

IN-DEPTH ANALYSIS

Free and fair trade for all ?

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ABSTRACT

With its strategy paper entitled 'Trade for all' in 2015, the Commission launched an EU trade policy that focussed on values such as human rights, workers' rights, environmental protection and sustainable development. The idea was that free trade should be fair for both consumers in Europe and for citizens elsewhere. This approach was pursued in bilateral trade negotiations and in legislative proposals on, for example, conflict minerals, dual-use goods or the investment court system. But by the end of 2016 the tenor of the debate on international trade had changed, shifting the focus to national interests and fairness for consumers and producers at home. The UK's decision to withdraw from the EU and the election of President Trump in the US, together with the expiry of the clause recognising China's non-market economy status, contributed to this shift. The European Parliament has played a crucial role in shaping the direction of EU trade policy. While its 2015 resolution on the Transatlantic Trade and Investment Partnership (TTIP) set the values-based trade agenda, its resolutions in 2016 and 2017 on China's market economy status and global value chains reflected the shift in values. The Commission is seeking to balance free and fair trade but new challenges lie ahead, notably in the EU's neighbourhood: Russia, the Eastern Partnership, Turkey and the UK's withdrawal from the EU.

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Introduction: evaluating trade policy and its implementation

On 13 September 2017, the Commission published two reports¹, which evaluate the current state of trade policy since the **'Trade for all' strategy** was published in October 2015. **The first annual report on the implementation of free trade agreements**² followed on 9 November 2017 (referred to hereafter as the Implementation Report). These reports place current EU trade policy in the context of global developments and emphasize its merits and results. This briefing makes its own assessment of recent developments in trade policy, focussing on a European Parliament perspective.

The rapid expansion of global value chains and trade in intermediary goods has changed the nature of international commerce in the past three decades. Given the complexity of multilateral negotiations, the World Trade Organization (WTO) was unable to keep pace with these developments and, consequently, the existing multilateral regulation does not sufficiently reflect the realities of 21st century trade³. When trade liberalisation through the WTO lost its momentum after 2004, the focus of EU trade policy shifted towards bilateral free trade agreements (FTAs). This policy shift finds its expression in the 2006 Commission communication **Global Europe**⁴. The communication gave priority to emerging economies in Latin America and Asia, with the ambition to create region-to-region FTAs, for instance with Mercosur and the ASEAN countries. However, it proved quicker to complete successful bilateral negotiations with one or more countries and the current FTAs with Colombia, Peru, Vietnam, Singapore and South Korea find their roots in this period.

In its Implementation Report, the Commission labels all FTAs since 2006 'new generation FTAs'. In contrast, FTAs concluded before 2006 are called 'first generation FTAs'. When negotiating ambitious FTAs with like-minded partners, the EU seeks to set standards for issues that are not yet sufficiently covered by multilateral rules. As for plurilateral agreements, the provisions agreed on by major trading powers are expected to serve as blueprints for future WTO legislation⁵. Likewise, the fear of being excluded from the process of standard-setting might spur non-participating countries to discuss issues they were reluctant to discuss earlier.

The impact of the economic and financial crisis, which hit Europe in 2009, led to a greater focus on law enforcement and regulatory cooperation, especially within and between developed economies. At the same time, it was felt that free trade and investment could provide the necessary economic impetus to recover from the crises⁶. **Ambitious bilateral negotiations** were launched with mature economies, for instance Japan in 2013. The best known are the Comprehensive Economic and Trade Agreement with Canada (CETA), on which negotiations were launched in 2009 and concluded in 2016, and the Transatlantic Trade and Investment Partnership (TTIP), for which negotiations were launched in 2013. The most **ambitious example of plurilateral negotiations** is the negotiations on the Trade in Services Agreement (TiSA), launched in 2013. The last three trade negotiations in particular led to unprecedented protests in several EU Member States. The protests reflected criticism of a perceived lack of transparency in the negotiation process and fears that the quality of European regulation would be reduced. A number of NGOs saw regulatory cooperation as a threat to European standards rather than as an opportunity to set common standards. Towards the summer of 2015, criticism on TTIP and CETA focussed on Investor to State Dispute Settlement (ISDS), an arbitration mechanism which was originally set up to protect investments abroad but was now perceived by its detractors as an instrument for Multinational Enterprises to exert pressure on states to bring down legal standards and constrain their right to regulate in the public interest. This context needs to be borne in mind when evaluating the Commission's 'Trade for all' strategy, which was published in October 2015.

¹ [COM\(2017\)491 final 'Report on the Implementation of the Trade Policy Strategy Trade for All - Delivering a Progressive Trade Policy to Harness Globalisation'](#) and [COM\(2017\)492 final 'A Balanced and Progressive Trade Policy to Harness Globalisation'](#).

² [COM\(2017\)654 final 'Report on Implementation of Free Trade Agreements: 1 January 2016 - 31 December 2016'](#).

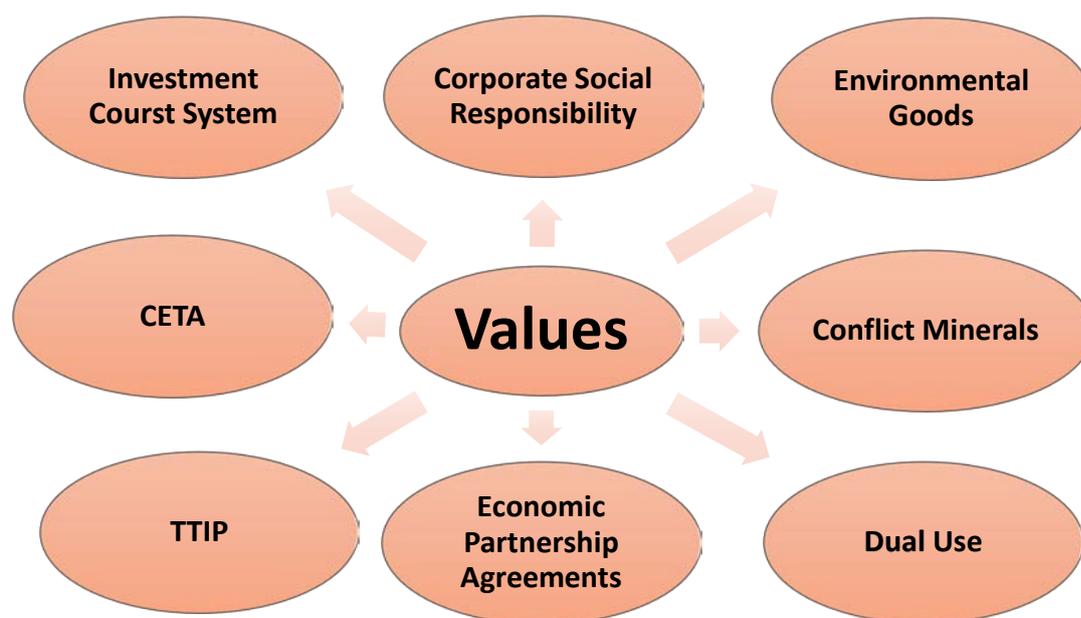
³ [Baldwin, R., 'WTO 2.0: Global governance of supply-chain trade' Center for Economic Policy Research Policy Insight No 64, Sept. 2012.](#)

⁴ [COM\(2006\)567 final 'Global Europe - Competing in the World'](#).

⁵ [COM\(2006\)567 final 'Global Europe - Competing in the World', p. 10.](#)

⁶ [COM\(2010\)612 'Trade, Growth and World Affairs - Trade Policy as a Core Component of the EU's 2020 Strategy'](#).

1 The period from mid-2015 to mid-2016: values-based trade



1.1 Guiding principles: fair for consumers here and citizens there

In her foreword to the Commission communication 'Trade for all'⁷, Commissioner Malmström states 'In recent years we have seen an intensive debate about trade across the European Union which has some important lessons for trade policy.' She sums up the lessons in the following paragraphs. Trade is not only about economic results but also about '**core principles**, like human rights and sustainable development⁸ around the world or high quality safety and environmental regulation and public services at home'. Trade policy needs to be more effective, more transparent and more about values.

