EGMONT PAPER 113

# THE EU-US TRADE AND TECHNOLOGY COUNCIL: MAPPING THE CHALLENGES AND OPPORTUNITIES FOR TRANSATLANTIC COOPERATION ON TRADE, CLIMATE, AND DIGITAL

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September 2021

EGMONT

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*This paper was written in cooperation with the European Policy Centre (EPC) and is part of a broader partnership between the Egmont Institute and EPC that focuses on exchanging expertise and analysis on EU affairs and the EU's role in the world.*

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## Abstract


The EU-US Summit on 15 June 2021 marked the beginning of a renewed transatlantic partnership and set an ambitious joint agenda for EU-US cooperation post-COVID-19. The new Biden administration offers the EU the opportunity to re-establish transatlantic relations, which reached their lowest point since World War II under the turbulent Trump administration, and to address the bilateral disputes and tensions that have emerged, partly as a result of Trump's 'America First' policies. One of the key deliverables of the Summit was the establishment of the EU-US Trade and Technology Council (TTC). The TTC aims to deepen EU-US relations on trade and investment and to avoid new technical barriers to trade by cooperating on key policies such as technology, digital policy issues and supply chains.

Despite the optimism in Brussels and Washington about renewing and strengthening transatlantic cooperation, there are several challenges for EU-US cooperation. In the areas of trade, digital and climate in particular several differing views or outstanding disputes (most of them inherited by the Trump administration) will need to be addressed by the new TTC (the first meeting is scheduled on 29-30 September 2021) or other joint bodies. Only then will the EU and the US be able to deliver on the new ambitious transatlantic agenda. This paper will therefore discuss the key challenges and opportunities for EU-US cooperation in the three interrelated areas of trade, digital and climate. For each of these areas, the outcome of the June 2021 EU-US Summit will be discussed and the challenges and opportunities for delivering on the renewed transatlantic agenda will be analysed. Moreover, this paper will present several policy recommendations, for the TTC or on EU-US cooperation in general, on how to advance the transatlantic partnership.

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# 1. INTRODUCTION

“All is changed, changed utterly: A terrible beauty has been born”. With this quote from Irish poet W. B. Yeats at the start of his first EU-US Summit as President, Biden pointed towards the themes discussed with his EU counterparts: China, the COVID-19 pandemic, digital transformations and climate change.[1] The new Biden administration offers the EU the opportunity to re-establish transatlantic relations, which reached their lowest point since World War II under the turbulent Trump administration, and to address the bilateral disputes and tensions that emerged, partly as a result of Trump’s ‘America First’ policies. In this context, the EU-US Summit on 15 June 2021 marked the beginning of a renewed transatlantic partnership and set an ambitious joint agenda for EU-US cooperation post COVID-19.

The EU had already demonstrated its keenness to ‘reset’ transatlantic relations after Biden’s election in November 2020, as the European Commission and the High Representative (HR) published on 2 December 2020 the Joint Communication on “A new EU-US agenda for global change”.[2] In their joint communication, the Commission and HR stressed that while EU-US relations were tested under the Trump administration through geopolitical power shifts, bilateral tensions, and unilateral tendencies, the new Biden administration, “present[s] a once-in-a-generation opportunity to design a new transatlantic agenda for global cooperation based on our common values, interests and global influence”. The key priorities for transatlantic cooperation enumerated in this agenda are to strengthen bilateral and multilateral cooperation to address the COVID-19 and climate crises; solve the EU-US bilateral trade disputes; improve cooperation on technology, trade, and tech standards; and work together “towards a safer, more prosperous and more democratic world”.

These issues were at the heart of the debate during the first EU-US Summit. After the Summit the EU leaders welcomed “America back on the international stage” and adopted with their US counterparts a joint statement which laid down an ambitious agenda on four key areas of cooperation: (i) overcoming the COVID-19 pandemic, preparing for future global health challenges, and fostering a sustainable global recovery; (ii) cooperating on tackling climate change; (iii) boosting EU-US trade, investment and technology; and (iv) nurturing democracy, peace, and security at a global level.[3]

Key deliverables of the Summit were the joint commitment to resolve long-standing trade disputes by reaching a truce on the Boeing/Airbus dispute, as well as affirming

1 The White House, ‘Remarks by President Biden at the U.S.-EU Summit Expanded Plenary Session’, 15 June 2021.
2 European Commission, ‘A new EU-US agenda for global change’, JOIN(2020) 22 final, 2 December 2020.
3 EU-US Summit 2021 – Joint Statement: Towards a renewed Transatlantic partnership, 15 June 2021.

the joint ambition to further discuss the termination of the US' Section 232 tariffs on EU steel and aluminium. To face the COVID-19 crisis, both parties agreed to continue supporting the COVAX Facility, to reform the WHO and to create a Joint EU-US COVID Manufacturing and Supply Chain Taskforce. Concerning climate, the EU and the US committed to establishing both an EU-US High-Level Climate Action Group to promote cooperation on the implementation of the Paris Climate Agreement and a Transatlantic Green Technology Alliance. Moreover, the EU and the US agreed on a wide range of new proposals and initiatives on digital and tech cooperation aimed at countering China's rise as a digital superpower.

To address mounting competition from China as it sets its own standards in tech and digital trade, the EU decided to set up a high-level EU-US Trade and Technology Council (TTC). The TTC aims to deepen EU-US relations on trade and investment, and to avoid new technical barriers to trade by cooperating on key policies on technology, digital policy issues and supply chains. The TTC is expected to cover numerous issues: technology standards, regulating Artificial Intelligence (AI), climate and green tech, ICT security, data governance and technology platforms, export controls, investment screening, digital technologies and challenges in global trade. The TTC will initially comprise ten working groups.[4] Moreover, the EU and the US will set up a Joint Technology Competition Policy Dialogue that will focus on developing common approaches and strengthening transatlantic cooperation on competition policy and its enforcement in the peer economies' respective tech sectors.

The Summit was considered a "lovefest" between the leaders from the EU and the US, "with perhaps the only disagreement being who was happiest, Biden or the EU leaders, that Donald Trump is no longer president of the United States".[5] Despite this optimistic outlook, the areas of trade, digital, and climate present serious challenges for transatlantic cooperation. Several divergent views or outstanding disputes (most of them inherited from the Trump administration) will need to be addressed by the new TTC (the first meeting is scheduled on 29-30 September), or other joint bodies. Only then will the EU and the US be able to deliver on the new ambitious transatlantic agenda. This paper will therefore discuss the key challenges and opportunities for EU-US cooperation in the three inter-related areas of trade, digital and climate. For each of these areas, the outcome of the June EU-US Summit will be discussed and the challenges and opportunities for delivering on the renewed transatlantic agenda will be analysed. Moreover, this paper will present several policy recommendations, for the TTC or EU-US cooperation in general, on how to advance the transatlantic partnership forward.

4 These are: Technology Standards Cooperation, Climate and Clean Tech, Secure Supply Chains, ICTS Security and Competitiveness, Data Governance and Technology Platforms, Misuse of Technology Threatening Security & Human Rights, Export Controls Cooperation, Investment Screening Cooperation, Promoting SME Access to and Use of Digital Technologies and Global Trade Challenges.

5 Politico, 'EU swaps Trump's well-done steak (with ketchup) for Biden's prime ribeye', 15 June 2021.

## 2. TRADE: OLD HABITS DIE HARD

At first sight, the Summit's Joint Statement seems to deliver on the EU's trade-related priorities for transatlantic cooperation as outlined in the Joint Communication from 2 December and in the Commission's recent Trade Policy Review.[6] These two documents illustrate that the EU is eager to reboot transatlantic trade relations and to end the trade disputes triggered by the previous Trump administration. However, at the same time the EU is envisaging a realistic and careful approach for transatlantic trade cooperation, focussing on specific issues of shared interest. Instead of relaunching negotiations on a kind of a 'TTIP(-light)' agreement, the Commission identified key priorities for transatlantic trade cooperation: solving the bilateral trade disputes and irritants; cooperation on WTO reform; strengthening regulatory and standards cooperation by developing a joint EU-US tech agenda, including by setting up the TTC; and establishing a transatlantic green trade agenda (the trade-related digital and climate priorities are discussed further below).

