



# **EU** and **USA** **HOW TO BUILD A POSITIVE AGENDA**



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### For further information:

International relations Department

Luisa Santos, Deputy Director General - [l.santos@businessseurope.eu](mailto:l.santos@businessseurope.eu)

Eleonora Catella, Senior Adviser - [e.catella@businessseurope.eu](mailto:e.catella@businessseurope.eu)

Tel : +32 (0)2 237 65 24

BUSINESSEUROPE

Av. de Cortenbergh 168 – 1000 Brussels

## FOREWORD

The United States remains the EU's biggest trade and investment partner - and vice versa, yet the transatlantic relationship is no longer as solid as the economic ties would suggest. The two sides need to rekindle their cooperation and strategic alliance. This is crucial in these challenging times of unprecedented health and economic crisis that affect us all. Other systemic challenges that generate distortions in global trade and negatively impact companies on both sides of the Atlantic, like overcapacity, remain a problem and we should be working on them together.

It is time for the EU to adopt a coherent and proactive strategy vis-à-vis the United States. We have known for years that there is a huge untapped potential in transatlantic trade and investment, and that an enhanced bilateral relationship can generate tremendous opportunities for our societies. But now there is a stronger sense of urgency to look for every opportunity to spur growth and relaunch our economies. Our companies, citizens, consumers, employees have been deeply affected by the COVID-19 crisis and the measures taken to fight it. Our priority must be to reignite growth, create jobs, and build business confidence. This is the necessary precondition to generate investment and underpin the economic recovery.

The objective of this paper is to contribute to a renewed and improved EU-USA relationship by emphasising the untapped potential of transatlantic trade and investment and suggesting concrete policy proposals to build a positive agenda for bilateral relations, for cooperation on multilateral issues, and for the resolution of disputes that arise from unilateral initiatives.

Every relationship sails through rough waters at times and there have always been irritants between the USA and the EU, though these have never overshadowed the largely positive relationship. But today the number and significance of bilateral disputes is reaching a dangerous level. On the other hand, the areas of common interest and possible cooperation keep increasing, ranging from disciplines on industrial subsidies and e-commerce to cooperation on cybersecurity or export controls.

We believe it is time to set up a formal platform for high-level strategic dialogue between the EU and the United States. This would be the right forum to settle our grievances and to discuss a positive agenda for bilateral and multilateral cooperation.

We are at a pivotal moment for the multilateral economic order and the rule-based trading system that the EU and the United States have helped to create. The system needs reform to better reflect today's global challenges, like climate change, digitalization, overcapacities or the increasing role of state-owned enterprises. This is key to ensure legitimacy and public support to trade. This must be a joint project, where the EU and the United States work together and with like-minded partners to bring a real and meaningful change to the system.

There is room for improving our bilateral relations by reducing the costs of doing business across the Atlantic, ensuring that more companies benefit from the transatlantic economy. Regulatory cooperation remains a key priority and we have seen results when there is political will, as shown by the Mutual Recognition Agreement on inspections in medicines manufacturers.

We invite you to read our proposals that hopefully will contribute to building a positive transatlantic agenda.

Pierre Gattaz  
President



Markus J. Beyrer  
Director General



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## KEY MESSAGES

- We call on the relevant EU and US policy-makers to establish a formalised platform for high-level strategic dialogue related to trade and economic cooperation that spans across EU institutional cycles as well as changing US administrations. This new platform, unlike previous frameworks for dialogue, should bring in the right political weight, at a level that would reflect the importance of the transatlantic relations.
- The EU and the USA should take a sequential approach to trade negotiations, starting with tariffs on all industrial goods and progressively expanding in case of success to including areas like agriculture, public procurement, services, and investment.
- It is important to deepen and broaden bilateral discussions on conformity assessment procedures, expanding the list of product categories.
- The USA and the EU should enhance their regulatory cooperation in various sectors, tailoring the approach to the specificities of each sector – especially in new and rapidly growing fields like digital technologies, artificial intelligence, cybersecurity, and smart textiles – and should implement a structured dialogue on regulatory cooperation.
- The EU and the USA should formalise a bilateral dialogue on other trade-related issues like services, transatlantic digital flows, FDI screening and infrastructure/connectivity.
- The EU and the USA should take the lead in setting new rules on a variety of topics such as industrial subsidies, state-owned enterprises, forced technology transfers, developing country status, dispute settlement by working constructively on joint proposals to present to other WTO members, focusing on short-term objectives first.
- The EU and the USA should restart the initiative to counter overcapacities.
- The EU and the USA should work together to achieve an ambitious e-commerce agreement. New rules that address current priorities are crucial for the competitiveness of transatlantic business as we advance in the digital transformation of our economies.
- The EU and the USA should strengthen existing multilateral export control regimes and refrain from adopting unilateral export controls that give preference to the development of emerging and sensitive technologies outside the EU and USA thus harming the long-term competitiveness of our economies.
- The EU and the USA must fight protectionist tendencies, by engaging in discussions to remove existing tariffs and non-tariff barriers as well as by refraining from imposing new ones.
- The EU and the USA must reject quantitative management of trade, i.e. purchasing commitments in their trade agreements.
- The EU and the USA should thoroughly take the trade dimension of regulatory measures into account with regard to conception and design, impact assessments and implementation, even if such initiatives primarily deal with policy areas other than trade.
- The EU must defend its own interests and strengthen its defensive regulatory toolbox if needed.
- The transatlantic economy includes non-EU European countries that enjoy a high degree of economic integration with the EU, like the UK, Switzerland, Norway, Iceland and Turkey. Therefore, it is important to look at ways to ensure openness and dock-in options for these countries in the future agreement or set of agreements.

# 1. INTRODUCTION

Global trade is in a challenging state of flux. The world's three biggest economies, the European Union, the United States, and China, are all entangled in a triangular web of partnership as well as competition, and conflict. Global value chains that span multiple continents have been beneficial for European, American and Chinese companies and consumers. However, this complex state of interdependence has led some policy-makers, notably in the current US Administration, to question who benefits the most from the current trade system. This has caused the USA to rethink their unilateral, bilateral and multilateral instruments for shaping global trade. As a consequence, all of the traditional partners and allies of the USA have had to adjust on the go. The EU has been no exception.

Purely reactive measures have not proven to be efficient, however. It is time for the EU to adopt a coherent and proactive trade strategy vis-à-vis the United States in order to build a new kind of more balanced relationship to the benefit of consumers, employees and enterprises on both sides of the Atlantic. Rekindling constructive cooperation on trade and investment between the EU and the USA has become even more important in the context of the globe-spanning COVID-19 crisis. Millions of European and American citizens have been affected by the virus or by the measures taken to combat it. Creating jobs and re-igniting growth in both economies is therefore a top priority on both sides of the Atlantic; sustainable trade relations, free of tariffs and non-tariff barriers play a key role in this regard.

