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The New Geo-Economic Environment and the EU’s Capacity to Act

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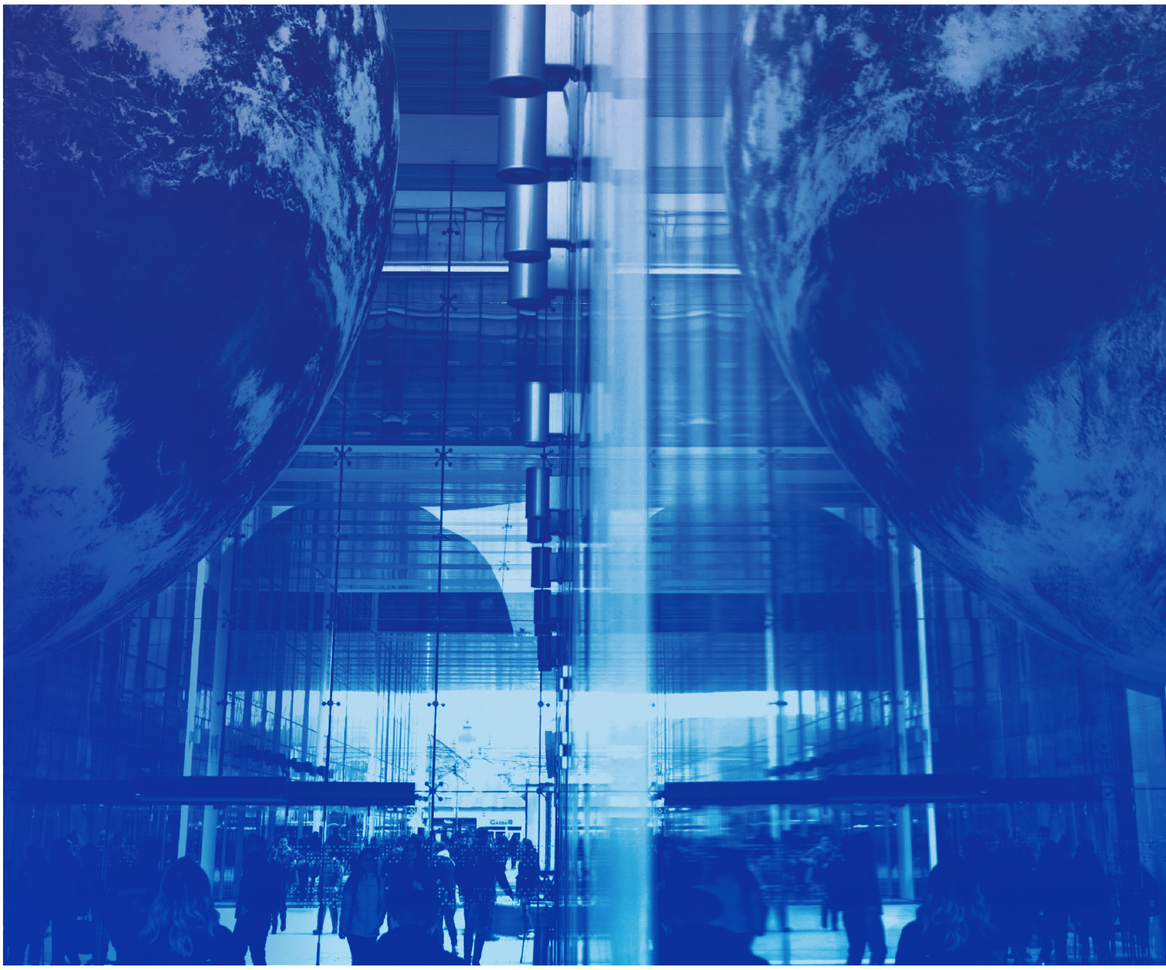

IDEENWERKSTATT DEUTSCHE AUSSENPOLITIK

This monitoring study was written within the framework of the project "Ideenwerkstatt Deutsche Außenpolitik," a process of reflection on the capacity to act in German and European foreign policy, the underlying conditions for which are undergoing a fundamental transformation. In addition to the much-discussed changes to the international system and increasing great power competition between the United States and China, technological developments, new security threats, the consequences of climate change, and socioeconomic upheavals are just some of the developments that will determine the future tasks and international impact of German foreign policy. Furthermore, the COVID-19 pandemic poses numerous political, economic, and societal risks and accelerates many existing trends in the multilateral system with immediate consequences for Germany and the EU. In light of these challenges, the project "Ideenwerkstatt Deutsche Außenpolitik" aims to put German foreign policy to the test – through evidence-based analyses and interdisciplinary strategy discussions – and contribute to strengthening Germany's and the EU's capacity to act in foreign policy.

The project focuses on four thematic areas that are highly relevant for the future ability of German and European foreign policy to act: **geo-economics, migration, security and defense, and technology.** As part of the project's overall strategic and analytical effort, DGAP will produce a monitoring study on each of these areas – four in total, including this one. All four studies analyze Europe's capacity to act and provide recommendations to EU and German policy-makers on how to strengthen this capacity. In order to provide a nuanced and yet comprehensive picture, they take the different stages of the policy cycle into account: (1) problem definition, (2) agenda-setting, (3) policy formulation, (4) implementation, and (5) impact assessment. In gauging Europe's capacity to act, the studies refer back to a series of scenario workshops on the four thematic areas that were held in late 2020 and in which DGAP and external experts created status quo, best-case, and worst-case scenarios for how the future might look in 2030. Taking the respective scenarios into account, the monitoring studies analyze to what extent the EU and Germany are prepared for the worst case, are aware of the implications of the status quo, and move toward achieving the best case. The report that distills the results of the scenario workshops and all four monitoring studies can be found here as soon as they are published: https://dgap.org/en/ideenwerkstatt-aussenpolitik.

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EXECUTIVE SUMMARY

The United States and China are increasingly using their economies to shape international relations, as well as regional and global regulatory structures. Currently, the EU is in the process of developing sufficient measures and policies to react to – as well as influence – these strategies, thus addressing increasing concerns about being taken advantage of by China (and possibly the United States). The EU needs to use its trade policy actively to achieve strategic goals and to defend its interests and values, which are under pressure. In order to achieve the best-case scenario, which focuses on effective multilateral cooperation within the framework of the WTO, the EU needs the support of the United States and China in the long run, and this means finding ways to influence and team up with them, despite the present competitive international environment.

There has been a realization by the EU that it needs to reinforce its own trade toolbox to restore an economic level playing field with China and to address Beijing's trade-distorting measures. The EU has thus acknowledged that an overhaul of its trade measures is necessary to adapt to a newly geo-economic trading environment. The arrival of the Biden administration also shows the need to think about how to re-engage with old partners, and to work more closely together with the United States to induce reforms in China; but the EU also needs to diversify and look for additional strategic partners.

Trade has become one of the most important and stable pillars of the strategic relationship between the EU and third countries. Due to the well-established structure of EU trade policy, the EU is a very active agenda-setter regarding the activities of its member states across a growing range of related policy fields. Due to the exclusive EU competence over trade, the European Commission has also been able to quickly react to crises. Nevertheless, European unity will remain key if the EU wants to continue its successful and strategic trade policy in the future.

On a bilateral level, the EU is increasing its resilience with regard to the great power competition and exporting its norms and values through the successful negotiation of various bilateral and regional trade agreements. The EU has an almost global net of different kinds of trade agreements in place. In the future, the EU also wants to strengthen the connection and enforcement between trade and climate issues. On a multilateral level, the EU is highly dependent on the transparent and rules-based trading system of the WTO. But the organization itself is experiencing its deepest crisis since its creation in 1995 with all four pillars of the WTO deadlocked to a greater or lesser degree.

The relevant challenges and opportunities in trade policy are certainly on Berlin's radar. Germany has realized that Europe needs to adapt to the changes in the new geo-economic trading environment because great power competition has negative consequences for EU/German open trade and investment. Germany has a strong influence on European trade policy and generally a positive impact on the EU's capacity to act strategically in trade. However, the strong push for and implementation of German interests might increase EU divisiveness and hamper EU unity in the long run.

In general, European trade policy is thus capable to at least act in all scenarios and on all levels. But continuous reform efforts are necessary to keep this status. It is critical to unblock the WTO, and here, EU and US leadership is necessary. As such, the EU is using its capacity to act in trade in a constructive way, to make Europe more resilient internally against geo-economic pressure.

The Challenges of a New Geo-Economic Environment

WHAT IS GEO-ECONOMICS?

We use the familiar definition of geo-economics: How trade, investment, technology, finance, and/or energy are employed to achieve strategic goals in another country or region. **But we also pay attention to a further, multilateral dimension:** How a state can open the path to pursue strategic interests through the reform and organization of the trade and monetary system, the advancement of certain financial regulations, the access to critical technology or the sharing of data, and the pursuit of climate and ecological policies. These diplomatic avenues, and the strategic use of international organizations like the World Trade Organization (WTO), are often neglected in analyses.

Trade, investment, finance, energy, tech, and climate; geo-economics covers a wide range of policy fields (both in terms of the tools they provide for the pursuit of strategic ends and the regulatory forums in which these play out). In this study, we will focus on trade, the core of the EU's market power, and analyze the EU's capacity to act strategically in the respective related fields.

The EU finds itself in a new geo-economic environment. The United States and China are increasingly using their economies to shape international relations, as well as regional and global regulatory structures. The EU is a market power and it has always used trade for strategic purposes. But, unlike China and the United States, it remains committed to acting through multilateral organizations and enhanced global cooperation whenever possible. At this point in time, it is in the process of developing sufficient measures and policies to react to – as well as influence – these strategies, addressing increasing concerns about being taken advantage of by China (and possibly the United States).

The EU is aware of these challenges. A series of high-profile developments inside Europe itself alerted not only EU governments, but also societies to the issue. It is China in particular, and a series of Chinese investments in prestigious or strategically sensitive industries, which have attracted public attention: the acquisition of the German robot manufacturer KUKA in 2016; the 2019 purchase by the state-backed Beijing Automotive Group of a significant stake in Daimler; and of course, the 2009 investment by China's Cosco Pacific in the Greek port of Piraeus at the zenith of the eurozone crisis. All these were particularly controversial and served as wake-up calls for Europe. They have also led to new thinking about how the EU should position itself geo-economically to remain a key global actor.

A distinctive geo-economic approach emerged under the Trump administration: with trade and investment becoming a prime currency of international power, the United States used its large market as a lever to push for American strategic interests in a variety of policy areas, most notably trade, investment, technology, and energy. The weapons of choice for President Trump were tariffs, which he imposed to unilaterally open markets, to obtain concessions on tariff reductions and increase exports from the United States (managed trade), and to change behavior of major trading partners, including the EU. This new approach was embodied in the "America First" strategy which, as the name implied, took a zero-sum attitude toward international economic and trade relations in which America could gain only if others lost out. Examples include the emphasis on strong favorable investment provisions for the US in the renegotiated United States-Mexico-Canada Agreement (USMCA) – at the expanse of the other two partners; and a global focus on a positive US trade balance with all trading partners, which led to managed trade provisions and a disruption of global value chains.