The commitments enshrined in the Joint Statement echo these EU priorities for transatlantic trade cooperation. Moreover, they are very much in line with the trade priorities of the new Biden administration, set out in, for example, the USTR's 2021 Trade Policy Agenda.[7] Similar to the Commission's recent Trade Policy Review, the US' new 'Worker Centric Trade policy' focuses on restoring the post-COVID-19 economy and strategic partnerships and multilateralism (WTO); sustainable development and climate change; and strong trade enforcement, in particular by tackling China's trade-distortive trade practices. However, so far the Biden administration remains vague on how to implement most of these policy objectives.

In view of these corresponding trade agendas, the Joint Statement mentions that the EU and the US "intend to use trade to help fight climate change, protect the environment, promote workers' rights, expand resilient and sustainable supply chains, continue to cooperate in emerging technologies and create decent jobs". In addition, both parties aim to uphold and reform the rules-based multilateral trading system and to stand together to protect businesses and workers from unfair trade practices, "in particular those posed by non-market economies that are undermining the world trading system" – clearly (but indirectly) targeting China. The Summit kicked off with a promising start by reaching an agreement on the long-standing Boeing/Airbus dispute and the commitment to address the Section 232 Tariffs and to cooperate on WTO reform. Moreover, a wide range of initiatives in the area of trade and tech was announced, including the establishment of the TTC.

6 European Commission, 'Trade Policy Review – An Open, Sustainable and Assertive Trade Policy', COM(2021) 66, 18 February 2021.

7 USTR, '2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program', 1 March 2021.

However, although both sides are committed to this ambitious transatlantic trade agenda, lingering trade disputes – including those inherited from the Trump administration – have the potential to frustrate policy makers on both sides of the Atlantic and can jeopardise the implementation of this ambitious trade agenda. The Summit's Joint Statement remained carefully vague on these disputes, which mainly relate to the Boeing/Airbus dispute and the Section 232 tariffs on EU steel and aluminium.

## 2.1. The Boeing/Airbus dispute

During the EU-US Summit, EU Trade Commissioner Valdis Dombrovskis and the USTR Katherine Tai finally reached an agreement on the Airbus/Boeing dispute, the longest trade dispute in the history of the WTO that has been dragging on for 17 years. The agreement was heralded by Commission President von der Leyen as a token that "our transatlantic partnership is on its way to reaching cruising speed".[8] This announcement also came at challenging time for Airbus and Boeing, as the civil aircraft industry is wrestling with the reluctance of most airlines to take delivery of airplanes as a result of the COVID-19 crisis.

Prior to the Summit, the EU and the US had agreed on 5 March 2021 to suspend all retaliatory tariffs on EU and US exports imposed in the context of the WTO Airbus and Boeing disputes for a four-month period (until 10 July 2021).[9] The US had been authorised by the WTO to raise tariffs on $7.5 billion of EU exports to the US. Similarly, EU tariffs were suspended on some $4 billion worth of US exports into the EU. The suspension allowed both sides to focus on resolving this long-running dispute.[10]

During the Summit the EU and the US agreed to extend the suspension of the retaliatory tariffs for a period of five years. The parties also agreed to overcome longstanding differences in order to avoid future litigation and to preserve a level playing field between their aircraft manufacturers. In particular, the EU and the US agreed on an "Understanding on a cooperative framework for Large Civil Aircraft (LCA)".[11] In this agreement the two sides expressed their intention to establish a Working Group on Large Civil Aircraft to discuss disagreements and to develop "principles and appropriate actions". Moreover, the EU and the US agreed to provide financing to large

8 Statement by President von der Leyen at the joint press conference with President Michel following the EU-US Summit, 15 June 2021.

9 European Commission, 'EU and U.S. agree to suspend all tariffs linked to the Airbus and Boeing disputes', 5 March 2021.

10 Commission Implementing Regulation (EU) 2021/425 of 9 March 2021 suspending commercial policy measures concerning certain products from the United States of America imposed by Implementing Regulation (EU) 2020/1646 following the adjudication of a trade dispute under the Dispute Settlement Understanding of the World Trade Organization.

11 Understanding on a cooperative framework for Large Civil Aircraft (LCA), to consult at: Understanding on a cooperative framework for Large Civil Aircraft (europa.eu).

civil aircraft producers on market terms and to provide R&D funding through an open and transparent process. R&D funding as well as specific support to their own producers may not harm the other side. Finally, the and the US will collaborate on addressing non-market practices of third parties that may harm their respective large civil aircraft industries.

With regard to the last point, the agreement includes an annex on ‘Cooperation on Non-Market Economies’. Both the EU and the US declare in this document to intensify their cooperation to address “the challenges posed by non-market economies”. These provisions target obviously China and its state-run and subsidised manufacturer ‘Commercial Aircraft Corporation of China’ (COMAC). It is expected that COMAC will break in the next decade Boeing and Airbus’ duopoly in the civil aircraft market, leading to a triopoly in this sector. To team up against this new Chinese player, the EU and the US will share information regarding cybersecurity concerns and other areas relevant to non-market practices in the civil aircraft sector, cooperate on the screening of inward and outward investment in this sector, and jointly analyse non-market practices (e.g. sharing information about subsidies of third countries).

However, this deal masks the fact that the EU and the US still need to agree on what types of subsidies should be allowed in this sector. For example, the US is seeking more transparency about – and the adjustment of – the Airbus Member States’ (i.e. France, Germany and Spain) ‘Repayable Launch Investment scheme’. The EU on the other hand is still concerned about the US subsidy programmes to Boeing, including certain NASA and US Department of Defence procurement contracts and several tax concessions that support Boeing’s exports. The agreed aircraft deal does not specify what are acceptable subsidies in the civil aircraft sector but establishes only some general principles. Instead of tackling the root causes of the conflict and finding a more detailed agreement on a level playing field for their respective civil aircraft manufactures, the EU and US decided to kick the can 5 years down the road. EU leaders have stated that they are confident that an agreement can be reached on this in the new dedicated Working Group. However, the USTR was more cautious and declared after the Summit that “should EU support cross the red line, and U.S. producers are not able to compete fairly and on a level playing field, the United States retains the flexibility to reactivate the tariffs that are being suspended”.[12]

If the EU and the US cannot agree on what type of subsidies are allowed in this sector, it will be very difficult for them to challenge China’s subsidy programmes to its own civil aircraft champion. It will therefore also be crucial for the EU to engage with other (civil) aircraft producing countries in the Working Group – such as the UK, Brazil and India and Japan – to come to a broader agreement on subsidies.

[12] White House, ‘On-the-Record Press Call by United States Trade Representative Ambassador Katherine Tai’, 15 June 2021.

