

# “Trade for all. Towards a more responsible trade and investment policy”

## DIGITALEUROPE comments

*Brussels, October 2015*

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### KEY MESSAGES

DIGITALEUROPE’s vision is of a European Union (EU) that nurtures and supports digital technology across all industries, and that prospers from the jobs we provide, the innovation and economic and social benefits we generate and the societal challenges we solve.

DIGITALEUROPE applauds the European Commission (EC) for making digital a top priority in its new Trade Strategy and is committed to ensure its implementation. We pledge our support in advocating the benefits and importance of digital trade for European citizens and business alike. The digital trade principles in the strategy build on the recommendations of the EC Digital Single Market Strategy (DSM) which highlighted the importance of the “international dimension” for the European digital economy. As recognised in the new trade strategy, the Internet and digital technologies are transforming our world beyond the barriers of geography and distance. Information and Communications Technology (ICT) has become more than a specific sector, it is now a key driver for innovation, growth and job creation in almost all sectors of the economy, and an enabler for societal wellbeing and individual empowerment. It’s indispensable for the EU’s future trade agreements to lay the future rules of the road which is online.

We know that an ambitious and offensive approach to digital trade in implementing this new trade strategy will help the European Union to become a frontrunner again on the international scene. This can be achieved through trade agreements that promote the free flow of data, oppose forced localisation, eliminate tariffs for ICT products and remove non-tariff barriers in the ICT sector. We need a global web for online global markets.

### RESPONDING TO THE RISE OF GLOBAL VALUE CHAINS

ICT is global by default and enables global value chains for every sector of the economy. Europe’s future Digital Single Market has to stay open and integrated within the global connected ecosystem and marketplace for European business and ideas to lead and scale up. We see huge potential in areas such as Internet of Things, e-Health, Industry 4.0.

This also asks for a principle-based approach for Europe’s domestic regulation and policies. Technological neutrality and engagement in support of international and open standards are prerequisites for fast innovation. Locking in current technologies through prescriptive regulation impedes innovation and denies consumers the benefits of new, more advanced ICT goods and services. Unique country-specific technical regulations can be burdensome, especially for SMEs, and become quickly outdated as technology evolves.

In the global context Europe needs to lead by example and strive for market access and preserve openness. Free trade agreements are a tool for this objective. The rise of forced localisation policies and other forms of

digital protectionism around the world in a growing sector like ICT marks a troubling shift in the global trade and economic policies. Any local content requirement has a strong impact on EU businesses – ICT and non-ICT-inside and outside Europe. But also on the worldwide economy as supply chains are global and digitally connected. Impediments for the global supply chain also results in a GDP loss in the EU, according to a simulation realised by Brussels think tank ECIPE. This provides an opportunity for the EU to display trade leadership again for everyone’s interest. We therefore wholeheartedly agree with the new Strategy’s motto: Trade for All.

We welcome the Commission’s willingness to **prioritise trade in services** and seek an ambitious outcome in all trade negotiations (2.1.1.), as well as to seek to use FTAs and the TiSA to **set rules for e-commerce and cross-border data flows and tackle new forms of digital protectionism, including forced data localisation or storage**, in full compliance with and without prejudice to the EU’s data protection and data privacy rules (2.2.2.). In this context we repeat our call to the Commission after the Safe Harbor ruling by the European Court of Justice to ensure legal certainty and clear guidance for business on data flows to the United States as soon as possible. If we want European companies to become global online players we need to enable them to scale up on the global online marketplace. We also encourage the Commission to continue to promote the current regime for online intermediaries in the e-Commerce Directive, as included in the FTA’s with South-Korea and Columbia/Peru;

Besides restriction to data flows and forced localisation, tariff and non-tariff barriers are also increasingly problematic for the digital sector.