China has been using geo-economics as the central anchor of its geopolitical approach for some time now – and certainly since 2013, the start of the Belt and Road Initiative (BRI). Beijing's geo-economic approach involves tying other countries into its overarching strategic goals through commodity agreements and major infrastructure projects, thereby creating economic dependencies. With the BRI, Beijing is attempting to open new markets, create coercive economic dependencies, and enforce Chinese norms and technological standards across Eurasia. Ultimately, these economic measures serve the goal of developing China's political power over the countries and regions in question.

Inevitably, this has led to rivalries between the two major powers. China is a rising economic power, which threatens US dominance in a number of key areas. In addition, it pursues an expansionary trade and investment policy while keeping its own market relatively closed. The Trump administration started a tariff war based on national trade laws, combined with a tightened investment screening process regarding Chinese foreign direct investment (FDI). The ultimate goal was to decouple the two economies. This rivalry has in turn taken its toll on the work and relevance of international organizations, as well as informal groupings of powerful economies such as the G7 or G20. The more the two major players rely on their economic (as well as their technological and military) strength in order to pursue their interests, the less relevant multilateral organizations are. The latter seek to establish global rules and protect weaker countries. The question about whether we are moving from a multilateral, rules-based, and cooperative order to a conflictual and competitive one is becoming ever more pressing. And that matters for the EU, which has always seen its strategic ends best served by the former.

Since the 1950s, the European Union has – for the most part – placed its hopes in a rules-based global economic order and trusted multilateral institutions for the resolution of tensions between states, small and large. It is now facing a fundamental challenge to this strategy. The EU needs to use its trade policy actively to achieve strategic goals and to defend its interests and values, and that means: adapting the trade toolbox (e.g., antidumping procedures and procurement) to achieve reciprocity in an unlevel playing field; using bilateral and regional free trade agreements to shape globalization by exporting European standards, norms, and values (on human rights, digital standards, labor rights, and environmental standards); and offering alternative agreements to regions that are under pressure, particularly from China. The multilateral dimension remains the vital forum for all these dimensions since it regulates trade on a global scale, providing transparent and non-discriminatory rules that apply to all (164) WTO member states. But the WTO is facing a highly uncertain future, and it may be that the EU needs to support the rules-based order through plurilateral, regional, and bilateral means. One thing is certain, though: Geo-economics is not going to diminish.

Three Scenarios for the Shape of Geo-Economics in 2030

At the outset of this project, in October 2020, we gathered a group of experts for three days and asked them to tell us how the geo-economic landscape might look in 2030. The experts elaborated three scenarios – the good, the bad, and the baseline – to guide our judgment of how well the EU is prepared for the future:

The status quo scenario:
"Traditional rivalries and growing fragmentation in the face of global challenges"

The negative scenario:
"China rules if Europe does not catch up"

The optimistic scenario:
"A green, rules-based cooperative order"

The **status quo scenario,** with regard to trade, sees the WTO at a loss for how to carry out its core tasks. Although the WTO gains new mandates to negotiate new rules on trade and e-commerce, as well as on trade and green technology, global talks stall and fail to improve the WTO's credibility. The WTO thus proves ineffective in expanding rules-based trade to new fields. In addition, this scenario includes a decline in traditional European economic integration, including in finance, trade, and labor.

The EU itself was factored into this scenario, providing us with a baseline to track: The experts envisaged a 2021 pilot project to launch the euro as a digital currency, which struggles to win commercial partners not least because of divergent data regimes for payments in different world regions. This was just one sign of the way the EU fails to generate the political leverage at home and abroad to achieve the trade and finance agenda it has set for itself, which includes the reform of the WTO as one of its core priorities. The EU is unable to navigate competing US and Chinese sanctions regimes and loses competitive ground in both new sectors and old industries.

USING ALTERNATIVE SCENARIOS FOR CAPABILITY DEVELOPMENT

When the EU thinks about how to sharpen its geo-economic profile, it is typically through a strategic "means-ends" process: It defines its future goals and interests and tries to generate the necessary capabilities to achieve them. In the spheres of EU finance and trade policy, this has led to terms such as "European strategic autonomy" and "open strategic autonomy." By contrast, our project on the EU's capacity to act relies on a more open process of thinking about the future, one which acknowledges that the EU has to anticipate multiple eventualities, will not be able to define its future alone, and must imagine and prepare for several future scenarios. The aim is to answer two questions vital to its survival: First, how well prepared is the EU for all three scenarios? Second, can it make the right choices to avoid the worst-case scenario and work toward the best?

In the **negative scenario,** the global trade regime and the role of the WTO disintegrates even further and – even worse – China establishes alternative global institutions to regulate trade based around its own strategic priorities, focusing on market access for Chinese exports rather than on transparency and reciprocity. Here, the EU is perceived more as a geopolitical object than a player. Due to a lack of internal cohesion and unity, the EU proves incapable of geo-economic action, even in the field of trade in which it has exclusive competence. The EU is split internally, and the euro fails to become a global reserve currency.

Finally, in the **optimistic scenario,** the WTO manages successfully to deal with the most pressing trade issues on its agenda today (health and trade; climate and trade; digital trade) and restores its credibility. In addition, this scenario foresees the possibility of a new (second) WTO negotiating round that is supported by all major players. In the area of finance, the scenario anticipates the rise of the Chinese renminbi (RMB) as an international reserve currency – with beneficial effects. This forms the basis for a multipolar and stable monetary system, presumably including the euro. The G20 operates well to coordinate macroeconomic policies, and the Basel Committee reaches an international compromise and extends its coverage to non-banking actors.

Evidently, the status quo scenario ran very close to the negative scenario, and that is worrying: It suggests that Europe is currently on course to lose power and influence if it does not act upon its assessment of the situation and become more assertive in the geo-economic sphere, including with regard to trade. We analyze the changes that need to take place to steer the global trade system away from the baseline and toward an optimistic scenario and assess whether the EU has built the capacity to act on that assessment. The trouble is that the EU is *already* very active in this area. So, what is missing from the EU's repertoire? Both unilateral and bilateral trade is already far advanced in the EU. However, in order to achieve the optimistic scenario, which focuses on effective multilateral cooperation within the framework of the WTO, the EU needs the support of the United States and China in the long run, and this means finding ways to influence and team up with them, despite the present competitive international environment.

The increasing geo-economic rivalry between the United States and China has already led the pair to try to decouple from each other on an economic, financial, and technical level, so far leaving the EU beached in the middle. If the United States and China each pursues its interests by means of its own levers (be these economic, technological, or military), multilateral organizations such as the WTO will continue to lose effectiveness and relevance. Even before the start of the COVID-19 pandemic, the WTO was in crisis mode – again, mainly due to US-Chinese rivalry – a situation encapsulated by the resignation of the WTO Director-General Roberto Azevedo. Right now, none of the four major pillars of the WTO system work: The dispute settlement system is blocked (due to the ongoing US refusal to appoint members to the Appellate Body (AB)), the rule-setting and trade liberalization functions are deadlocked (the incomplete 2001 Doha Round), and the monitoring function can no longer be properly fulfilled due to an inadequate subsidies notification by the member states, particularly China.

In this tough new trade environment, watched over by ineffective multilateral institutions, President of the European Commission Ursula von der Leyen has started to reform the EU to become a more assertive global player and in particular wishes to use trade policy increasingly to achieve strategic goals. Despite the assertive language and the geopolitical sensibility, these goals are also idealistic and include – among other things – improving international trade relations, supporting the green and the digital transition, and reviving multilateralism. In June 2020, the Commission first introduced the idea of an "open strategic autonomy," which centered around the use of trade and initiated a trade policy review to clarify the future outlook of European trade policy.

The Commission stated in a Consultation Note that open strategic autonomy means "reaping the benefits of openness for our businesses, workers, and consumers, while protecting them from unfair practices and building up our resilience to be better equipped for future challenges."[1] According to the Commission, this concept has the goal to stabilize relations with strategic partners in order to diversify its present trade relationships and create alliances on global challenges. This new thinking in Brussels about a more assertive trade policy, combined with reform of the multilateral system, is broadly supported by all European countries, including Germany and France. But the exact structure of this strategy – how to achieve these partnerships and how to influence China and the United States – needs to be more clearly defined. The Joint Communication on a new EU-US agenda for Global Change from December 2020[2] and the recently negotiated EU-China Comprehensive Agreement on Investment (CAI) show the directions in which the EU wants to go with regard to the transatlantic and EU-China partnership. The Communication of the Commission on the outlook of EU trade policy from February 2021, called "An Open, Sustainable, and Assertive Trade Policy,"[3] which was published in reaction to the trade policy review, provides further guidance. It lists six areas that are critical to achieving the EU's objectives in the medium term: These include WTO reform, the green transition, the digital transformation, the strengthening of the EU's regulatory impact, the strengthening of EU neighborhood partnerships, as well as those in Africa, and a new focus on enforcement. The most concrete ideas have so far focused on options for WTO reform. These are based on a WTO reform paper, which the EU already published in September 2018,[4] and which was further specified by the new Communication.

1 European Commission, "A Renewed Trade Policy for a Stronger Europe," Consultation Note, June 16, 2020: https://trade.ec.europa.eu/doclib/docs/2020/june/tradoc_158779.pdf (accessed October 17, 2020).

2 European Commission, "Joint Communication to the European Parliament, the European Council, and the Council," *A New EU-US Agenda for Global Change*, JOIN(2020) 22 final, December 2, 2020: https://ec.europa.eu/info/sites/info/files/joint-communication-eu-us-agenda_en.pdf (accessed January 4, 2021).

3 European Commission, Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy*, COM(202) 66 final, February 18, 20201: https://eur-lex.europa.eu/resource.html?uri=cellar:5bf4e9d0-71d2-11eb-9ac9-01aa75ed71a1.0001.02/DOC_1&format=PDF (accessed February 24, 2021).

4 European Commission, "WTO Modernization: Introduction to Future EU Proposals," Concept Paper, September 18, 2018: https://ec.europa.eu/info/sites/default/files/communication-eu-china-a-strategic-outlook.pdf (accessed October 28, 2020).

Measuring the EU's Capacity to Act Across Five Benchmarks

PROBLEM DEFINITION: HAS THE EU IDENTIFIED THE STRATEGIC STAKES?

Our assessment of this part of the EU response is worrying – not because the EU has not recognized what is at stake, but precisely because it *has*. Given that our experts judged the status quo scenario to be essentially negative (regarding the global economic order) and that the EU is thus falling short of what is required (namely modernizing global trade rules and increasing the WTO's relevance), this would have been the easiest fix: A reassessment by the EU of the main and urgent challenges in the trade policy realm. But a lack of strategic clarity is not the weak point here.