The Commission does not dispute the role of free trade as an important **motor of the European economy**. 'Trade for all' continues the balanced approach of pursuing bilateral trade negotiations and continuing multilateral efforts to build on a multilateral, rules-based trading system. But the new strategy emphasises that trade is for everyone, not just something from which professionals and companies can make money, and must also benefit consumers in our internal market and raise the living standards of those who produce goods for them in third countries: *trade for all*.

More **transparency** during negotiations is an important tool in the awareness campaign launched by the Commission as a clear response to the public debate and criticism. A number of the texts proposed by the EU to the US in the TTIP negotiations are available online and members of the European and national parliaments have access to even more documents. The fourth chapter of 'Trade for all' leaves no doubt about the Commission's intentions: it presents a trade and investment policy *based on values*.

The Commission is eager to show that there are **values-based benefits** for European consumers and foreign citizens alike. In response to consumers' concerns about the quality of imported products, the Commission makes the case for high standards, emphasizing the role of the state as regulator. A new

⁷ http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

⁸ Sustainable Development stands for meeting the needs of present generations without jeopardizing the ability of future generations to meet their own needs. With its commitment to sustainable development in its trade policies, the EU aims to contribute to United Nations global sustainable development goals ([United Nations, 'Transforming our world — The 2030 Agenda for Sustainable Development'](#)).

approach to investment protection called the 'Investment Court System' (ICS) will replace the criticised Investor State Dispute Settlement mechanism, to put the arbitration in the hands of independent judges.

The promotion of sustainable development and human rights in third countries should, according to the Commission, be not only a matter of government policy but also the responsibility of private business, through '**corporate social responsibility**'⁹ initiatives' and 'due diligence across the production chain'. Fair and ethical trade schemes should be promoted, which should also cover environmental aspects, as in the EU organic scheme. Governments should maintain their commitment to sustainable development in trade, for instance through the GSP+ scheme or EU support for the Environmental Goods Agreement (EGA), which is currently under negotiation in the WTO. The expression '**fair trade**' seems to be used in 2015 in its traditional meaning: trade that is fair for citizens in third countries as regards their living and working conditions, their wages and their health. It can also denote a broader concept of fairness towards the natural environment, which implies healthy products for producers and consumers. Trade for all combines the benefits of free trade with the values of fair trade.

1.2 Concrete developments

1.2.1 The Bilateral Trade Agenda

According to the Commission's Implementation Report¹⁰, the **bilateral approach has paid off**. Although the title of the report suggests an evaluation of the year 2016, the report looks further back in time, which can be justified by the fact that this is the first report of its kind. Major growth in exports is shown for the late 'first-generation FTAs', with an increase in EU exports to Chile of 170 % since 2003. Similarly, EU goods exports to Mexico increased by 19 % while services exports grew by 54 % since 2000¹¹. Early 'new-generation FTAs' are not performing any worse¹². For example, EU exports to South Korea have increased by 59.2 % since the FTA was provisionally applied in 2011 and exports to Central America have grown by 22 % since 2013. A spectacular increase of 244 % in EU car exports to South Korea since 2011 shows that double-digit growth in a traditional sector such as the automobile industry is possible once an FTA is in place.

In the two years since the 'Trade for all' communication, **new bilateral FTAs** have entered into force. In the Eastern Neighbourhood, the Association Agreements with Moldova, Georgia and Kosovo, which all have a strong trade component, have entered into force. In the Southern Neighbourhood, the EU has finally launched negotiations with Tunisia – negotiating directives had already been adopted by the Council in 2011. In Africa, the Pacific and the Caribbean, the stepping-stone EPAs with Ghana and Ivory Coast and the EPA with the Southern African Development Community have entered into force. Looking to Asia, negotiations with Vietnam were concluded formally in December 2016. In addition, new FTA negotiations have been launched with Indonesia and the Philippines. The negotiating directives for these date back to 2007 when the EU embarked on region-to-region negotiations with ASEAN countries. As the members of the ASEAN bloc had very different expectations for their talks with the EU, negotiations were paused in 2009 and both sides decided to pursue bilateral talks instead. In Latin America, Ecuador joined the FTA with Colombia and Peru.

⁹ The Commission has defined CSR as the responsibility of enterprises for their impact on society. CSR should be company led. Public authorities can play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation. Companies can become socially responsible by following the law and integrating social, environmental, ethical, consumer, and human rights concerns into their business strategy and operations (https://ec.europa.eu/growth/industry/corporate-social-responsibility_en).

¹⁰ [COM\(2017\)654 final 'Report on Implementation of Free Trade Agreements: 1 January 2016 - 31 December 2016'](#).

¹¹ [COM\(2017\)654 final 'Report on Implementation of Free Trade Agreements: 1 January 2016 - 31 December 2016'](#), p. 24, 26, 31.

¹² [COM\(2017\)654 final 'Report on Implementation of Free Trade Agreements: 1 January 2016 - 31 December 2016'](#), pp. 7-9.

On the **Transatlantic** side, events have taken a different turn. The negotiations on TTIP not only ran into public opposition, they also got stuck on disagreements regarding further market opening. The US was not satisfied with the EU's offers in the field of agriculture, whereas the EU did not see enough opportunities in American public procurement markets, where 'Buy America' provisions at federal and state level have prevented further market opening. While the US was not embracing EU proposals for a reform of the ISDS system, negotiations had been slowing down even before President Trump took office. In the CETA agreement with Canada however, it was possible to include the new ICS system proposed by the EU, thanks to the flexible and progressive trade policy of the newly elected government of Justin Trudeau. Although the final conclusion of CETA was preceded by some drama on the European side when the region of Wallonia threatened to block agreement by Belgium, the agreement was finally signed on 30 October 2016.

Extensive **investment chapters** are usually included in EU FTAs. With some partners, however, the EU prefers to negotiate separate investment agreements¹³ instead of entering into full-scale FTA talks. This is currently the case with China and Myanmar. Negotiations on a comprehensive investment agreement with China have been under way since November 2013. The agreement aims at providing investors on both sides with predictable, reciprocal, long-term access to the EU and Chinese markets and to protect investors and their investments. In particular, the EU and China have agreed that the future deal should improve market access opportunities for their investors by establishing a genuine right to invest and by guaranteeing that they will not discriminate against each other's companies. The EU and China are also determined to address key challenges in the regulatory environment, including those related to transparency, licensing and authorisation procedures, and to provide for a high and balanced level of protection for investors and their investments. Moreover, the agreement will include rules on the environmental and labour-related dimensions of foreign investment. The 16th round of talks will take place in the week of 11 December 2017 in Brussels.

1.2.2 Legislation

Several regulations have been adopted in recent years to support the EU's bilateral and multilateral trade agenda. Here, the increased public focus on trade negotiations has made it necessary to reassure citizens both that EU standards were not being bargained away behind closed doors and that the EU was not betraying its values in its quest to open new markets.

In response to the wide protests against TTIP, which largely revolved around ISDS, the Commission held a public consultation on **investment protection** in 2014. There, some stakeholders proposed reforming investment dispute resolution multilaterally as the most effective way to address the shortcomings of ISDS. In its May 2015 Concept Paper on investment in TTIP and beyond¹⁴, the Commission indicated its intention to reform the ISDS system in bilateral negotiations and transform it into an instrument that functions more like traditional courts systems and includes an appellate mechanism. These changes were intended to be the stepping stones towards a permanent multilateral system for investment disputes, on which the Commission sought to work in parallel. The European Parliament supported this proposal on various occasions, including in its July 2015 TTIP resolution¹⁵, where it called for replacing the ISDS with a more

¹³ After the Lisbon Treaty entered into force in December 2009, the EU gained exclusive competence for foreign direct investment as part of the common commercial policy. In the 50 years before, EU Member States had negotiated more than 1 400 bilateral investment agreements offering investment protection to many European investors. These will continue to exist until they are replaced by EU agreements.

¹⁴ [Investment in TTIP and beyond - the path for reform.](#)

¹⁵ [\(2014/2228\(INI\)\) 'European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership \(TTIP\)'.](#)

transparent and democratic system. Also as a reaction to this, the Commission published its proposal¹⁶ on a new ICS in September 2015 in the framework of the TTIP negotiations. The ICS departs substantially from the old ISDS framework, especially since parties to the dispute are no longer able to choose their tribunal members. These will instead be selected on a rotational basis from a group of judges, appointed for a specified period of time by a joint committee of the EU and its respective FTA-partner¹⁷. Moreover, in the October 2015 'Trade for all' communication, the Commission set the goal of engaging with partners to build consensus for a fully-fledged, permanent Multilateral Investment Court (MIC) so as to develop a coherent, unified and effective policy on investment-dispute resolution.