## 2.2. The Section 232 Tariffs

Whereas the EU and the US were able to suspend the application of the tariffs adopted in the context of the Boeing/Airbus dispute, the US' Section 232 tariffs on imported steel and aluminium from the EU remain in place. In the context of its 'America first' policies, on 1 June 2018 the Trump administration invoked the national security clause of the US Trade Act ('Section 232') to impose duties of 25% and 10% respectively on imports of steel and aluminium from the EU. The European Commission responded to these tariffs by adopting rebalancing measures that targeted a broad list of US products worth €2.8 billion (including for example Harley-Davidson motorcycles, American whiskey and motorboats). Moreover, the EU launched, together with several trade partners, legal proceedings against the US at the WTO[13] and imposed in February 2019 safeguard measures on imports of steel products.[14]

Since the beginning of the Biden administration, the Commission has been lobbying to terminate these Section 232 tariffs, arguing that the EU cannot be considered 'a national security threat' to the US, and that the EU and the US must cooperate instead to tackle the root causes of the problem: global steel excess capacity caused by China's trade-distortive practices. During a meeting on 17 May between Commissioner Dombrovskis, USTR Katherine Tai and US Secretary of Commerce Gina M. Raimondo, the EU and the US already agreed "to addresses steel and aluminium excess capacity and the deployment of effective solutions, including appropriate trade measures".[15] In particular, the EU and the US agreed to hold countries like China that support trade-distorting policies to account. To ensure "the most constructive environment for these joint efforts", the EU and the US agreed "to avoid changes on these issues that negatively affect bilateral trade" and to enter into discussions on the mutual resolution of concerns in this area. Following this meeting, the European Commission suspended the automatic increase of its rebalancing tariffs from 1 June to 30 November 2021 (a second tranche of rebalancing measures was scheduled to take effect on 1 June 2021, including doubling of retaliatory tariffs on a wide range of US products).[16] The first tranche of rebalancing measures (i.e. the tariffs adopted in June 2018) will remain in place. The Commission's decision to suspend this second tranche of rebalancing measures was criticised in the EU, including by MEP and INTA chair Bernd Lange who argued that this suspension was

13 WTO, 'United States – Certain Measures on Steel and Aluminium Products; Request for consultations by the European Union', WT/DS548/1, 1 June 2018.

14 Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ 2019, L 31/1).

15 Joint European Union – United States statement on addressing global steel and aluminium excess capacity, 17 May 2021.

16 Commission Implementing Regulation (EU) 2021/866 of 28 May 2021 suspending commercial policy measures concerning certain products originating in the United States of America imposed by Implementing Regulation (EU) 2018/886.

"too generous" as it lacks reciprocity and was not conditional to a tangible commitment from the US side.[17]

Despite the efforts from the Commission to have the US suspend its Section 232 tariffs, the Joint Statement merely states that the EU and the US "will engage in discussions to allow the resolution of existing differences on measures regarding steel and aluminium before the end of the year" and that they are committed "to ensure the long-term viability of our steel and aluminium industries, and to address excess capacity". A new Working Group has been established to hammer out an agreement in the coming months.

Commission President von der Leyen stated after the Summit that Brussels and Washington needed "a little bit more of time" to settle the Section 232 dispute, but that she is confident that a solution would be reached before the end of the year. It is indeed crucial that an agreement can be found before 1 December, when the postponed second tranche of EU rebalancing tariffs will kick in, potentially leading to an escalation of the dispute. However, it is unlikely that the Biden administration will swiftly terminate the Section 232 tariffs this year. Biden is carefully avoiding a conflict with America's steelworkers on this issue (in particular before the 2022 midterm elections) and is therefore reluctant to roll back these tariffs imposed by the Trump administration. The steel tariffs are popular in the powerful US steel industry and in the so-called mill states, such as Indiana, Ohio and Pennsylvania. Whereas the US steel-producing industry is lobbying the US government to keep Section 232 tariffs in place, the US steel-consuming industry is pushing the Biden administration for their removal.[18] The latter is facing severe consequences of the increased steel prices in the US (US domestic steel prices have increased 160% since August 2020 and are now 68% higher than the global market price).[19] This is mainly the result of the supply shutdowns during the coronavirus pandemic, coupled with high demand and the envisaged Infrastructure Bill which would require increased domestic steel production. Despite the fact that these Section 232 tariffs significantly harm the US manufacturing sector and the economy more broadly, while not resolving global steel and aluminium production overcapacity, it appears that they will not go away any time soon. The USTR even considered these tariffs as a "legitimate tool"[20] in trade policy and the Biden administration has even considered the imposition of new Section 232 tariffs.[21]

The Biden administration is insisting to first address to structural problem of global excess capacity driven largely by China's trade distortive practices before lifting its

17 See B. Lange's tweet on 31 May on this issue.
18 Reuters, 'Steel industry groups urge Biden to keep tariffs in place after EU truce', 19 May 2021.
19 European Commission, 'EU-Steel and Aluminium trade'.
20 Hearing to Consider the Nomination of Katherine C. Tai, of the District of Columbia, to be United States Trade Representative, with the rank of Ambassador Extraordinary and Plenipotentiary, 25 February 2021
21 I. Manak and S. Lincicome, 'The Biden Administration Flirts with Section 232. It Will Backfire', CATO Institute, 10 June 2021.

Section 232 tariffs. However, even though the EU and the US are working on rules to tackle China's trade distortive practices in the steel and aluminium sector (and other sectors) in the context of the trilaterals with Japan, the next WTO Ministerial conference (MC12) and the G7, it remains unlikely that Beijing will agree to specific commitments before 1 December when the EU's second tranche of countervailing duties will be applied.

During a virtual meeting on 29 July 2021 Commerce Secretary Gina Raimondo and EU Executive Vice President (and Trade Commissioner) Valdis Dombrovskis confirmed the readiness to find a solution to this dispute by 1 November, which would be one month before the EU would impose its second batch of retaliatory tariffs.[22]

Both sides agreed to move forward with some concrete solutions in line with key parameters, such as restoring historic trade flows and to have a WTO-compatible system. The EU wants the complete and mutual withdrawal of the tariffs, but Commission Vice-President Dombrovskis stated that the EU is "ready to look [at] other solutions, understanding the fact that the US also is interested in protecting its steel industry."[23] However, legal and political constraints limit the possibility to find a creative solution. For example, the EU already ruled out the option of 'voluntary export restraints' (VER) that would limit in quantitative terms exports to the US. Such a quota system is in principle incompatible with WTO law (for example, South Korea agreed in 2018 on such a VER with the US in order to get an exemption from the Section 232 tariffs). Another option would be that the US turns the Section 232 tariffs into a safeguard measure. However, to be WTO-compatible, such a measure would have to be temporary; be applied on a non-selective (MFN) basis, only be imposed when imports are found to cause or threaten serious injury to the US domestic steel industry; and be progressively liberalised while applied. As this would constrain the US to use tariffs as a political tool, safeguard measures will not be the preferred option for this issue in Washington. Significantly, the European Commission adopted in July 2018 safeguard measures on imports of certain steel products to protect the EU steel market against trade diversion, following the US Section 232 tariffs.[24] On 25 June 2021 the European Commission decided to prolonging for three additional years this safeguard measure. The Commission's implementing regulation links these safeguard measures with the Section 232 tariffs as it states that the Commission will initiate "immediately" a review of this measure if the US introduces significant changes to its 'Section 232' measure on steel.[25]

[22] Politico, 'U.S., EU eye steel tariff deal by Nov. 1', 2 August 2021.

[23] Financial Times, 'EU trade chief says US steel deal may fall short of removing all barriers', 25 July 2021.

[24] Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ 2019, L 31/1).

[25] Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021 amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products.

## 2.3. WTO reform

Finally, a key priority for the transatlantic trade agenda will be cooperation on WTO reform. Transatlantic cooperation is at the heart of the Commission's recent Communication on WTO reform, annexed to its Trade Policy Review.[26] The Commission intends to pursue reform of the WTO across all of its functions, in particular updating its 'rulebook' and restoring its Dispute Settlement Mechanism (DSM) and Appellate Body (AB). The Commission has outlined several proposals regarding the WTO's contribution to sustainable development; restoring a fully functioning WTO dispute settlement system with a reformed Appellate Body; improving the functioning of the WTO system; and modernising its rules in areas such digital trade, agriculture and competitive neutrality. In the run-up to the 12th Ministerial Conference (MC12), which will take place from 30 November to 3 December 2021 in Geneva, the EU aims to intensify its engagement with the US on all aspects of WTO reform to seek a maximum of convergence on their respective positions, including possible joint proposals on issues such as 'trade and health' and 'trade and climate'. The Commission targets three areas where work should intensify prior to MC12: trade and health, fisheries subsidies and the reform of the dispute settlement system.