Indeed, over the past five years, the EU has more or less had the strategic situation clarified for it by others. During the four-year reign of US President Donald Trump, American tariffs specifically targeted (or vaguely menaced) numerous European economic sectors. The Trump administration turned its sights on such industries as steel and aluminum, automobiles, and agriculture. The WTO, already fragile, was partly put out of service by Washington in a purposeful bid to avoid any further impediments to the use of US trade remedies against China. The EU's concept of open strategic autonomy, which looks at diversifying relationships and creating alliances with like-minded partners to achieve strategic goals, is therefore a result of its (hopefully temporary) estrangement from its most vital partner. Trump's politics led to a realization by the European Union that it needed to reinforce its own trade toolbox regardless of who was in power in the White House. This would mean, for example, stronger enforcement regulation, which allows for the use of retaliatory tariffs even in the case of a non-functioning WTO dispute settlement, or a common investment screening process to protect strategic European sectors.

This rethink of the EU's international relationships was also occasioned by a change of attitude toward China. Until as recently as five years ago, hopes were still high in the EU that China was on course to open up and become a market economy, thus cementing the rules-based trading order. The Council of the European Union concluded in 2016: "The Council sees major opportunities for cooperation with China, (...) engaging China in its reform process in a way which ensures openness, a level playing field, and genuine mutual benefits."[5] This assessment has changed profoundly: In March 2019, the European Commission presented a strategic outlook on the EU-China relationship with a much fiercer tone, calling China "an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models of governance."[6] The Commission now aims to restore an economic level playing field with China (in trade but also in investment and high-tech) and to address Beijing's trade-distorting measures, which include non-transparent industrial subsidies, a lack of intellectual property rights (IPR) protection, forced technology transfer, as well as strong investment restrictions. The conclusion of CAI is a first step in the long process of establishing a level playing field in economic relations with China. With regard to transatlantic cooperation, however, the timing was bad. This agreement gave China a strategic victory over the United States, at a time when Beijing cracked down on civil rights demonstrations in Hong Kong or uses the Uighur minority for forced labor. However, since then, transatlantic cooperation regarding China has improved again, starting with coordinated sanctions in March 2021.

The EU has acknowledged that an overhaul of its trade measures is necessary to adapt to a newly geo-economic trading environment. In order to bolster its resilience to hostile trade moves, the EU had already begun discussions on a strengthening of the EU's Enforcement Regulation, which enables the EU to withhold concessions under bilateral and multilateral agreements if the trading partner violates international trade rules and does not accept WTO litigation. To enhance the effectiveness of trade enforcement, the EU also created the new post of a Chief Trade Enforcement Officer (CTEO). Other discussions revolved around stronger European anti-dumping and countervailing mechanisms to enable a level playing field in trade. In addition, the EU is

5 Council of the European Union, "Outcome of Proceedings: EU Strategy on China," July 18, 2016: https://data.consilium.europa.eu/doc/document/ST-11252-2016-INIT/en/pdf (accessed October 27, 2020).

6 European Commission, "EU-China: A Strategic Outlook, European Commission contribution to the European Council," March 2019, p. 4: https://ec.europa.eu/info/sites/default/files/communication-eu-china-a-strategic-outlook.pdf (accessed October 27, 2020).

talking about a new anti-coercion instrument to empower the Commission to impose trade and investment or restrictions toward a third country that is unduly interfering in the policy choices of the EU or its member states. These measures are designed to uphold rules-based trade and to make the EU more resilient in crises and against outside pressure. Similarly, on a bilateral level, the EU realized that it needs to become more assertive in the way it negotiates bilateral free trade agreements (FTAs), of which the agreements with Mercosur, Indonesia, Australia, and New Zealand (among others) are currently on the table. On a multilateral and global level, the EU wants to use its role as a global player in trade to work on WTO reform. This includes the reform of the dispute settlement system (AB), plurilateral negotiations in new trade areas (health, green goods), improved rules for subsidies, and stronger monitoring measures.[7]

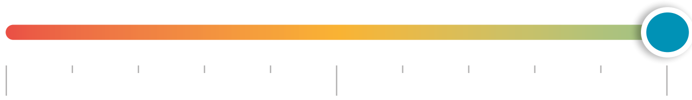
As the formerly well-ordered global trading environment took on a more conflictual geo-economic character, a relative consensus emerged on the necessity of a more assertive EU trade policy. This consensus stretched across the EU institutions and member states. Ursula von der Leyen stressed in her speech to the European Parliament (EP) in November 2019: "My Commission will not be afraid to speak the language of confidence. But it will be our way, the European way. This is the geopolitical Commission that I have in mind, and that Europe urgently needs."[8] The aim today is to strengthen EU trade (and investment) policy in order to help economic recovery after the COVID-19 pandemic and to better protect European companies from unfair trading practices from major trading partners.[9]

But if the broad contours of EU policy were thus clear, the details were not. In June 2020, the Commission then launched a review of its trade policy, in which the Commission was looking for input from the EP, individual member states, business, civil society, and other stakeholders. The consultation shows how broad the aims of EU trade policy have become, and focus inter alia on the following:

- Building a resilient and sustainable EU economy after the COVID-19 pandemic through investment and trade;
- Creating global trade opportunities for European businesses and in particular small and medium sized enterprises (SMEs);
- Maximizing the contribution of trade policy to addressing key global challenges such as climate change, sustainable development, or the digital transition;
- Strengthening of trade and investment relationships with key trading partners;
- Improving the global level playing field and protecting EU business and citizens; and
- Reforming the WTO.

The results of the review were then published in the aforementioned Commission Communication on an "Open, Sustainable, and Assertive Trade Policy." And it is worth unpacking this a little to show how tall an order it will be to combine trade and open markets with "the support of the green transition and the promotion of responsible and sustainable value chains," the "support of the digital transition," the "strengthening of the EU's regulatory impact," as well as WTO reform goals. Moreover, the notion of open strategic autonomy was forged during a spasm of fear during the Trump administration (and prior to the COVID-19 crisis that dented the EU's markets and international leverage). This means that, even on the core notion of open strategic autonomy, some recalibration may be needed. The arrival of the Biden administration shows the need to think about how to re-engage with old partners and to work more closely together with the United States to induce reforms in China; but the EU also needs to diversify and look for new strategic partners, as the United States will mostly focus on its national economic recovery in the foreseeable future.

CAPACITY TO DEFINE THE PROBLEM



The EU has identified the strategic stakes. It has realized that an overhaul of its trade measures is necessary to adapt to the new geo-economic trading environment.

7 Stormy Mildner and Claudia Schmucker, "EU Trade Policy Reform, Levelling the Playing Field in a New Geo-Economic Environment," DGAP Analysis, No. 7, German Council on Foreign Relations (October 2020): https://dgap.org/en/research/publications/eu-trade-policy-reform (accessed November 10, 2020).

8 Ursula von der Leyen, "Speech by President-elect von der Leyen in the European Parliament Plenary on the Occasion of the Presentation of her College of Commissioners and their Programme," November 27, 2019: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6408 (accessed October 8, 2020).

9 European Commission, "European Commission Kicks Off Major EU Trade Policy Review," Press Release, June 16, 2020: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1058 (accessed October 27, 2020).

AGENDA-SETTING

As should be evident from the broad list of aims for trade set out in the Communication on an Open, Sustainable, and Assertive Trade Policy, trade can be a vehicle for a whole range of European strategic goals. This poses a potential challenge when it comes to agenda-setting as trade issues impinge upon social standards, sustainable development, and digital transformation – issues that cut across policy fields and can be socially divisive. But the Commission managed to achieve a broad consensus on what kind of policy goals need to be part of the negotiating mandates for free trade agreements. These include – among others – human rights, trade and environmental standards (adherence to multilateral environmental agreements (MEAs)), and trade and labor standards (International Labor Organization (ILO) core labor standards), as well as standards on digital trade and data protection issues (adherence to the General Data Protection Regulation (GDPR)). However, the depth and enforcement of these policy fields are still partly open to discussion. What becomes clear in the new trade communication is a much stronger focus on the future of green transition, and a clear directive that the Paris Agreement must be an essential element of future trade agreements. The EU also wants to pursue a strong environmental agenda at the WTO. On digital transformation, the EU is mostly focusing on the conclusion of an ambitious and comprehensive WTO agreement on digital trade, as well as a closer regulatory cooperation with like-minded partners on issues of relevance for digital trade.[10] The EU is therefore broadly fit for action mobilizing member states on these related policy fields; however, the exact design in future trade agreements (apart from the Paris Agreement) is still open.

At the outset, it is important to clarify a widespread misperception: The EU in fact has *always* used trade as a vehicle to achieve strategic ends since the very inception of European integration. Merely because it is facing a new geo-economic environment does not mean the EU is having to change the whole way it sets the agenda and establish from scratch a system of coordination across related policy fields. At the outset of the European Community in 1957, trade policy was one of the few areas delegated to the European Commission. From the get-go, its strategic goals were to:

- Advance European growth and development (the so-called external dimension of European competitiveness – the ability of its firms to compete on global markets);
- Open up trade markets worldwide, through the abolition of trade barriers in international trade as well as through multilateral and regional FTAs;
- Establish a level playing field for EU producers vis-à-vis foreign competitors; and
- Not just promote EU interests but also defend European values such as environmental and labor standards, as well as human rights and democracy.

As such, trade has become one of the most important and stable pillars of the strategic relationship between the EU and third countries. But that can no longer be taken as a given because of increasing resistance against FTAs by the European population (starting with the Transatlantic Trade and Investment Partnership (TTIP) with the United States). This resistance also stems from an increasing overlap with connected policy fields (like climate policy) and differences about the exact extent to which these policies should be intertwined. In addition, the relationship between "strategic autonomy" and openness is not yet finalized.

Happily, the EU retains the attributes required to ensure that Europe can set a clear agenda on trade, one that is not watered down by member states or caught up in inter-institutional or intra-institutional tensions. Article 207 of the Treaty on the Functioning of the EU (TFEU) forms the basis for how EU trade policy is conducted. The European Commission submits recommendations to the Council on which policy issues and goals should be included in a new trade agreement; the Council then adopts negotiating directives about the strategic goals of the negotiations (mandate) and authorizes the start of negotiations. This gives the Commission a strong hand because it has the backing and economic power of all 27 EU member states. On the basis of the mandate, the European Commission (in practice, the Trade Commissioner) conducts the trade negotiations with third countries and/or in international organizations such as the WTO on behalf of all of its member states.

Over time, the competences of the Commission in trade policy have been expanded: Since the Lisbon Treaty came

10 European Commission, Trade Policy Review – An Open, Sustainable and Assertive Trade Policy (see note 3), p. 12 ff.

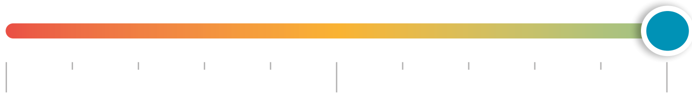
into force in 2009, the Commission has enjoyed the exclusive EU competence in all matters of trade. Gone are the old sectoral exceptions, e.g., in the provision of audiovisual services, which were previously protected by certain member states like France, which were concerned about the implications for national culture. Additionally, thanks to the May 2017 decision of the European Court of Justice (ECJ) regarding the EU-Singapore FTA, the EU also has secured for itself the exclusive competence in investment provisions (the rules under which FDIs are made). The only remaining exceptions are portfolio investments (investments in stock as opposed to FDIs) and dispute-settlement regimes for investments. The exclusive competence on all matters in trade and important parts of investment allows the EU to use its economic power to export its norms and standards to third countries and to get important concessions in return for opening the common market. This is particularly valuable in today's geo-economic environment, as it allows the EU to remain a relevant global actor in trade – alongside the United States and China.