In this context, the objective of this paper is to contribute to a renewed and improved EU-US relationship by emphasising the untapped potential of transatlantic trade and investment, and the significant opportunities that an enhanced bilateral relationship can generate. The European business community proposes a positive agenda for EU-US relations based on three streams of work, which are elaborated in the respective chapters of this paper. Within each section, short-term goals are presented first, followed by medium- and long-term objectives.

The first stream focuses on the **bilateral agenda**: The USA remain the EU's biggest trade and investment partner - and vice versa. The transatlantic economy generates close to EUR 5 trillion in total commercial sales every year, it produces 75% of global digital content, and employs up to 16 million workers on both sides of the Atlantic<sup>1</sup>. The trade and investment bonds are already strong. How can we strengthen the mutually beneficial EU-US cooperation and trade relations even further? By agreeing a bilateral free-trade agreement that **removes and/or reduces all tariffs on industrial goods**. By broadening and deepening talks on **conformity assessments**, by exploring more **formalised methods of bilateral cooperation** especially in innovative fields like artificial intelligence or cybersecurity, but also in health research and crisis management or issues like foreign direct investment (FDI) screening. Overall, such an agreement or set of agreements should follow the spirit of inclusivity for European non-EU countries to maximise transatlantic benefits and economic potentials. The Transatlantic economy includes non-EU European countries that enjoy a high degree of economic integration with the EU, like the UK, Switzerland, Norway, Iceland and Turkey. Therefore, it is important to look at ways to ensure openness and dock-in options for these countries.

The second stream of work aims at strengthening the cooperation between Brussels and Washington on **multilateral issues**. As allies, the USA and the EU should increase their collaboration, especially in times when both parties are similarly concerned about global trade distortions caused by emerging powers such as China. A positive agenda would build on existing cooperation at the multilateral level, especially with regard to the trilateral talks with Japan on **industrial subsidies** and state-owned enterprises, the upcoming **plurilateral agreement on e-commerce** and the much needed **modernisation of the World Trade Organisation (WTO)** with a special emphasis on reforming its dispute settlement system.

The third stream of work deals with the **unilateral dimension** of trade policy in the USA and the EU, respectively. The European business community urges both US and EU policy-makers to consider the transatlantic impact of unilateral actions and threats. This includes imposed US **tariffs on steel and aluminium** that triggered EU counterbalancing tariffs on US products, US tariffs on steel derivatives as well as threatened tariffs on automobiles and auto parts, which would result in a response from the EU. It also includes the threat and imposition of **unilateral and uncoordinated economic sanctions** on third countries with an extraterritorial impact. Such actions cause significant irritants for companies on both sides of the Atlantic and therefore need to be addressed.

<sup>1</sup>Hamilton, Daniel S., and Quinlan, Joseph P., "[The Transatlantic Economy 2020: Annual Survey of Jobs, Trade and Investment between the United States and Europe](#)", 2020.

The EU should consider the impact of potential unilateral measures on its trading partners, including the USA. However, the EU also has to be ready and able to deter damaging policies from third countries and uphold its economic interests. It is vital to **possess credible measures to safeguard Europe's interests and level the playing field on the market** while preserving the rules-based multilateral order by addressing WTO-incompatible actions and policies. Nevertheless, the business community emphasises that these are instruments of last resort and that it is of utmost importance to avoid the activation of such measures on political and diplomatic levels.

These three avenues for rejuvenating and improving the transatlantic trade relations hold great potential and economic and geostrategic benefits – for both the EU and the USA. However, the European business community knows that much work is needed to realise this potential. Restoring trust is a paramount first step. The EU and the USA must be able to discuss matters frankly and coordinate trade and related policies even when they are in disagreement on the exact path forward. Thus, we call on the relevant EU and US policy-makers to establish **a formalised platform for high-level strategic dialogue** related to trade and economic cooperation that spans across EU institutional cycles as well as changing US administrations, similar to the EU-China High-Level Economic and Trade Dialogue (HED) or the EU-Japan Business Round Table (BRT). This new platform, unlike previous frameworks for dialogue, should bring in the right political weight, at a level that would reflect the importance of the transatlantic relations.

BusinessEurope and its members firmly believe that closer EU-US cooperation on trade and related economic issues will be to the benefit of both economies and societies. If the world's two biggest market economies do not succeed in agreeing upon free, fair and rules- and values-based international trade, other more state-centric actors may seek to exploit this disunity to the detriment of European as well as American interests – in every regard from industrial subsidies to overcapacity and technology standards. The lamentable result would be the loss of all positive synergies from integrated transatlantic value chains, adversely impacting EU and US businesses, workers and consumers. Therefore, the European business community urges interlocutors on both sides of the Atlantic to get started on establishing a close dialogue and positive cooperation in each of the three work streams.

## 2. THE BILATERAL AGENDA

### *STRENGTHENING MUTUALLY BENEFICIAL EU-US COOPERATION AND TRADE RELATIONS*

On the bilateral agenda, the EU and the USA should focus on the removal of tariffs, and non-tariff barriers, on regulatory cooperation, and on cooperation on other trade-related issues.

#### 2.1. TARIFFS

As a first step in improving bilateral trade, European business advocates for the removal or reduction of all tariffs on industrial goods traded between the EU and the USA, including automobiles and auto parts. Such a scope is already stipulated in the Council decision of April 2019<sup>2</sup>. For this reason, BusinessEurope looks positively at the discussions agreed by Presidents von der Leyen and Trump in Davos in January 2020. While the average import duty of EU and US goods is low<sup>3</sup>, transatlantic trade is still hampered by tariffs on many products, including considerable tariff peaks in some sectors (i.e. in the USA 48% on footwear, 32% on textiles and clothing and 25% on trucks; in the EU, 22% on trucks and 17% on footwear).

It is important that the perfect does not become the enemy of the good, however. Setting excessively high and unrealistic ambitions for one all-encompassing agreement at this moment could doom the negotiations before they even started. Therefore, the two parties could consider a **sequential approach**, focusing first on the conclusion of an agreement that eliminates and/or reduces tariffs on industrial goods. Only once such agreement is reached, the parties could explore additional agreements on services, digital trade and other components such as agricultural tariffs, public procurement and investment.

In more sensitive agricultural areas, any concessions would have to be balanced by an opening on an equally sensitive area on the US side, like the American federal and sub-federal public procurement markets, and should be accompanied by adequate safeguards for potentially vulnerable sub-sectors in the agri-food chain.

Naturally, the EU should stick to other staples of its approach to free-trade agreements that are non-negotiable. First of all, EU FTAs must be WTO-compliant, which amongst other things means they must cover a “substantial part” of the EU’s bilateral trade. Secondly, BusinessEurope categorically refuses the “managed trade” approach, which has been showcased in the US-China “phase one” trade agreement: EU deals must not include purchase targets or quantitative restrictions on exports, and have to include a dispute settlement mechanism that is effective and independent. Finally, the conclusion of these agreements should be closely connected to and go hand-in-hand with the resolution of ongoing trade disputes, such as the steel and aluminium dispute, accelerating the improvement of bilateral relations.