The architecture of new FTAs should also make space for a vertical **ICT chapter** that includes provisions that reduce excessive regulatory costs, unjustified regulatory differences, and duplicative or unnecessary red tape for ICT products and services. The Commission could set up new cooperation mechanisms in plurilateral and bilateral agreements to support the creation of harmonised rules and standards in new types of services, the joint collaboration in R&D, exchange of best practices for more creativity and innovation, and create new ecosystems (e.g.: smart cities). Such cooperation would allow Governments to jointly address matters such as standardization, strengthening broadband infrastructure handling complexity, regulatory convergence, promote and innovation and protect and enforce Intellectual Property Rights (2.1.7) or upskilling workforce, that are essential to explore the full potential of new technologies for the European Union. Trade agreements are also an opportunity to look at innovative regulations in partnering countries, notably in the area of e-labelling, e-accessibility, e-health/m-health, Big data and the Internet of Things.

Addressing **regulatory issues** in negotiations (2.1.4.) should indeed remain a priority. In its Trade and Investment Barriers Report (COM(2015)127), DG Trade included and reported on many of these new digital barriers. The WTO also took an important step at the plurilateral level in the Spring 2015 with the WTO Workshop addressing IT Non-Tariff barriers (NTBs) which could lead soon to a new WTO Work Programme to tackle the trade-distorting effects from NTBs. We ask the Commission to keep the momentum at WTO level and to contribute working on a comprehensive Work Programme with ambitious but realistic objectives and timeline.

Finally, we insist on the need for a discipline in trade agreements for a **fair and equal access to government and private sector procurements** for European operators in partnering countries, aligned with the WTO Agreement on Government Procurement (GPA).

## IMPLEMENTATION AND ENFORCEMENT

In order to keep the level of ambition of ongoing and future negotiations of free trade negotiations in the implementation of their provisions, an efficient enforcement chapter is crucial. We strongly welcome the proposals of the European Commission (2.2.2) to ensure that its partners will play by the rules and respect their commitments, notably by developing a more coordinated approach to economic diplomacy and using the mediation mechanism and dispute settlement procedures in free trade agreements to quickly tackle non-tariff barriers, protectionist or intrusive domestic regulations not responding to legitimate policy objectives. We also support and encourage the Commission's willingness to use FTAs to monitor domestic reform in relation to the rule of law and governance and to set up consultation mechanisms in cases of systemic corruption and weak governance (4.2.6.).

## ENSURING RESPONSIBLE MANAGEMENT OF SUPPLY CHAINS

As the Commission notes, policies to support responsible supply chain management are complex and must involve a range of public, private and civil society actors to make meaningful changes for people's livelihoods. The electronics industry is committed to responsible supply chain management, including through its leadership work to enable conflict-free mineral supply chains. DigitalEurope looks forward to working closely with the Commission as it further develops these policies in the coming years.

## EXPORT CONTROL

DIGITALEUROPE understands the concerns of the European Commission to prevent misuse of digital surveillance and intrusion systems in regards to **human rights consideration** (4.2.5.).

The EU should acknowledge the positive role played by technology and any intervention should be proportionate and well-considered. Indeed, we are convinced that our most important contribution is made through our digital technology and we believe that the communication and connectivity we provide fulfills a basic human need. ICT provides vitally important tools for democratisation and availability of information allows the public to participate meaningfully in governance. It can also strengthen human rights, providing a global platform for opposition movements challenging autocratic regimes and military dictatorships. At the same time, it should be kept in mind when considering a necessity for further controls that those controls should not hinder opportunities which ICT bring to societies and economies.

The recital of dual use regulations makes clear that decisions to update the EU's common list of dual-use items subject to export controls must be in conformity with the obligations and commitments that Member States have accepted under the various international non-proliferation regimes and export control arrangements such as the Wassenaar Arrangement ("control regimes"). Due to the technical nature of implementing control lists, DIGITALEUROPE is convinced that the government-to-government dialogue under the existing control regimes are the appropriate fora to review controlled software, hardware and technology, should that be deemed necessary.

Without compromising the overall goals of national security and international security and stability, a **well-balanced and proportionate export control system** which considers global availability of dual use items, global value chains and the ambition for a global level playing field can actually strengthen the competitiveness of the digital technology industry in Europe. By reducing the differences between Member

States, through a greater harmonisation of practices and procedures, a modernised export control policy could also pave the way for a more level playing field within the EU.