Once negotiations with a trading partner have begun, the Commission has to consult constantly with the EU's Trade Policy Committee (TPC). The TPC consists of representatives of the member states (in practice: representatives from the trade (economic) ministries) and Commission officials (from the Directorate General for Trade (DG Trade)) and meets every Friday in Brussels. These meetings ensure that the Commission only concludes agreements that align with the strategic goals of the member states. If there is no agreement in the TPC as to how the Commission negotiators should proceed or meet a trading partner's new demands, the decision will be taken to the Committee of Permanent Representatives (COREPER), which consists of the ambassadors to the EU of each member state, or to the Council of the EU itself. When negotiating agreements, the European Commission is thus getting constant feedback (and, thereby, backing) from EU member states. This is also important for the later ratification and implementation stage.

For both the negotiation and conclusion of agreements, the Council generally acts by a qualified majority. It needs to act unanimously only when agreements include trade in services and the commercial aspects of IPR, as well as portfolio investment. In addition, the Council needs to act unanimously on matters of cultural and audiovisual services, as well as social, education, and health services (see: Art. 207 TFEU). Moreover, since the Lisbon Treaty, the Commission must inform the EP of the status of negotiations. The Commission therefore regularly reports to the EP on the progress of negotiations.[11] As trade relates to many sensitive and cross-cutting policy issues, such as public services, environmental and labor standards, and data protection, the requirement to consult with the Parliament, which is directly elected by the European population, is also of utmost importance to enhance the legitimacy of EU trade policy. In the end, the EP has to ratify the agreement by a simple majority, making ongoing consultations a necessary prerequisite (Art. 207, Art. 218 TFEU).

Due to the well-established structure of EU trade policy (or common commercial policy), the EU is a very active agenda-setter regarding the activities of its member states across a growing range of related policy fields. The Commission can set each individual negotiating agenda through its recommendations for trade negotiations to the Council and through the regular dialogue within the TPC. As such, the EU is succeeding at translating the challenges of a geo-economic trade environment into a clear trade agenda.

CAPACITY TO SET THE AGENDA



The EU has a well-established structure in place to be an active agenda-setter in trade and across a wide range of trade-related policy fields.

11 European Council, *The Role of the Council in International Agreements*: https://www.consilium.europa.eu/en/council-eu/international-agreements (accessed November 3, 2020).

POLICY FORMULATION

The exclusive competence in trade gives the EU not only the power to set the agenda but also to formulate overall policy and shape negotiations as they unfold. As trade policy has been part of the EU's competences from the beginning, there is a clear and well-established procedure between the EU and its member states on how to reach decisions in trade policy. The success of this structure is evident in the numerous FTAs that the EU has been negotiating since the Global Europe Strategy of 2007[12] and until today: These agreements are ambitious and strategic in the sense that they go beyond current WTO rules (the so-called WTO plus). As such, they establish European rules and standards in new areas, which can then be multilateralized at a later stage.

Due to this exclusive competence over trade and the comprehensive definition of what constitutes trade, the European Commission has so far also been able to quickly react to crises. This is a key attribute of policy formulation in the new geo-economic environment because third countries try to leverage shortfalls and strategic supplies. This became evident during the COVID-19 pandemic, when many WTO member states (including allies such as the United States) introduced export bans on critical protective equipment. When the EU found itself facing only a limited supply of medical and personal protective equipment (PPE) during the start of the pandemic, for instance, the EU, based on the Implementing Regulation 2020/402, made the export of PPE subject to authorization from March until the end of April 2020. There has been some criticism as to whether this, and subsequent measures, were necessary and/or appropriate, but regardless, they show that the European Commission can act swiftly in times of crisis to protect what it sees as European interests. In addition, the export licensing also had the goal of keeping the common market open. Several European member states had introduced restrictive measures even against other EU member states. Through the European export authorization scheme, the EU managed to prevent conflicting national policies and to secure the unity of European trade within the common market.

That said, the Commission must always assure itself that it is acting on the interest of the member states. Crucial to this process are the overarching recommendations given by the Council whenever it meets, and the weekly cooperation in the TPC between the Commission and EU member states. Even though each member state has one vote in the TPC, in practice the largest member states have a strong impact on final outcomes. This matters for the EU's overall framing of policy. France, for instance, started to push already in 2019 for the inclusion of the Paris Climate Agreement into FTAs, and on this basis opposed any trade agreement with the Trump administration. This push, which found more European supporters over time, in the end indeed led to the proposal of the inclusion of the Paris Agreement in FTAs – as outlined in the new Commission trade strategy from February 2021.

The Commission must, moreover, always ensure that it formulates policy in such a way that member states ratify the end results. France and Ireland, for example, both also countries with a strong defensive interest in agriculture, oppose the ratification of the EU-Mercosur agreement. As the 2019 EU-Mercosur deal (probably) falls under the category of a "mixed agreement,"[13] France and Ireland can hold up the ratification process and ensure discussion on the agriculture and environmental chapters of the agreement.

Usually, member states are able to find compromises that give the Commission the mandate to negotiate – and it helps that Germany in general actively supports the negotiations of FTAs. Nevertheless, European unity will remain key if the EU wants to continue its successful and strategic trade policy in the future. This is not a field in which the EU's competitors have been able to play "divide and rule" among member states in the past. But that may prove both more tempting and easier today, given greater divides in the EU regarding future trade agreements and the chapters they should entail. This became apparent in the trade negotiations with the United States under the Trump administration, which targeted German car producers and French agricultural products and as such tried to divide the two major European players. It also becomes apparent in the relationship with China, in which initiatives such as the 17 plus 1 format, coupled with Chinese investment in Eastern European countries, could prevent a common European strategy toward the country. The agreement in principle on the CAI in December 2020, which in the end was pushed by the large member states Germany and France, also led to a lot of discontent for various reasons by other member states such as Italy, Poland, and the Netherlands. This lack of unity must be avoided, as it would effectively paralyze the EU at a global level, preventing it from being an assertive player vis-à-vis China and (even) the United States.

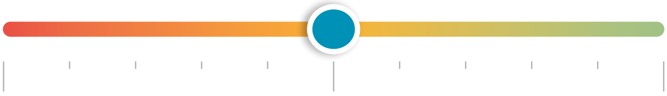
12 European Commission, "Global Europe, Competing in the World," October 4, 2006: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF (accessed November 3, 2020).

13 So-called mixed agreements include provisions on portfolio investments and investment dispute resolution and therefore also fall under the competences of the EU member states.

The ambitious TTIP marked a watershed for the EU in its relationship with the general public. The start of negotiations in 2013 sparked widespread protest across Europe and led the EU to adapt its strategy on trade to ensure that its benefits are more inclusive. The result was the "Trade for All" communication from 2015,[14] which pledges to make trade beneficial not only for companies but also for consumers and workers. In addition, it promises to have a more responsive approach to the public's expectations on regulations and investment and to have a strong trade agenda to promote sustainable development, human rights, and good governance. A central plank of this communication also involves improving the transparency of the negotiations by immediately publishing the negotiating mandates, as well as key negotiating texts throughout the talks. Since then, the Commission also holds regular consultations with all relevant stakeholders on various trade policy issues. These consultations and the increased transparency are significant improvements toward a more inclusive trade policy and an important step to boost European unity.

Since the TTIP negotiations, there has been a popular mistrust in European institutions in general and of trade liberalization in particular. The question of how to formulate open trade policies that enjoy public support has become particularly tricky during the era of geo-economics because of the apparent outside pressure by the United States and China. The Trade for All approach is a direct result of this development, with the aim of improving the general perception and trust of the public. The next step was a public consultation in 2020 about the design of a future European trade strategy. The outcome of this consultation directly influenced the new trade policy priorities, which are laid down in the trade communication from February 2021.

CAPACITY FOR POLICY FORMULATION



The exclusive competence in trade gives the EU the power to set the policy agenda and shape negotiations. However, in the future, the EU needs to work on maintaining unity on trade matters and gathering public support.

POLICY IMPLEMENTATION

The EU succeeds in translating its strategic trade policies into action. Depending on its unity, the EU can be an assertive global player that exports its trade policy agenda. The EU is dependent on open markets (for trade in goods and services) and the rules-based trading system. Through the successful negotiation of various bilateral and regional trade agreements, the EU is increasing its resilience with regard to the great power competition and exporting its norms and values.

In order to defend itself in this new geo-economic environment, the EU (on a unilateral level), managed to reform its anti-dumping policies – already in 2018. It also amended the Enforcement Regulation to ensure that the EU can deal effectively with trade conflicts, even in times when the WTO is blocked. Such actions are particularly important because the geo-economic environment opens up a large vista of unilateral and protectionist trade actions that potentially go against WTO rules. In the past, it was easy to bring these actions to the WTO dispute settlement system. Now that the system is blocked, the EU has the possibility to impose trade sanctions after a ruling of the first WTO panel if the other party does not comply. As such, the EU can enforce global trade rules, even without a functioning WTO Appellate Body.

On a bilateral level, the implementation of EU trade policy can be measured by the sheer number of trade agreements the EU has concluded with industrialized countries (like Canada, Japan), emerging market economies (like Singapore, Brazil/Mercosur), and developing countries (Vietnam) – and by the almost uniformly high level of ambition they display. Currently, 77 countries enjoy one of the various types of EU trade agreements (FTAs, Stabilization and Association Agreements, Economic Partnership Agreements, etc.).[15] In addition, the EU is awaiting adoption/ratification of agreements with 24 countries (including Mercosur) and is currently negotiating agreements with Australia, Indonesia, New Zealand, and the Philippines.[16] The level of ambition in each is apparent in the fact that the EU has an almost global net of different kind of trade agreements in place.

These bilateral and regional FTAs are not only about prizing open new markets for European firms. They are also used to help shape globalization and rules-based trade. As such, they contain standards and norms that are important for Europe. This relates not only to technical and/or sanitary

14 European Commission, "Trade for All, Towards More Responsible Trade and Investment Policy," 2015: https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf (accessed November 3, 2020).

15 With regard to the numbers: Sometimes, several countries are part of one regional agreement.

16 European Commission, Negotiations and Agreements: https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_in-place (accessed November 3, 2020).