#### 2.2. REGULATORY COOPERATION - CONFORMITY ASSESSMENTS

Though tariffs sometimes deter or reduce trade between the EU and the USA other types of barriers, such as regulatory divergences, are even more prohibitive for companies. Regulatory cooperation covering a variety of industrial sectors is therefore essential to reduce the burden for economic operators and consumers. Currently, the main focus of the EU and the USA as regards regulatory cooperation is on conformity assessments.

Conformity assessment, whereby a producer must be able to demonstrate compliance with the technical and safety requirements of the importing party, can be very costly. Especially small and medium-sized European and US companies often forego exporting to the other market because they cannot afford to undergo testing of their products both in the EU and the USA.

<sup>2</sup> <https://www.consiliium.europa.eu/media/39180/st06052-en19.pdf>.

<sup>3</sup> Even though there have been recent public statements that the USA would initiate procedures to change its tariff schedules at the WTO.

The mutual recognition agreement (MRA) on good manufacturing practices in pharmaceuticals that was reached between the EU and the USA in 2017 is an excellent example of regulatory cooperation. With the agreement in force, inspectors examine manufacturing plants for pharmaceutical products in both the EU and the USA and ensure that they meet the required standards for both markets. – this saves resources for regulators and industry, and allows for greater focus on areas of highest risk, i.e. manufacturing in third countries. The MRA is also the result of long-standing co-operation between regulators, and is driven by a strong focus on bringing benefit to citizens and patients on both sides – for example information sharing on rare diseases, and expanding the scope of the MRA to include vaccines manufacturing<sup>4</sup>. Given the impact of Covid-19, this co-operation is needed now more than ever.

Building on these positive examples in some sectors, the EU and the USA should deepen and broaden bilateral discussions on conformity assessment procedures. There is scope for expanding the list of product categories, including industrial machinery, electronics, textiles and chemicals, whereby the USA can accept a European certificate and vice versa. As part of this process, relevant US and European business organisations should be brought on board early to support regulators and make regulations more efficient and effective. The approach should be tailored to cater for the specificities of each sector to see what is feasible and desirable, taking previous efforts and dialogues, such as the Transatlantic Economic Council (TEC), into account.

## 2.3. REGULATORY COOPERATION – OTHER AVENUES FOR COLLABORATION

Beyond conformity assessment, there is further scope for other types of regulatory cooperation between the USA and the EU in various sectors.

In new and rapidly growing fields such as **digital technologies, artificial intelligence (AI), cybersecurity** and **smart textiles**, both US and EU legislators and authorities are establishing and defining the standards within their respective jurisdiction. Closer transatlantic cooperation and information sharing could enable both sides to adopt common procedures that enable trust and ensure conformity to regulations on both sides. As a concrete example, within the field of AI, the EU could discuss with US legislators how to implement the OECD Principles on Artificial Intelligence. This would also allow the EU to promote its own Ethics Guidelines for Trustworthy AI.

Yet, there is also work to be done in more traditional industrial sectors. As regards chemicals, it was recognised that differences between REACH and TSCA<sup>5</sup> do not allow for mutual recognition. However, removing non-tariff barriers may yield the most economic benefit in the long term. Discussions should take place on a voluntary basis and be based on industry consensus, with firm commitments on resource allocation and timelines, building on earlier pilot projects. Efforts should focus on prioritising chemicals for assessment, removing duplicate classification and labelling requirements between the EU and the USA; and on moving towards a more harmonised approach on the requirements for data sharing, which represents a significant opportunity to improve the quality and efficiency of regulatory processes and bringing innovative ideas to market.

For the textile and clothing sector, the priorities are: convergence on labelling requirements (i.e. fibre composition, fibre names, care symbols and wool labelling), product safety, including on children products and flammability as well as smart textile standards.

For the machinery sector, we would welcome the harmonisation of technical requirements in line with the consensus-based international technical standards, such as of the International Organisation for Standardisation (ISO) and International Electrotechnical Commission (IEC).

The automotive sector on both sides of the Atlantic has identified several areas for closer cooperation between regulators, both for existing and future regulations. This includes connected and automated driving, electric vehicles and batteries, real driving emissions, safety regulations, and heavy-duty fuel efficiency and emission standards. At this time in particular, closer cooperation on the formulation of policy and regulation related to future technologies is crucial to avoid possible permanent regulatory divergence in a new era for automotive.

<sup>4</sup> <https://www.ema.europa.eu/en/news/european-commission-ema-fda-agree-new-priorities-strengthen-their-collaboration-medicines>.

<sup>5</sup> REACH is the European Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals, TSCA is the Toxic Substances Control Act of the USA.

Where this type of regulatory cooperation on standards is possible, it must of course be assessed with regard to potential differences in policy and/or prioritisation. However, even within more politically sensitive sectors, such as certain food and agricultural products, exploring potential avenues for cooperation on safety and health standards will be welcomed by companies.

For all these examples of potential regulatory cooperation – on conformity assessment and beyond – to be successful with regard to existing and future standards and requirements, a more efficient and formalised structure for dialogue would be beneficial.

One issue that is important for many manufacturing sectors relates to remanufacturing of products, which reduces waste and minimises the need for raw materials thereby providing benefits for consumers, companies, and societies at large. Both the EU and the USA have included provisions on remanufacturing in several trade agreements with third countries. They should build on these positive examples and agree on a common approach, addressing remanufacturing products at the end of their serviceable lives and barring discrimination against such goods when in same-as-when-new condition. This helps reduce owning and operating costs by providing quality components and equipment at a fraction of the cost of a new product.

## 2.4. BILATERAL COOPERATION ON OTHER TRADE-RELATED ISSUES

Such formalised bilateral dialogue forum could be used to tackle issues beyond tariffs and regulatory barriers. As trade policy has grown in complexity, a number of different policy areas may impact the ability of companies on both sides of the Atlantic to do business and better serve the market.

One of these policy areas is trade in services. The EU and the USA are leading services economies and the full potential of transatlantic trade cannot be achieved without ambitious disciplines on services. This applies to services industries as well services being an integral part of industrial goods. We therefore have an interest in a conducive framework that facilitates trade in services. This includes free and safe cross-border data flows, access to services markets, better disciplines on entry and visa restrictions, mutual recognition of professions and faster and clearer licensing procedures.

The digital economy should also be a strategic target for transatlantic trading relations. Transatlantic data flows are the fastest and highest worldwide and contribute more to growth than trade in goods. Strong privacy and security standards, underpinned by the EU General Data Protection Regulation (GDPR), are critical to build trust in digital transatlantic trade. A closer regulatory cooperation and structured dialogue between the EU and the USA would have a positive impact on these trends and build a future-proof transatlantic digital economy.

