Trade and competitiveness policies in the European Council

Background, current developments and way forward

IN-DEPTH ANALYSIS

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In recent years, international trade has gained increasing visibility on the European Council agenda. Profound changes have occurred in the global trading landscape, with common rules and standards questioned and new actors entering the world stage. A high level of economic interconnectedness and the ineluctable rise of emerging economies on the world stage, notably China, have highlighted differences across economic systems and divergences over the impact of certain policies and practices in the global economy. Moreover, the United States administration's pursuit of an 'America first' foreign policy has been accompanied by a trade policy aimed primarily at reducing trade deficits with partners. The existential threat which the World Trade Organization now faces, as the core of the multilateral trading system, has compounded growing trade tensions and translated into a highly unstable global environment. The European Council has reacted to these developments promptly, with the last three years seeing the adoption of measures to strengthen the European Union's capacity to address such challenges. It has placed high emphasis on the need for the EU to be able to defend itself against unfair trade practices, through strengthened defence instruments, greater surveillance of foreign direct investment, and broader access to public procurement markets abroad. The objectives set out in its Strategic Agenda for 2019-2024 reflect a need for a more assertive and united European Union on the global stage, able to tackle the technological and environmental challenges of the coming decade.

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Executive summary

In recent years, international trade has gained increasing visibility on the European Council agenda. Profound changes have occurred in the global trading landscape, with common rules and standards questioned and new actors entering the world stage. A high level of economic interconnectedness and the ineluctable rise of emerging economies on the world stage, notably China, have highlighted differences across economic systems and divergences over the impact of certain policies and practices in the global economy. Moreover, the United States administration's pursuit of an 'America first' foreign policy has been accompanied by a trade policy aimed primarily at reducing trade deficits with partners. The existential threat which the World Trade Organization (WTO) now faces, as the core institution in the multilateral trading system, has compounded growing trade tensions and translated into a highly unstable global environment.

A higher prevalence of market-distorting behaviour has led to novel forms of unfair competition impacting on European Union (EU) business and industrial sectors, leading EU Member States to mobilise swiftly to find solutions. The past three years have seen the adoption of modernised trade defence instruments, the establishment of an EU framework for screening foreign direct investment and a resumption of discussions on an international procurement instrument. Given the lack of agreement among Member States on these issues and their potential cross-border implications, the European Council was called upon to provide a forum for discussion and consensus-building.

While the WTO has guaranteed the necessary framework for trade to flourish for several decades, the global rulebook remains far from complete, and some of its existing rules and the functioning of the institution itself have recently been questioned, with members calling for reform. The European Council was therefore asked to provide strategic guidance and has invited the European Commission to propose a comprehensive approach to improving the functioning of the WTO in its three essential functions: rule-making, monitoring and dispute settlement. In this sense, it has supported the European Commission in its efforts to resolve the WTO Appellate Body crisis and strengthen rules on industrial subsidies, forced technology transfer and intellectual property, as well as to agree on new rules in areas such as e-commerce, domestic regulation on services and the facilitation of investment for development.

Finally, while the EU has strengthened its internal policy toolbox to address unfair trade practices, reinforcing the EU's economic base by adjusting it to today's economic realities is a strategic imperative for the EU, as underlined by the European Council throughout 2019 and emphasised in its strategic agenda for 2019-2024. EU leaders have called for a holistic approach touching upon all relevant policies, including an EU industrial strategy building on a strong single market and a forward-looking digital policy, an ambitious and robust trade policy anchored in fair competition and reciprocity, as well as increased research and innovation in key technologies, and investment in strategic value chains. In this context, the European Council has therefore invited the European Commission to provide a long-term vision for EU industrial policy and called for an updated EU competition framework to keep in step with new technological and global market developments. The directions set by the European Council throughout 2019, and a number of proposals made by Member States, are expected to feature high on the European Union's agenda over the next five years.