Another major values-based piece of legislation from this period is the **Conflict Minerals** Regulation. The legislative process began in 2014 and the agreement was published in the Official Journal of the EU in May 2017. When it enters fully into force in 2021, EU importers will be required to carry out due diligence in their supply chain, following a five-step framework set out in the corresponding OECD guidance document¹⁸. The regulation applies to trade in four minerals — tin, tantalum, tungsten and gold — which sometimes finance armed conflict or are mined using forced labour. It aims at stopping exports of conflict minerals to the EU and the use of those minerals by EU and global smelters and refiners by requiring EU companies in the supply chain to import them from responsible sources only. Moreover, it seeks to end the abuse of mine workers and to support local development. To help EU businesses apply the regulation, the Commission is currently preparing guidelines for identifying conflict-affected and high-risk areas. It will also publish an indicative list of such areas in 2019, which will then be updated regularly.

The update of the EU export control policy on **dual-use goods** is another ongoing process that aims to ensure that EU businesses comply with European values. The EU has had a Community regime for the control of exports, transfer, brokering and transit of dual-use items since the adoption of Regulation EC No 428/2009¹⁹ in 2009. In 2013, the Commission concluded in a report on the implementation of the regulation that the system must be upgraded in order to face new challenges. Consequently, following an impact assessment and a communication in 2015, the Commission published a proposal²⁰ in September 2016 to recast the system. Amongst other things, the proposal intensifies controls to tackle illicit trade and widens the definition of dual-use items to include cyber-surveillance technologies since these can be misused in violation of human rights. Moreover, it provides for enhanced information exchange and cooperation on implementation and enforcement between the Member States and the Commission, increases transparency, and establishes a dialogue on export controls with third countries.

1.2.3 The WTO

After limited progress following the unsuccessful Cancún Ministerial Conference in 2004, the **Doha Development Agenda** regained some momentum at the Ninth Ministerial Conference. At this conference, in Bali in December 2013, ministers reached agreement on three pillars: (i) trade facilitation, (ii) selected agricultural issues, and (iii) selected development-focused provisions. While the **Trade Facilitation Agreement**, which aims at simplifying customs procedures by reducing their costs and improving their speed and efficiency, was chiefly a concern of developed countries, pillars (ii) and (iii) mainly included provisions intended to meet developing countries' demands for a fairer and more inclusive international trade system. For example, simplified rules of origin were introduced for Least Developed Countries (LDCs) and these countries were granted improved access to richer countries' markets. Altogether, the Trade

¹⁶ http://trade.ec.europa.eu/doclib/docs/2015/september/tradoc_153807.pdf.

¹⁷ EPRS, 'From arbitration to the investment court system (ICS): The evolution of CETA rules'

¹⁸ [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#).

¹⁹ [Council Regulation \(EC\) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items](#).

²⁰ [COM\(2016\)616 final 'Proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items \(recast\)'](#).

Facilitation Agreement, which formed the centre-piece of the so-called Bali Package, was the first multilateral trade deal agreed by WTO members since the creation of the organisation. It entered into force in February 2017 following its ratification by two-thirds of the WTO members.

Two years after the Bali meeting, at the **2015 Nairobi Ministerial**, negotiators managed to break some more new ground. The Nairobi package honours the Doha Round's pledge to make trade fair for developing countries by delivering commitments that benefit in particular the WTO's poorest members. It is based on three pillars, around which its six ministerial decisions are organised: (i) agriculture, (ii) cotton; and (iii) LDC issues. Besides the immediate elimination of agricultural export subsidies in developed countries, it includes a ministerial decision on public stockholding for food security purposes. It also contains provisions granting enhanced preferential rules of origin to LDCs and preferential treatment for LDC services providers. Moreover, the package addresses new issues, for example in the ministerial decision on the continuation of the Work Programme on Electronic Commerce.

Yet, many issues still remain unresolved and the **11th Ministerial Conference**, held in Buenos Aires from 11 to 13 December 2017, will be a challenging endeavor.

In parallel to the Doha Round, several plurilateral negotiations are under way. These are held between like-minded countries and are, in principle, open to all WTO members to join. Although plurilateral agreements are not a new phenomenon, their number has increased in recent years. One of these agreements is the **Environmental Goods Agreement (EGA)**, the negotiations on which were launched in July 2014 by the EU and 17 other WTO members²¹. The agreement aims to remove barriers to trade in environmental goods, which are crucial for environmental protection and climate change mitigation. They include products that help to clean the air and water, help to manage waste, contribute to energy efficiency, help to control air pollution, or generate renewable energy. As well as slashing tariffs on these goods, the EU wants the agreement to include services related to exports of environmental goods and to tackle non-service barriers. So far, 18 negotiating rounds have taken place²².

The **Trade in Services Agreement (TiSA)** is another example of a plurilateral agreement. Although talks are not held in the framework of the WTO, this agreement is intended as a forerunner of a multilateral agreement on services that would be folded into the WTO once a critical mass of members was reached. The EU and 22 other WTO members²³ launched negotiations on it in March 2013. Together, these 23 WTO members account for 70 % of global trade in services. Based on the WTO's General Agreement on Trade in Services, TiSA aims to open up markets and improve rules in areas such as licensing, financial services, telecoms, e-commerce, maritime transport, and professionals moving abroad temporarily to provide services in order to ensure that the multilateral rules reflect the realities of 21st century services trade. TiSA is open to all WTO members who want to open up trade in services. Since the 21st negotiating round, in November 2016, negotiations have been on hold because the outstanding issues are too controversial to be discussed in the current political context.

²¹ Australia, Canada, China, Costa Rica, Hong Kong (China), Iceland, Israel, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, Liechtenstein, Chinese Taipei, Turkey, United States

²² https://www.wto.org/english/tratop_e/envir_e/ega_e.htm.

²³ Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey and the United States

1.3 The European Parliament

1.3.1 Shaping the Bilateral Trade Agenda

The European Parliament can be credited with being one of the forces that influenced the tone and content of the Commission's 'Trade for all' communication. In the first place, the Parliament has consistently pushed the Commission to allow greater transparency in ongoing bilateral trade negotiations, in particular those on TTIP. The **resolution on the TTIP negotiations of July 2015**²⁴ may be considered exemplary in this respect. Many of the issues in this resolution have found their way into 'Trade for all' or subsequent Commission proposals.

In the resolution, the EP recognises the importance of TTIP in setting high standards that could at a later stage become global if others follow them. It states that due to 'the size of the transatlantic market, TTIP is an opportunity to shape and regulate the international trade order in order to ensure that both blocs thrive in an interconnected world'. To address the fears of many civil society organizations that the agreement could undermine European standards, the resolution calls for convergence in standards and regulation at the highest level. Moreover, it recommends excluding from the scope of the negotiations areas such as public healthcare services, genetically modified organisms (GMOs), the use of hormones in the bovine sector, the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation and its implementation, and the cloning of animals for farming purposes because the EU and the USA have very different rules. Parliament also emphasises the importance of a balanced involvement of stakeholders.

Regarding investment protection, the resolution advocates replacing the ISDS system with a new, more transparent system, where disputes between investors and states are treated by publicly appointed, independent professional judges in public hearings and an appellate mechanism ensures the consistency of judicial decisions. Furthermore, investment protection provisions have to protect the right to regulate in the public interest and give foreign investors no greater rights than domestic ones. Also, the jurisdiction of the EU and its Member States must be respected by the new system. In the same year, the Commission complied with these demands when it presented concrete proposals to create an Investment Court System²⁵, which evolved into plans for a Multilateral Investment Court.

