that would raise their DST rate to 4, 5 or even 6 percent.[1]

Ex-Ante Regulation

The European Commission has been pursuing an aggressive ex ante regulatory agenda aimed at regulating digital service providers before supposed anticompetitive practices occur to preempt long probes into such practices after they are claimed to have occurred. Some of these regulations are targeted exclusively at U.S. tech companies while others apply across the board. In recent years, U.S. tech companies have been subject to Europe's highest-profile competition enforcement cases. The European Commission has imposed record fines and essential facility-style rules on U.S. companies for conduct most other regulators and courts have found to be legal. The Commission has also required record repayments of tax revenues as part of its state aid cases. As the *Digital Markets Act* and *Digital Services Act* are implemented NFTC encourages USTR to work with the EU to uphold principles of non-discrimination and technology neutrality in laws and regulations. It is important that regulatory approaches impacting digital services and technologies are not protectionist, but rather developed in a deliberate and consultative manner subject to traditional trade principles, including non-discrimination and national treatment.

Digital Markets Act (DMA) Implementation

The DMA, which was concluded in the first half of 2022 and entered into force in November despite U.S. government concerns regarding the discriminatory treatment of U.S. companies, creates significant and burdensome requirements for the small set of companies that the measure targets, all but one of which are American firms. The regulatory approach to impose "one-size-fits-all" obligations to different digital services with different business models is inadequate and could hamper innovation. The DMA restricts the use of data, creates new data access and portability obligations, and introduces interoperability requirements with a short implementation period and the threat of significant penalties. Despite commitments the European Commission (EC) made to the Biden administration before finalizing the DMA, no European companies were designated as "gatekeepers". On September 6, the EC designated 22 core platform services from 6 companies as gatekeepers: Alphabet, Amazon, Apple,

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[1] Amendment No. I-CF 52 (4%), Amendment No. I-CF701 and Amendment No. I-CF49 (5%), and Amendment No. I-CF1747 (6%).

ByteDance, Meta and Microsoft. Gatekeepers will need to comply with DMA's substantive obligations within six months, with the EC as the main enforcer. On March 7th, 2024, the DMA took effect, with the EC opening investigations into Apple, Google, and Meta for suspected compliance breaches soon after on March 25th. In June, Apple updated its rules for EU developers in response to the DMA non-compliance investigations.

DSA Implementation

The DSA, adopted in July 2022, creates new rules for the handling of illegal third-party content on cloud hosting and intermediary services in Europe, such as video-sharing services, social networks, and online marketplaces. The DSA has a particular focus on content-sharing platforms and marketplaces. Additionally, the DSA creates a new classification of companies called Very Large Online Platforms (VLOPs), a grouping that is almost entirely made up of U.S. companies, based on a presumption that services with more than 45 million active users present "systemic risk" irrespective of any specific risk assessment. The DSA imposes additional restrictions on targeted advertising and obligations for VLOPs and VLOSEs to provide alternative recommendation systems, despite the lack of any clear evidence that the size of a company indicates additional risk. The EU announced the designation of VLOPs on April 25, and of the 19 services announced, 16 were American, two were Chinese (AliExpress and TikTok), and just one was European (Zalando). The EU required the 19 designated VLOPs to come into full compliance by August 25, 2023, seven months earlier than all other companies, even though VLOPs and VLOSEs face a significantly larger compliance burden.

Internet Infrastructure Levy

The European Commission launched a consultation exploring the possibility of requiring over-the-top providers "of a certain size" to bear the cost of the development of telecom infrastructure in Europe. The Internet infrastructure levy, supported by European telecommunications companies, would initially require six U.S. companies to pay €20 billion annually to telecommunications operators to support infrastructure development. Introducing an Internet levy to subsidize EU telecommunications companies would have significant negative consequences for the digital economy and would directly discriminate against U.S. companies that are already significantly invested in European networks and Internet infrastructure. The EC opened a consultation on this proposal on February 23; comments were due on May 19.