## CUSTOMS

As stated in the first part of the communication, imports are as much important as exports as they bring ideas and innovation, new technologies and the best research, and they benefit consumers, lowering prices and broadening choices. Even if the Directorate General for Trade is not in charge of customs related issues – we recommend also to strengthen the **collaboration and coherence** between DG Trade and DG Taxud **on the implementation of the new Union Customs Code (UCC)** to ensure European businesses will benefit from existing customs valuation principles for the import of products into Europe in order to continue offering state-of-the-art products and technologies at a competitive price.

## A FORWARD-LOOKING PROGRAMME OF NEGOTIATIONS TO SHAPE GLOBALISATION

### 1. Reinvigorating the multilateral trade system

DIGITALEUROPE agrees with the European Commission that the multilateral system must remain the cornerstone of EU Trade Policy. However, to remain relevant, the WTO needs to start addressing 21<sup>st</sup> century issues such as digital trade. The WTO and the international trading system should not miss the boat of the Internet, recognised as the most important innovation for globalization since the maritime shipping lanes. The EU should take the leadership and address an ambitious message for the post-Doha Work Programme at the 10<sup>th</sup> Ministerial Conference of the WTO to be held in Nairobi in December 2015, and suggest the relaunch of the WTO e-Commerce Work programme as a forum to address digital issues at multilateral level or plurilateral level.

The conclusion of the Information and Technology Agreement (ITA) and the Trade in Services Agreement (TiSA) are two of the most important tools to continue leveraging on ICT goods and services. They should both include a “review clause” to make sure both agreements will remain up to date and to serve the Commission’s goal to make proposals for more focused and targeted outcomes at the WTO (5.1.1.). Further, we encourage the Commission to convince more Governments to become part of these agreements so we can fully multilateralise them.

## 2. Moving forward bilateral relationships

DIGITALEUROPE supports the ambitious and comprehensive trade agenda set up by the European Commission for the upcoming years. We encourage the European Institutions to look for a rapid conclusion of new free trade agreements – without compromising their high level of ambition - so both businesses and consumers can more quickly reap of the benefits of these FTAs. This is also very much needed for sectors like ICT which technological revolution is constant.

A key priority for the ICT industry is for ongoing and future negotiations to include commitments that promote the growth of ICT goods and services, telecoms, cloud computing, e-commerce, and ensuring that the digital ecosystem and the data that flows through it remains open to innovation and commerce globally. These trade agreements should also strive to sustain and enhance cooperation on the protection of intellectual property rights and create a climate in which innovators are encouraged to invest in the research, development, and commercialisation of leading-edge technologies, and promote the dissemination of technologies and services. Another priority for our industry is for the TTIP and EU-Japan FTA to include provisions that reduce excessive regulatory costs, unjustified regulatory differences, and duplicative or unnecessary red tape for ICT products and services. Furthermore we believe that having an ICT chapter in TTIP is a tremendous opportunity to set the gold standard for inclusion of ICT chapters in other new trade agreements and fortify the global rules-based trading system.

DIGITALEUROPE also very much supports the ongoing negotiations for an EU-China Bilateral Investment Treaty (BIT) to facilitate access of European companies to the Chinese market and promote investment in technology development, innovation and deployment, which together would greatly benefit the ICT industry in both Europe and China. The BIT should be a mechanism that both countries could use for creating a better business environment. In this regard, we encourage the EU to include an effective dispute settlement mechanism in the agreement.

We encourage the Commission to reactivate the negotiations for a EU-India FTA and a EU-MERCOSUR FTA, as these two markets are of high importance for the ICT industry in Europe. In addition, considering India's importance as a growing market and due to heavy investments made in the country by European companies, we ask the Commission to pursue bilateral engagement with the government of India to get rid of trade barriers as much as possible via existing trade tools such as WTO consultations and bilateral dialogues, without waiting for the restart of the negotiations for a FTA.