Another policy area where the EU and the USA could establish a formal bilateral dialogue is FDI screening. The objective of **FDI screening** mechanisms is to strike a balance between attracting and maintaining investment while guaranteeing national security and public order. The Committee on Foreign Investment in the United States (CFIUS) has been operational and active for forty-five years. In the EU, screening on a national level in a number of EU member states has recently been supplemented with an EU-wide framework for FDI screening. With these new developments, there is scope for improving and strengthening the existing EU-US cooperation on FDI screening. It would be important to achieve a common understanding of the delimitation of economic sectors that are relevant to public security and order. Both sides should coordinate on priority areas, exchange views and best practices, as well as share information in a timely manner. The latter is of particular importance for businesses. Transatlantic investments are often huge and challenging undertakings, which require thorough planning and a degree of certainty and predictability. Therefore, companies need transparency on how national screening mechanisms operate: to prevent any negative impact, businesses have to be duly notified of impending policy developments and should be systematically consulted whenever FDI legislation is being reviewed. An efficient screening of investments in strategic sectors on grounds of defence and security will need to be well targeted: Europe and the United States do not pose a national security threat to each other. European companies should be on the whitelist that exempts foreign enterprises from toughened scrutiny of investments in the USA.

Another area of **potential cooperation regards infrastructure and connectivity in developing and emerging countries**. We should support the possibility to study synergies between the EU connectivity strategy and the US Blue Dot Network for infrastructure financing. This initiative, led by the USA and supported by Australia and Japan, works to develop quality standards to certify for projects upholding

global infrastructure principles, to attract private capital to infrastructure projects in developing and emerging countries.

Bilateral cooperation on other topics could also become relevant. Below, we focus on a number of issues that should ideally be addressed on a multilateral or plurilateral level.

## **RECOMMENDATIONS**

- We call on the relevant EU and US policy-makers to establish a formalised platform for high-level strategic dialogue related to trade and economic cooperation that spans across EU institutional cycles as well as changing US administrations. This new platform, unlike previous frameworks for dialogue, should bring in the right political weight, at a level that would reflect the importance of the transatlantic relations.
- Take a sequential approach to the trade negotiations, starting with tariffs on all industrial goods and progressively expanding in case of success to including areas like agriculture, public procurement, services, and investment.
- The EU and the USA should deepen and broaden bilateral discussions on conformity assessment procedures, expanding the list of product categories.
- Enhance regulatory cooperation between the USA and the EU in various sectors, tailoring the approach to the specificities of each sector, especially in new and rapidly growing fields like digital technologies, artificial intelligence, cybersecurity and smart textiles. Implement a structured dialogue on regulatory cooperation.
- Formalise a bilateral dialogue on other trade-related issues, like services, transatlantic digital flows, FDI screening, and infrastructure/connectivity.

## 3. COOPERATION ON MULTILATERAL ISSUES

### *EU-US LEADERSHIP IN NEW AND EXISTING MULTILATERAL AND PLURILATERAL FORA*

The importance of the WTO as a guardian of international trade rules becomes even more relevant as the global economy will start recovering after the COVID-19 crisis. One of the preconditions for a speedy recovery is that countries avoid introducing protectionist measures that could increase the cost of trade and consequently slow down the economic recovery. The WTO is the right forum to discuss trade measures introduced by its members and, overall, to foster cooperation between countries in international trade during these challenging times. We are therefore pleased to see that both the EU and the USA are duly notifying their trade and trade-related measures taken in the context of the COVID-19 crisis to the WTO Secretariat. The pandemic outbreak should also represent an opportunity to promote multilateral cooperation on trade in health goods and services, such as waiving tariffs on medical supplies, e.g. by expanding the WTO agreement on pharmaceutical products.

Still, multilateralism is going through a deep crisis. As such, modernisation and reform of the WTO is one of the top priorities for European businesses<sup>6</sup>. Not even the most extended web of bilateral agreements would be able to establish and enforce a global level playing field in areas relevant for the functioning of a global trading system, such as industrial subsidies and state-owned enterprises (SOEs), forced technology transfers, services, or e-commerce – to mention a few.

On many of these issues, joint work has already started, either among a restricted number of countries (like the trilateral talks on industrial subsidies between the EU, the USA and Japan) or in a plurilateral framework (like the discussions on e-commerce, now involving 78 countries). The EU and the USA should be the promoters of a coordinated and consistent approach to multilateral issues. Efforts should focus first on areas where deliverables have already been identified to a large extent and can be achieved in a relatively short period of time, leaving more difficult issues for later.

Below we outline five avenues for EU-US collaboration and leadership, namely on industrial subsidies, SOEs, forced technology transfers; over-capacities, e-commerce, export controls, and overhaul of the WTO, including of its dispute settlement mechanism. If the EU and the USA take on this joint leadership role, it will be to the benefit of liberal market-based economies and spur less liberal and more state-dominated countries to alter their behaviour.

### 3.1. INDUSTRIAL SUBSIDIES, SOES, FORCED TECHNOLOGY TRANSFERS

The EU and the USA, together with Japan, have engaged in trilateral discussions to address market-distortive practices effectively, particularly in the area of industrial subsidies (beyond export subsidies), the role SOEs and forced technology transfers. The objective is to address the current lack of coherent and comprehensive rules and to agree on appropriate definitions and disciplines. For example, the Boeing and Airbus disputes have highlighted that the EU and the USA could potentially take the lead in setting the rules regarding civil aircraft subsidies. However, for this to happen, it is essential that the two cases continue to run in parallel. Therefore, the WTO should as soon as possible publish the award in relation to the Boeing dispute. Hopefully, this will lead to a long-awaited negotiated solution that could settle the complaints.

Multilateral rules on subsidies should be expanded and reinforced, stricter controls should be operated at the global level with the aim of creating a level playing field. It will be crucial to find ways to create an incentive for China to join these discussions in a productive manner. For now, it is critical that the EU, the USA and Japan agree on a formal proposal that can be submitted for discussion with other WTO members.

<sup>6</sup> For a more detailed position on WTO reform, please refer to BusinessEurope's position paper "[Reinvigorating the WTO – Safeguarding a strong and effective multilateral trading system](#)", 2018.

## 3.2. BILATERAL COOPERATION ON OTHER TRADE-RELATED ISSUES

Addressing subsidies also plays a crucial role in the fight against another source of global imbalances: **overcapacities**. Efforts to reduce overcapacities have already started in the steel sector, with the Global Forum on Steel Excess Capacity bringing together G20 and other interested OECD members to address steel overcapacity. European businesses regret that the Global Forum has been discontinued and call on the EU and the USA to restart the initiative. As other sectors, however, have also been adversely impacted by global excess capacity due to subsidies and other support measures, discussions to reduce such overcapacities should be extended to these affected sectors.

## 3.3. PLURILATERAL AGREEMENT ON E-COMMERCE

The EU and the USA should work together to ensure new rules are developed that address e-commerce and digital trade. This has become even more important with the COVID-19 crisis that demonstrated the importance of digitalisation and how critical it is to have the right set of rules and infrastructure.

The EU and the USA have a common objective of ensuring that companies and consumers alike can benefit as much as possible from new, digital avenues of doing business across borders. However, they do have different views on specific issues like liability. Naturally, reaping the benefits of e-commerce relies on a solid balance between free flow of data on the one hand and protection of privacy on the other. The EU has established a standard for data privacy with its General Data Protection Regulation (GDPR). If other countries adopted the same level of data protection it would be a strong basis of trust. Concretely, the EU needs to adjust its position on cross-border data flows in consistency with the European data strategy and without hampering privacy but allowing for more ambition in bilateral and multilateral trade negotiations<sup>7</sup>.