1. EU TRADE AGREEMENTS 2021

EUROPEAN UNION

CUSTOMS UNION, EEA, AND OCT*

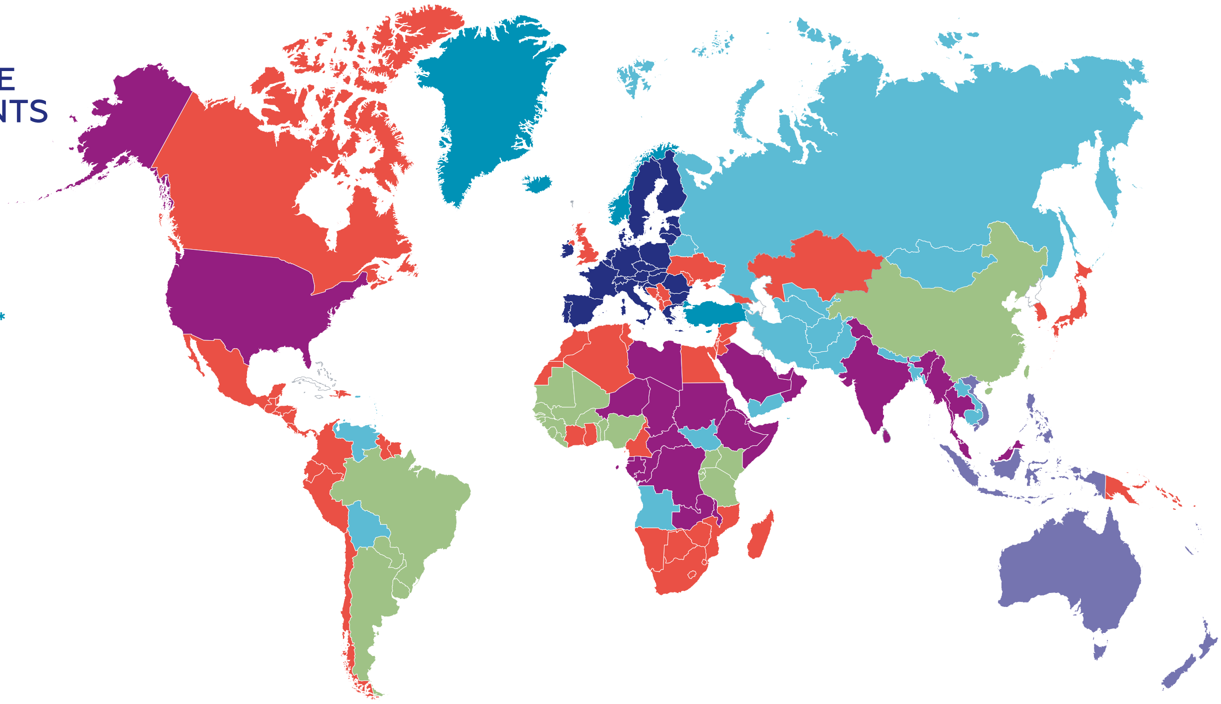
IN PLACE***+

ADOPTION/ RATIFICATION ON-GOING**

BEING NEGOTIATED**

ON HOLD**

NO AGREEMENT**



*European Economic Area (EEA), Overseas Countries and Territories (OCT)
**Free Trade Agreement (FTA), Deep and Comprehensive Free Trade Agreement (DCFTA), Investment Agreement, Enhanced Partnership and Cooperation Agreement (EPCA), Partnership and Co-operation Agreement with preferentialelement (PCA)
+ The agreements with Chile, Tunsisia, and Eastern and Southern Africa are currently being updated; the updated agreement with Mexico is under ratification. The DCFTA with Georgia does not apply in South Ossetia and Abkhazia. The agreement between the EU and the United Kingdom is applied provisionally, pending ratification by the EU.

Source: European Commission

and phytosanitary standards and norms, but also to European standards on IPR protection, sustainability, environmental protection, labor rights, rules on digital trade, and consumer protection, etc. Through the negotiation of FTAs, the EU uses the attraction of the large common market as an incentive for third countries to adopt European standards and norms. Due to the economic and political power of the EU, it generally manages to insert its ambitious standards into the agreements. However, depending on the development status of the trading partners, this includes more flexible and longer timelines for implementation. In addition, FTAs are used to support European values like human rights, democracy, and the rule of law.

The EU also includes a dispute settlement mechanism in all its bilateral and regional trade agreements to secure the implementation by third countries. This mechanism is modeled after the WTO dispute settlement. Typically, the dispute settlement procedure allows for trade sanctions (in the form of the suspension of tariff preferences) to compensate parties for the economic damages that result from a lack of compliance with the agreement. However, disputes regarding the Trade and Sustainable Development Chapters (TSD), which include environmental and labor rights, are an exception and do not provide the possibility of trade sanctions. Instead, after consultations among governments, a panel is established that publishes a final report that neither party can block ("naming and shaming").[17]

The issue of a sanctions-based approach to the TSD chapters is heating up in the context of the ongoing destruction of the Amazon rainforest by Brazil and the upcoming ratification of the EU-Mercosur agreement. The hope among supporters is that future sanctions on TSD chapters will enable the EU to pursue its climate goals through trade more effectively in the long term. However, up until now, there had been no consensus on the introduction of sanctions among member states. Germany was also not in favor. In addition, the Commission had stressed that in the case of a TSD violation, the EU would only be "compensated" for such a breach (if quantifiable); this would, however, not guarantee that the TSD standards improve. In the new Trade Policy Communication from February 2021, the Commission changed course: It now wants to pursue an early review in 2021 of the 15-point action plan on the effective implementation and enforcement of TSD chapters in trade

17 Sam Lowe, "The EU should Reconsider its Approach to Trade and Sustainable Development," Centre for European Reform (October 31, 2019): https://www.cer.eu/insights/eu-should-reconsider-its-approach-trade-and-sustainable-development (accessed November 4, 2020).

agreements. This review is supposed to cover all relevant aspects of TSD implementation and enforcement, including the scope of commitments, monitoring mechanisms, and the possibility of sanctions for non-compliance, as well as the institutional set-up and resources required. This proves that the EU wants to strengthen the connection and enforcement between trade and climate issues in the future.[18]

Similarly, on the multilateral level, the strategic interest of the EU lies in the support of the rules-based global trading system (WTO). But here it has proved far harder for the EU to implement its agenda. The EU is actively working on reforms; however, due to the previous opposition from the Trump administration, it was not able to implement its proposals. Much of the Trump administration's criticism of the WTO related to the role of China in the organization. In the 2017 Report to Congress on China's WTO Compliance, then United States Trade Representative (USTR) Robert Lighthizer boldly declared that China's membership in the WTO was a mistake, stating that:

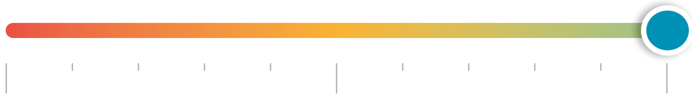
"China largely remains a state-led economy today, and the United States and other trading partners continue to encounter serious problems with China's trade regime. Meanwhile, China has used the imprimatur of WTO membership to become a dominant player in international trade. Given these facts, it seems clear that the United States erred in supporting China's entry into the WTO on terms that have proven to be ineffective in securing China's embrace of an open, market-oriented trade regime." [19]

China has become a heavyweight in the world economy but has yet to assume responsibility for the global economic order. For instance, it is not only still a closed and state-planned economy but has also hindered a reform of the WTO by blocking talks about state-owned enterprises (SOEs) and industrial subsidies. Moreover, the country frequently fails to adhere to the rules of the WTO and its own Accession Protocol to the organization. Trump was therefore right in his criticism, but his policies regarding the multilateral trade order were quite dangerous. He blocked the dispute settlement system on the basis that the rulings hindered the United States from fighting back against unfair Chinese trade practices. Trump also complained about the unwillingness of WTO members – and again, China is at the top of the list – to comply with the notification requirements; another reason for turning his back on the organization.[20]

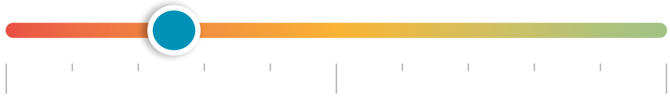
However, despite the non-cooperative and often destructive behavior by the United States (under President Trump) and China, the EU managed to achieve some progress on the multilateral level. In March 2020, the EU successfully established a multi-party interim appeal arbitration arrangement (MPIA) together with 22 other WTO members (including China) to uphold rules-based arbitration. The fact that the EU succeeded in getting the Chinese on board suggests that some progress is possible.

However, there is still a long way ahead. The WTO reform agenda needs to be urgently picked up by the new Biden administration. While the US support of the new Director-General Ngozi Okonjo-Iweala is an encouraging sign, more needs to be done. This relates to the negotiation of new rules (e.g., on industrial subsidies), the conclusion of ongoing and the initiation of new plurilateral initiatives (digital trade and environmental goods), as well as stronger enforcement regulations. However, the criticism regarding the AB is widely shared by both parties in the US Congress. At the first meeting of the WTO dispute settlement body since President Biden took office, the United States continued to block new appointments due to ongoing concerns. Therefore, fundamental reform is inevitable, and this will take time. But – unlike with the Trump administration – a Biden presidency will probably be open to a reform dialogue with the EU and other stakeholders.

CAPACITY TO IMPLEMENT POLICIES



Unilateral and bilateral level: The EU succeeds in translating strategic trade policy goals into action. It reformed its trade toolbox and has successfully negotiated a wide net of bilateral and regional free trade agreements.



Multilateral level: While the EU has a clear reform agenda in mind for the multilateral level, it still lacks the support of China, the US, and others to implement true organizational reform.

18 European Commission, Trade Policy Review – An Open, Sustainable and Assertive Trade Policy (see note 3), p. 13.

19 US Trade Representative, *2017 Report to Congress on China's WTO Compliance* (January 2018): https://ustr.gov/sites/default/files/files/Press/Reports/China%202017%20WTO%20Report.pdf (accessed December 22, 2020).

20 Stormy Mildner and Claudia Schmucker, "Making America Great Again versus Made in China: The US Geo-Economic Rivalry with China," DGAPanalyse, No. 2, German Council on Foreign Relations (June 2019): https://dgap.org/sites/default/files/article_pdfs/2019-02-dgapanalyse.pdf (accessed December 22, 2020).

IMPACT ASSESSMENT

The EU's Impact at Home

The factors that make the EU such an effective actor in trade talks – the size of its market, the relative centralization of its competencies, its bureaucratic sophistication – do not always guarantee a high impact at home. For the EU's Free Trade Agreements to become effective and to deliver on the EU's strategic goals, they need to actually be used. In 2018, the European Commission was sufficiently worried about this to authorize the economists Lars Nilsson and Nicolas Preillon to study the utilization rate of European FTAs. These two Commission officials analyzed the preference utilization rate (the PUR or the amount of trade which is conducted under the preferential tariffs of an agreement). In their study, they concluded that the average PUR in 18 FTAs was 77.4 percent and for Germany 78 percent.[21] Germany's non-utilization rate of 22 percent is thus relatively low but nevertheless much too high if compared to Austria with 11.3 percent. In addition, a study by the United Nations Conference on Trade and Development (UNCTAD) from 2018 finds that, while about two thirds of EU exports to partner countries use FTAs, the corresponding number for partner country exports to the EU is as high as 90 percent.[22]

The Federation of German Industries (BDI) decided to analyze the reasons for the non-utilization rate in Germany and found three familiar problems:

1. The high costs and bureaucracy to comply with the agreement;
2. Internal capacity problems within businesses to verify whether a product falls under the complex agreement; and
3. Legal verification uncertainties pertaining to high compliance risks associated with goods clearance on the basis of complex supply chains.