Moreover, the Commission envisages addressing the concerns that the EU and the US share vis-à-vis China's trade-distortive practices, such as on subsidies and state-owned enterprises (SOEs). So far, neither the EU nor the US has managed to agree with China on ambitious commitments on subsidies in their respective bilateral agreements (i.e. the US-China Phase 1 agreement and the EU-China Comprehensive Agreement on Investment (CAI)).[27] Therefore, the Commission aims to intensify its engagement with the US, to launch negotiations on the development of rules on competitive neutrality, including modernised rules on industrial subsidies and SOEs. The Commission can build further on the work on industrial subsidies established in the trilateral format with Japan, broadening its scope and membership with like-minded countries.

The EU's priorities for WTO reform are very much in line with those of the US. However, it is unlikely that the EU and the US will already be able to reach an agreement on multilateral or plurilateral agreements before or during the MC12. Possible exceptions could be an agreement on fishery subsidies (WTO members edged closer to an agreement during a ministerial meeting on 15 July)[28] or Services Domestic Regulation (the US joined the services domestic regulation talks on 20 July 2021).[29]

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[26] European Commission, 'Annex on WTO Reform' – 'Trade Policy Review – An Open, Sustainable and Assertive Trade Policy', COM(2021) 66, 18 February 2021.

[27] On this issue, see G. Van der Loo, 'Lost in translation? The Comprehensive Agreement on Investment and EU-China trade relations', EPC and Egmont Institute, 3 July 2021.

[28] WTO, 'WTO members edge closer to fisheries subsidies agreement', 15 July 2021.

[29] WTO, 'US joins services domestic regulation talks, participants move closer to MC12 outcome', 20 July 2021.

However, in line with the (vague) commitments on WTO reform mentioned in the Summit's Joint Statement, the key objective of the Commission is to cooperate with the US to kickstart during the MC12 the negotiations on ambitious new WTO rules on competitive neutrality, 'trade and environment' and 'trade and health' and to make substantial progress on plurilateral initiatives such as on e-commerce and investment facilitation.

However, on the reform of the DSM and the AB, which is still in limbo after President Trump's blockade of appellate body appointments, the positions still diverge. The Commission recognises several of the US' concerns on the DSB and AB (e.g. the duration of the procedure and certain adjudicative approaches of the AB) and has addressed them in its WTO and AB reform proposals.[30] However, the Biden administration is yet to take a clear stance on this issue. Although the Biden administration is open to reforming the DSM (instead of torpedoing it like its predecessor), US officials have recently stated that "the United States does not believe it would be productive at this juncture to begin discussions on process [of DSM reform] before Members have an opportunity to engage with the US and others on key fundamental, substantive issues".[31] The European Commission on the other hand will want to see already substantial progress on this issue during the MC12. As noted by the EU's ambassador to the WTO: "the lack of any progress concerning one of the core functions of the WTO [i.e. the AB] would cast doubt on the credibility of the reform agenda and of the WTO itself".[32] Surprisingly, the EU could find a partner in China for its DSM and AB reform proposals, as China – a frequent user of the DSM – has already aligned itself with the Commissions' proposals on this issue and is – contrary to the US – a member of the WTO multi-party interim appeal arrangement.

[30] WTO (2018), Communication from the European Union to the General Council, 26 November 2018.
[31] Statement by the United States – Informal TNC and Heads of Delegation Meeting, 25 June 2021.
[32] EU Statement at the Trade Negotiations Committee/Heads of Delegation meeting, 25 June 2021

# 3. Climate: a transatlantic cordial understanding?

The EU-US Summit on 15 June 2021 had a special meaning for transatlantic climate cooperation, marking a new start to a relationship that was once the driving force behind the Paris Agreement, but had soured under the Trump administration. The Summit made the first practical steps towards renewed transatlantic climate cooperation under the Biden administration, by announcing an “EU-US High-Level Climate Action Group” and the “Transatlantic Green Technology Alliance”. The EU and the US also outlined a broad agenda on climate cooperation, including sustainable finance and addressing the risk of carbon leakage.

In recent months we had already seen the US returning as an international climate actor after its 4-year period of climate isolation under the Trump administration. On his first day in office, President Biden signed the reintroduction of the US into the Paris agreement. On April 2021, the US convened a “Leaders Summit on Climate”[33], bringing together leaders from across the globe to initiate climate action ahead of the UN Climate Change Conference in Glasgow (COP26). The US announced its target of climate neutrality by 2050, and a reduction in emissions by 50-52% by 2030.[34] In the meantime, newly appointed US Climate Envoy John Kerry toured the globe[35] to discuss climate action bilaterally. The US re-entered the climate diplomacy scene with a bang.

These efforts to relaunch US climate diplomacy did not immediately result in practical deliverables for EU-US cooperation on climate. Around the time of Biden’s election, the Commission and the HR had already made a number of concrete proposals for EU-US climate cooperation in its Communication for “A new transatlantic agenda for global change”[36]. The first visit of John Kerry to the EU in his new position as Climate Envoy in March 2021 was cordial and left positive impressions for the future of EU-US relations, but the common statement went no further than reiterating common climate objectives across the Atlantic.[37] As illustrated by Kerry’s deflecting replies[38] regarding French proposals for cooperation on sustainable finance and carbon pricing, the US clearly needed time to consider.

33 United States Department of State, Leaders Summit on Climate (Accessed 12 July 2021).
34 Below 2005 levels
35 Reuters, ‘Biden’s climate duo of Kerry and McCarthy puts U.S. back in global warming fight’, 16 April 2021.
36 European Commission, ‘A new EU-US agenda for global change’, JOIN(2020) 22 final, 2 December 2020.
37 European Commission, ‘Joint Statement on visit of John Kerry to the European Commission’, 9 March 2021.
38 Reuters, ‘France urges common U.S.-EU green finance rules after Kerry talks’, 10 March 2021.

## 3.1. A new start for the EU-US climate tandem

The Summit's Joint Statement demonstrates that the US is now ready to move forward. It announces two new instruments for bilateral cooperation: the "EU-US High-Level Climate Action Group" and the "Transatlantic Green Technology Alliance". The parallels between these announcements and the Commission's December transatlantic agenda are hard to ignore: the latter had called to "coordinate positions and lead efforts for ambitious global agreements" and to "form a transatlantic green tech alliance". Both proposals will now be institutionalised through the two working groups announced at the EU-US summit.

The *Climate Action Group* was announced as a reinforced cooperation for the "effective and strengthened implementation" of the Paris Agreement. The Group would serve as a platform between the EU and the US not only for discussions on moving forward on bilateral topics – which could include sustainable finance or carbon pricing (see below) – but also to coordinate a common approach on climate diplomacy. The Joint Statement lacks details on the composition of the Climate Action Group (remaining vague on whether it will only involve EU Commissioners and the US Climate Envoy or would involve a broader institutional cooperation), how often it would meet and which climate-related issues it is expected to cover. Despite the lack of detail, its establishment creates a more direct line between Brussels and Washington, signalling that we can expect a closer EU-US cooperation on climate diplomacy. The Group may be the platform for an effective EU-US tandem ahead of COP26.

The *Transatlantic Green Technology Alliance* similarly institutionalises cooperation on the development of technology required to achieve global climate ambitions. Like the Climate Action Group, the proposal currently lacks details on the institutional setup and the scope of the agenda (e.g. which technologies would be covered). The announcement of the TTC was more substantial, as it announced relevant working groups (including on climate and green tech). Although the creation of a separate alliance indicates a strong willingness to cooperate on green technology – a mutual interest on both sides of the Atlantic in light of green technology competition with China – the differences (if any) with the TTC's climate and green tech working group will have to be clarified. The Green Technology Alliance has the potential to evolve into a meaningful instrument, for example by promoting similar regulation and addressing existing regulatory discrepancies between the EU and US, as well as increasing public investment to increase the breakthrough of green technologies on both sides of the Atlantic.

The leaders of the EU and the US also discussed during the Summit the more contentious topics in the area of climate cooperation. The Joint Statement announced close coordination on "robust climate measures", including sustainable finance and addressing carbon leakage, two bones of contention between the two partners.