By aligning EU and US positions in this way, both parties should work for an ambitious and comprehensive e-commerce agreement that creates legal clarity and levels the global playing field in terms of market access for goods, digital and other services. An ambitious e-commerce agreement is crucial for the competitiveness of transatlantic business as we advance in the digital transformation of our economies.

## 3.4. EXPORT CONTROLS

Another area that stands to benefit from strengthened cooperation is export controls on dual-use items, especially at a time when new technologies are being developed, and cyber-surveillance and human rights violations receive increased attention from citizens and policy-makers alike.

The EU and the USA should cooperate in order to strengthen existing multilateral export control regimes, such as the Wassenaar Arrangement<sup>8</sup>. Conversely, both the EU and the USA should refrain from adopting unilateral export control lists, including on foundational and emerging technologies or cybersurveillance. Unilateral approaches harm the competitiveness of producers on both sides of the Atlantic. A multilateral approach would be beneficial by ensuring a global level playing field and prevent fragmented competition. By cooperating on a multilateral level, the EU and the USA will also increase the chance of establishing global standards in line with our common objectives.

## 3.5. OVERHAUL OF THE WTO AND ITS DISPUTE SETTLEMENT MECHANISM

The World Trade Organisation is the single most important component of the global trading system. The members of BusinessEurope continue to reiterate this fact. Companies appreciate three key features of the WTO system.

<sup>7</sup> For more details see [BusinessEurope's letter on cross-border data flows](#) of 27 April 2020.

<sup>8</sup> [Wassenaar Arrangement On Export Controls for Conventional Arms and Dual-Use Goods and Technologies](#).

First, multilateral trade liberalisation is the best way to increase market access across the globe. Both when it comes to tariff and non-tariff barriers, liberalisation at the WTO level in general outranks the bilateral free-trade agreements. It is much easier for exporters to deal with one uniform set of rules than having to adjust for individual export markets and fulfil different rules of origin requirements for a variety of preferential trade agreements separately.

Second, the common rulebook of the WTO strives to create a level playing field for companies competing on the global marketplace based on the quality of products and the efficiency of production and supply chains.

Third, the WTO is uniquely equipped with an effective dispute settlement system that ensures far better enforcement of its common rulebook as compared to other international organisations. This provides companies with a higher degree of certainty, providing the opportunity for better long-term planning in terms of both trade and investment.

These three advantages of the WTO system apply to American companies as much as to European and worldwide. Businesses on both sides<sup>9</sup> agree that liberalisation, a level playing field and dispute settlement can be improved, adapted and made more efficient. But there is no reason to utterly disrupt or dismantle the fulcrum of this mutually beneficial global trade system. Instead, the EU and the USA should work together to address the shortcomings of the WTO system along with other like-minded partners.

One issue on which the EU and the USA agree is the need to change the way the developing country status is self-designated, to stop countries from enjoying privileges that should be reserved for others. However, the conditions that the USA are proposing are different from the European terms. We urgently call on both sides to find common ground and set criteria for the designation as developing country that can be proposed to other trading partners.

Conversely, an area that has been a source of concern for the EU is the reluctance shown by the USA to engage with like-minded partners to set up a dispute settlement mechanism that could replace the current one. The USA have blocked the appointment of new judges to the WTO Appellate Body, which consequently ceased to function in December 2019. While the European business community understands US arguments about the need to review the dispute settlement system, we are concerned about the lack of enforcement of the global trading rulebook that the absence of a dispute settlement mechanism would entail. While the interim mechanism provides a welcome temporary solution that the USA and other countries are invited to join, a long-term mechanism agreed upon by all WTO members must be established. We are convinced that the USA as the EU have every interest in preserving and updating the Appellate Body, in order to discipline WTO members' behaviour regarding, for instance, industrial subsidies or state-owned enterprises. We continue to hope that the USA will come forward with a constructive proposal and engage in fruitful discussions.

### 3.6. COOPERATION IN OTHER FORA

The EU and the USA should also join forces and step up their engagement in the ISO to develop new standards for digital technologies as well as other areas. Such transatlantic partnership is important to set a proper global framework for the growing digital economy. In a similar vein, increased cooperation among CEN, CENELEC, ETSI<sup>10</sup> and US standard-setting bodies on technical standardisation deserves a more comprehensive and strategic approach. Finally, existing EU-U.S. cooperation on intellectual property rights (IPR) should be strengthened via the work of the Transatlantic IPR Working Group.

<sup>9</sup> U.S. Chamber of Commerce, [Why American Business Needs the WTO](#), 6 February 2020

<sup>10</sup> The European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI).

## RECOMMENDATIONS

- The EU and the USA should take the lead in setting new rules on a variety of topics such as industrial subsidies, state-owned enterprises, forced technology transfers, developing country status, dispute settlement by working constructively on joint proposals to present to other WTO members, focusing on short-term objectives first.
- The EU and the USA should restart the initiative to counter overcapacities.
- The EU and the USA should work together to achieve an ambitious e-commerce agreement. New rules that address current priorities are crucial for the competitiveness of transatlantic business as we advance in the digital transformation of our economies.
- The EU and the USA should strengthen existing multilateral export control regimes and refrain from adopting unilateral export controls that harm their companies' competitiveness.

## 4. UNILATERAL ACTIONS WITH IMPACT ON TRADE

### *RESOLVING AND PREVENTING DISPUTES IN EU-US RELATIONS CAUSED BY UNILATERAL ACTIONS*

Despite the quite apparent commonalities between the USA and the EU and the sheer importance and strength of transatlantic economic links, in recent years the bilateral relationship has been put under serious strain.

Whereas nearly every relationship generates disputes at times and whereas there have always been irritants in the bilateral economic relationship between the USA and the EU, these have never been such as to overshadow the largely positive relationship. But today, the present deterioration of relations has reached an unprecedented level. The number and significance of bilateral disputes has accelerated very rapidly in the past few years to the extent that **they can no longer be likened to normal frictions**.

These disputes cannot be “compartmentalised”, i.e. put aside separately and ignored while we engage in cooperation on other fronts. Each issue should be resolved as quickly as possible.

Current disputes do not result from divergent economic interests but fundamentally from a systematically different way of looking at international trade. Insofar as they pose an essential threat to open trade, multilateralism and the rules-based global order, the EU and its member states should be assertive in properly diagnosing the challenges undermining the bilateral relationship, and in raising these issues comprehensively with US counterparts.

We question some of the underlying assumptions that appear to drive the US trade policy decisions vis-à-vis the EU. Not only is the so-called ‘trade deficit’ not a reflection of unfair competition, but it is – as laid out in the Annex – an extremely limited metric for the real size of the transatlantic economy, as the term often only refers to trade in goods, and disregards the huge importance that services and investment play in forming the mutually beneficial transatlantic relationship. The EU is a liberal market economy that is extremely open to US companies. European companies are alarmed by the current state of play.