In general, the BDI found that these problems with bureaucracy tend to bite only if the FTA has shaved a small margin off the regular (WTO) tariff. This is logical: In such cases, firms do not see the point in investing in compliance checks or other bureaucratic hurdles. But by using the FTAs, European and German exporters can increase their competitive advantage by utilizing the preferential tariffs (even with a small margin), thereby achieving effects of scale across the whole of the internal market.

The utilization rate of the latest EU agreements – the Comprehensive Economic and Trade Agreement with Canada (CETA) and the EU-Japan Economic Partnership Agreement (EU-Japan-EPA) – was particularly low. In 2018, the CETA utilization rate stood at just 37 percent. This means that only slightly over 30 percent of the possible preferences were used by European exporters that year. It is worth noting that Canada itself fared slightly better with a PUR of 49.6 percent in 2018.[23] With regard to the EU-Japan-EPA, exports from Japan to the EU had a PUR of 34 percent (according to EUROSTAT), and exports from the EU to Japan a PUR of 52 percent.[24]

Of course, one possible reason for this very low utilization rate for CETA and the EU-Japan-EPA lies in the fact that both are comparatively new agreements and that firms do not yet know about the opportunities. But companies that are aware of the two deals also point to the complex verification procedures required to prove preferential origin. Regarding the EU-Japan-EPA, another factor features prominently: The responsibility for origin verification – the international trade document that certifies that goods, in a particular export shipment, have been obtained, produced, manufactured, or processed in a particular country – was transferred from the customs authorities of the exporting countries (Europe) to the authorities of the importing country (Japan). Companies fear that this structure will lead to more legal uncertainty and jeopardize sensitive data and IPR, which have to be transferred to third country authorities.[25]

The EU's Impact in the Outside World

Despite the current problems with PUR at home, abroad the EU is considered to be "capable to act" by its member states. The EU is the largest trading bloc in the world and, due to its competencies in trade, it has for years spoken in international organizations like the WTO with one voice. But its international impact is being damaged by the gridlock in the WTO.

The EU relies heavily on the WTO to maintain its global impact. The EU has a highly integrated trade relationship with numerous countries and regions in the world and, to

21 Lars Nilsson and Nicolas Preillon, "EU Exports, Preference Utilisation, and Duty Savings by Member State, Sector, and Partner Country," DG Trade Chief Economist Note (June 2018): http://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156931.pdf (accessed November 10, 2020).

22 UNCTAD, "The Use of the EU's Free Trade Agreements, Exporter and Importer Utilization of Preferential Tariffs," January 2018: https://unctad.org/system/files/official-document/EU_2017d1_en.pdf (accessed December 22, 2020).

23 Jana Titievskaia and Ioannis Zachariadis, "CETA Implementation, European Parliamentary Research Service," November 2019, p. 18: https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/644179/EPRS_IDA(2019)644179_EN.pdf (accessed November 10, 2020).

24 Ministry of Foreign Affairs of Japan, *Exchange of import statistics since the entry into force of the Japan-EU EPA*, February 3, 2020: https://www.mofa.go.jp/ecm/ie/page22e_000907.html (accessed November 10, 2020).

25 Stormy Mildner and Claudia Schmucker, "EU Trade Policy Reform, Levelling the Playing Field in a New Geo-Economic Environment," DGAP Analysis, No. 7, German Council on Foreign Relations (October 2020), p. 28: https://dgap.org/en/research/publications/eu-trade-policy-reform (accessed November 10, 2020).

create oversight and minimize complexity and uncertainty, it has become highly dependent on the transparent and rules-based trading system of the WTO. But the WTO itself is experiencing its deepest crisis since its creation in 1995 with all four of its pillars blocked to a greater or lesser degree. There is a crisis in the dispute settlement function; the rule-setting function (industrial subsidies); the trade liberalization function (Doha Developing Round); and the trade monitoring function (subsidies notification). The main reason for this deadlock lies in the ongoing geo-economic rivalry between the United States and China, which has paralyzed the entire organization due to a lack of consensus on the necessary reform steps.

The European Commission has made a readiness to drive forward WTO reform into one of its major strategic trade policy priorities. As noted above, in September 2018, the EU issued a paper on WTO reform in order to shape the discussions in a constructive way.[26] In that paper, the EU addressed all four pillars and offers concrete proposals on how to get out of the crisis. The Annex to the Commission Communication from February 2021 on "Reforming the WTO: Towards a Sustainable and Effective Multilateral Trading Systems" provides further clarifications and reiterates many of the reform proposals from the 2018 publication.[27]

1. As regards the WTO dispute settlement system, the Trump administration has effectively blocked its workings by refusing to appoint new members to the AB. The United States has tried to justify this by pointing to several concerns with the practice of the dispute settlement system, which together had the effect of preventing the effective use of trade remedies against unfair Chinese trading practices: (1) The US criticizes that the 90-day deadline for appeals, which is defined in Article 17.5 of the WTO Dispute Settlement Understanding (DSU), is often ignored, even though it is essential for the prompt settlement of disputes. (2) The problem of the continued service by persons who are no longer AB members also goes against DSU rules, and, according to the United States, needs to be decided formally by the WTO member states. (3) The US considers the issuing of advisory opinions on topics that are not necessary for the solution of the dispute to be an attempt by a panel or the AB to "make law" rather than resolve a particular dispute. (4) And the United States resists the use by the AB of mere reports as firm precedents on the basis that it strays from the mandate of the DSU and is not appropriate for the world trading system. The EU paper acknowledged all these problems and offered concrete answers to them. Unfortunately, the Trump administration was not willing to enter into reform discussions, (probably) because they were not interested in having a binding dispute settlement on a global level. So far, the Biden administration has not changed its position with regard to the AB. In contrast, the new administration stressed that it continues to have "systemic concerns," which the United States had raised and explained for more than 16 years and across multiple US administrations. Therefore, the blockage will continue for the time being. However, these problems can hopefully be settled in the medium term, as the Biden administration will be open for discussion with WTO member states that is based on the EU reform proposals.

2. With regard to the second pillar, the WTO in its Agreement on Subsidies and Countervailing Measures (ASCM) has only weak definitions and rules on subsidies, in particular regarding SOEs. This has caused concern ever since China's integration into the WTO in December 2001 because China's heavy use of subsidies distorts global trade and leads to overproduction – with clear disadvantages for other trading partners like the EU and the US. The EU therefore, together with the United States and Japan (Trilateral Initiative), proposed in its joint declaration from January 2020 to add new types of so-called unconditionally prohibited subsidies to the WTO Agreement in order to strengthen the multilateral constraints on: a form of state aid regarding unlimited guarantees; subsidies to an insolvent or ailing enterprise in the absence of a credible restructuring plan; subsidies to enterprises unable to obtain long-term financing or investment from independent commercial sources operating in sectors or industries in overcapacity; and certain direct forgiveness of debt.[28] This is an important first step to tackle the market and trade distorting subsidization that exists in large economies such as China, but the EU and the other members of the Trilateral Initiative need to expand the number of countries to implement reform in order to achieve a critical mass.

26 European Commission, "WTO Modernization: Introduction to Future EU Proposals," Concept Paper, September 18, 2018: https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf (accessed November 10, 2020).

27 European Commission, Annex to the Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, Trade Policy Review – An Open, Sustainable and Assertive Trade Policy, COM(202) 66 final, February 18, 20201: https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159439.pdf (accessed February 25, 2020).

28 Trilateral Initiative, "Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union," January 14, 2020: https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158567.pdf (accessed December 22, 2020).

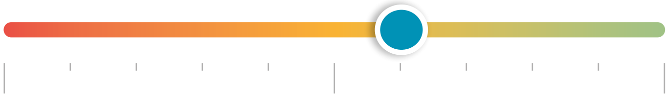
3. Since they started in 2001, the multilateral negotiations on the Doha Development Agenda (DDA) have hardly reached any outcomes at all. The negotiating agenda of the DDA, which started almost 20 years ago, also no longer reflects the realities of modern trade. It was therefore a breakthrough when the EU – along with more than 50 countries, including the United States – decided at the Ministerial Conference in Buenos Aires in December 2017 to pursue plurilateral agreements in the more up-to-date areas of e-commerce, investment facilitation, and domestic regulation in services, as well as micro, small, and medium enterprises (MSMEs). These plurilateral agreements have in effect become the only way to negotiate modern trade rules at the WTO – despite current opposition by India and South Africa. The EU is highly active in promoting these initiatives. In addition, the EU has made concrete proposals on how to overcome the problem of self-definition of developing countries, which hampers progress in the multilateral DDA negotiations. The EU concept of "graduation" is a good basis for the reform discussions and overcomes US-Chinese tensions by not focusing on the official definition of what constitutes a developing country, but by using a case-by-case approach instead.

4. The WTO regularly monitors the trade policy of its member states, the fourth pillar of its work. But the United States and the EU have continually criticized the fact that WTO members – particularly, China – have not fulfilled their notification requirements about industrial subsidies, although this is vital to the Organization's capacity to create a transparent international trade regime. In its 2018 Concept Note and the 2021 trade communication, the EU addressed the problem of transparency and notification. The paper suggested that assistance should be given to developing countries to help with notifications, and that sanctions should be introduced to punish continuous non-compliance. The EU also intends to work with like-minded countries on the use of counter-notifications – that is: a submission to the WTO that purports to correct another country's notification, as the United States and Canada did toward India when the latter was felt to have misreported the basis for its market price support for pulses.[29]

In addition, in the annex to the new trade communication, the EU points out how to restore trust and a common sense of purpose among WTO member states. The EU proposes to coalesce around the overarching objective of addressing: "economic recovery and development, free from competitive distortions, as well as environmental and social sustainability as part of the green transition of economies."[30] The EU then urges – among other ideas – more in-depth discussions on the issues of trade and sustainability, trade and development, and competitive neutrality.

The EU has, in short, been able to proactively shape the agenda of the WTO and is considered to be a powerful actor by other countries and stakeholders. Due to its supranational character and its focus on rules-based trade policy, the EU is also considered a role model by international actors, in particular smaller countries in geopolitical hotspots such as Southeast Asia. In addition, the EU was able to establish an interim appeals mechanism to uphold rules-based trade, a provisional measure until a formal deal on the reform of the AB is achieved. All participant countries can now use this arrangement to settle disputes among them in a rules-based way until the AB is functioning again.

IMPACT CAPACITY



The EU has a strong impact capacity, particularly at home. However, on the multilateral level, it has not made enough progress due to lack of support from the US, China, and others.