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1. Introduction

1.1. Trade and competitiveness issues in the European Council: A rebalancing act

Historically, Heads of State or Government have rarely addressed trade issues during European summits, given that according to the EU Treaties, the European Commission is responsible for commercial relations with third countries. However, since 2016, in a context of profound changes in the global trade landscape and rising tensions between trading partners, trade issues have risen up the agenda of European Council meetings. When debating these topics, EU leaders have placed strong emphasis on the need for the EU to be able to adequately defend itself against unfair trade practices, notably calling for strengthened trade defence instruments, for greater surveillance of foreign direct investment in the European Union, and for broader European access to public procurement markets in third countries.

The increased focus on these issues reveals, on the one hand, the European Council's concerns regarding European competitiveness on the world stage, and at the same time signals a change in direction towards a more assertive EU stance in its relations with strategic trade partners, notably with emerging economies such as China.

The difficult situation in the EU steel sector was the catalyst for stronger EU Heads of State or Government involvement in trade issues. In a letter[1] to the Dutch Council Presidency and the Commission from February 2016, the economic ministers of seven EU Member States (Belgium, France, Germany, Italy, Luxembourg, Poland, United Kingdom), expressed concern regarding global overcapacity in the steel sector and called for more effective trade defence instruments to protect EU businesses. Barely a year later, in February 2017, the French, German and Italian economy ministers wrote[2] to the EU Trade Commissioner, at the time, Cecilia Malmström, regarding non-EU investor acquisitions of EU companies in 'strategic sectors' with 'key technological competences'. The timing of these requests shows their importance, as they were sent before European Council meetings in March 2016 and June 2017, where EU leaders subsequently discussed these issues.

While the text of European Council conclusions addressing these topics does not single out China, discussions among EU leaders at these meetings have shown that the objective is to level the playing field with China and other emerging economies. The inclusion of these very same issues in a joint communication[3] of the Commission and High Representative for Foreign Affairs and Security Policy on EU-China relations, ahead of the March 2019 European Council, indicates that the shift in approach is decisively under way. Half of the actions proposed in the communication focus on improving market access for EU businesses in China and on reinforcing the EU's policy toolbox in addressing unfair trade practices.

In this respect, Made in China 2025[4], a nationwide strategy revealed in 2015, which aims at transforming China into a global manufacturing power by 2025, attracted great attention in the EU (as well as in the United States of America (USA)). The programme intends to shift Chinese

[1] Letter to Dutch Council Presidency, 5 February 2016.

[2] Letter to EU Trade Commissioner Cecilia Malmström, February 2017.

[3] European Commission and HR/VP contribution to the European Council, EU-China – A strategic outlook, March 2019.

[4] See more details in Commission SWD(2017) 483, December 2017.

manufacturing to higher added-value manufacturing in ten emerging technologies, including automated machines and robots, energy-saving and new energy vehicles, aerospace and aeronautics, and information technology, to name but a few. Likewise, China's Belt and Road Initiative (BRI)[5], the 'New Silk Road', a multifaceted initiative focused on large scale infrastructure development projects in Asia, Europe and Africa, already covers more than 120 countries since its launch in 2013. China has become the EU's second biggest trading partner after the USA. Its development as a major economic power in the last decades and its unique economic system with a decisive role for the State presents its global partners with a formidable economic challenge.

The Chinese government grants significant support to its companies, in particular state-owned, in the form of tax incentives, licenses and regulatory approvals, as well as funding and subsidisation. Given the sheer size of its market and in light of its economic growth, China's national policies and practices have, however, had an impact[6] on the global economy, leading to concerns over unfair competition[7] and limited access to its market. While China has undertaken reforms to open up its market to foreign businesses in recent years, the primary focus remains on 'supporting Chinese industry in expanding abroad, in line with the policy of creating a set of internationally competitive national champions' as the Commission indicates in its analysis[8] of China's national five-year plans for economic and social development. It is in this context that the Commission has labelled China both as a 'cooperation partner with whom the EU has closely aligned objectives, a negotiating partner with whom the EU needs to find a balance of interests, an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models of governance'. Relations with China are expected to feature high on the agenda of the European Council, with two high level meetings with China scheduled in 2020, one regular EU-China summit in the spring, and one meeting at the level of Heads of State or Government during the German Council Presidency.