Almost a year later, in July 2016, the call for a more values-based trade system was echoed in the European Parliament **resolution on social and environmental standards, human rights and corporate responsibility**²⁶. Here, the parliament addresses a wide variety of issues regarding values-based trade and the responsibility of the private sector. Acknowledging that the effectiveness of past provisions in this field has been limited, it also proposes some remedies to ensure their implementation. For example, since human rights clauses in trade and association agreements have had a limited impact, the parliament suggests the inclusion of a committee for human rights in all future FTAs to ensure systematic follow-up on human rights issues related to the FTA in question. Likewise, the Commission is invited to ensure regular in-depth monitoring of the implementation of human rights clauses in FTAs in collaboration with other EU institutions.

Moreover, the resolution calls for a greater coherence between EU development and trade policy. The Commission is also requested to identify the consequences of its trade and investment agreements for gender equality and consider the gender equality dimension in future FTAs. At the same time, the EP prompts the Commission to adopt binding measures to ensure that companies pay their taxes where value is created and economic activities take place. Likewise, the EP stresses the responsibility of the private

²⁴ [2014/2228\(INI\) 'European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership \(TTIP\)'](#).

²⁵ http://trade.ec.europa.eu/doclib/docs/2015/september/tradoc_153807.pdf

²⁶ [\(2015/2038\(INI\)\) 'European Parliament resolution of 5 July 2016 on implementation of the 2010 recommendations of Parliament on social and environmental standards, human rights and corporate responsibility'](#).

sector to act responsibly abroad on other occasions: it calls on the Commission to include corporate social responsibility (CSR) commitments in all FTAs and increase the enforcement of existing provisions. For example, the Commission should be enabled to conduct investigations into alleged breaches of CSR commitments and it should reward companies that introduce CSR strategies.

The EP also gave its official reaction to the 'Trade for all' strategy in its **resolution of 5 July 2016 on a 'forward looking and innovative future strategy for trade and investment'**²⁷. While this resolution takes up many aspects of the 'Trade for all' communication it can also be seen as something of a tipping point for Parliament in its stance on trade policy. It underlines that only 'fair and properly regulated trade, if aligned with the Sustainable Development Goals, could reduce inequality and foster development'. In making this connection between 'fair' and 'properly regulated' trade, Parliament seeks to ensure that trade takes place under conditions that are both fair to producers and consumers in the EU and fair to stakeholders in developing countries. To create such a properly regulated commercial environment, the EP calls on the Commission to include provisions on human rights, social, labour and environmental standards, principles of CSR, and chapters on sustainable development in all EU trade agreements and to ensure their enforceability. At the same time, trade agreements should be tools in the fight against corruption. Moreover, Parliament points out that greater consistency is needed between the EU's trade policy and other aspects of its external policy in order properly to achieve these goals.

In addition, the EP recalls that, through global value chains, the lax enforcement of existing labour laws and safety standards in third countries creates unfair competition both for suppliers that comply with these rules and for governments seeking to improve living standards. Therefore, the EU must be able to react more effectively to unfair trading practices by quickly updating its trade defence instruments. Similarly, the EU should be able to impose sanctions on countries that do not comply with the standards they agreed upon. Parliament also urges the Commission to work with EU trade partners towards more reciprocal market access in the areas of transport, telecommunications and public procurement, where the EU market is largely open. In this context, Parliament recalls that even open and fair trade and investment policies need a range of effective flanking policies in order to maximise the gains and minimise the losses of trade liberalisation.

Furthermore, the EP calls on the Commission regularly to update its trade and investment strategy and to publish a detailed implementation report every two years. The two implementation reports that the Commission published in September and November 2017 are, in part, a response to these requests. Lastly, welcoming the Commission's efforts to make the TTIP negotiations more transparent, the resolution requests an even higher level of transparency, which should be extended to all ongoing and future trade negotiations.

1.3.2 Shaping the WTO agenda

While seeking to advance the Bilateral Trade Agenda, the European Parliament has also continued to support a multilateral trade agenda in the WTO. Its **resolution on the state of play of the Doha Development Agenda**²⁸ of November 2015 — only a month after 'Trade for all' was published — recalls that the objective of placing the needs of developing countries at the heart of the Doha Round stems from the conviction that a multilateral system based on more just and equitable rules can contribute to fair and free trade at the service of the economic development of all continents and the alleviation of poverty. It goes on to point out that a truly open, fair and non-discriminatory system must be based on shared and applied rules and take greater account of the interests of a wide range of actors. Besides, the resolution

²⁷ [\(2015/2105\(INI\)\) 'European Parliament resolution of 5 July 2016 on a new forward-looking and innovative future strategy for trade and investment'](#).

²⁸ [\(2015/2632\(RSP\)\) 'European Parliament resolution of 26 November 2015 on the state of play of the Doha Development Agenda in advance of the 10th WTO Ministerial Conference'](#).

calls for speedy ratification of the Trade Facilitation Agreement as it will bring significant benefits to WTO members and especially developing countries due to enhanced transparency and legal certainty as well as reduced administrative costs and less lengthy customs procedures. Nevertheless, it also urges advanced developing countries to take their share of responsibility and make adequate contributions to ensure the successful conclusion of the Doha Round. The recent concern with transparency is also reflected in this resolution. For example, it calls for the parliamentary dimension of the WTO to be strengthened and for parliamentarians to be granted better access to negotiations and relevant documents.

In its February 2016 **resolution on the negotiations for the TiSA agreement**²⁹, the EP calls for an 'ambitious, comprehensive and balanced negotiation, which should unleash the untapped potential of a more integrated global services market, while preventing social, environmental and economic dumping and fully guaranteeing compliance with the EU *acquis*'. In this context, the resolution stresses that consumer rights and social and environmental standards should not be considered as trade barriers but rather as non-negotiable building blocks for smart, sustainable and inclusive growth. At the same time, the agreement should ensure that EU small and medium-sized service providers are protected against unfair trading practices by services providers outside the EU. Here, the use of the word 'fair' already foreshadows the shift towards a trade policy more concerned with the effective implementation of international rules and standards. Additionally, the EP demands reciprocity at all levels and calls for the exclusion of certain sectors, such as services of general economic interest.

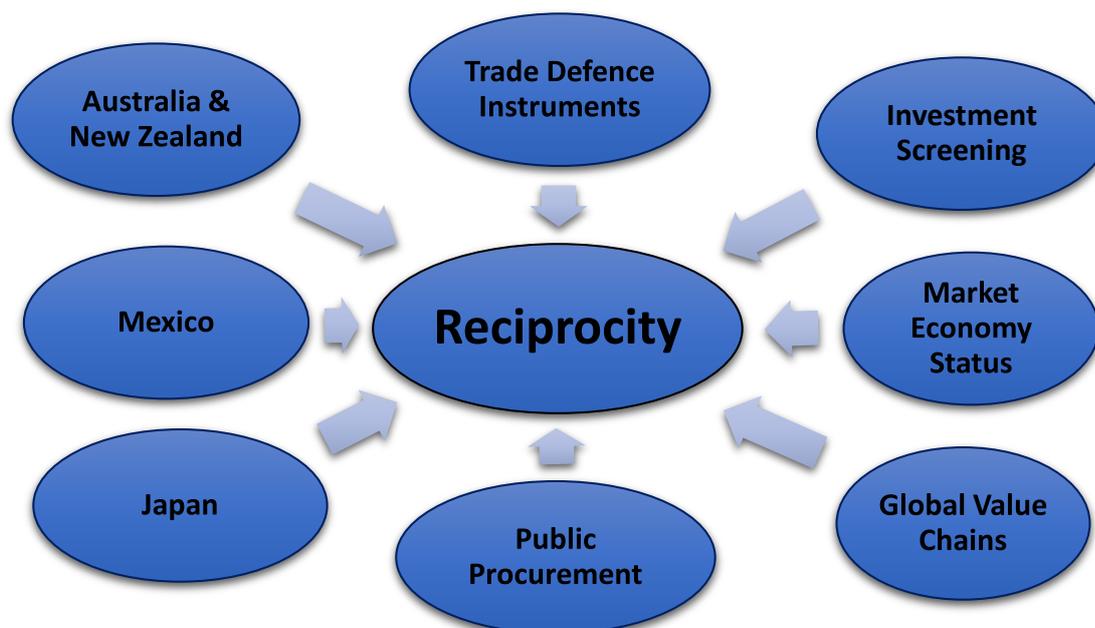
Since the agreement should be open to other WTO partners, there should be flexibility for developing and least developed countries that generally subscribe to the level of ambition of the agreement. This is particularly so given that the resolution states that 'enabling developing countries to gain fair access to world markets in services could bolster their economic integration and their adjustment to globalisation'. This is in line with the Parliament's view that, in a duly regulated environment, trade in goods and services can be a trigger for inclusive growth, sustainable development, poverty and inequality reduction and the creation of decent jobs.