29 Stormy Mildner and Claudia Schmucker, "EU Trade Policy Reform, Levelling the Playing Field in a New Geo-Economic Environment," DGAP Analysis, No. 7, German Council on Foreign Relations (October 2020), pp. 29-35: https://dgap.org/en/research/publications/eu-trade-policy-reform (accessed November 10, 2020).

30 European Commission, Annex (see note 28), p. 3.

Germany's Role with Regard to the EU's Capacity to Act

Even though the EU has the exclusive competence in trade, member states have a strong influence on trade policy through the Council, as well as through the aforementioned regular consultation with the TPR or the COREPER during the negotiations. Germany is very active in this regard and often at the forefront of new initiatives for trade agreements.

The relevant challenges and opportunities in trade policy are certainly on Berlin's radar. Germany has realized that Europe needs to adapt to the changes in the new geo-economic trading environment posed by an aggressive China and a unilateralist and possibly protectionist United States because great power competition has negative consequences for EU/German open trade and investment. Even with a change in the White House, this policy direction will not change profoundly. Under President Biden, the United States will continue to focus on the recovery of its own economy, which includes the use of "Buy America" provisions, strong investment screening provisions, and export controls – also to the detriment of the EU. Germany has therefore strongly advocated the need for the EU to become more assertive in the new geo-economics trading environment. It pushes for the conclusion of strategic FTAs and the necessity of WTO reform.

In addition, in order to regulate strategic investments by outside parties in Germany, the German government passed several amendments to the Foreign Trade and Payments Ordinance (AWV) on December 19, 2018, that significantly expanded the possibility of controlling foreign investments. Peter Altmaier, Minister for Economic Affairs and Energy (BMWi), who is responsible for trade policy, stressed "that everyone had to acknowledge that in the long term, trade could only work on a level playing field."[31] Although this is a domestic measure, it has a European dimension in that the AWV is regularly amended to reflect current developments and new legal requirements, including EU regulations. In spring 2020, for example, the fifteenth amendment to the AWV strengthened the possibilities for reviewing company acquisitions by non-EU parties in the healthcare sector against the backdrop of the COVID-19 pandemic.[32] The last revision, which took place in May 2021, further tightened the notification requirements and expanded the list of sensitive sectors (Section 55 AWV). However, this strengthening of the AWV does not only include new European provisions, but it also reflects a shift in the German position toward tightened screening, particularly regarding foreign takeovers by China.

With regard to EU agenda-setting and policy formulation, Germany – due to its economic clout – has a strong influence and has helped promote an active and strategic European trade policy until today. In this regard, the BMWi has stated that:

> "For many years, Germany has been one of the leading nations in the international trade of goods and services. Free global trade and fair competition help boost economic growth and create jobs in our country. The Federal Ministry for Economic Affairs and Energy therefore advocates open markets that are guided by clear rules."[33]

One example of Germany pushing for an active and strategic trade agenda and facilitating decision-making relates to the trade mandates for an agreement with the United States in 2018. President Trump had repeatedly accused Europe of unfair trade practices, which, in his view, resulted in a flood of German cars into the US. To prevent the United States from imposing tariffs on European car exports, the German Federal Minister for Economic Affairs pushed for negotiations on a trade deal with the US. This was risky: the initiative might, at this highly critical point in time, have caused a split within the EU, where many countries wanted to hold a firmer line against what they regarded as US

31 Michael Nienaber, "EU must diversify trade ties, develop own value chains: Germany's Altmaier," Reuters, September 18, 2020: https://in.reuters.com/article/us-eu-trade-germany-altmaier/eu-must-diversify-trade-ties-develop-own-value-chains-germanys-altmaier-idINKBN269161 (accessed November 12, 2020).

32 Federal Ministry of Economic Affairs and Energy (BMWI), *Außenwirtschaftsrecht*, 2020: https://www.bmwi.de/Redaktion/DE/Artikel/Aussenwirtschaft/aussenwirtschaftsrecht.html (accessed December 23, 2020).

33 Federal Ministry of Economic Affairs and Energy (BMWi), *Fostering International Trade and Reducing Barriers*: https://www.bmwi.de/Redaktion/EN/Dossier/trade-policy.html (accessed November 12, 2020).

bullying. However, after internal discussions among member states and strong engagement by Germany, European countries agreed to present the United States with an offer for a trade deal. In this first major geo-economic test, Germany proved to be an active agenda-setter within the EU.

Germany also usually succeeds at translating its European initiatives into action. For example, as a result of the German engagement regarding an EU-US trade deal, then Commission President Jean-Claude Juncker went to Washington in June 2018 and agreed two new trade initiatives that were based on the German proposal: One on the abolition of all industrial tariffs (including cars), and one on common conformity assessments. And even though France voted against these mandates, Germany succeeded in securing a majority vote for the mandate from the other European countries.

The recently concluded CAI is another case in point. Germany wanted to finalize the deal during its EU Council Presidency in the second half of 2020. Despite much criticism from other EU member states (e.g., from the Netherlands and Central and Eastern European countries), Germany pushed for the success of the deal in the final days of its presidency. It also managed to win over France. Regardless of whether this is the right decision from a transatlantic or geo-economic point of view, the case shows Germany's political might in trade and investment policy.

However, there is also a negative example of Germany impeding European strategic trade policy goals, and this relates to TTIP. This agreement promised to establish a shared transatlantic market and strong transatlantic standards (also vis-à-vis China) and to shape the future of globalization as a whole. However, public opinion in Germany turned against this agreement. The German government hesitated to give its support, and opposition also spread to other European countries, forcing the EU to rethink its trade strategy – and, in the longer run, abandon TTIP.

This crisis led to reforms in trade. After the TTIP opposition, the EU improved the structure of its trade policy (e.g., greater transparency, stakeholder involvement, the "Trade for All" strategy), as well as its goals during the negotiations (a change from investor-state dispute settlement system (ISDS) to an Investment Court System). This led to improved public opinion on European trade policy. There were no major setbacks regarding the EU-Japan-EPA, for example. However, with the upcoming ratification of the EU-Mercosur agreement, protests might flare up again over environmental concerns. The new Communication on Trade Policy from February 2021 therefore strongly pushes for much stronger connections between trade and climate goals.

All in all, Germany – as the largest economy in Europe – has a strong influence on European trade policy and generally a positive impact on the EU's capacity to act strategically in trade. However, the strong push for and implementation of German interests (the Trump trade deal, CAI) might increase EU divisiveness and hamper EU unity in the long run.

Stocktaking: Assessment of Capacity to Act as a Whole

The question is whether the EU right now is prepared for all three 2030 scenarios in trade. If we look at the **status quo scenario,** the WTO is the pivotal factor in defining the course of global trade; it is also central to EU trade policy given the challenges that the EU faces that stem from the fact that the WTO cannot carry out its core tasks. In this scenario, the (imagined) new WTO mandates on trade and digital, as well as green technology stall – hardly improving the WTO's credibility and relevance. Similarly, in the **negative scenario,** the WTO disintegrates even further.

But even in these two – negative and very negative – scenarios, in which the EU can no longer rely on the WTO to be the guardian of a rules-based trade order, the EU would be able to rest upon a large web of existing bilateral and regional FTAs to secure rules-based trade for European companies and people. This will stand it in good stead even if the EU's capability to act in trade does deteriorate even further (as foreseen in the negative scenario). Through these trade agreements, it enjoys not only market access but also a variety of rules and standards to prevent a distortive and chaotic trade environment. As such, the EU is prepared for these scenarios, even if it would struggle to shape the outcome.

In addition, the EU is also strongly driving events toward the best-case scenario of a modernized and relevant WTO. In the **optimistic scenario,** the WTO manages successfully to deal with modern trade issues (health and trade, climate and trade, digital trade, etc.) and restore its central relevance as an organization. In addition, this scenario foresaw a new WTO negotiating round, superseding Doha, which is supported by all major players, including the EU, United States, China, India, and Japan. The EU, with its focus on the multilateral arena, would easily be prepared to act on this scenario and to participate in a new multilateral trade round, addressing modern trade issues, including trade and health issues, digital trade, as well as trade and climate/ sustainability issues.

Today, the EU has already proposed an initiative on trade and healthcare (abolition of tariffs on pharmaceutical and medicinal products) and is part of the (unfortunately deadlocked) negotiations on the Environmental Goods Agreement (EGA). The EU also participates in the plurilateral e-commerce (digital trade) negotiations and it works together with the United States and Japan in the context of the Trilateral Initiative to strengthen existing rules on subsidies, SOEs, and intellectual property rights. The 2018 EU paper on WTO reform and the 2021 communication also give detailed proposals on how to move forward on all four pillars of the WTO to make the organization relevant again.

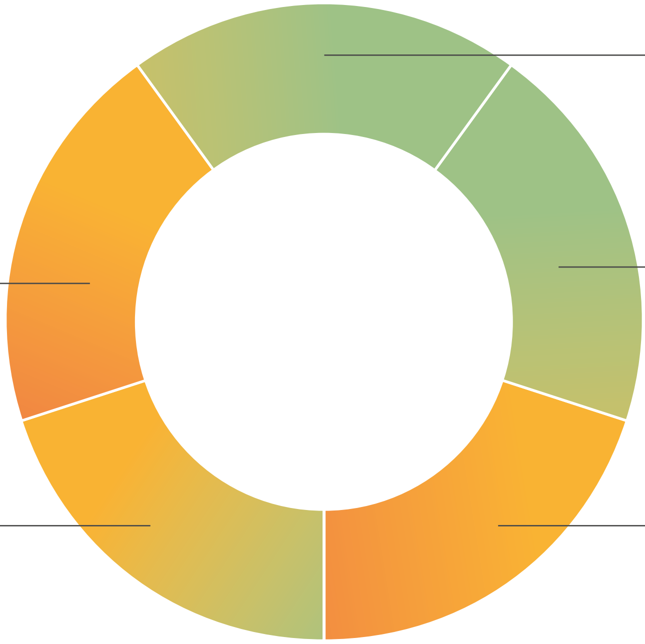
In general, European trade policy is thus capable to at least act in all scenarios and on all levels. But continuous reform efforts are necessary to keep this status. On a unilateral (EU) level, Trade Commissioner, Valdis Dombrovskis, has stressed: "We agreed that the biggest risk for European industries is … [un]fair competition, so the level playing field issues will be very important in our trade policy."34 In this regard, the EU strengthened its internal trade policy measures (anti-dumping, countervailing duties, trade enforcement). The outcome of the trade policy review further set up new ways to adapt to this new geo-economic environment.

Additionally, when negotiating bilateral and regional FTAs with third countries and regions, the EU is capable of acting in a proactive way, exporting European norms and values. And finally, on a multilateral level, the EU is acting in a forward-looking way to achieve WTO reform to rescue the transparent and rules-based trade system. As such, the EU is using its capacity to act in trade in a constructive way – to make Europe more resilient internally against geo-economic pressure, while at the same time strengthening and exporting its norms and values to third countries and multilateral organizations.

