



November 21, 2022

The Honorable Katherine C. Tai
Office of the United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Ambassador Tai:

The Coalition of Services Industries¹ strongly supports the Biden administration's continued work to build a closer alliance with the European Union, both through the Trade and Technology Council (TTC), bilaterally, and in other fora on issues of shared concern. We congratulate the administration for issuing the executive order to effectuate the U.S.-EU Data Privacy Framework, an achievement welcomed by the many U.S. service suppliers operating in Europe that rely on cross-border data flows. As you prepare for the upcoming TTC meeting on December 5, we wish to highlight a number of EU digital initiatives that disadvantage U.S. companies in Europe, and which we urge you to prioritize for your engagements with Commission leaders.

CSI members remain concerned about the EU push for digital sovereignty that European policymakers outlined in their "Digital Compass" of 2021. This overarching policy objective has underpinned legislation that has been finalized and proceeding towards implementation, and continues to drive protectionist proposals that will diminish operating space for U.S. firms. Below we have briefly noted proposed measures poised to have a disruptive impact not only on U.S. services and digital firms, but also on the wide spectrum of U.S. economic sectors they support.

- Cloud cyber certification. The draft European Cybersecurity Certification Scheme for Cloud Services (EUCCS) is particularly concerning, as it stipulates that only companies that are fully European-owned, controlled and headquartered in an EU member State are eligible to be certified at the EUCCS "High" level. Because EUCCS certification is likely to be required for firms to be able to bid for cloud contracts with EU governments and operators of critical infrastructure, the proposed restrictions would effectively shut U.S. firms out of these markets. These sovereignty requirements raise questions about the EU's compliance with WTO commitments under the Government Procurement Agreement and General Agreement on Trade in Services, and could stand in the way of future transatlantic cooperation on defense and development of emerging technologies. The September 2021 joint statement tasked the Data Governance and Technology Platforms Working Group with discussing "common approaches on the role of cloud infrastructure and services." We believe those guidelines should reasonably accommodate a conversation about EUCCS.
- Data Act. The draft Data Act is intended to promote data sharing within the EU of data generated by Internet of Things devices. However, with its proposed curbs on transfers of non-personal data outside the

¹ CSI is a Washington, D.C.-based trade association that has represented the interests of the services sector since 1982, shaping policies to facilitate the growth of services trade and promoting greater awareness of the role of services in the U.S. economy.

EU, the legislation threatens to block the flow of commercial data traffic across the Atlantic, creating another Schrems II-like situation where transatlantic transfers of non-personal data are restricted without an immediate solution. Since non-personal data is in practice often mixed with personal data, such an outcome stands to bottle up a large quantity of digital information within EU borders. It would also undermine the commercial relevance of the recently negotiated Data Privacy Framework, which is intended to facilitate exchanges of personal data. In addition, the Data Act lacks sufficient IP and security safeguards for the transfer of data to third parties, and arbitrarily uses the definition of a “gatekeeper” from the Digital Markets Act to limit consumers from transferring data to companies that have been designated as gatekeepers.

- AI Act. The broad scope of the proposed AI Act would extend the definition of AI well beyond what the EU and other countries agreed to at the OECD. It could needlessly impose regulations on general-purpose AI models as well as what would more conventionally be regarded as AI products and services, in a manner that would upend the Act’s risk-based framework and potentially limit access to, and collaboration around, foundational AI technologies. Assigning stringent obligations to the providers of these systems goes against the objective of pre-determining and clarifying the balance of responsibilities in the AI value chain. The regulation also contains a problematic requirement for potential disclosure of source code. In addition, the cost of complying with the provisions of the AI Act is a significant concern for industry, and particularly for small businesses.
- Space-based secure communication system. The EU has announced plans to establish a new, €6 billion satellite-based secure communication system that would provide service to both government and commercial users. However, the eligibility conditions appear to exclude U.S. firms from involvement, even as subcontractors. The new initiative would require that to provide services, a company must not be “subject to control” by a third country.

We hope the TTC can serve as a venue to discuss the policies noted above, consistent with its mandate to prevent the emergence of trade barriers in emerging technologies as set out in the [September 2021 joint statement](#). This would include the emerging technologies enabled and powered by cloud computing, the Internet of Things that is addressed by the Data Act, artificial intelligence covered by the AI Act, and the proposed satellite-based communications system.

- DMA implementation. The TTC should also serve as a mechanism to discuss and provide clarification on compliance with the EU’s Digital Markets Act, a sweeping piece of legislation with complex requirements, to ensure it is not implemented in a discriminatory or unduly burdensome manner.
- Network usage fees. The EU has announced its intention to launch a consultation on a regulatory model that could require content providers to pay fees to EU-based telecommunications providers for the content demanded by the providers’ customers. Contrary to the debate in the U.S. on expanding the base of companies and services that should contribute to the federal Universal Service Fund, which in part provides supporting subsidies for broadband services managed by an independent body, Europe is reviewing whether companies should subsidize broadband providers directly. One influential industry body has issued a report that exclusively highlights U.S. content providers and suggests that these companies should pay 20 billion euros annually to EU firms. Despite a finding by the Body of European Regulators for Electronic Communications (BEREC), the EU telecom regulatory authority, that such a proposal “could be of significant harm to the Internet ecosystem,” there is a risk that this measure could move forward in 2023.
- Standardization strategy. Another problematic initiative, the EU Standardization Strategy, is excluding experts of non-EU companies from participating in newly created bodies such as the High-Level Forum, and the EU is also driving these exclusions on other experts’ groups (e.g., radio equipment). Standards

should not be employed to discriminate against non-EU players. Different standardization processes across the EU, U.S. and other third countries can lead to fragmentation, additional compliance and legal uncertainty, potentially hindering innovation and competitiveness and creating unintended barriers to trade. There is a potential for a full revision of the EU Standards Regulation in the near future that might exacerbate this approach.

In sum, we hope the U.S. government will raise all the trade concerns we have noted above within the TTC. We also encourage negotiators to press these issues within the framework of the Inflation Reduction Act task force, to ensure a balanced and fair exchange, as well as other bilateral fora. Given the number of potentially trade-restrictive digital policies under consideration in the EU, we believe there is an urgent need to ensure U.S. concerns are adequately addressed.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Christine Bliss". The signature is fluid and cursive, with the first name "Christine" written in a larger, more prominent script than the last name "Bliss".

Christine Bliss
President, Coalition of Services Industries

Cc:
Secretary of Commerce Gina Raimondo
Secretary of State Antony Blinken
National Security Advisor Jake Sullivan