

## WHAT TACD EXPECTS FROM THE TRANSATLANTIC INITIATIVE ON SUSTAINABLE TRADE (TIST)

The Transatlantic Consumer Dialogue (TACD) is a coalition of more than 75 leading European and U.S.-based organisations representing the consumer interest. On a daily basis TACD members defend the right of consumers to make more sustainable choices, when it comes to food, textiles, electronic devices or financial services.

TACD welcomes the first step of the TIST, especially the idea to cooperate on regulatory approaches for greener goods and technologies. TACD insists that any discussions of regulatory approaches and development of new standards center the consumer perspective and must aim to enhance the levels of consumer protection, not reduce them to the lowest common denominator. Our recommendations respond to the questions asked by the European Commission in its stakeholder consultation of September 2023, while providing a broader overview of what the transatlantic consumer movement expects from the TIST.

### 1. MAKE THE SUSTAINABLE CHOICE THE EASY CHOICE FOR CONSUMERS

The TIST's goal of promoting a more resilient and environmentally sustainable transatlantic marketplace that will help accelerate the green transition is laudable, particularly for the benefit of consumers on both sides of the Atlantic. The transatlantic marketplace is a key forum for accelerating the transition, and the TIST can promote this by facilitating trade in products that provide consumers with more sustainable choices, such as electric vehicles, heat pumps, and smart thermostats and other smart appliances (alongside strict cybersecurity and data protection/privacy standards for connected products).

The TIST workplan outlines an encouraging path to facilitating the green transition, and TACD members offer extensive input on two of the specific regulatory issues facing consumers that the TIST has highlighted: product repair and green claims/greenwashing.

**RIGHT TO REPAIR** To benefit consumers and reduce wasteful practices, TACD has long called for transatlantic cooperation on the right to repair, based on improving product design, consumer information, repair services, and guarantee rights. The recognition of this issue in the TIST workplan is therefore warmly welcomed. TACD calls on the TIST to explore new legal requirements that will empower consumers to repair their products or have their products repaired more easily.

To that end, TACD recommends the TIST incorporate input from the U.S.-EU informal consumer dialogue. Indeed, in this dialogue led by the FTC, and DG JUST, experts and stakeholders already exchanged best practices related to the right to repair. To facilitate trade in repaired products across the Atlantic, TACD recommends to:

- Introduce mandatory lifespan information on products;
- Introduce mandatory repairability scores on products;

- Establish legal guarantees in relation to product lifespan in the US and extend the EU legal guarantees to reflect product lifespan;
- Ensure producers will contribute to the costs of repair either directly or through a repair fund;
- Establish horizontal obligations on reparability across product groups (anchored in European eco-design);
- Establish horizontal obligations across product groups to provide spare parts for a longer period (anchored in European eco-design);
- Exclude secrecy guarantees for source code and algorithms from trade and commercial agreements so that governments can require producers to provide consumers with operating system updates, repair instructions, firmware updates, and access to updated diagnostic tools to repair their products;
- Cooperate to facilitate trade of spare parts; and
- Introduce prohibitions on restricting competition for repair services.

**GREEN CLAIMS** A consumer landscape in which almost all products are advertised as having green features makes it impossible for consumers to differentiate between less sustainable and more sustainable products. For example, the definition of “recyclable” should be simple, but [one study](#) found that “recycling” is defined in 18 different ways across the U.S. Another example is the wide-spread “carbon-neutral” claims that cannot be substantiated scientifically and which are often used by the most environmentally harmful industries, e.g. [air transport](#) or [meat and dairy products](#), while the carbon offsetting schemes being used to justify said claims are unreliable and often disingenuous. This harms not only consumers, but also the environment. According to a [2021 EU Commission study](#), 56% of EU consumers considered at least once the environmental impact of their purchase, and 67% of consumers said they bought products that are better for the environment even if they cost more. Unfortunately, the proliferation of such claims on the market and a high percentage of them being unsubstantiated and misleading leads to the situation where the majority (61%) of consumers find it difficult to understand which products are truly more environmentally friendly. To prevent the spread of greenwashing practices and misleading information, TACD offers the following foundational recommendations:

- Complete ban of “climate neutral” and similar claims;
- Minimum criteria for substantiation of “green” claims;
- Obligation for green claims to be based on a solid scientific methodology;
- Mandatory, independent third-party certification of claims; and
- Obligation for companies to make the information on which they base their claims publicly available.

**BORDER INSPECTION AND CUSTOMS PROCEDURES** Further, governments must have the appropriate tools to enforce domestic policies at their borders. Enforcement at customs, including through cooperation on lowering de minimis levels<sup>1</sup> (particularly for the U.S.), can ensure that goods purchased online across borders meet environmental and consumer safety standards. As the EU is reforming its customs union, TACD recommends regulators to exchange information on best practices in customs related to sustainability. A concrete deliverable of the TIST could be to systematically exchange customs

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<sup>1</sup> De minimis refers to **the minimum value of the goods below which no duties and taxes are collected by Customs.**

information related to products made from forced labor and textiles not complying with domestic requirements such as due diligence and chemicals.