Data Act

The Data Act, which takes effect in September 2025, regulates access to and transfer of data generated by connected products and related services. It forces the sharing of data and transfer of trade secrets under certain conditions. It also creates new discriminatory barriers for "gatekeepers" designated under the DMA. In particular, users will not be able to utilize a new portability right established by the Data Act to transfer their data to "gatekeepers." The

Data Act also creates new obligations on cloud service providers on the access and transfer of non-personal data following third country access requests, leading to a new potential conflict of EU and third-country law. According to the Data Act's impact assessment, concerns over unlawful access to data by authorities not subject to EU legislation is one of the main drivers for the data access and transfer restriction, which implies an equivalence between U.S. and Chinese governments. Lastly, it imposes switching obligations on cloud service providers where the associated costs will disproportionately fall on U.S. CSPs because of their customer base and the maturity and complexity of their service portfolio.

EU AI Act

The EU Artificial Intelligence (AI) Act establishes a horizontal risk-based framework to regulate AI systems in the EU. The Regulation entered into force in August 2024, triggering the gradual phase-in of its provisions over a 36-month period. It will now be supplemented by Implementing Acts and standards to implement its requirements for general-purpose AI, foundation models and high-risk AI.

The AI Act also requires providers of general-purpose AI models to disclose a "sufficiently detailed" summary of their model training data. The European Commission is currently developing a template for these disclosures. If the template requires granular disclosure of training data, it could impinge on the IP and trade secrets of model developers. Moreover, Recital 106 of the AI Act also foresees that "any provider placing a general-purpose AI model on the Union market should comply with [the Regulation's copyright obligations] regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of those general-purpose AI models take place". If the AI Act imposes more stringent requirements or compliance costs on AI models trained outside the EU, this could contravene WTO MFN principles.

EU Cloud Services (EUCS)

The EU Agency for Cybersecurity (ENISA) amended the European Cybersecurity Certification Scheme for Cloud Services (EUCS) in June 2022 to add four new criteria – including immunity from foreign law – for cloud service providers (CSPs) to qualify for the highest cybersecurity certification level in EUCS. Under this standard, only companies with their head office and global headquarters in an EU Member State would be qualify for certification at the highest level of EUCS, effectively preventing U.S. companies from providing services to covered entities. In March 2024, ENIS responded to push back from industry and a majority of EU Member States by proposing to drop the sovereignty requirements. However, the process has stalled due to French opposition. Discrimination on the basis of corporate ownership would violate the EU's obligations under the World Trade Organization (WTO) Government Procurement Agreement (GPA) and the General Agreement on Trade in Services (GATS).

SecNumCloud

France's national cybersecurity certification and labeling program, known as SecNumCloud, was also revised in March 2022 to impose a requirement that cloud providers must be "immune to non-EU laws" and Article 19.6, explicitly disqualifies any company that is more than 39 percent foreign-owned (i.e., non-European) from eligibility for certification. As a result, U.S. companies must partner with, and transfer technology and control to, a local company in order to compete for cloud contracts with French public sector agencies and commercial entities considered "operators of vital importance." Like the EUCS, Article 19.6 of SecNumCloud appears to be a clear violation of Article 3 of the WTO GPA and Article XVIII of the GATS, both of which stipulate that signatories shall not discriminate against suppliers on the basis of nationality.

Revision of the EU Procurement Directives

The EU Procurement Directives establish core requirements for public procurement procedures across all EU Member States and public entities. In a Mission Letter sent to the Executive Vice-President-designate for Prosperity and Industrial Strategy on 17 September 2024, President von der Leyen outlined her plan to "revise the Public Procurement Directives to […] enable preference for European products in public procurement for certain strategic sectors and technologies".

EU Space Law

The European Commission is expected to publish a draft EU Space Law in H1 2025. Although there is relatively little information regarding the content of the Law, the Commission has publicly stated its intention to create an asymmetric regulatory regime where 'small' satellite operators are subject to a lighter regime than 'larger' operators (e.g., constellations). This asymmetric approach would impose higher compliance costs on U.S. constellations (e.g., Starlink, Kuiper) than EU operators. The EU Space Law may also restrict certain communications services to EU-headquartered satellite operators (similarly to EUCS).