The European business community is particularly concerned about four aspects of US policy-making: **protectionism, unilateralism, managed trade and interpretation of trade rules**.

The first section below elaborates on these four aspects. Another section is dedicated to an assessment of which upcoming unilateral EU policies carry a potential risk of causing trade irritants. Finally, we briefly touch on how the EU can defend its interests in face of actions that are not in compliance with international rules.

## 4.1. EU BUSINESS CONCERNS

### Protectionist tendencies

Free trade is not only about economic prosperity; it is also about culture, people, and values; open trade lifts people out of poverty, promotes peace and trust between countries, solidifies nation-to-nation relations, and forms the base for strategic and political alliances.

In this sense, trade tensions are bad economics – and they are certainly bad for business, too: severe trade tensions and in particular escalated trade disputes disrupt value chains, destroy jobs and slow down economic growth, as recent experiences attest. Tariffs hurt the economies on both sides of the Atlantic, raising prices and depressing salaries, and fundamentally diverting attention from systemic trade distortions, like subsidies, overcapacities and the leakage of knowhow. Increasing tariffs or threats of an increase are especially harmful when our economies are fighting an unprecedented economic downturn and desperately need trade and investment to spur growth and create jobs. Finally, the application of carousel mechanisms increases uncertainty for businesses, thereby maximising the negative impact of tariff measures on companies.

### Movements away from multilateralism

As digitalisation keeps on transforming societies as well as business models, and the world becomes more integrated, companies' supply chains grow ever more diversified as well. Making supply chains more resilient to shocks will be a priority as we exit the COVID-19 crisis and diversification will be on the menu for many companies. Businesses everywhere benefit from predictable, transparent and enforceable trading rules at a multilateral level. And it is not just companies that gain advantages from multilateralism: when likeminded partners – such as the USA and the EU, but also in many respects Japan, Canada, Australia, New Zealand and others – work together, they acquire greater leverage in defining rules, setting standards and steering the course of governance worldwide. On that score, European firms are increasingly concerned about the way in which the USA seem to be retreating from the global institutions and fora it helped to build and develop.

Apart from the decisions to leave a variety of international organisations, in the trading sphere the USA recently threatened to withdraw from the WTO Agreement on Government Procurement (GPA) and to revise its WTO bound tariff rates.

Another point of concern, as it pertains to the USA moving towards unilateralism, is the issue of sanctions and their extraterritorial effect. We refer here to the implementation of sanctions on Cuba through the Helms-Burton Act in May 2019; the reintroduction of sanctions on Iran after the USA withdrew from the Joint Comprehensive Plan of Action (JCPOA) in May 2018; the sanctions against the aluminium company Rusal in April 2018, which created numerous blockages for the aluminium market in the EU; and the sanctions under the Countering America's Adversaries Through Sanctions Act targeting Russia. These measures do not only have a negative impact on the economic interests of European business but even more worryingly, they were imposed unilaterally, without an effort of coordination with the EU.

In the case of Iran, the USA reintroduced 'secondary sanctions' that had previously been lifted under the JCPOA and which target the operations of non-US actors if and when they engage in transactions with Iran in listed areas. The extraterritoriality of US sanctions law effectively prohibits European firms from doing business, which they are allowed to conduct under EU law. In spite of the EU Blocking Statute Regulation, the current situation is such that European companies operating both in Iran and the United States have basically halted their operations with Iran to avoid being subject to US secondary sanctions.

In this context, the EU must defend its own interests and mitigate the exposure to US sanctions, including by further strengthening the role of the euro in international payments<sup>10</sup>.

### Quantitative management of trade

Following the focus on merchandise trade deficits, the current US Administration has included elements of managed trade, i.e. purchasing commitments in their most recent bilateral trade agreements. The most notable case in this regard is the USA-China 'phase-1 deal' reached in January 2020. Further

<sup>10</sup> BusinessEurope is currently working on a position paper on sanctions and the role of the euro.

examples are the revised South Korea-USA agreement (KORUS) and the agreement between the USA, Mexico and Canada (USMCA).

The USA-China agreement includes an unconventional chapter on 'expanding trade' with a view to allegedly rebalancing the trade deficit, whereby China agrees to import an additional USD 200 billion worth of US goods and services over two subsequent years, specifying targets in four key areas (manufactured goods, agricultural products, energy products and services).

The provisions contained therein do not effectively address the systemic challenge posed by the consolidation of China's state-led economy and may even aggravate the problem, inasmuch as these provisions allow for a greater control of the Chinese party-state in steering the economy to fulfil the purchasing commitments. Furthermore, there is substantiated doubt as to whether these provisions are compliant with the most-favoured nation (MFN) principle of non-discriminatory treatment of imports.

Crucially, though, the chapter on 'expanding trade' – which may be included in future bilateral trade deals negotiated by the USA (e.g. with India) – constitutes an evident move towards a system of managed trade, putting into question the independence of private actors and the very notion of market-based free trade and resulting in trade diversion and beggar-thy-neighbour policies while reducing efficiency and driving up costs.

It is important to ensure that bilateral deals are WTO-compliant. The European Commission should monitor carefully how China is going to fulfil its purchasing obligations under the USA-China deal and to ensure that this is not done at the expense of European companies.

#### Interpretations of the law

Section 232 of the U.S. Trade Expansion Act of 1962 allows the President to impose tariffs based on a recommendation of the Secretary of Commerce if imported products are deemed to "threaten or impair the national security [of the USA]". This section has rarely been invoked until quite recently.

The current US Administration has conducted five investigations into imports of certain products (steel, aluminium, autos and auto parts, uranium, and titanium sponges), and recently initiated new investigations on imports of electrical components, mobile cranes, and vanadium to determine whether they threatened US national security. In 2018, tariffs were imposed on steel and aluminium.

We acknowledge that article XXI of the GATT allows WTO members to adopt measures necessary for the protection of its essential security interests. However, the European business community fails to see how European exports of the above products constitute a threat to American national security.

European companies, which invest massively in the USA and employ millions of American workers, find it erroneous to be considered national security threats. In that regard, the concept of 'national security' is subject to legal overreach or even abuse, showing significant tendencies to protectionism. This is not in line with the WTO interpretation of the security exception: the possibility to invoke article XXI of the GATT is limited by the occurrence of the objective conditions listed in its subparagraphs, such as measures taken in time of war or other emergency in international relations. It is clear for the European business community that the US aluminium and steel tariffs (and the potential tariffs on automobiles and auto parts) do not fulfil this requirement.

As it has already been the case, in similar situations in the future, if bilateral talks fail the EU must act accordingly and take the case to the WTO.

## **4.2. UPCOMING EU MEASURES WITH A SIGNIFICANT TRADE DIMENSION**

Both the EU and the USA must consider the trade dimension and the potential impact on third countries of certain decisions. In this regard, BusinessEurope is conscious that two European legislative proposals, the carbon border adjustment mechanism and the digital services tax, may cause significant friction in the EU's relations with its commercial partners including the USA, and the implementation process should be accompanied by a close dialogue with partner countries.