Following the trend since the 'Trade, Growth and World Affairs'³⁰ communication, the Parliament places emphasis on implementation: if a party does not comply with its obligations, especially on labour and social standards, a revision clause should allow for the possibility to leave the agreement or to suspend or reverse commitments concerning the liberalisation of a service. Furthermore, a state-to-state dispute settlement mechanism should be included in the agreement to make sure mutually agreed commitments are respected in practice and allow for effective retaliation.

²⁹ [\(2015/2233\(INI\)\) 'European Parliament resolution of 3 February 2016 containing the European Parliament's recommendations to the Commission on the negotiations for the Trade in Services Agreement \(TiSA\)'](#).

³⁰ [COM\(2010\)612 'Trade, Growth and World Affairs - Trade policy as a core component of the EU's 2020 Strategy'](#).

2 The period from mid-2016 to mid-2017: reciprocity on a level playing field



2.1 Guiding principles: fair for consumers and producers here

'Trade for all' can be seen as an adjustment of trade policy in response to the public debate on high profile trade negotiations such as TTIP and CETA. Although the TTIP negotiations lost their momentum in the course of 2016, this would not in itself seem to be reason enough for a change in the tenor or direction of the general debate on trade policy. Yet, such a shift in tenor could be observed from the end of 2016. The optimistic message that **globalisation** can be shaped by making it a transparent and fair process, was now more often countered by the more pessimistic message that globalisation has losers as well as winners, including in the relatively rich 'western' world. The expression '**fair trade**' was now used not only to indicate its fairness towards workers in third countries or towards our own consumers, but also and especially to refer to fairness towards producers and workers in our own countries. In short, trade should be fair to the national interest. Apart from fears of lowered standards, more basic fears of unfair competition, undercutting prices and job losses came to the fore. These fears require more defensive answers. The new buzz words in the debate have become '**reciprocity**' and '**trade defence**'. When it comes to analysing the change of tone in the trade debate, it is difficult to distinguish clearly between causes and effects, because they often seem to reinforce each other. Yet, two streams of events seem to have significant influence.

Firstly, in the course of 2016, the **political mood** in many western countries shifted to approaches that put their own (national) interest first. In the United States, this was clearly mirrored in the election campaign slogan of President Trump: 'America first'. Trade played an important role in President Trump's election campaign. Not implementing the Transpacific Partnership Agreement (TPP) and re-negotiating the North American Free Trade Agreement (NAFTA) with Canada and Mexico were intentions that he put into practice immediately after taking office as president in January 2017. A similar approach based on national interest was taken towards Europe, for instance by criticising Germany's export surplus with the US. Trends focussed on the national interest can be seen in European countries as well, where they played a role in the Dutch, French and German elections. The strongest shift towards the national interest in Europe was however the decision taken by the UK to leave the EU, resulting from the will expressed by a narrow majority in the June 2016 referendum. The slogan 'take back control!' was the British version of 'America

first!' and politicians supporting 'Brexit' also believed that an independent British trade policy would better serve the national interest than a joint European trade policy. Although in France Emmanuel Macron was elected president on a pro-European agenda, his trade policy seems to continue the French tradition of defending the national interest, more subtly characterised in the word 'reciprocity'. Markets can only be opened in as far as others open their markets as well.

Secondly, in the course of 2016, discussions on trade defence in Europe intensified in the lead-up to the expiry of a provision in the **China's** WTO accession protocol³¹, which seemed likely to mean that China could no longer be treated as a 'non market economy' after December 2016. The issue of reforming European **trade defence instruments**, proposals for which had been stalled in Council for a long time, seemed to gain urgency. Chinese overproduction of steel, which peaked in the same year, leading to a growing number of anti-dumping cases, increased the sense of urgency that a 'level playing field' could not be taken for granted.

This shift in the mood of the trade debate finds expression in the **European Commission's Communication on a Balanced and Progressive Trade Policy to Harness Globalisation**³², published on 13 September 2017. In this paper, the Commission seems to walk a delicate line: on the one hand it does not want to give up on all the principles of 'Trade for all' or on all the benefits of free trade, but on the other hand it wants to recognise that globalisation does not only have winners and that the economic interests of producers, consumers and workers in the EU need to be protected. There is no substantive policy shift, but rather a subtle change, which may be seen not only in the use of the more active term 'shaping globalisation' but also with the more defensive term 'harnessing globalisation'. The Commission warns that nationalism or isolationism cannot lead to solutions. It calls for a level playing field, but also for moves to strengthen the competitiveness and innovation of Europe itself, for instance through education.

2.2 Concrete developments

2.2.1 The Bilateral Trade Agenda

In the EU's bilateral trade agenda, the above-mentioned change in the tone of the debate was reflected in the stalling of the TTIP negotiations. As a consequence, other bilateral trade negotiations gained importance for the EU. Similar effects could be observed in non-European countries, who had to deal with **a new situation regarding the TPP and NAFTA. Mexico**, faced with the tough line taken by the USA on renegotiating NAFTA, felt a new sense of urgency for trade diversification towards other partners, like the EU. The EU is Mexico's third trading partner (after the US and China) and negotiations on upgrading the current EU-Mexico FTA started in mid-2016. Negotiations with **Mercosur** accelerated in 2016 after a long standstill and both sides envisaged concluding them soon. The mandate for the modernization of the agreement with **Chile** has just been cleared by the Council. But at the same time, the newly reinforced feelings of national interest complicate concluding these negotiations, as could recently be witnessed in disputes about the beef or sugar quotas with Mercosur. Agriculture, which was always a sensitive sector, is not likely to experience much liberalisation in the current trade climate.

In the Asia and Pacific region, probably also under the influence of the non-entry-into-force of TPP, the EU and **Japan** in mid-2017 reached agreement in principle on the main elements of their Economic Partnership Agreement. Negotiations on some outstanding issues are still ongoing and should be concluded by the end of 2017. For **Australia and New Zealand**, the Commission proposed negotiating directives in 2017. Discussions to assess the possibility of resuming talks on an FTA with **India** resumed in

³¹ [WT/L/432 'ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA', Article 15.](#)

³² [COM\(2017\)492 final 'A Balanced and Progressive Trade Policy to Harness Globalisation'.](#)

January 2016 after a three-year standstill of the trade negotiations. Yet, the two sides are struggling to agree on an appropriate level of ambition.

In connection with the Eastern Neighbourhood, the outcome of the consultative referendum in the Netherlands in April 2016 on the Association Agreement with **Ukraine** may appear to have been an expression of a more self-oriented stance in trade policy but in fact most of the arguments against the agreement concerned policy areas other than trade. After the Dutch obtained reassurances regarding these policy areas in December 2016 and the Dutch Parliament approved the agreement, there was no longer any obstacle to the agreement's entry into force. Establishing a deep and comprehensive free trade area is even one of its main goals. In general, Ukraine is making good progress in implementing the Deep and Comprehensive FTA in the areas of market access, industrial product safety, food safety, customs, public procurement, protection of intellectual property rights and competition policy, and a visa-free regime with the EU became a reality in July 2017. Moreover, in 2016, the first year of application of the EU-Ukraine agreement, EU exports to the country grew by 17.6 %³³.

2.2.2 Legislation

The legislation prioritized by the Commission in its 'Harnessing Globalisation' communication clearly reflects the change of tone in the trade policy debate. The proposals presented by the Commission in the past year all serve as levers to make third countries comply with the standards they have agreed upon and they also foresee the partial closure of the EU market should EU economic or security interests be threatened by competition that is not fair towards EU businesses.