Harmonization of Medical Device Instructions

An issue of interest to the many in the medtech community is electronic instructions for use (e-IFU). The U.S. Food and Drug Administration has for years permitted e-IFUs (via a QR code) for devices intended for professional use. The EU's current regulatory framework under the Medical Device Regulation (MDR) and In Vitro Diagnostic Regulation (IVDR) allows e-IFU only in specific cases as defined in the regulations. It is worth noting that while the provisions remain very limited for medical devices, e-IFUs are permitted for all professional laboratory use IVD devices, but not for devices used in Point of care setting (known as near patient testing devices in the EU). This discrepancy and lack of harmonization not only presents practical challenges for manufacturers but has also environmental impact, such as excessive paper consumption, larger packaging, increased sterilization needs and a greater transportation footprint.

EU Deforestation Regulation

While NFTC understands the EU Deforestation Regulation is intended to reduce the EU's impact on global deforestation and forest degradation, there are elements of the law that are very difficult for businesses to comply with. For example, the regulation requires very detailed information from suppliers going back four years, such as geolocation of the plot where the wood that was used to make packaging came from. Many suppliers do not have that information available due to retroactivity of the requirement. Companies have difficulties understanding the timelines, scope and the required due diligence. The Regulation requires due diligence statements for every single transaction of batches that come into the EU and also when products are used in re-manufacturing which has an impact on companies' processes and existing systems.

EU PFAS

Per- and polyfluoroalkyl substances (PFAS), are a broad class of over 10,000 substances that are used in the manufacture of and/or found in a variety of consumer, commercial and industrial products. Potential bans or limits on the use of PFAS, as have begun in the EU, have the potential to significantly impact the production of critical products, such as medical technologies. As suppliers face increasing global regulatory hurdles, some may choose to leave the market. While some PFAS are being regulated in consumer products, all PFAS are not the same. PFAS are a broad group of chemicals with diverse chemical structures and correspondingly different physical properties, with a range of applications and uses. For many PFAS there are no alternatives currently available that have similar properties and functionalities. The TTC could serve as an important venue for the EU and US to discuss the impact of approaches to regulating PFAS in critical sectors like medical technologies and identify a realistic transition pathway to non-PFAS alternatives that are reliable and feasible for critical products to avoid product shortages for patients and practitioners.

EU Medical Device Regulation and In-vitro Diagnostic Medical Devices Regulation

The initial objective of the MDR and IVDR, which U.S. industry supports, was to provide safe and effective devices on the Union market in a transparent and predictable manner while fostering innovation. However, it is clear that significant changes to the regulations are needed to achieve this goal. The U.S. industry has developed several recommendations for addressing concerns regarding lengthy and complex conformity assessment procedures, documentation requirements, cost and predictability challenges, accelerating file review consultations, and creating expedited pathways for breakthrough technologies. In addition, with the new EU MDR/IVDR regulations in place and with an increased alignment between the EU and US on how to strategically position the EU and US companies to remain competitive vis-à-vis third markets, the TTC offers a unique opportunity to revisit the idea of the mutual recognition agreement for medical devices.

EU Retail Payments Strategy

The European Commission and the European Central Bank continue to drive a European payment sovereignty agenda that is geared at making instant payments the “new normal,” reducing reliance on International Card Schemes, and Europeanizing the payment value chain in Europe. This has been evident in the political support for the European Payment Initiative, which notably excludes non-European players from participating. The finalization of the negotiations on the instant payments regulation in 2024 has also been a step forward, with some of its measures already starting to apply in January 2025.