## 3.2. Opening the discussions on carbon pricing

Although the EU and US agreed to strengthen climate cooperation, they do not necessarily see eye to eye on the specific policy solutions. Whereas the US favours climate action through technology improvements, the EU prefers to add strong regulatory action and emission pricing into the mix. The common statement after the EU-US Summit reflects both of these approaches by acknowledging the need to discuss the carbon leakage and sustainable finance, while setting up common initiatives for technology cooperation. The opening move from the US is there, but the challenge will now be to move forward on all three fronts (technology, regulatory action and emissions pricing) with actual outcomes.

Carbon pricing at the border will be a particularly hot topic in the coming months. On 14 July, the European Commission proposed its Carbon Border Adjustment Mechanism (CBAM) as a tool to prevent carbon leakage – the relocation of industrial production because of carbon pricing or stricter emission regulation. The CBAM proposal would put a price on embedded emissions for products imported to the EU. Due to its impact on trade and the EU's share in the global market, the proposal has triggered an international debate on carbon pricing – a debate that is otherwise evolving notably slowly (see below).

The US reaction to CBAM was not outrightly negative, but can be qualified as reluctant, with contradictory messages ensuing. While Kerry notably called for the EU to postpone action until after COP26[39], the US announced that it was looking into its own carbon border adjustment.[40] In his remarks after the Summit, European Council President Charles Michel noted that carbon pricing in particular had been discussed.[41] The mention of the willingness to "address the risk of carbon leakage" in the Joint Statement is a gesture from the US on CBAM – and potentially also a way to raise the debate internally in the US, while the administration looks into the possibilities for setting up its own mechanism. However, developments in the US on a CBA have remained contradictory after the Summit: while the US Senate started a debate on CBA[42], John Kerry called it "premature" to implement unilateral CBAs.[43]

Although the US is not particularly impacted by the EU CBAM (if compared to the relative impact on other EU trade partners such as Russia, Turkey and Ukraine),[44] the US position towards the CBAM will not necessarily develop positively. This is in no small part due to US reluctance to engage with carbon pricing as a domestic tool, which can be considered a precondition for implementing its own CBA. The imple-

39 Financial Times, 'John Kerry warns EU against carbon border tax', 12 March 2021.
40 AP News, 'Kerry says US examining carbon border tax, sees risks', 18 May 2021.
41 European Council, 'Remarks by President Charles Michel following the EU-US summit in Brussels', 15 June 2021.
42 Euractiv, 'US lawmakers push carbon border tariff similar to EU's CBAM', 22 July 2021.
43 Time, 'Kerry Explains Why U.S. Isn't Doing a Border Carbon Tax – Yet', 26 July 2021.
44 M. Chepeliev, 'Possible Implications of the European Carbon Border Adjustment Mechanism for Ukraine and Other EU Trading Partners', Energy Research Letters (2021).

mentation of emissions trading within the US was already a contentious issue under the Obama administration, lacking bipartisan support.[45] There are reasons why such a proposal could gain some traction this time around. The EU Emissions Trading System (ETS) – which at the time was just getting started – may serve as an example of functioning carbon markets. Moreover, the more ambitious US climate targets may lead policymakers to explore new tools and the prospect of a US carbon border adjustment may alleviate some competitiveness concern. However, these new considerations may still prove insufficient for carbon pricing to secure the bipartisan support it needs. Without its own domestic system in place, the US will necessarily remain more reluctant to engage positively with EU action in carbon pricing.

In light of Article 6 of the Paris Agreement, which calls for an international carbon pricing system, the EU and US cannot afford to stall the discussion any longer. Progress on Article 6 has been notably slow: it is one of the key remaining gaps in the Paris rulebook, the 'manual' for the implementation of the Paris Agreement. It was one of the main challenges for COP25, which failed to find agreement around it, and will be the subject of intense discussions during the COP26. If the EU and US want to establish their common climate leadership, they should also be willing to engage in bilateral negotiations on carbon border adjustment ahead of COP26. While the US might be reluctant to cooperate on this issue at this point, at its inception the EU's ETS was also subject to significant debate and hesitancy, tough it is now a cornerstone of EU climate action. A similar dynamic could create a functioning ETS in the US, phasing-in carbon pricing with the objective of achieving a fully-fledged system in the long run.

The Climate Action Group announced during the Summit can be a platform to discuss cooperation and coordination on carbon pricing. Considering that the main opposition to carbon pricing in the US is not in the White House, it will be crucial that the Climate Action Group engage directly or indirectly with all relevant stakeholders in the EU and US. On the EU side, a successful bilateral Climate Action Group should not only involve Commission representatives, but also the European Parliament and Member States (for example through a dedicated Council working group).

The new transatlantic cooperation should team up on carbon pricing, a tool which has proven effective to reduce emissions in the EU. A serious discussion on how to set up a CBAM cooperation would simultaneously signal that the two biggest world economies are ready to move forward with carbon pricing under the Paris Agreement. Moreover, the revenues of such a mechanism could prove an effective way for both the EU and US to commit to fulfil their portion of the $100 billion pledge for international climate finance, where effective outcomes are lacking.[46]

[45] M. Levy, President-Elect Biden Supports a "Carbon Enforcement Mechanism" – Could that Mean a Price on Carbon?', Harvard Law School EELP, 14 November 2020.

[46] CARE, 'Hollow commitments: an analysis of developed countries' climate finance plans', June 2020.

## 3.3. Cooperation on multilateral climate engagement and green technology

The climate commitments enshrined in the Summit's Joint Statement are a positive sign for multilateral climate negotiations: the announcement of the Climate Action Group specifically mentions its objective to implement and strengthen the Paris Agreement, implying that the Group will also be a forum for – at the very least – determining a common approach for the COP26

However, both for the Climate Action Group and, in particular, in relation to the climate aspects of the TTC and the Green Tech Alliance, China is the elephant in the room. In September 2020, China surprised friend and foe alike by announcing that it would become carbon neutral by 2060, throwing itself into the climate race in spite of the absence of the US, which had withdrawn from the Paris Agreement. This announcement immediately projected that if the US were absent from climate action, China would step in as a leader: sometimes geopolitical positioning can also lead to positive commitments. Even though the Climate Action Group now marks the return of the EU-US tandem that was successful in achieving the Paris Agreement, the EU should make progress on climate cooperation with China, in addition to the EU-US tandem. This can be done on a trilateral basis (EU-US-China) or bilaterally (EU-China).

While far-reaching trilateral climate cooperation ahead of and during COP26 may be in the realm of possibility, tech cooperation is affected by geopolitical (security and competitiveness) concerns. The Transatlantic Green Technology Alliance can therefore not simply be extended to the cooperation with China or other third countries. However, international cooperation on green technology will remain crucial for a successful transition. The separate character of the 'Green Tech Alliance' from the broader range of topics of the TTC, therefore fills a gap in the governance of climate change: cooperation on green tech can, in the common interest, be different (and potentially more open and ambitious) from tech cooperation in other areas. Despite the quintessentially bilateral character of the Transatlantic Green Technology Alliance, similar discussions should therefore be held with third countries to connect bilaterally with the EU, to agree on a bespoke cooperation for green technology.

# 4. Digital cooperation: building an EU-US strategic digital agenda

Strengthening transatlantic cooperation on digital policy and tech was a key issue during the EU-US Summit on June 15. The European Commission had already set the tone for EU-US cooperation on digital matters in its December 2020 Communication on "A new transatlantic agenda for global change."[47] The agenda's key priorities for cooperation were framed under the broader need to support EU-US shared values of human rights and democratic values. In particular, these areas for technological cooperation focused on promoting a human-centric model for artificial intelligence, defining the responsibility of online platforms, boosting the free flow of data, resilience of digital supply chains, and strengthening cooperation between national digital antitrust enforcement authorities. The June EU-US Summit focused on the same digital issues but this time within the outline of the envisaged EU-US Trade and Technology Council (TTC). The TTC will advance the above-mentioned goals through the creation of working groups with agendas focused on cooperating on technology standards, competitiveness in the digital platform economy, data governance, and boosting digital adoption by Small and Medium Enterprises (SMEs).