One priority the Commission states is the amended proposal for a **Public Procurement Instrument**³⁴ (IPI) from January 2016. It is the response to the lack of a level playing field in world procurement markets. Although the EU's public procurement markets are open to foreign bidders, procurement markets in third countries remain to a large extent closed de jure or de facto. Therefore, the proposal aims to encourage partner countries to engage in negotiations and open their procurement markets to EU bidders. It is also intended to send a strong signal in ongoing trade negotiations and give EU negotiators some leverage to pursue a substantial opening of third country procurement markets.

The initial IPI proposal was launched back in March 2012 but the Parliament and the Council never concluded the first reading. Some Member States expressed reservations regarding the temporary closure of the EU procurement market to goods and services originating in certain third countries. Several states also underlined concerns with regard to the administrative burden the instrument could impose on contracting authorities and on businesses. The Parliament, in contrast, was prepared to enter negotiations and endorsed the trilogue mandate by a large majority after adding a list of amendments. These included the expansion of the scope of exemptions for developing countries and the tightening of the time limits for Commission investigations of alleged discriminatory practices.

To address these concerns, the new proposal foresees price penalties as the only restrictive measure that can be imposed on third countries. The possibility of a full procurement-market closure has been deleted. Thus, foreign bidders can still be awarded the contract if their offer remains competitive despite the price penalty. Also, territories can now be targeted not only at national but also at regional and local level. Moreover, adjustments have been made to reduce the administrative burden and make the proposal more advantageous to SMEs and developing countries.

³³ [COM\(2017\)654 final 'Report on Implementation of Free Trade Agreements: 1 January 2016 - 31 December 2016'](#), p. 14.

³⁴ [COM\(2016\)34 final 'Amended proposal for a regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries'](#).

Moreover, the Commission is currently working closely with the Parliament and the Council to modernise its **Trade Defence Instruments**³⁵ (TDI). This is the first fundamental review of EU TDI since 1995 and would enable the EU to effectively react to market distorting practices in countries exporting to the EU and ensure that trade is not only free but also fair and mutually beneficial. On the one hand, a new anti-dumping calculation methodology should ensure a level playing field. On the other hand, strengthening the anti-subsidy trade defence instruments will protect EU businesses against unfair subsidisation practices in third countries, especially those leading to overcapacities. Here, the EU would, in certain cases, deviate from its general 'lesser duty' rule that keeps the additional tariff within the limit of what is strictly necessary to prevent an injury to an EU industry in order to discourage other trading partners from engaging in unfair trading practices. Launched in 2013, the debate has been going on for several years now and has only advanced slowly because of a blocking minority in the Council. Yet, recent Parliament resolutions and the 'Harnessing Globalization' communication stress the importance of a quick conclusion of the talks.

An important step was taken on 15 November 2017 when the European Parliament approved the proposed new methodology to calculate the EU's anti-dumping duties, one month after the Council gave its green light. Here, agreement on a new method was urgent since China had launched legal action against the EU's trade defence system before the WTO, immediately after its WTO accession protocol expired last year. The protocol had allowed for China to be treated as a non-market economy for trade defence purposes.

More recently, in September 2017, the Commission unveiled a proposal to set up a European framework for **screening foreign direct investment** into the European Union. Since the EU has one of the most open investment regimes in the world, the proposal seeks to prevent takeovers of strategic assets that could threaten security or public order while at the same time maintaining EU openness to FDI. The proposal is directed at FDI in sectors that, for example, involve activities related to the operation or provision of critical technologies, infrastructure, inputs or sensitive information.

Twelve EU Member States³⁶ have already put in place mechanisms that assess the risk of FDI. Yet they differ significantly in their design and scope. The Commission proposal seeks to establish a uniform mechanism to allow the Commission and Member States to screen FDI in a transparent, non-discriminatory and predictable way and with adequate possibilities for redress. This includes a cooperation mechanism between Member States and the Commission for cases in which a specific foreign investment in one or more Member States might affect the security or public order of another. While this European framework standardizes the EU Member States' approach to FDI screening, the proposal also foresees a European Commission FDI screening mechanism when FDI is likely to affect projects or programmes of Union interest in the area of research, space, and transport, energy and telecommunication networks.

In addition, the proposal would establish a coordination group on inward FDI to exchange information and best practices, and analysis on foreign direct investments between the Member States and the Commission. Also, the Commission will carry out an in-depth analysis of foreign direct investment flows into the EU, focusing on strategic sectors and assets whose control may raise concerns for security, or for public order reasons.

³⁵ [COM\(2013\)192 final 'Proposal for a regulation of the European Parliament and of the Council amending Council Regulation \(EC\) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation \(EC\) No 597/2009 on protection against subsidised imports from countries not members of the European Community'; COM\(2016\)721 final 'Proposal for a regulation of the European Parliament and of the Council amending Regulation \(EU\) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation \(EU\) 2016/1037 on protection against subsidised imports from countries not members of the European Union'](#).

³⁶ Austria, Denmark, Finland, France, Germany, Italy, Latvia, Lithuania, Poland, Portugal, Spain, UK

In the same month, the Commission adopted a recommendation³⁷ to open negotiations to establish a **Multilateral Investment Court (MIC)**. Along with the recommendations on FTA negotiations with Australia and New Zealand, the Commission's recommendations for negotiating directives for a MIC were the first to be published immediately to increase the transparency of EU trade policy. On the one hand, the proposal is a reaction to the increased public scrutiny and questioning of the inclusion of ISDS in FTAs. On the other hand, it addresses the limitations of the ICS, which has had costs in terms of administrative complexity and budgetary impact and, due to its bilateral nature, could not fully meet civil society demands for transparency, consistency, and legitimacy.

The MIC initiative seeks to establish a framework for the resolution of international investment disputes that is permanent, independent and legitimate; predictable in delivering consistent case-law; allows for appeals against decisions; is cost-effective; and whose proceedings are transparent and efficient and allow for third-party interventions (including for example interested environmental or labour organisations). The independence of the Court should be guaranteed by stringent requirements on ethics and impartiality, non-renewable appointments, full-time employment of adjudicators and independent mechanisms for appointment. The EU is now seeking supporters for this initiative amongst its key trading partners. For example, both CETA and the EU-Vietnam FTA include provisions anticipating the transition from the bilateral Investment Court System included in the agreements to a permanent MIC.

2.2.3 The WTO

Because of the lack of US support, the prospect of agreeing on a possible ministerial declaration at the upcoming **11th WTO Ministerial Conference in Buenos Aires**, from 10 to 13 December 2017, is highly uncertain. While, in general, negotiation outcomes remain unclear, a proposal on domestic support in agriculture and public stockholdings and fisheries might be realistic. In the run-up to the ministerial, the EU and Brazil published a joint proposal on domestic support in agriculture, which addresses the issue of public stockholdings for food security purposes as well. Together with several members of the Cairns Group of agricultural exporters, the EU also issued a statement reaffirming its commitment to tackling the most trade-distorting domestic support in agriculture. This joint declaration is an important step towards a solution that limits market distortions and ensures a global level playing field for farmers, whilst taking into account the particular needs of developing countries.

In addition, the EU has tabled proposals on fisheries subsidies, domestic regulation in services, e-commerce, on enhancing transparency for the benefit of SMEs as well as on horizontal subsidies. Apart from that, it is supportive of further discussion on investment facilitation in the WTO and aims at including a gender declaration. Moreover the ministerial declaration should reflect the Sustainable Development Goals. Regarding the lack of US support, the EU remains open for discussion about the country's concerns and call for reforms. However, concrete reform proposals are needed and they should not weaken the organization.

2.3 The European Parliament

2.3.1 Shaping the Bilateral Trade Agenda

As in the previous period, the European Parliament has shaped the direction of trade policies on the bilateral and legislative front. Referring to the shift in the tone of the debate, the **resolution of May 2016 on China's market economy status**³⁸ is an important indicator. It reflects the growing concern of the EP to ensure a level playing field for EU enterprises. While the resolution stresses the importance of the EU's partnership with China, it underlines the significance of free and fair trade and investment in this

³⁷ [COM\(2017\)493 final 'Recommendation for a Council decision authorising the opening of negotiations for a Convention establishing a multilateral court for the settlement of investment disputes'](#).