Discussions continue on the European Commission proposals to review the Payment Services Directive (PSD3/R), and a proposal for Financial Data Access (FIDA) framework, with the aim of improving consumer protection and competition in electronic payments as well as to developing fairer access to and use of data in the EU Digital Single Market. Separately, both the Council of the EU and the European Parliament continue discussing the regulation on a retail Digital Euro, with political skepticism over the project still present. As currently envisaged, it gives extensive power to the ECB as both the issuer of the Digital Euro and the scheme manager while also overseeing most of the competitors to the future digital currency. Despite little progress on the legislative side in Brussels, the European Central Bank has vowed to keep advancing across several key elements of the digital euro project. In fact, it is currently in the “preparation phase,” focusing on finalizing the scheme rule book and selecting providers for developing parts of the needed infrastructure.

Uniform Custom Code Reforms/Removing De Minimis

The EU has proposed significant reforms to its customs procedures that will have long-lasting effects on trade with the EU. The customs reform proposal includes, among other things, the elimination of the EU’s duty de minimis. Eliminating duty de minimis would be a violation of the EU’s obligations under the WTO’s Trade Facilitation Agreement (TFA) (Article 7, paragraph

8.2(d)), which requires signatories to "provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected…". In addition, elimination of de minimis would have serious negative effects on U.S. exporters to the EU, disproportionally harming small-and-medium sized traders. Furthermore, the cost of implementation for EU member states would dwarf projected revenue collection increases and likely slow the flow of low-value goods that are exports from the U.S. and inputs for American small businesses. Commerce and USTR are uniquely positioned to share how unilateral efforts in the EU to eliminate de minimis level could impede U.S. small package trade with Europe.

Limited U.S. Eligibility for the European Defence Industry Programme (EDIP)

In March 2024, the EU released the European Defence Industrial Strategy (EDIS) to guide EU policy on defense industry matters for the next decade and strengthen the defense industry. To begin implementing EDIS, the European Commission proposed a regulation to establish the EDIP. Among other things, the European Commission proposes spending EUR 1.5 billion on EU defense between 2025 to 2027.

The current proposed eligibility criteria for participating in EDIP limits U.S. exports of goods and services and diminishes U.S. foreign direct investment. As currently proposed, eligible legal entities must be established in the EU or in an "associated country" (i.e., members of the European Free Trade Association that are members of the Agreement on the European Economic Area – Iceland, Liechtenstein, and Norway). In other words, although entities established in some non-EU countries may participate in EDIP, entities established in other countries – including like-minded allies and members of the North Atlantic Treaty Organization such as the United States – are not eligible. These eligibility limitations create a significant barrier to U.S. exports of defense goods and services to the EU that could otherwise support the EU's policy goals of EDIS and EDIP.

In addition, as the regulation is currently proposed, participants in EDIP cannot be subject to the control of an entity located outside the EU or an "associated country." For example, an entity established in an EU Member State but controlled by a U.S. company is not eligible for participation in EDIP. Individual EU Member States would be able to issue derogations to allow such entities to participate in EDIP, but the current proposal gives EU Member States significant leeway to create and implement their own criteria for such derogations, which could lead to discrimination and protectionism. This proposal harms existing U.S. foreign direct investment in the defense industry, reduces future opportunities of U.S.-owned subsidiaries based in the EU, and ignores the contribution of EU-based entities that support EU defense with numerous employees and extensive EU supply chains.

By excluding companies located in like-minded non-EU countries – and even entities owned by companies located in like-minded non-EU countries – EDIP acts as a roadblock to the type of coordination and collaboration that the United States and EU envisioned through the TTC and through the January 2023 NATO-EU Joint Declaration. Stated goals of the TTC include "[g]row the bilateral trade and investment relationship;" "coordinate, seek common ground, and strengthen global cooperation on . . . supply chains;" and "[s]upport collaborative research and exchanges." EDIP's eligibility criteria inhibit coordination and collaboration on these goals in terms of the defense industry. EDIP's eligibility criteria also raise concerns about compliance with WTO agreement provisions regarding subsidies, non-discrimination, national treatment, and trade-related investment measures