As the adoption of a given measure may have a significant trade dimension and an important impact on a commercial partner, the involvement of the Commissioner for Trade is essential in the elaboration of a measure in a novel field, as is the assessment of the potential impact on the EU's trade partners and the EU's trade flows when conducting the impact assessment.

The European business community urges both parties to take the trade dimension of measures thoroughly into account during their conception and design, impact assessments and implementation, even if such initiatives primarily deal with national security, the digital economy, climate action, or another policy field. One crucial aspect that should underpin all EU measures with a trade dimension is that they must be compliant with WTO rules. It is also important that measures that can have an impact on trade flows and investment are addressed at the multilateral level and are brought to the international appropriated fora for discussion. The approach taken by the OECD to reform global tax rules is a good example for a common approach. In this context, we regret the US decision to suspend its participation in the negotiations and in parallel to launch a Section 301 investigation on a number of individual member states as well as on the EU.

### 4.3. THE EU NEEDS TO BE MORE ASSERTIVE IN DEFENDING ITS RIGHTS

In times of rising unilateralism, the EU cannot idly stand by. While fighting to preserve and expand the multilateral trade system, the EU should also be ready and able to deter damaging policies from third countries. Possessing credible countermeasures aimed at WTO-incompatible sanctions and tariffs is important, even if the business community hopes that actually activating such countermeasures will not be needed.

BusinessEurope calls on the EU to take a systematic firm stance in defending its interests. The EU must be ready to react promptly, proportionally and effectively to any unilateral measure adopted by a third country that has a negative impact on the European economy. Any EU measures should be WTO-compliant, proportionate and compatible with the interests of the EU. EU measures should therefore consider the economic relevance of pan-European and transatlantic value chains, consistency with wider EU policy objectives, and be taken in close consultation with the European industry.

Even in situations where a trading partner is legally permitted to impose countermeasures, product lists defined for compensation must be proportionate and designed as to minimise the impact on non-related sectors as much as possible (e.g. in the Airbus/Boeing cases).

We recently saw many countries deviating from international rules and tending to favour a creative interpretation of international rules whenever they consider their national interests are being undermined. The implementation of Section 232 by the current US Administration is a good example. Against this background, we support the proposal of the European Commission to revamp the EU Enforcement Regulation and to create the position of a Chief Trade Enforcement Officer. The main objective should be to uphold international trading rules while ensuring that the interests and rights of European companies are respected and properly enforced.

#### **RECOMMENDATIONS**

- The EU and the USA must fight tendencies towards protectionism, by engaging in discussions to remove existing tariffs and non-tariff barriers as well as by refraining from imposing new ones.
- The EU and the U.S. should work together to strengthen the resilience of supply chains for the future by safeguarding the free flow of goods in areas such as health products, pharmaceuticals, and medical supplies.
- The EU and the USA must reject quantitative management of trade, i.e. purchasing commitments in their trade agreements.
- The EU and the USA should take the trade dimension of regulatory measures thoroughly into account with regard to conception and design, impact assessments and implementation, even if such initiatives primarily deal with policy areas other than trade.
- The EU must defend its own interests and strengthen its defensive regulatory toolbox if needed.

## 5. APPENDIX - TRANSATLANTIC ECONOMIC RELATIONS<sup>11</sup>

The United States and Europe together represent 32% of the world's gross domestic product (GDP), slightly over 26% which is the share of China and India combined. Taken together, the USA and Europe lead in a variety of indicators: they account for 50% of global personal consumption (versus only 14% for the two Asiatic giants), 32% of global imports and 27% of global exports, 58% of global inward stock of foreign direct investment (FDI) and 63% of outward stock of FDI (2018 data).

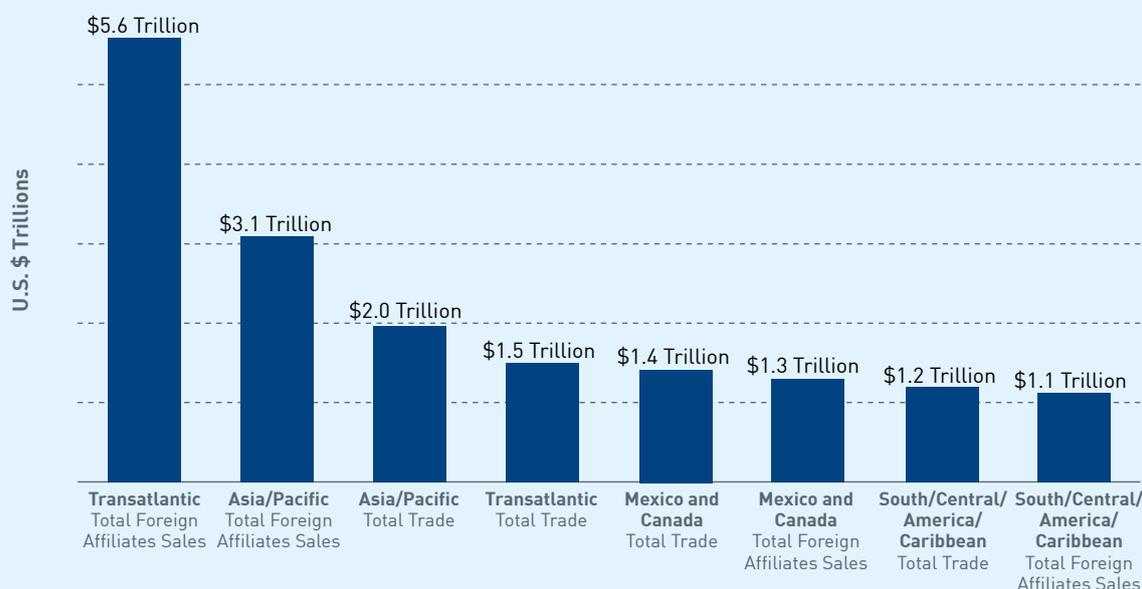
The transatlantic economy supports USD 5.5 trillion in total commercial sales a year and employs up to 16 million workers on both sides of the Atlantic. 50% of global investment into the USA comes from Europe (2019) and 61% of US global investment goes to Europe (2018). Data flows between the USA and Europe are 55% higher than data flows between the USA and Asia, and 75% of digital content globally is produced in North America and Europe. No two other regions in the world are as deeply integrated as the USA and the EU.

Deficits in merchandise trade can be caused by a variety of different economic factors, but it ought not be the ultimate metric or benchmark against which to evaluate international economic relationships. In fact, a surplus in trade can be a bad sign of weak domestic demand, making countries sensitive to changes in the global economy.