**SUSTAINABILITY REPORTING** Creating a "sustainable business environment for an integrated transatlantic marketplace" is one of four areas of cooperation in the TIST. Mandatory and standardized sustainability reporting rules for listed and/or large companies are indispensable to creating such an environment, although the Joint Statement omits them. Fortunately, however, a great deal of work has been done in this area in the last couple of years by the EU, the U.S. Securities and Exchange Commission (SEC), and the International Sustainability Standards Board (ISSB), the sustainability reporting arm of the International Financial Reporting Standards Foundation. From a consumer perspective, the European Sustainability Reporting Standards (ESRS), which will become applicable as of 1st January 2024, are the most advanced because they cover the entire range of sustainability topics (including circular economy), unlike the ISSB standards, and the disclosure rules suggested by the SEC, which, for now, focus on climate change. Moreover, ESRS are based on the "double materiality" principle. Unlike the ISSB, they require sustainability-related disclosures not only when a sustainability matter has the potential to affect a company's financial performance, but also when there are negative impacts on people or the environment, regardless of whether financial effects can also be expected.

It is commonly understood that the ISSB standards will become a 'global baseline' for sustainability reporting, but sustainability-conscious consumers want truly comprehensive sustainability reports, and they care about people and planet. Therefore, we call upon the participants of the TIST to explore ways of ensuring that companies that trade on the transatlantic marketplace are fully transparent about their sustainability performance. This should be added to Step 1 of the TIST work program.

## 2. TRADE RULES SHOULD NOT CREATE BARRIERS TO THE FIGHT AGAINST CLIMATE CHANGE

Too often, trade rules are invoked to influence domestic policy making. Lately, trade policy has become a front line for great power competition and geo-political tensions in reaction to countries like China. In many cases, threats of trade disputes target initiatives designed to improve consumer protection and fight climate change. If we want to develop a strong transatlantic cooperation, this pattern must come to an end. TACD calls on the U.S. and EU to stop threatening each other and third countries with trade retaliation or trade disputes whenever there are concerns over domestic regulations. TACD expects in the TTC5 ministerial statement a clear political commitment from the EU and the U.S. to support one another's bold climate policies and to refrain from launching trade challenges against climate policies.

Important public interest policies should not be weakened, undermined or chilled on the grounds that they might violate overreaching trade and investment rules. Tools currently used to defend public interest policies against trade agreement constraints, such as the general exceptions of GATT and the GATS, have proven direly ineffective. In fact, only two out of 48 attempts to defend domestic policies from WTO challenges have been successful. And despite the limitations of these exceptions, they have been copied and pasted into numerous trade deals. TACD recommends using the opportunity of the TIST to explore other means to avoid conflicts between WTO rules and climate policies, including the U.S. and EU agreeing to adopt a climate peace clause between them. This would create a ceasefire in U.S.-EU trade challenges to climate policies while needed changes to the core WTO rules can be discussed and agreed. Trade and sustainability can go hand in hand, but only if the WTO rulebook is updated and trade attacks are suspended.

The TIST workplan acknowledges the need to "deepen ongoing efforts to diversify the EU and U.S. supply of rare earth magnets as a way to avoid reliance on geographically concentrated primary production and

processing.” Any processes to negotiate trade in critical minerals must be transparent and not bypass opportunities for public comment on proposals and legislative checks and balances, i.e., must not follow the model of the U.S.-Japan Critical Minerals Agreement.

TACD members urge caution on the approach to trade in critical minerals, both with regard to EU-U.S. negotiations and all bilateral deals the EU and U.S. may sign with third countries. We affirm the need for a sustainable strategy to manage the scarce resources we have in critical minerals, without contributing to exploitation of vulnerable workers, communities, and economies, adding to environmental degradation, undermining development opportunities of countries in the Global South or ignoring the imperative to have resilient supply chains, meaning both domestic production and diverse import sources. The TIST should ensure that any Critical Minerals Agreement signed between the U.S. and EU contain binding, enforceable commitments on environmental and labor standards with clear rules of origin to ensure that supply chain diversification goals are met.

### 3. TRANSLATE THE PRINCIPLES OF THE TIST INTO EU AND US TRADE AND INVESTMENT POLICIES

The TIST provides an opportunity for the EU and the U.S. to reflect on the coherence between their climate and trade policies. For instance, TACD EU members have flagged that the recent trade agreement between the EU and New Zealand promotes exports of meat and dairy products, while at the same time the EU Green Deal foresees a reduction of consumption of these products for environmental reasons. Trade policies should not contradict the efforts planned in climate policies. The EU and the U.S. should also discuss this beyond the TIST, notably in the Coalition of Trade Ministers on Climate.