Elimination of Retaliatory Spirits Tariffs

The TTC Trade Group should engage to secure the permanent return to zero-for-zero tariffs on distilled spirits between the U.S. and EU. Since 1997, the U.S. and EU spirits industries have largely enjoyed duty-free access to each other's markets. However, from June 2018-January 2022, the EU imposed a 25% retaliatory tariff on American Whiskeys in response to U.S. Section 232 tariffs on steel and aluminum. This tariff caused a 20% decrease in American Whiskey exports to the EU between 2018 and 2021. Similarly, between November 2020 and June 2021, the EU imposed a 25% tariff on U.S. rum, brandy, and vodka in connection to the WTO Boeing-Airbus dispute. These retaliatory tariffs have been temporarily suspended but could be reinstated in the future. USTR should engage in the TTC Trade Group to negotiate the permanent removal of the EU's retaliatory tariffs on American spirits.

2. Third Country Concerns

The actions of "nonmarket economies" appear to be the primary focus of the Trade Working Group's "third country concerns" attention. In addition to coordinating on China policy, there are numerous other markets in which EU and U.S. companies face major barriers and market distorting measures.

Joint U.S.-EU advocacy is also needed in other markets where we have geopolitical and strategic economic concerns, often as a means to deter China. For example, in markets such as India and Indonesia, the U.S. and EU each have some form of bilateral or regional trade dialogue (FTA negotiations for EU, IPEF or bilateral frameworks for the U.S.). These are precisely the markets in which U.S. and EU are seeking to encourage their companies to diversify in order to decrease exposure to China. TTC ministers noted in their second (Saclay) meeting that they intended to "establish a trade coordination dialogue to exchange information at an early stage on initiatives or measures of third countries that either side believes constitute or could evolve into a significant trade barrier for EU and U.S. businesses," but neither side has offered any update since, nor has there been any evidence of a meaningful and structured dialogue having been created. The U.S. and EU have a variety of for a (G7, OECD, WTO) in which they could coordinate to highlight and advocate for the removal of trade barriers in third countries. To date, this is an untapped opportunity that could be leveraged to far greater effect than has been done to date.

The TTC Trade Group could also collaborate and work together on connectivity capacity building opportunities in third countries, such as implementing joint connectivity strategies to bolster trusted digital infrastructure networks and ensure allocate sufficient spectrum is allocated for Wi-Fi.

3. Alignment on Supply Chain Requirements

The U.S. and EU have both recently adopted new measures that require businesses to engage in supply chain tracing, either for purposes of compliance (CS3D) or in order to respond to enforcement action (UFLPA). The scope of such measures is broad, covering matters such as forced labor, responsible business conduct, and carbon content in supply chains.

While the business community supports efforts to advance human rights and sustainability, divergences in how these measures are crafted and implemented can create a massive compliance challenge, especially for SMEs. Doing business in Europe is more difficult when compared to other regions such as the U.S. and China. According to Mario Draghi's report, the EU has passed nearly four times as many pieces of regulation than the U.S. over the past five years.

The U.S. and EU should use the TTC to more systematically catalogue, compare, and seek to align their respective approaches on these issues. An inspiration for such work could be the "mapping exercise" that the U.S. and EU undertook for measures relating to digital IDs. At minimum, such an exercise can help policymakers in the U.S. and EU see where and how existing and proposed measures diverge in areas that could create operational and compliance challenges for transatlantic businesses.

In implementing various laudable policies and priorities, the EU and U.S. have both begun imposing massive data requirements on importers, which require collecting extensive information from other parties in the supply chain. Too often, these measures are imposed with limited or late guidance and with varying enforcement strategies across the European Union. For example, the European Commission recently proposed a one-year delay (pending approval from the Parliament) until December 30, 2025, for compliance with the EU Deforestation Regulation (EUDR). The Commission also released substantial additional guidance on complying with the directive along with the proposed delay, absent which compliance (including with the new guidelines) would have been required by the end of this year.

