



The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
Washington, D.C. 20510

9 June 2022

Dear Speaker Pelosi and Leader Schumer,

The Trans-Atlantic Consumer Dialogue, consisting of 75 leading European and U.S.-based organizations representing the consumer interest, has been working to protect and build digital rights and safeguards for EU and U.S. citizens and consumers as well as to promote the recognition and improvement of consumer rights in the digital world. We have worked to ensure that policies and legislation on digital rights (e.g., the EU's General Data Protection Regulation, the EU-US Privacy Shield, e-Privacy Directive revision) are effectively implemented by the industry and understood by policymakers.

We write to you today to express grave concern over a provision buried in the Trade Title of the United States Innovation and Competition Act (USICA) that could be used by large U.S. tech corporations to undermine the European Union's superior regulatory framework to protect consumers online and hold these firms accountable.

While USICA is ostensibly a bill focused on competition with China, Section 71011 would extend a program known as "Special 301" to U.S. large technology firms and apply to the entire world, including Europe. This provision would newly require the Office of the U.S. Trade Representative (USTR) to monitor the anti-monopoly enforcement and digital governance policies of countries around the world and target for elimination pro-consumer, pro-worker, pro-privacy and pro-competition policies and proposals. Nations that maintain such policies would be subject to U.S. government investigations and sanctions.

Special 301 involves continual USTR monitoring of other nations' policies, publication of an annual list of countries that have laws that the firms do not like, and ultimately sanctions. The Special 301 process for intellectual property rules has been abused by large pharmaceutical corporations to undermine policies that foster access to medicine for decades.

While Section 71011 is framed as countering online censorship by China, the actual provisions apply to the whole world, and the concept of censorship is not defined in the legislation. Large technology firms often claim that they are communications platforms, not retail, transportation, hotel or other service providers and that they have been subject to censorship if they are blocked by a government as a penalty for failing to meet domestic regulatory standards that apply to domestic and foreign firms alike.

In Section 71011, "censorship" is equated to policies that deny "market access to digital service providers that are United States persons" or "disrupt digital trade." Such domestic policies, which clearly could include denial of operating authority for violations of domestic labor, consumer

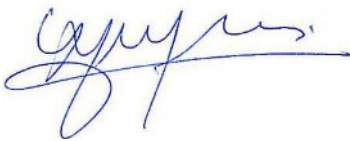
protection or other laws, are deemed to be illegal trade barriers subject to the Special 301 investigation and sanctions process.

We already know that U.S. large technology firms have the European Union's Digital Services Act, Digital Markets Act and General Data Protection and Regulation legislation in their crosshairs. Establishing Special 301 powers for these corporations would create yet another tool to attack these European policies and would also contradict the Biden administration's Executive Order on Promoting Competition in the American Economy as well as the considerable efforts in the U.S. Congress and U.S. agencies to rein in the growing power of these corporations and hold them accountable for abuses of workers, consumers, and smaller firms.

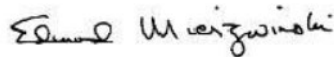
With consumers increasingly relying on the internet for work, shopping, and social life, it is more important than ever that the appropriate regulatory frameworks are in place to ensure their safety and privacy. Instead of promoting labor rights and consumer protections in the digital sphere, this provision could undermine the best public interest protections in Europe just as Congress and agencies are trying to catch up on digital governance. It is particularly inappropriate for the U.S. to create new tools for Big Tech to attack EU digital governance laws now, just as the U.S.-EU Trade and Technology Council (TTC) is getting off the ground. This provision flies in the face of the goals of the TTC as well as the informal dialogue on consumer protection.

We thus urge congressional leadership and the conference committee to ensure that this problematic provision is not included in any final legislation.

Sincerely,



**Monique Goyens**  
Director General, BEUC  
EU Co-Chair of TACD



**Edmund Mierzwinski**  
Senior Director, Consumer Programmes, U.S. PIRG  
US Co-Chair of TACD

**C/c:** The Honorable Maria Cantwell, Senate Commerce Science and House Science, Space, and Technology Transportation Committee; The Honorable Eddie Bernice Johnson, Chair, House Science, Space, and Technology Transportation Committee; The Honorable Roger Wicker, Ranking Member, Senate Commerce Science and House Science, Space, and Technology Transportation Committee; and The Honorable Frank Lucas, Ranking Member, House Science, Space, and Technology Transportation Committee