³⁸ [\(2016/2667\(RSP\)\) 'European Parliament resolution of 12 May 2016 on China's market economy status'](#).

relationship in the same sentence. It then maintains that China has not yet met the five criteria established by the EU to define market economies and should not, therefore, be granted market economy status. Thus, in determining price comparability, the EU should continue to apply a non-standard methodology in anti-dumping and anti-subsidy investigations into Chinese imports as provided for by Section 15 of China's Accession Protocol to the WTO even though parts of this section expire in 2016. It then calls on the Council to quickly seek agreement with the Parliament on the reform of EU trade defence instruments as these are central to ensuring a level playing field for EU industry, not only with China but also with other trading partners.

A change of tone can also be detected in the **resolution on the EU flagship initiative in the garment sector**³⁹, which was tabled by the Committee on Development (DEVE) in April 2017. It should be seen in the context of two Committee on International Trade (INTA) resolutions following the Rana Plaza building collapse in Bangladesh⁴⁰. While the last two resolutions focus specifically on the poor working conditions in the garment sector in Bangladesh and on the progress since the Rana Plaza incident, the scope of resolution on the EU initiative in the garment sector is more general. In it, Parliament recalls that fierce global competition and aggressive purchasing practices by the international wholesale and retail trade in the garment sector have led to widespread labour rights violations in developing countries. To stop these practices, the EP calls on the Commission to propose binding legislation on due diligence obligations for supply chains in the garment sector. The proposal should set core standards in areas including occupational health and safety, health standards, a living wage, freedom of association and collective bargaining, the prevention of sexual harassment and violence in the workplace, and the elimination of forced and child labour.

While this is still in line with the values-based agenda, the EP points out later in the resolution that noncompliance with labour standards in third countries leads to social dumping and is therefore also detrimental to European garment industries. Consequently, the Commission should 'put in place mandatory measures to ensure that companies importing to the European Union comply with the level playing field established by the requested legislative proposal' and launch a global initiative in the WTO. In addition, voluntary private-sector initiatives, such as codes of conduct, excellence labels and fair trade schemes, should be enhanced and the initiative should be underpinned by EU development, aid for trade and public procurement policies.

In a similar vein, in its September 2017 **resolution on the Impact of international trade and EU's trade policies on Global Value Chains (GVCs)**⁴¹, the Parliament calls for stronger and more binding international social and environmental standards while at the same time prompting the Commission to adopt unilateral policies to protect EU businesses from unfair practices. While acknowledging the importance of GVCs for the international economy, the resolution emphasizes that integration into GVCs must not be to the detriment of EU's social and regulatory model and the promotion of sustainable growth. Thus, EU trade and investment policy must aim at facilitating an upward convergence of standards and creating a level playing field for European businesses.

The EP particularly stresses the responsibility of the business community in incentivizing the promotion of human rights, democracy and corporate responsibility and invites the Commission to give greater importance to creating international rules on CSR. Furthermore, it calls on the Commission to negotiate standstill clauses, ensuring a minimum level for social, environmental and safety standards, in future EU

³⁹ [\(2016/2140\(INI\)\) 'European Parliament resolution of 27 April 2017 on the EU flagship initiative on the garment sector'](#).

⁴⁰ [\(2015/2589\(RSP\)\) 'European Parliament resolution of 29 April 2015 on the second anniversary of the Rana Plaza building collapse and progress of the Bangladesh Sustainability Compact'](#); [\(2017/2636\(RSP\)\) 'European Parliament resolution of 14 June 2017 on the state of play of the implementation of the Sustainability Compact in Bangladesh'](#).

⁴¹ [\(2016/2301\(INI\)\) 'European Parliament resolution of 12 September 2017 on the impact of international trade and the EU's trade policies on global value chains'](#).

trade agreements. To ensure that partner countries comply with these standards, the Commission is asked to increase monitoring in collaboration with civil society and to extend the scope of the general dispute settlement mechanisms in FTAs to human rights clauses and chapters on sustainable development. Moreover, incentives such as tariff preferences should be used to encourage trading partners to adopt higher social, labour and environmental standards.

At the same time, the resolution prompts the Commission and Member States to adopt reinforced trade defence instruments capable of combating unfair commercial practices. Here, social and environmental dumping should also be taken into account. Furthermore, the Commission is invited to take measures to increase the awareness of consumers of existing fair trade schemes and to work towards a transparent and mandatory 'social and environmental traceability' labelling system along the entire production chain.

The EP's February 2016 **resolution on opening FTA negotiations with Australia and New Zealand**⁴² also raises concerns about the effects of extensive market opening, especially for the agricultural sector. Parliament calls for the conclusion of two high-quality FTAs in a spirit of reciprocity and mutual benefit without undermining progress on the multilateral front. The EP points out that these FTAs could 'help mitigate the potential diversionary effects of the recently concluded TPP'. The sustainable development chapter, including provisions on labour standards, human rights and environmental protection, should be underpinned by the establishment of a joint civil society forum that monitors and comments on its implementation.

On agriculture and fisheries, however, the Parliament calls for a rather limited degree of market opening. Transition periods, appropriate quotas, and the inclusion of effective bilateral safeguard measures should ensure a balanced outcome and avoid disruptions. The most sensitive sectors should be excluded altogether. The two **resolutions on the negotiating mandate for trade negotiations with Australia and with New Zealand**⁴³, respectively, repeat these concerns on agriculture. They also emphasize the importance of opening public procurement markets and creating business opportunities for small companies. At the same time, the EU's consumer protection standards should be maintained and no provision should prevent EU governments from legislating to protect health, safety or the environment or require them to privatise public services.

2.3.2 Shaping the WTO agenda

In its **resolution on the 11th WTO Ministerial Conference in Buenos Aires**⁴⁴, adopted on 15 November 2017, the Parliament reiterates its demand for a trade agenda based on free, fair and rules-based trade for the benefit of all and in line with the EU's values and it calls for ambitious outcomes on agriculture, e-commerce and fishing subsidies. It also encourages the parties to pursue new policy objectives in the areas of digital trade and investment facilitation. Here, it emphasizes that the world has changed dramatically since the Doha Round was launched in 2001 and that new issues beyond the round's agenda need to be discussed, which should be done without prejudice to the outstanding issues of Doha. Moreover, the EP underlines that the outcome of the 11th ministerial round should 'clearly recognise the importance of the 2030 Sustainable Development Goals and of the Paris Agreement commitments in the fight against climate change and the role which trade can play in contributing towards their achievement'.

The resolution considers the WTO to be crucial for the rules-based trading system and stresses the need to secure the implementation of its decisions, the enforcement of binding commitments and the settlement

⁴² [\(2015/2932\(RSP\)\) 'European Parliament resolution of 25 February 2016 on the opening of FTA negotiations with Australia and New Zealand'](#).

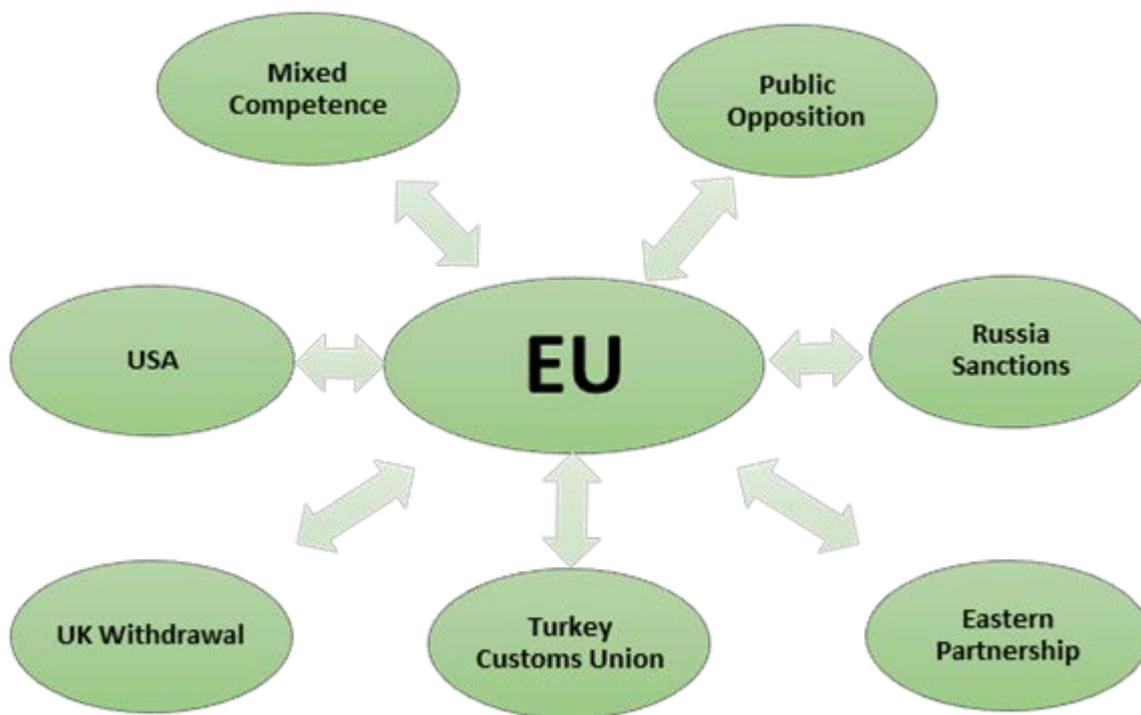
⁴³ [\(2017/2192\(INI\)\) 'Negotiating mandate for trade negotiations with Australia'](#); [\(2017/2193\(INI\)\) 'Negotiating mandate for trade negotiations with New Zealand'](#).