**Table 1:**

America's major commercial arteries in 2018

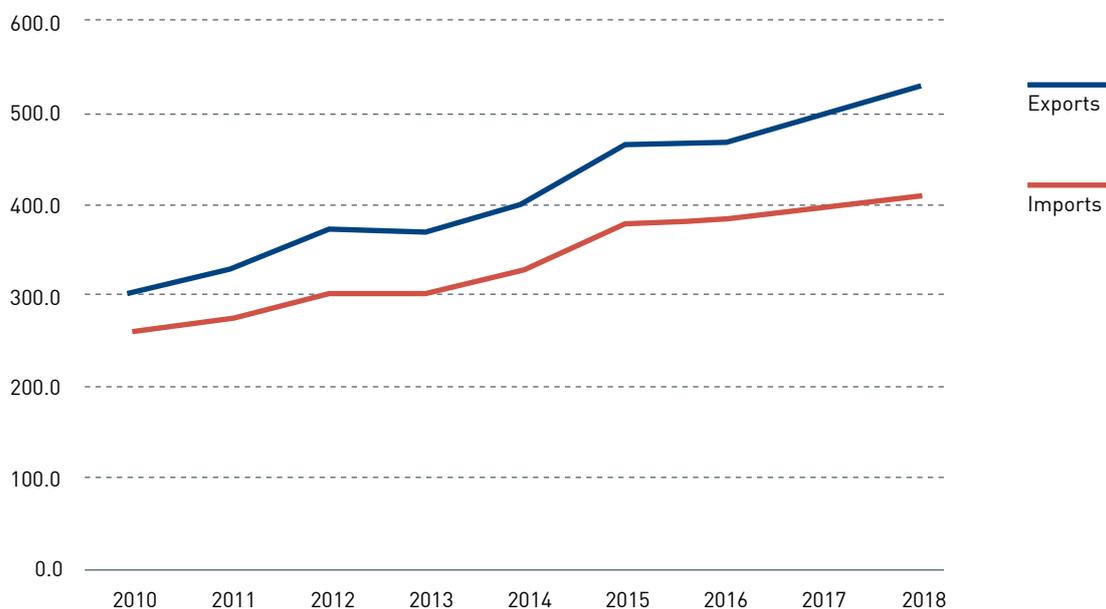
(Values in USD trillions, foreign affiliate sales: estimates for 2018. Total trade: data for goods and services, 2018. South/Central America and Caribbean includes Mexico).



Source: Bureau of Economic Analysis

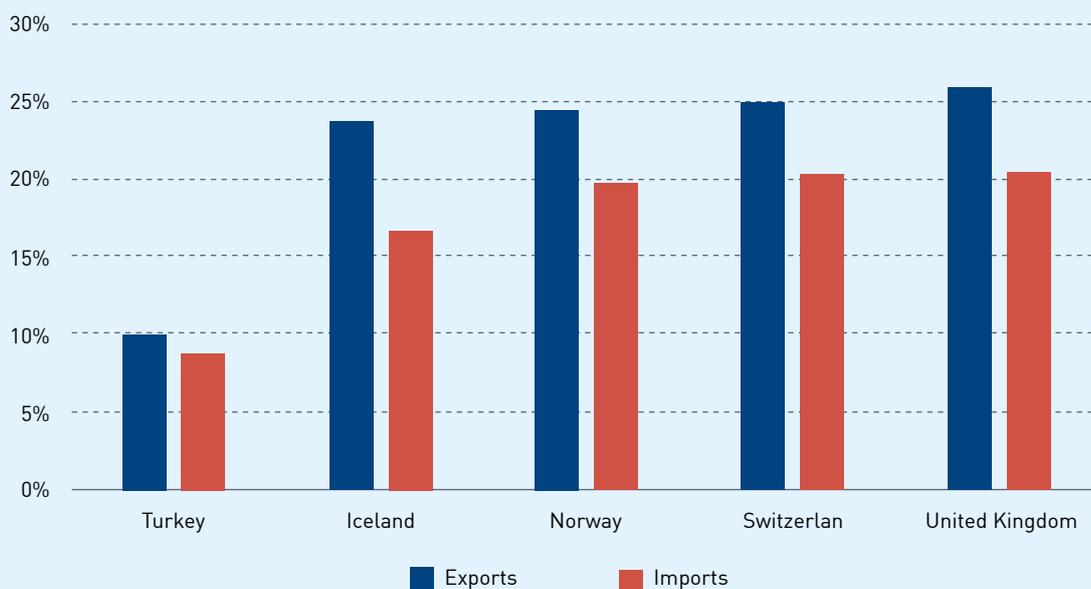
<sup>11</sup> Unless stated otherwise, all figures in this section have been sourced from the comprehensive study conducted by D. Hamilton and J. Quinlan, "[The Transatlantic Economy 2020](#)". We present this study's terminology and charts, which provide the most up-to-date information on European-sourced jobs, trade and investment with the 50 US states, and US-sourced jobs, trade and investment with the 28 member states of the European Union, as well as Norway, Switzerland and Turkey. Although the UK left the EU formally in early 2020, the data covers 2019, when the UK was still part of the EU.

**Table 2:**  
Total EU27 trade with US (goods and services)  
(EUR bn)



Source: Data elaborated by BusinessEurope for the EU27, which excludes the UK.

**Table 3:**  
Major non-EU European economies: U.S. share of extra-EU trade in goods (2018)



Source: Data elaborated by BusinessEurope for major non-EU European economies: UK, Turkey, Switzerland, Norway and Iceland.

Modern economies thrive on services and investment, which create jobs and raise salaries. The USA is a services-led economy, and it is the global services powerhouse. American services exports to Europe amounted to USD 312 billion in 2018, with a surplus of USD 75 billion, and have grown up 50% compared to 2009. But services trade figures are just a small part of the broader picture they do not account for sales of services by US foreign affiliates in Europe, which reached USD 839 billion in 2017.

Another indicator to look at is primary income, part of the current account in the balance of payments and which refers to the net flow of profits, interests and dividends from other countries and net remittance flows from migrant workers. Here, the USA has a surplus of USD 112 billion, with US primary income receipts from the EU totalling almost USD 450 billion in 2017.

When it comes to investment, it is clear that European businesses have a great stake in the US economy. Total European FDI in the USA amounted to USD 3 trillion in 2018, which is roughly 68% of the total and four times the level of comparable investment from Asia. In the manufacturing sector, the number is even more striking: European FDI represents 77% of the total. European companies invest more than any others in the USA, contributing to the prosperity of the American economy.

The transatlantic economy is complex, multi-layered and balanced. Above all, it is beneficial for both sides. It should therefore be fostered, treasured and be given the conditions to flourish further. If the two partners work closer together, integrate their economies further and allow each other's businesses to trade and invest more easily, there is every reason to believe that manifold economic opportunities will flourish for companies of all sizes, leading to greater prosperity and job creation.

# BUSINESSEUROPE



**BusinessEurope** is the leading advocate for growth and competitiveness at the European level, standing up for companies across the continent and campaigning on the issues that most influence their performance. A recognised social partner, we speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.



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Switzerland



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Turkey



United Kingdom



Avenue de Cortenbergh 168  
B - 1000 Brussels, Belgium  
Tel: +32(0)22376511 / Fax: +32(0)22311445  
E-mail: [main@businesseurope.eu](mailto:main@businesseurope.eu)

[WWW.BUSINESSEUROPE.EU](http://WWW.BUSINESSEUROPE.EU)