## 4.1. Mapping the challenges for transatlantic cooperation on digital policies

While the Summit's Joint Statement illustrates that there is cautious optimism on both sides about what an improved transatlantic partnership on tech could accomplish, long-standing differences on regulating digital policymaking remain.

Firstly, designing effective governance rules for online content on social media platforms, marketplaces, and digital services is key.[48] The impact of disinformation was acutely felt in the EU during the European Parliament elections in 2019, as well as earlier during the Brexit referendum campaign in 2016. The European Commission's tabled Digital Services Act aims to target these issues by creating a governance framework that improves transparency about the algorithmic activity and business models of digital platforms, e-commerce, and other digital services. The lack of common rules and minimum standards for transparency online has undermined fair trade, consumer trust, and most crucially, democratic resilience online. In the US, the angry mob that stormed Capitol Hill on January 6 was responding to calls by Presi-

[47] European Commission, 'A new EU-US agenda for global change', JOIN(2020) 22 final, 2 December 2020.

[48] A. Aktoudianakis, 'Fostering Europe's Strategic Autonomy – Digital sovereignty for growth, rules and cooperation', European Policy Centre/Konrad-Adenauer-Stiftung, 18 December 2020. See also A. Aktoudianakis, 'Getting the Digital Services Act right: 3 recommendations for a thriving EU digital ecosystem', European Policy Centre, 23 July 2020.

dent Trump made on Twitter – policy analysts from the EU commented that this would have been avoided if the US had previously taken a stronger approach in addressing online harms. While the January 6 events promoted US policymakers to take a more active stance on these issues, there is currently no regulation that matches the remit of the European Commission's tabled Digital Services Act.

Secondly, boosting fair competitive practices in digital markets is now deemed a priority on both sides of the Atlantic. The European Commission has already tabled its proposal – the Digital Markets Act – which aims to reign in so-called 'gatekeeping' activity by big 'GAFAM' companies (Google, Apple, Facebook, Amazon, Microsoft), among others. Dominant online platforms and services harvest vast troves of data by monitoring user activity across their platforms. These data translate into crucial insights – also referred to as "data power"[49] – that potentially give these companies unfair advantages, while stifling innovation, competition, and growth for SMEs – and consumer choice too.[50] Regulating tech giants' data power is both about developing joint EU-US approaches to common governance issues in digital markets and about boosting growth, innovation, and investment plans for SMEs. However, as most of the big tech companies are based in the US, the EU's recently tabled Digital Markets and Digital Services Acts have caused uneasiness in the US because they seem to directly target US big tech.[51]

Thirdly, another point of contention relates to digital taxation. Differences between the US and the EU on the regulation of the digital economy came to the fore in 2019 in light of the debate on a digital services tax. Strongly advocated by France, this measure has been fiercely opposed by the US, whose tech giants would be affected by a European digital tax regime.[52] In June 2021 the USTR announced the conclusion of the one-year Section 301 investigations of the Digital Service Taxes (DSTs) previously adopted by several EU Member States (Austria, France, Hungary, Italy, Poland, Spain) and other countries.[53] According to the investigations, these tax schemes are designed to apply only to companies with very high revenues, effectively targeting primarily US companies.

The USTR therefore considered these digital tax schemes discriminatory. The outcome of the USTR investigations was to impose additional tariffs on certain goods from these countries, while suspending the tariffs for up to 180 days. This would

49 O. Lynskey, 'Grappling with 'Data Power': Normative Nudges from Data Protection and Privacy' (2019) 20(1) Theoretical Inquiries in Law 189, 207-209.

50 P. Marsden, and P. Rupprecht, 'Restoring Balance to Digital Competition – Sensible Rules, Effective Enforcement', Konrad-Adenauer-Stiftung (2020).

51 Although the US government views the DMA/DSA to be disruptive for US companies, it is interesting how the U.S. Congressional Research Service has recommended that the U.S. "should follow the spirit of other EU digital regulations, especially the Digital Services Act and the Digital Markets Act," see Fefer, Rachel F. (2021), "EU Digital Policy and International Trade", Congressional Research Service.

52 T. Köster, 'Digital tax – a chimera', Konrad-Adenauer-Stiftung, 2019.

53 USTR, 'USTR Announces, and Immediately Suspends, Tariffs in Section 301 Digital Services Taxes Investigations', 2 June 2021.

provide additional time to conclude negotiations on international tax regimes in the OECD and in the G20 processes. The Biden administration's preference is that the debate on digital tax be resolved as a part of a broader agreement on reforming the international tax regime. From the US' point of view, announcing tariffs for EU Member States and immediately suspending them could give the US important bargaining leverage in shaping the conclusions about digital tax at the global level and approaching EU Member States individually.

Regardless of how the US uses the current state of play to boost its leverage over the process, for example by fragmenting EU Member States' plans for digital taxation by working on a bilateral basis, the European Commission was set to present its own digital tax/'levy' proposal in July 2021. This planned digital tax was one of the Commission's planned 'own resources' to fund the EU's NextGenerationEU recovery fund. This has now been postponed by the European Commission, after the Biden administration expressed its concerns about this envisaged proposal, arguing that this EU proposal will threaten the work undertaken in the context of the OECD/G20 process. The European Commission confirmed on 12 July that it will prioritise finalising a global tax accord, before reassessing its digital levy in October 2021.[54]

Lastly, and probably the most pressing action point in the digital EU-US partnership, is the issue of EU-US data flows. The EU previously adopted (and eventually annulled) two consecutive frameworks that enabled the free flow of data between the two territories – while respecting the EU citizens' data privacy rights when their data was accessed in the US. However, both the Safe Harbour (2000) and Privacy Shield (2016) frameworks, were struck down by the European Court of Justice (ECJ) in its Schrems I (2015) and Schrems II (2020) judgments, expressing serious doubts "as to whether US law in fact ensures the adequate level of protection [of personal data] required under Article 45 of the General Data Protection Regulation."[55] While the ECJ invalidated the EU-US Privacy Shield, EU-US data flows continued using the temporary mechanism of EU Standard Contractual Clauses for the transfer of personal data to jurisdictions outside the EU/EEA.

A definitive framework for the transfer of EU data to the US is necessary, but the 2018 US Cloud Act has been an obstacle and the main reason for the latest ECJ ruling on July 16 2020. This piece of legislation allows US intelligence agencies to access data hosted by US firms, regardless of the jurisdiction in which the data server is physically located.[56] Considering the EU's strong commitment to addressing citizens' data protection and privacy concerns, this issue is of major importance for fostering democratic resilience and stable economic activity between the two partners – whose economic relationship involves at least $260 billion in digital services and

54 New York Times, 'E.U. Delays Digital Levy as Tax Talks Proceed', 16 July 2021.
55 Court of Justice of the European Union, C-311/18 – Facebook Ireland and Schrems, 16 July 2020
56 Senate of the United States (2018), "CLOUD Act", (accessed 10 December 2020).

trade annually[57] and accounts for nearly half of each other's 'digitally deliverable service exports'.[58]

To ensure the safe transmission and privacy of data transferred between the EU and third countries like the US, the European Commission grants third countries a 'decision on adequacy'. Such a decision depends largely on whether a third country's national security and intelligence gathering activities present vulnerabilities in relation to the handling of EU citizens' data.[59] While the European Commission can grant a decision on data adequacy to a third country, it is the ECJ that will have the final word. The ECJ can invalidate a decision on adequacy "even when the Commission has adopted a decision finding that a third country affords an adequate level of protection of personal data".[60] With the consecutive annulment the Safe Harbour (2000) and Privacy Shield (2016) data frameworks, the Commission is now under pressure to negotiate with the US a more robust framework that will definitively address the ECJ's expectations in the long term. Otherwise, half-baked solutions could soon be challenged before the ECJ on similar grounds, thus plunging EU-US data flows in uncertainty and supressing the potential investment, growth, and innovation by business and other stakeholders.