Even more troubling is the Corporate Sustainability Due Diligence Directive (CS3D), The EU adopted the CS3D in June 2024 and entered into force in July. EU Member States must enact national laws to comply with the Directive by July 2026 with implementation set for the largest companies in July 2027. If companies want to start bringing their operations into compliance in anticipation of the July 2027 deadline (recognizing the extensive lead time that is required), they will likely need to do so largely absent official guidance as the Commission has set January 26, 2027 as the deadline to publish official implementation guidelines, which may include due diligence best practices, responsibility prioritization, sector-specific guidance, etc. With guidelines potentially coming as late as January 2027, companies could be left with a 6-month implementation window.

Not only does CS3D impose heavy, costly and in some cases unfeasible burdens on companies (in many cases it simply transfers public commitments made in state-to-state treaties onto the private sector), it does so with extraterritorial effect, impacting even companies that have no nexus to the EU, and opens the door to the constant threat of meritless, excessive, and expensive litigation by virtually anyone in the EU.

CS3D is a direct contradiction to the efforts to strengthen the EU's competitiveness and risks further weakening business confidence and economic growth in Europe. Put simply, it's the wrong way to do the right thing. Due to the far-reaching implications of CS3D, the Directive should be paused in order to assess its impact on business and industry, and the necessary remedies should be identified (withdrawal or substantial modifications).

These examples show that the TTC Trade Working Group could play a critically important role in aligning U.S. and EU approaches on the growing number of supply chain compliance measures. In addition to collaborating to set meaningful but achievable objectives, the U.S. and EU should also collaborate on mechanisms, perhaps building off the Digital Product Passport, that would enable harmonized data collection and interoperable transmission of data across government agencies.

4. Facilitating Sustainable Supply Chains

The U.S. and EU should use the TTC and their broad policy alignment on sustainability issues to explore creative ideas that can make an actual difference to traders. The circular economy is an area ripe for such cooperation. Today, there is a massive opportunity to enhance the supply of critical minerals through salvaging materials in end-of-life products; yet regulatory regimes today do not easily accommodate cross-border movement of these goods. This was an area of significant alignment and focus on the part of participants in the first stakeholder event under the Transatlantic Initiative on Sustainable Trade (TIST), key recommendations from which included "that the EU and U.S. agree on a joint green corridor or pre-consented lane for the movement of green goods and waste between them."

The Trade Working Group should take up these issues and the related recommendations and seek to do something concrete in the transatlantic bilateral trade space that by aligning the EU's industrial, digital, energy and green policies, and removing trade barriers for sustainable technology. This approach could potentially serve as a model for and be expanded to include other economies.

B. How can USTR and DG Trade expand or enhance cooperation and coordination to deter and counter non-market policies and practices.

In addressing non-market practices, USTR and DG Trade could enhance cooperation and improve the coordination of trade tools by addressing the following issues:

EU Foreign Subsidies Regulation (FSR) Implementation

The FSR extends new powers to target economic distortions in the EU market caused by foreign subsidies. While the EC claims that the FSR targets subsidies from non-market economies, the FSR still applies the same burdensome procedures to U.S. companies as those from non-market economies.

In July, the EC published an Implementing Regulation (IR) that significantly reduced the scope of the FSR in several ways, including: (i) limiting the most onerous and in-depth reporting obligations to a narrow range of subsidies considered "most likely to distort"; (ii) excluding from the reporting obligations all contracts for the supply/purchase of goods/services on market terms; and (iii) exempting the notification of general tax measures and incentives valued below €1M.

While these changes are a significant step in the right direction, and will help reduce unnecessary red tape for businesses, there are still some problematic elements in the FSR. Most significantly, there are certain incentives that fall within the scope of the FSR but would not have to be notified if granted by EU Member States (e.g., certain audiovisual incentives and R&D tax credits). In addition, the EC has failed to offer any guidance on how it will operationalize the FSR's ex officio tool; thus, creating significant uncertainty for businesses and opening the door for discriminatory enforcement.