When looking at the different levels of European trade policy, the EU is using its capacity to act in a defensive as well as in a proactive way. Particularly the EU level trade policy reforms are defensive in nature, trying to level the playing field particularly with China and the United States, and to use reciprocity in market access to ensure fair trade and in-

34 European Commission, "Remarks of Executive Vice-President Valdis Dombrovskis at the informal meeting of Trade Ministers," September 21, 2020: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1720 (accessed November 23, 2020).

2. IN SUMMARY: CAPACITY TO ACT ACROSS THE FIVE STAGES OF THE POLICY CYCLE



Source: Author's compilation

vestment relations. With regard to the bilateral (FTAs) and multilateral level (WTO), the EU acts proactively, shaping globalization by initiating negotiations on FTAs and proposing reform measures for the WTO.

Summing up, the EU has a strong capacity to act in trade: On the one hand, due to the size of its market, the relative centralization of its competencies, its bureaucratic sophistication, and repeated trade reforms (the latest being Trade for All), the EU is quite effective in achieving its trade policy objectives. In short, trade is probably the one major European policy area where the EU is on the right track and ready to act due to its exclusive competence and its forward-looking and inclusive trade strategies. This started with the Global Europe strategy in 2007, was reformed after the TTIP negotiations through the Trade for All Strategy in 2015, and is now further enhanced through the new publication on an open, sustainable, and assertive trade policy (2021).

On the other hand, there are two drawbacks to the EU's capacity to act on trade. The first drawback is the new uncertainty regarding the European unity of its trade policy, which has been underlined most recently again by the debate about the EU-Mercosur trade agreement, the connection between trade and climate change (sanctions on sustainability chapters), or the new EU-China investment deal. What is more, the COVID-19 pandemic has advanced protectionist sentiments among some EU member states, dividing the EU members even further. The EU will thus only be an assertive actor in trade if it gets its own house in order. The second drawback relates to the multilateral level, where the EU is highly dependent on the United States and China to reach meaningful WTO reforms. The WTO reform papers from 2018 and 2021 are a good basis for discussion, but the EU needs the political will from all major players to achieve relevant changes. The United States might be on board under the new Biden administration; but China so far has shown less willingness to acknowledge that it needs to take on more global responsibilities in trade.

In addition, there are also some possible trade-offs among the unilateral, bilateral, and multilateral trade levels. The use of unilateral measures and the pursuit of bilateral FTAs is not entirely unproblematic when it comes to the overarching goal of strengthening the global rules-based trading order. First, unilateral trade measures always have to be WTO-compatible and not lead to increased protectionism. Otherwise, this would go against the spirit of the WTO and the optimistic scenario. Second, negotiations not only on large mega-regional deals such as TTIP but also on smaller but economically important FTAs like the one between the EU and Japan threaten to sap the energy and resources required to pursue the reform efforts at the multilateral level. The dragging out of the DDA gave impetus to a wide range of bilateral and plurilateral negotiations, but these negotiations further worsened the outlook on the multilateral negotiations in return. Countries now tend to work together within coalitions of the willing instead of with all 164 WTO members.

Implications and Recommendations Derived from the Monitoring Exercise

The EU has a good grasp of the challenges that the new geo-economic trade environment poses. In addition, there is a well-established structure of cooperation between the supranational EU institutions and EU member states in place. Nevertheless, there are some obvious vulnerabilities when it comes to both the bilateral and multilateral channels, and these require attention.

Looking at weaknesses on a bilateral level, it becomes apparent that the EU increasingly has a problem in the area of decision-making as it sometimes lacks unity on even the overarching strategic goals that European trade policy should pursue.

There are also problems with regard to the EU's structural capacity to act, which – in the case of trade – means the efficient ratification of free trade agreements. Agreements that include investment chapters, so-called mixed agreements, have to be ratified not only by the EP but also by more than 40 parliamentary chambers, upper and lower, across the 27 member states. In Belgium, even the individual regional parliaments have to ratify an agreement. CETA has now provisionally been applied since September 2017 after ratification by the EP. But in July 2020, the parliament of Cyprus decided not to ratify the Agreement on the grounds of its concern about the level of protection afforded to Cyprus' agricultural products, particularly Halloumi cheese. As such, individual countries and even regions can block a strategic European trade deal for political and individual interests.

With regard to the effectiveness of European trade policy, the low utilization rate (or PUR) for CETA and other agreements clearly needs to be improved so that the standards and norms, which were negotiated with strategic trade partners, can be applied in the EU and third countries. Looking to the future, this issue will become increasingly crucial as economic competitors such as Japan and China concluded large mega-deals like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP) in the fast-growing Asia-Pacific region. If PUR remains low, European companies will lose their competitive advantage in these dynamic markets.

ON A BILATERAL LEVEL: UNITY IS KEY TO REMAINING A RELEVANT ACTOR

How can the EU best resolve problems that arise on a bilateral level? The most fundamental issue relates to unity in European trade policy. The EU can only stay a relevant global actor in trade if the member states agree on common goals for a future strategy. In addition to the Paris Agreement, which – according to the new Commission proposal - will be firmly integrated in future EU trade agreements, EU member states have to clearly define the extent to which climate goals will be part of trade agreements. The outcome of the review process can only be a first step. However, some points are clear: The new trade agenda must take the EU Green Deal and climate goals into consideration. While trade policy is not climate policy, it needs to make sure that trade contributes to environmental goals. This also means that the EU must make sure that sustainability issues, which are already part of EU FTAs, are implemented. In addition, the EU member states need to get a clear understanding of the relationship between "strategic autonomy" and "openness." So far, there is a lack of common understanding on this issue.

As to the ratification problem, there is already a solution in sight. Since the ECJ decision of May 2017, the trade and investment competences of the EU have been clarified, leading to an accepted definition of what constitutes a "mixed agreement." When it comes to its bilateral and regional FTAs, an agreement needs to be ratified only by the EP if the EU leaves out chapters on portfolio investments and dispute-settlement mechanisms for investments. Pursuit of an easily-ratifiable agreement explains why the Commission decided to launch EU-only FTAs with Australia and New Zealand. But this does not resolve the problem arising from "mixed agreements" like EU-Mercosur, on which negotiations started before the ECJ decision – or indeed future agreements in which the EU might seek a mixed deal. If the EP ratifies such agreements, they will likely be applied only on a provisional basis for a long time while they work their way through national and regional parliaments.

Regarding the improvement of the utilization rate (PUR), the EU should – as a first step – increase information about the requirements and benefits of FTAs, making them more attractive for companies and SMEs. This is a low-hanging fruit that could bring immediate improvements. In the long term, the EU should negotiate simple and standardized rules of origins that apply to all sectors (and possibly to all agreements) to avoid a "spaghetti-bowl" of rules that firms with multiple export markets must somehow navigate. This would enable companies, in particular SMEs, to take advantage of opportunities more easily. It would also be helpful to have Information Technology (IT) systems in place, which can test whether an export product falls under the preferential tariffs in a standardized way. In addition, the EU needs to make sure that companies do not have to disclose sensitive data to foreign authorities in order to verify that the products fall under the FTA.[35]

On a multilateral level (regarding the reform of the WTO), the EU is showing a real capacity to act and has lined up its problem definition, agenda-setting, and decision-making powers to full effect. However, even then, due to a lack of cooperation from China and the United States, the EU was unable to move ahead with its reform proposals.

ON A MULTILATERAL LEVEL: TRY TO PUSH FOR TRADE ISSUES THAT KEEP THE WTO RELEVANT

With regard to WTO reform, the EU should immediately enter into discussions with the Biden administration and try to get broad support for its reform proposals on all four pillars of the WTO. It is critical to unblock the WTO, and here, EU and US leadership is necessary. The first step has already been accomplished: In March 2021, Ngozi Okonjo-Iweala became the new WTO director-general with the support of the EU and the United States. In addition, the EU – together with the US – can support plurilateral initiatives on issues that are relevant for modern day trade. This relates to the current plurilateral negotiations on e-commerce, for instance. However, to remain relevant, the EU – together with the United States and other like-minded countries – needs to push for plurilateral initiatives that are high on the global agenda such as trade and health issues, as well as trade and sustainability matters. For this, the fundamental opposition by India and South Africa with regard to the negotiation of plurilaterals needs to be overcome. Regarding trade and health, the EU initiative (together with the Ottawa Group of countries) to facilitate trade in health products is an important first step. In the area of climate, a revival of the Environmental Goods Initiative (EGA), which provides for the abolition of tariffs on environmental goods, would be important to modernize the institution.

Both the EU and the United States can also work with WTO members on stronger enforcement regulations. However, it remains uncertain whether China will participate – which is crucial for these efforts to succeed. Regarding the AB of the WTO, the present US criticism is widely shared by both parties. The majority of procedural points can probably easily be fixed on the basis of the EU proposals, but the problem of judicial overreach will remain complicated. However, in contrast to the previous administration, the Biden team will enter a dialogue with the EU and the other WTO trading partners, which raises the prospects for a successful WTO reform.

GERMANY SHOULD TRY TO BUILD COALITIONS AROUND A COMMON EUROPEAN STRATEGY NOT TRY TO FOSTER SPECIAL BILATERAL RELATIONSHIPS

The most important point for Germany to increase the EU's capacity to act is to work on the unity of European trade policy. To preserve and increase the EU's leverage and leadership, the cohesion of EU members is crucial. As the largest member state, Germany has a specific role to play in taking the initiative and fostering cohesion around common European positions. This means that there should be no *unilateral* German initiatives with third countries, in particular in response to the United States and China. This also relates to China's BRI: while most member states have concerns about Chinese market distortions, the EU is just starting to build a coherent response to the initiative. Closer cooperation on the long-term prospect of the BRI is most needed, while many member states still prioritize their short-term national self-interest. Germany should try to build European coalitions in this regard rather than fostering a special bilateral relationship with China. Therefore, it remains to be

35 Stormy Mildner and Claudia Schmucker, "EU Trade Policy Reform, Levelling the Playing Field in a New Geo-Economic Environment," DGAP Analysis, No. 7, German Council on Foreign Relations (October 2020), p. 28: https://dgap.org/en/research/publications/eu-trade-policy-reform (accessed November 24, 2020).

seen whether the German push for the investment agreement with China will have negative consequences.

In addition, Germany should be as transparent as possible about the economic benefits of a specific trade agreement – but also about possible drawbacks. As the gains of any agreement will be distributed quite unevenly, there should be studies on the impact of each FTA for specific regions and individual sectors. Such impact assessments would provide a useful way for the German government to highlight the potential benefits and proactively address the expected losses, thus reducing the likelihood that it will be the one to stand in the way of European unity. In addition, it is important for Germany to increase information about the requirements for companies to use the provisions of the FTAs. Such a package of reforms would ensure the faster ratification and implementation of FTAs both in Germany and in other member states. Through these means, Germany will boost its capacity to push and promote European FTAs, which are of special interest for the country.

The national and EU level are highly interlinked in trade through the well-regulated process of coordination between the European Commission, the Council, and the TPC. As such, a German effort for European cohesion and transparency in trade would have a strong impact on the overall effectiveness of a strategic European trade policy in the future.

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