The EU and the US will need to make significant advances to overcome the current stalemate. In August 2020 the European Commission and the US Department of Commerce initiated discussions to evaluate the potential for an enhanced EU-US Privacy Shield framework to comply with the judgement of the Court in the Schrems II case. The European Commission has "intensified" the negotiations with the Biden administration in March 2021 in order to overcome this impasse.[61] The Summit's joint statement remained rather vague on this issue, mentioning only that the EU and the US must openly discuss diverging views on data governance and "intensify their cooperation at bilateral and multilateral level to promote regulatory convergence and facilitate free data flow with trust on the basis of high standards and safeguards".

While it is encouraging that the US is taking an increased interest in addressing the issue of data flows, from the EU's view it is crucial to have legally binding commitments from the US on limiting the reach of US national security services into EU citizens' private data. From the US' view, it is hard to translate political will into legally-binding commitments, because these would require new legislation and

57 Penny Pritzker and Andrus Ansip 'Making a Difference to the World's Digital Economy: The Transatlantic Partnership' (2016) International Trade Administration Blog.

58 Congressional Research Service, 'Digital Trade and U.S. Trade Policy' (2017), p. 20.

59 A. Aktoudianakis, 'Data adequacy post-Brexit: Avoiding disruptions in crossborder data flows', in Aktoudianakis, Andreas, Jannike Wachowiak and Fabian Zuleeg (2020), Towards an ambitious, broad, deep and flexible EU-UK partnership?, European Policy Centre.

60 Court of Justice of the European Union, Judgment in Case C-362/14, Maximillian Schrems v Data Protection Commissioner.

61 European Commission, 'Intensifying Negotiations on transatlantic Data Privacy Flows: A Joint Press Statement by European Commissioner for Justice Didier Reynders and U.S. Secretary of Commerce Gina Raimondo', 25 March 2021.

approval by the Congress. In addition, the final agreement must address the concerns of the ECJ, as such an agreement will most likely end up again before the Court to determine if the new agreement meets EU fundamental rights.

Discussions are still focused on the political dimension of such a solution and the negotiations have not moved into plans about legally binding guarantees. Legal guarantees from the US's side – and not mere political assurances – are deemed essential by the European Commission.[62] A data protection framework at the federal level in the US would harmonise data protection regulations adopted by certain States and would give the US greater legitimacy vis à vis peer economies which are keen on protecting personal data online. Nevertheless, the framing of the US political debate on data privacy as privacy versus national security does not help overcome the political stalemate. It is very hard to advance in one year under President Biden all the digital policies that the Trump administration ignored for four years. Coming up with a viable solution is now seen mostly as a US issue in the EU. However, addressing this issue by limiting the purview of national security services under the 2018 US Cloud Act could weaken Biden's domestic political leverage. Republican circles could criticise that Democrats are willing to limit national security and compromise US sovereignty.

These transatlantic digital challenges could hold the EU and the US back from engaging ambitiously in the framework of the envisaged TTC. This is why addressing these points of disagreement will be crucial for the TTC and to meeting the objectives agreed at the June 2021 EU-US Summit.

## 4.2. China and the strategic challenges it poses to EU-US digital cooperation

China is capable of developing top-rate emerging technologies and conditioning global technological development by nurturing adherence to a distinctly Chinese set of technology standards and protocols. Having boosted its influence in the UN and other standard-setting bodies, China capitalises on its leverage and actively promotes the interests of its own companies abroad.[63]

Chinese corporate elites work closely with Chinese government officials. This means that the broader national strategy in China for geopolitical competition in tech can also determine a specific approach for Chinese companies. The benefits of a government-directed standards strategy in international standard-setting forums is that it can set up global tech monopolies with significant profits. From 2011 to 2020, the number of Chinese secretariat positions in the International Organization for Stand-

62 Politico, 'Europe to US: Pass new laws if you want a data-transfer deal', 1 June 2021.
63 'China in International Standards Setting – USCBC Recommendations for Constructive Participation', February 2020.

ardization (ISO) and the International Electrotechnical Commission (IEC) have increased by 73 percent and 67 percent, respectively. Dominating these forums gradually gives an edge to government-directed standard-setting by Chinese officials and it challenges both the EU's and the US' digital strategies and stakeholders in the private and public sectors.[64]

Until now, the lack of coordination under the previous US administration and the EU's aim for 'digital sovereignty' suggested that the EU and the US have significant challenges to address in order to work together on tech standards and the governance of emerging technologies. However, these challenges seem small when compared to the shared threat that China poses to the EU and the US partners in these fields. Unless the EU and the US make compromises to jointly address outstanding issues in their relations, it is very likely that existing Chinese threats could intensify in the longer term, with significant consequences:

- The intensifying EU-US-China race to promote and establish global standards in emerging technologies could eventually divide the tech world into different industrial blocs. This could create a geopolitical tech divide in a sector that operates globally.
- The global race to condition the development of tech standards could soon undermine democratic accountability. If Chinese standards acquire global norm-setting power, this could change the balance in the EU-US narrative about promoting liberal democratic values and respect for human rights.
- The lack of an internal/external level playing field gives China and its companies a strong competitive advantage that cannot be matched by the EU and the US economies. As China can directly invest in its companies through state-backed funding, the EU and the US should counter that competitive advantage by engaging in joint strategic standard setting in tech.[65]

In this context, China poses existential challenges to the development, growth, and cooperation between the EU and the US and their tech agenda agreed during the Summit. This is where the envisaged EU-US TTC could soon prove vital to bridging existing differences between the transatlantic partners and building joint strategic agendas to counter Chinese influence and dominance in the tech sector.

## 4.3. The TTC

The establishment of the TTC was one of the key deliverables of the EU-US Summit. The TTC is not the first attempt to create a platform for transatlantic dialogue on trade-related issues. Previous undertakings were met with limited success (e.g. the

64 Ibid.

65 European Investment Bank (2019), EIB Investment Report 2019/2020: accelerating Europe's transformation, Luxembourg, p. 110.

Bush-era Transatlantic Economic Council in 2007). Past efforts to address fairly similar objectives now put pressure on transatlantic legislators, as the TTC must steer clear of previous stalemates.

For the TTC to come to fruition and meet expectations it is important that it first tackles the issues that are essential to fostering a stable transatlantic cooperation on trade and tech: online content governance, digital anti-trust, standard-setting in emerging technologies (especially in artificial intelligence), and, in particular, transatlantic data flows. Once these priorities have been addressed sufficiently, the TTC could deliver on its mandate more ambitiously by identifying common approaches to strengthening EU-US efforts to incorporate democratic norms into the digital pillar of the global economy and global tech governance.

The EU and the US are now in the process of setting up the TTC and its Working Groups (the first meeting is scheduled on 29-30 September 2021). Both the EU and the US still need to determine who will be involved in the different working groups (e.g. which agencies or administrations) and agree on their 'modus operandi' (e.g. working method, procedural rules and frequency of the meetings). From the EU's side, senior officials from DG Trade will play a key role in the different working groups. However, other DGs will also need to be involved (e.g. DG GROW, DG CLIMA, DG CONNECT and DG COMP).

The EU's Council could also aim for stronger involvement in the different TTC working groups. Most likely specific preparatory bodies of the Council will be involved in the TTC's work – or at least be briefed regularly by EU Commission officials (e.g. the Trade Policy Committee; the Working Party on Telecommunication and Information Society; and the Working Party on Competitiveness and Growth). The Council may also choose to set up a new ad-hoc Working Group to monitor the work of the TTC. Also the European Parliament is expected to advocate for its strong involvement in the workings of the TTC.[66] For example, the co-chairs of the Transatlantic Legislators' Dialogue called in a joint statement on 21 July to give the TTC "a significant parliamentary dimension". In any case, it is expected that senior Commission officials will report regularly to relevant Committees in the European Parliament (e.g. INTA or the European Parliament's Delegation for relations with the US) on the work of the TTC.[67]

While the TTC should help foster an EU-US dialogue and policy coordination on tech, it is unlikely to meet its goals effectively without expanding its base. In this regard, creating a trajectory for effective standard-setting in emerging technologies

[66] In a recent Opinion for a Resolution on the future of EU-US relations, the INTA Committee called "for the establishment of a sub-committee on Trade & Technology within the Transatlantic Legislators' Dialogue to complement the executive part of the Trade & Technology Council and to exercise the democratic control thereof" (Committee of International Trade, 2021/2038(INI), 17 June 2021).