⁴⁴ [\(2017/2861\(RSP\)\) 'European Parliament resolution on multilateral negotiations in view of the 11th WTO Ministerial Conference in Buenos Aires, 10-13 December 2017'](#).

of trade disputes. In this context, it warns that the US block on vacant posts at the WTO's appellate body threatens 'to undermine the current and proper functioning of the dispute settlement'. In addition to calling in its resolutions for increased transparency and democratic legitimacy of the WTO, the Parliament has played an active role in the WTO parliamentary conference in recent years and has pushed hard to make the WTO inclusive in terms of participation, outreach and substance.

Conclusion: challenges ahead — free and fair trade for all ?

The two Commission reports of September 2017 and the first Implementation Report of November 2017 referred to in the introduction to this paper follow the same line of reasoning as the paper on 'Harnessing Globalisation'. This is also reflected in their titles: delivering a progressive trade policy and a balanced and progressive trade policy 'to harness globalisation'. The Commission continues to pursue the balanced approach of combining the benefits of **free trade** with the justice of **fair trade**, if possible for all. The Commission wants to avoid the danger of 'a protectionist resurgence'⁴⁵.



But many challenges lie ahead. First of all, scepticism about the benefits of free trade in Europe itself has not disappeared overnight. Although there have been no recent major protests against trade in the streets of Brussels the sentiments that came to the fore in the **public opposition** to TTIP and CETA could emerge again in relation to some other trade negotiation. The Commission has learned that transparency is indispensable to convince citizens and politicians and this policy is likely to continue. The negotiation directives for FTAs with New Zealand and Australia were published from the beginning. The Commission also intends to continue the dialogue with civil society and has announced the creation of an advisory group on EU trade agreements⁴⁶. It seems that events in recent years have at least brought about lasting change in the way European trade diplomacy works.

⁴⁵ COM(2017)491 'Report on the Implementation of the Trade policy strategy Trade for All', p. 2.

⁴⁶ Idem, p. 13.

Secondly, the case of CETA, in particular, has brought to the fore the dilemma of **mixed competence versus EU competence**. The particular case of Wallonia blocking Belgium's agreement to CETA highlighted the fact that potential obstacles can even exist at regional level. In its so-called Singapore Court opinion, the Court of Justice of the EU reinforced the institutional possibilities of delivering a European trade policy by giving clear guidelines on which aspects of trade policy fall under exclusive EU competence and which ones are mixed⁴⁷. And most aspects of trade policy are considered EU competence. However, on the aspects of mixed competence, which are mainly linked to certain forms of investment, national parliaments still have to agree. This raises the question of whether investment can better be dealt with in separate agreements, in order to keep trade agreements within full EU competence and thereby avoid difficult national ratification procedures.

Thirdly, if European values are considered universal, this also implies that the EU can sanction partners that do not apply European values in the way the EU itself would like to. **Sanctions** in relation to sustainable development chapters are a topic of discussion. But sanctions of a more specific kind have already been applied for several years against a very close neighbour of the EU: Russia. The reasons for these sanctions are well known and no solution to the problem that led to them appears to be in sight. Inconvenient questions may arise about the possible duration of this situation and the prospects, which go beyond trade policy.

A fourth challenge is the question of the future of the **Association Agreements with the Eastern Partnership countries**, which needs to be addressed at some point. As the above-mentioned example of Ukraine shows, there are hopeful signs that a level playing field can be established and that trade can grow. Hopes that the economic relationship can be deepened, possibly even into a customs union, are sometimes voiced. Yet, the costs for Ukraine to comply with the EU aquis are high and EU financial support is limited. Also, the decline in industrial capacity brought about by the war cannot be offset by the growth in agriculture and retail alone. The key challenges in the implementation of the EU-Ukraine agreement are rule of law and judicial reforms and the lack of political will to depoliticise state institutions⁴⁸. Will the values-based approach be able to solve these dilemmas?

The fifth issue is the future **trade relationship between the EU and Turkey**, which is something of an elephant in the room. Trade relations with Turkey have deepened and growth has been substantial since the customs union agreement of 1996. A clear request from Turkey to extend the customs union to other sectors is on the table, but political relations are deteriorating. An inconvenient question is whether the EU should apply its values-based approach strictly to Turkey as well, or whether it should look for ways to accommodate all interests.

Looking west, about a year since the election of US President Trump, the **future of EU-US trade relations** is still not clear. TTIP negotiations have been put on ice and are not likely to warm up in the near future, certainly not under the current mandate. Threats of a new border tax do not seem to be materialising but recent discussions on steel tariffs show that tensions can easily arise and caution seems necessary. The time when a great, comprehensive European-American trade deal could be reached on 'one tank of gas', in the words of the then vice-president, Joe Biden, definitely seems to be behind us.

And closer to us, in the west, there is the uncertainty over the consequences of **the UK's withdrawal from the EU**. Almost nine months after the negotiations began under Article 50 of the EU Treaty, the impact of

⁴⁷ In the [Opinion 2/15 of the Court](#) from 20 September 2013 following a request from the Commission, the European Court of Justice ruled that the EU-Singapore Agreement can, in its current form, only be concluded by the EU and the Member States jointly. The reason is that, according to the Court, the EU is not endowed with exclusive competence in two aspects of the agreement, namely the field of non-direct foreign investment ('portfolio' investments made without any intention to influence the management and control of an undertaking) and the regime governing dispute settlement between investors and States.

⁴⁸ [DG Expo Policy Department, 'The State of implementation of the associations and free trade agreements with Ukraine, Georgia and Moldova with a particular focus on Ukraine and systemic analysis of key sectors'](#).

the UK's withdrawal on current EU trade agreements and on the future EU-UK relationship is still unknown. In theory, many scenarios are possible. They range from participation in the Internal Market or the European Economic Area (EEA) or a customs union with the EU, to a deep and comprehensive free trade area (DCFTA) agreement or to a so-called hard Brexit, meaning that the UK would leave the EU without any specific agreements and trade relations would fall back on the rules of the World Trade Organisation (WTO). Although signals from the UK and its current government are not always consistent, the option of a comprehensive FTA currently seems to be the most feasible but it would take time to negotiate it in detail.

It is as if we are continually being confronted with conflicting signals: work on the trade agenda goes on as planned, and yet, disruptive events keep forcing us to rethink the future. This list of challenges and questions is not exhaustive. How the EU will deal with them and how others will deal with them, will be decisive for the potential realisation of free and fair trade for all.

In times of uncertainty, democratic scrutiny and public debate are of the utmost importance. The European Parliament must continue critically to follow every step of the implementation of the European trade agenda, using the full toolkit of co-decision, consent, monitoring groups and transparency. At the same time, and perhaps increasingly, as the end of the current legislative term approaches, the European Parliament may need to reflect in more general terms on the challenges described above, including any 'elephants in the room'. The EU alone cannot simply implement a values-based approach in a world that does not always agree with it. But the democratic privilege of reflecting on these questions is part of the core mission of the European Parliament.