The TIST should also examine how we respectively design our trade agreements with third countries. Historically, environmental protections have been siloed into side agreements to trade pacts, and more recently into their own chapters within pacts. Negotiators must think of sustainability beyond Labour & Environment chapters or Trade and Sustainable Development chapters. That means sustainability must underpin every chapter’s terms and be the basis for trade in every sector. To be effective, entire agreements must reflect climate and sustainability goals without conflicting agendas, such as those now included in terms focused on market access, “technical barriers to trade” and sanitary and phytosanitary matters.

To ensure a clean energy transition that is both just and equitable, the TIST should include mutual commitments to incorporate these principles into all U.S. and EU trade frameworks. All trade frameworks must include strong, binding, environmental rules backed by meaningful enforcement mechanisms and penalties that require compliance with the United Nations Sustainable Development Goals (SDGs) in addition to the Paris Agreement and other Multilateral Environmental Agreements and International Labour Organization conventions. As partners and leaders, the EU and U.S. can commit to holding each other accountable as we drive forward the green transition.

Moreover, TACD calls on the TIST to advance efforts to remove investor-state dispute settlement (ISDS) mechanisms from existing agreements that the U.S. and EU have with third countries. Indeed, ISDS has been increasingly used by corporations to thwart climate action. The United States has taken some positive steps away from the ISDS regime in existing pacts, and the Biden administration had pledged not to include ISDS in any future agreements. Several EU countries are withdrawing from the Energy Charter Treaty, and the EU is now envisaging an EU-wide exit. Additionally, in 2020 most EU Members chose to terminate their intra-EU agreements with ISDS. These encouraging developments should continue and be promoted through the TIST.

#### 4. TRANSPARENCY AND ENGAGEMENT

During the TTC stakeholder engagement session in Paris in May of 2022, TACD U.S. Co-chair Ed Mierzwinski highlighted a set of recommendations for the EU-U.S. cooperation agenda that TACD submitted the previous year. The need for a transparent process, with meaningful engagement opportunities for public interest groups, was the very first recommendation on this agenda.

Again at the College Park meeting of the TTC on 5 December 2022, TACD EU Co-chair Monique Goyens spoke on behalf of TACD and highlighted the need for “democratic scrutiny,” encouraging negotiators to make the process more transparent. Goyens offered the specific recommendation of a joint EU-U.S. website to upload negotiating documents for public analysis and commentary. Secretary of Commerce Gina Raimondo affirmed that the TTC ought to take up TACD’s suggestion to publish agendas online. However, since this exchange last year, there has not been any improvement regarding the transparency of documents related to the TTC. Further, TACD wrote to U.S. and EU TTC negotiators ahead of the May summit in Sweden recalling this exchange. TACD has not received any acknowledgement of receipt of this letter from the U.S. Department of Commerce, let alone witnessed good-faith efforts to negotiate in a transparent manner.

The European Ombudsman has identified potential deficiencies with information made available by the Commission about the TTC, and as of 13 July 2023, launched an investigation into how the European Commission ensures the transparency of the TTC. We applaud the initiative of the Ombudsman and urge the U.S. to follow suit.

The Ombudsman’s investigation includes questions for the Commission concerning the transparency and possibility for public scrutiny of the TTC, stakeholder engagement in the context of the TTC, and the transparency of interactions with interest representatives.

Such consultation is crucial to the democratic process. As such, TACD urges an on-the-record public process that includes:

- Publication of Working Group meeting agendas and minutes;
- Publication of the names and contact information for U.S. and EU representatives and other participants;
- Publication of regular progress reports of the Working Groups, followed by debriefs for civil society. (The EU conducted such a session on 12 May for EU stakeholders; the U.S. ought to follow suit.);
- Inclusion of consumer representatives on advisory committees, which to date have (with limited exceptions) represented businesses and industry associations to the exclusion of civil society; and
- Regular consultation with civil society regarding:
  - The drafting of important documents, instead of being made aware during the launch, as was the case with the AI Roadmap and voluntary code of conduct on AI;
  - What type of cooperation dialogues would benefit consumers and society; and
  - Possible creation of a joint platform addressing transparency and meaningful engagement. This platform should cover all the cooperation dialogues and channels established, including health, sustainability, competition, agriculture, digital, and potentially consumer issues.

We support the goal of realizing a new model for U.S.-EU cooperation that prioritizes the interests of consumers. A transparent and participatory process is critical to ensuring that the U.S. and EU are leaders in the green transition.

The United States and the European Union have taken the important first step in acknowledging the role of trade policy in driving the transition toward a green economy and building on the cooperation already ongoing under the TTC. For the sake of consumers and our planet, the more sustainable choice must always be made the easy choice, and the TIST has the opportunity to facilitate this transition.

A true transatlantic collaboration to address catastrophic climate change, and related global social, health, and biodiversity crises must protect consumers, not consumerism.