[67] Co-Chairs Costa, Sikorski Issue Statement following Transatlantic Legislators' Dialogue meeting in Washington, D.C., 21 July 2021.

between the EU and the US will not be enough, unless the TTC brings in other like-minded nations and the private sector. In this spirit, the envisaged TTC should offer clarity about the role of third countries and how they could observe/participate in its workings. This is crucial because in order to truly deliver on its objectives, the TTC – above all else – should bring ambition back to the Western alliance. The term is often misunderstood, but the goal is worthwhile: the US's status as an honest broker of international agreements and an alliance-maker on digital policy and tech governance had been cast into doubt during the Trump presidency. Establishing a forum where like-minded nations can observe discussions could help the EU-US in closing ranks against digital competition by authoritarian regimes.

On the issue of including corporate actors, it will be important to facilitate exchanges with all relevant stakeholders in parallel with the TTC's working groups, especially on the issues of tech standard-setting. In cutting-edge industries such as information technology, most leading companies are multinationals that operate globally and are not bound by national interests. Multinationals like Sony, Siemens, Microsoft and Nokia will only benefit from clear and transparent global (instead of regional or national) standards. Between the EU, the US and like-minded nations, the need to be innovative in a dynamic environment does not align with championing a certain standard that one national government wants to impose. Nevertheless, it will be crucial that EU-US partners engage with their tech champions in order to provide broader strategic direction for standard-setting in alignment with their Western, liberal values. As Chinese standard-setting in tech has increased significantly over the past few years, it will be important that the TTC offer effective channels for coordinating with corporate actors on the development of standards that foster democratic tradition, growth and innovation.

In order to create room for synergies with corporate actors and strategic coordination with strategic partners vis-à-vis Chinese standard-setting efforts, EU and US officials should consider:

- Assigning digital envoys who will agree on joint EU-US positions on digital trade issues, such as setting limits on the types of emerging technologies that can be exported to authoritarian countries like China.
- Planning for the creation of a body of delegates from third countries that will observe the workings of the TTC. The delegates should be appointed by EU-US strategic allies. They should observe the developments in the workings of the Trade and Tech Council and raise issues for consideration by this body.
- Establishing a Committee on Technical Standards that will be part of the Trade and Tech Council. The Committee should produce regular reports detailing the state of China's (and other countries') standard-setting actions in multilateral standard-setting organisations.
- Developing a forum of industry experts that will meet to address the issues raised in the reports of the above envisioned Committee on Technical Standards. The EU

and the US and their strategic partners should be able to appoint representatives from their respective industrial sectors to the forum. The forum's chair could convene experts from different industrial sectors in order to develop common positions and to ensure coordination on tech standard-setting.

# 5. Conclusion

The EU-US Summit on 15 June 2021 marked the beginning of a renewed transatlantic partnership with the new Biden administration and set an ambitious joint agenda for EU-US cooperation in the post-pandemic era. There is no doubt that both the EU and the US are committed to strengthening the transatlantic partnership in the inter-related areas of trade, digital and climate and to lead on these issues at the international stage. However, as demonstrated in this paper, in order to deliver on the broad and ambitious agenda agreed during the Summit, the EU and the US will need to overcome within or outside the framework of the TTC several (long-standing) disputes and address their differing views on key issues.

With regard to trade, the Boeing/Airbus and the Section 232 disputes are looming over the ambitious transatlantic trade agenda. Whereas the EU and the US bought 5 years' time to settle the former, the Section 232 tariffs will need to be addressed before the end of the year in order to avoid a new tariff conflict that could jeopardise the entire transatlantic trade agenda. EU-US cooperation on WTO reform looks promising, however, it is unlikely that the EU and the US will be able to book already significant results in time for the WTO MC12 in November/December this year. Although the EU and the US should push for an agreement on several (plurilateral) negotiations (e.g. fishery subsidies and Services Domestic Regulation), it will be important that the EU and the US establish a detailed and realistic programme for WTO reform on other key issues such as 'trade and climate', 'trade and health', e-commerce, competitive neutrality, Special and Differential Treatment, and, in particular, DSM and AB reform. The Commission's proposal to agree at the WTO MC12 on a Ministerial Declaration on WTO reform that establishes a dedicated Working Group could be a good start, provided that it outlines a detailed programme for WTO reform and has the support from the US and other likeminded countries – and, if possible, China.

With regard to climate, the Summit made a first step towards relaunching transatlantic climate cooperation, which can form an effective pair in the preparation of COP26. However, the alliance will not see a simple return to the pre-Trump era. With the Green Deal, the EU has taken a step forward in charting its own, individual course for climate action, choosing a holistic approach to emissions reduction. This distinct approach favours regulation and pricing, rather than the US's focus on technology. It seems unlikely that the EU and US will see eye-to-eye on these topics, and the Summit's Joint Statement simply reflects the preferences on both sides of the Atlantic. The key priority in this area is to move forward with common policies, exploring transatlantic cooperation in carbon pricing (including carbon border adjustment, whether bilaterally or multilaterally). The two working groups on climate established at the Summit (the Climate Action Group and Green Technology

Alliance), once implemented, can be a vehicle for a common approach that benefits both the EU and US and allows them to engage positively with their partners.

Balancing the principles of data protection and data access through a joint EU-US data governance framework will be key to enabling the safe transmission and privacy of data transferred between the EU and the US. Reaching an agreement will depend largely on whether the US will offer legal guarantees to the EU about the handling of EU citizens data. If the EU and the US cannot find meaningful ways to reinstate transatlantic data-flows within an agreed framework, they will stand much lower chances of faring well in other crucial digital transatlantic priorities. EU-US partners have important reasons to ensure the algorithmic transparency of online content governance, fair competition in digital markets, digital taxation, and coordination on the development of tech standards that support democratic values and boost innovation in the EU and the US. The TTC offers a unique opportunity to the EU and the US to ensure that the development of digital policy and tech governance is not only innovative but also democratic. Currently, EU and US policy observers should worry less about how to prevent authoritarian digital services and devices becoming dominant in their respective internal markets. Rather, they should worry more about preventing authoritarian digital rule-setting becoming a norm beyond their borders, especially in the Global South where Chinese influence is growing stronger.

The EU and the US set up during the Summit numerous joint bodies to hammer out details, to address divergent views and outstanding disputes and to strengthen bilateral and multilateral cooperation (e.g. the TTC and its 10 Working Groups, the Climate Action Group, the Transatlantic Green Technology Alliance, the Working Groups on Large Civil Aircraft and on the Section 232 tariffs). In order to make these platforms successful, the EU and the US will need to prioritise their work and achieve some early results (e.g. on the Section 232 tariffs and data governance). The first TTC meeting on 29-30 September will be a litmus test for the renewed transatlantic partnership. In addition to the topics covered in this paper, the first TTC meeting is excepted to also discuss sensitive issues such as cooperation on investment screening and cooperation on supply chains, in particular on semiconductors). Moreover, it will be crucial that both the Council and the European Parliament are integrated in the work of these bodies (i.e. being duly informed and even being allowed to make proposals) as both institutions will in the end need to agree on the legislative proposals or international agreements that may result from these working groups. These working groups also need to promote bottom-up approaches and input from all stakeholders (e.g. big tech in the case of the digital working groups) and structurally engage with like-minded countries to advance the transatlantic agenda on the international stage.

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ISBN 979-10-96843-28-2