Further, with the completion of the TransPacific Partnership (TPP), we also think it is important for the EU to reassess its strategy towards the ASEAN region, because there is a risk that European companies will be placed at a competitive disadvantage in that region. We welcome the conclusion of the EU-Vietnam FTA but ask the EU to keep the same level of ambition for the enforcement chapter still to be discussed with Vietnam to prevent any new localisation barrier and to guarantee a level playing field for all investors in Vietnam. Without such provisions DIGITALEUROPE would not be able to support the EU-Vietnam FTA.

Finally, we wish to see the FTAs with Singapore and Canada approved and implemented by 2016 as they are expected to remove almost all duties and non-tariff measures for respective partners.

## CONCLUSION

Conclusion of the negotiations for all trade agreements will continue to support the digital transformation of European Industry, especially in support of the Digital Single Market.

More regulatory cooperation between our main trading partners addressed in an ICT chapter in ongoing and future bilateral trade agreements will lead to more joint innovation, fewer administrative burdens and costs for businesses, and then to more growth for the EU. It is also necessary to remove local content requirements in relation to digital goods and services, which act as critical barriers to the European economic growth and to the development of the EU industry which relies on IT technologies and on the free flows of data.

The Digital Economy is a strategic sector for Europe and an enabler of trade in all sectors. In many ways digital trade is the new sealanes and containers of trade in the 21<sup>st</sup> century. Trade is not possible without the flow of data and digitally deliverable services. While having recognised their strategic importance, many countries are unfortunately introducing barriers to digital trade and promoting the localisation of digital goods and services. This is a trend DIGITALEUROPE asks the EU to fight against.

Finally, we invite EU leaders to acknowledge the *Ten Leading Principles to foster EU Digital Trade*<sup>1</sup> developed by DIGITALEUROPE members.

DIGITALEUROPE is looking forward to continuing working with the European Institutions to design the foundations of an ambitious EU digital trade policy.

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<sup>1</sup> [http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=998&PortalId=0&TabId=353](http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=998&PortalId=0&TabId=353)

## ABOUT DIGITALEUROPE

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

**DIGITALEUROPE** ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 59 corporate members and 35 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

## DIGITALEUROPE MEMBERSHIP

### Corporate Members

Alcatel-Lucent, AMD, Apple, BlackBerry, Bose, Brother, CA Technologies, Canon, Cassidian, Cisco, Dell, Epson, Ericsson, Fujitsu, Google, Hitachi, Hewlett Packard, Huawei, IBM, Ingram Micro, Intel, iQor, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Loewe, Microsoft, Mitsubishi Electric Europe, Motorola Mobility, Motorola Solutions, NEC, Nokia, Nvidia Ltd., Océ, Oki, Oracle, Panasonic Europe, Philips, Pioneer, Qualcomm, Ricoh Europe PLC, Samsung, SAP, SAS, Schneider Electric IT Corporation, Sharp Electronics, Siemens, Sony, Swatch Group, Technicolor, Texas Instruments, Toshiba, TP Vision, Western Digital, Xerox, ZTE Corporation.

### National Trade Associations

**Belarus:** INFOPARK

**Belgium:** AGORIA

**Bulgaria:** BAIT

**Cyprus:** CITEA

**Denmark:** DI ITEK, IT-BRANCHEN

**Estonia:** ITL

**Finland:** FFTI

**France:** AFDEL, AFNUM, Force Numérique

**Germany:** BITKOM, ZVEI

**Greece:** SEPE

**Hungary:** IVSZ

**Ireland:** ICT IRELAND

**Italy:** ANITEC

**Lithuania:** INFOBALT

**Netherlands:** Nederland ICT, FIAR

**Poland:** KIGEIT, PIIT

**Portugal:** AGEFE

**Romania:** ANIS, APDETIC

**Slovakia:** ITAS

**Slovenia:** GZS

**Spain:** AMETIC

**Sweden:** Foreningen Teknikföretagen i Sverige, IT&Telekomföretagen

**Switzerland:** SWICO

**Turkey:** Digital Turkey Platform, ECID

**Ukraine:** IT UKRAINE

**United Kingdom:** techUK