Non-Market Digital Policies

The TTC Trade Working Group should revive work announced at the Fourth Ministerial in Sweden focused on exchanging information on non-market policies and practices affecting digital trade and U.S. and EU policies linked to risks stemming from digital firms from non-market economies. Failure to launch substantive work on this critical initiative is a missed opportunity for the TTC to take on a critically important commercial issue and is enabling ongoing harm to U.S. economic and national security interests and undermines the United States and EU's shared interest in a global digital trade environment that reflects shared values.

C. **How can the Trade Working Group expand or enhance cooperation and coordination related to trade and labor to better address the needs of U.S. and EU workers and businesses.**

NFTC very much appreciates the opportunity to participate as a social partner in the Trade and Labor Dialogue (TALD). The work done to create joint recommendations reflecting the views of business and labor in the United States and Europe on common principles for implementing forced labor import compliance regimes was a meaningful contribution that should enable improvements to the effectiveness and efficiency of these measures on both sides of the Atlantic. The TALD should continue its work on effecting a just green transition, including developing recommendations on how the green transition will affect workers.

Another potential workstream could explore issues surrounding AI skills and workforce to ensure the TTC is empowering the next generation of workers with 21st-century digital and AI skills.

D. **What steps can USTR take to provide a wide-range of U.S. and EU stakeholders the opportunity to periodically provide suggestions, feedback, and input to the Trade Working Group.**

NFTC appreciates USTR's interest in promoting greater opportunities for stakeholders to provide input into the TTC. Meaningful deepening of the U.S.-EU trade relationship should be achieved as a partnership among Trans-Atlantic governments, businesses, and other stakeholders, including NGOs and unions. Successfully addressing complex international trade and economic issues requires an accurate assessment of the problem to be solved, brainstorming possible solutions, and implementing policies that achieve the desired outcomes with the least disruption and distortion of markets. Stakeholders can be a valuable source of information and insight in all phases of this process.

NFTC urges USTR and DG Trade to think more broadly about stakeholder engagement than simply seeking input or feedback and to view stakeholders as an essential partner in achieving the Trade Working Group's objectives. Events like the TIST stakeholder event referenced earlier can reveal areas of common interest across stakeholder groups and provide ideas and solutions for the U.S. and EU to incorporate into the TTC. USTR and DG Trade should incorporate stakeholder engagement approaches from other Working Groups such as the TIST and Working Group 7, who have very robust approaches to stakeholder engagement.

The stakeholder engagement process could also be strengthened by establishing sectoral working groups to enable continuous dialogue and coordination with industry. While there has been some coordinated government action in certain sectors, such as medical devices, we believe both sides should also increase their coordination and consultation with industry. In its current form, while the government-to-government discussions are helpful, industry is often disconnected from the dialogue and does not have enough visibility into actions and strategies developed by both governments. Having a dedicated and ongoing consultation dialogue with industry-specific stakeholders would ensure alignment and information flow which would benefit both the government stakeholders and the industry.

E. Other Issues

Russia Sanctions

The Trade Working Group should collaborate with Working Group 7 on the implementation of ongoing sanctions against Russia. Although these measures pursue legitimate policy objectives, without co-creation of the "how" with importers, the implementation of these measures at the border creates a trade barrier.

Cybersecurity

While NFTC recognizes that the TTC cybersecurity agenda is primarily covered by a separate working group, we still want to flag the importance of using the TTC to strengthen cybersecurity cooperation, including by making progress on removing outdated digital devices from critical networks and setting rules for how governments handle security vulnerabilities. The U.S. and EU should utilize the TTC to finalize a U.S. - EU agreement on government data demands and encourage continued work on the OECD Trusted Government Access to Data Initiative, building on the U.S. bilateral agreements with the UK and Australia.

III. CONCLUSION

Thank you for the opportunity to present our comments. If you have any questions regarding the issues raised in this submission, please contact Tiffany Smith, Vice President of Global Trade Policy (tsmith@nftc.org).