Against this background of strong support for Chinese companies and growing repercussions on the EU economy, following the 6th ministerial conference of Friends of Industry, back in December 2018, 18 EU Member States acknowledged[9] the need to adapt European industry to a changing global environment. They called for a competition policy able to foster the emergence of strategic value chains and urged for a revision of state aid rules allowing European players of international scale to emerge. In February 2019, signatories to this statement, notably Germany and France, called[10] for the development a genuine European industrial policy, along the same lines, emphasising the need for an updated competition framework to maintain EU competitiveness on the global market. They were later joined by Poland in calling[11] for a framework that takes account of state intervention by third countries in merger control and tackles the 'excessive market power of big tech firms'.

These proposals subsequently fed into discussions held at the March 2019 European Council, where EU leaders underlined the importance of a strong economic base for Europe's prosperity and

[5] For more information see EPRS briefing One Belt, One Road (OBOR): China's regional integration initiative, July 2016.

[6] For more information, see EPRS briefing State of play of EU-China relations, January 2019.

[7] For more information, see EPRS briefing Foreign direct investment screening A debate in light of China-EU FDI flows, May 2017.

[8] See more details in Commission SWD(2017) 483 , December 2017.

[9] Joint statement by France, Austria, Croatia, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Spain, 18 December 2018.

[10] A Franco-German manifesto for a European industrial policy fit for the 21st Century, 19 February 2019.

[11] Proposal from ministers of economy of France, Germany and Poland, Modernising EU Competition Policy, July 2019.

competitiveness. Actions should be taken to further strengthen and deepen the single market, build a sustainable and competitive industrial base, develop the digital economy, ensure 'digital sovereignty' and step-up investment and risk-taking in research and innovation, while pursuing an ambitious and robust trade policy ensuring fair competition and reciprocity. The Commission has been invited to present a long-term vision for the EU's industrial future and update the EU's competition framework by addressing the distortive impact of foreign state ownership and state-aid financing in the internal market.

It is in this light that trade and competitiveness issues have been discussed in the European Council in recent years. While until now the focus has largely been on strengthening the EU's ability to protect itself against unfair trade practices, attention is shifting to ways of strengthening the EU's industrial base and of enhancing its ability to compete on the global stage. In the absence of a global regulatory level playing field, the EU is simultaneously pursuing the creation of new rules in areas such as e-commerce, investment facilitation, domestic regulation on services, as well as revising existing rules on industrial subsidies, forced technology transfers and intellectual property, with the ultimate goal of reforming the WTO.

This paper focuses on the range of topics addressed by the European Council since 2016 and examines the rationale behind their presence on the agenda, as well as their subsequent development. While many factors guide policy choices at EU level, US foreign policy and China's growing influence in the global market have ineluctably influenced the EU's agenda. The first part of the paper therefore provides an overview of the main topics addressed by EU leaders, along with their development in the legislative cycle, where relevant. The second section focuses on EU relations with the USA and China, with regard to ongoing negotiations on trade and investment. The following section focuses on the reform of the WTO, outlining some of the causes of the WTO Appellate Body crisis, with a focus on EU action. The final section outlines objectives for the EU in the next legislature, as outlined by the European Council in its strategic agenda for 2019-2024, and detailed by the Commission in the mission letters provided to the new EU commissioners and in the Commission’s work programme.

1.2. Crisis as opportunity: China becomes the engine of the world economy

In 2007, the first signs of economic stress appeared in the USA and European banking systems; after years of allowing cheap and risky loans, feeding real-estate bubbles on both sides of the Atlantic, banks would soon have to face formidable losses, forcing governments into expensive bailouts in order to prevent a meltdown of the financial system. In that year, Chinese GDP grew by 14.2 percent[12], its highest growth rate for decades.

As the financial crisis in the USA and the EU morphed into an economic one, falling investment and consumption levels in the tightly integrated North Atlantic economy[13] translated into significantly reduced demand for Chinese exports. However, 'China was one of the few countries that escaped the great 2008–2009 global downturn without a major economic slowdown,' analysts noted[14]. Only

[12] See more information on World Bank national accounts data.

[13] See Financial Times, What really went wrong in the 2008 financial crisis? , 17 July 2018.

[14] See Mckinsey Quarterly, A truer picture of China's export machine, September 2010.

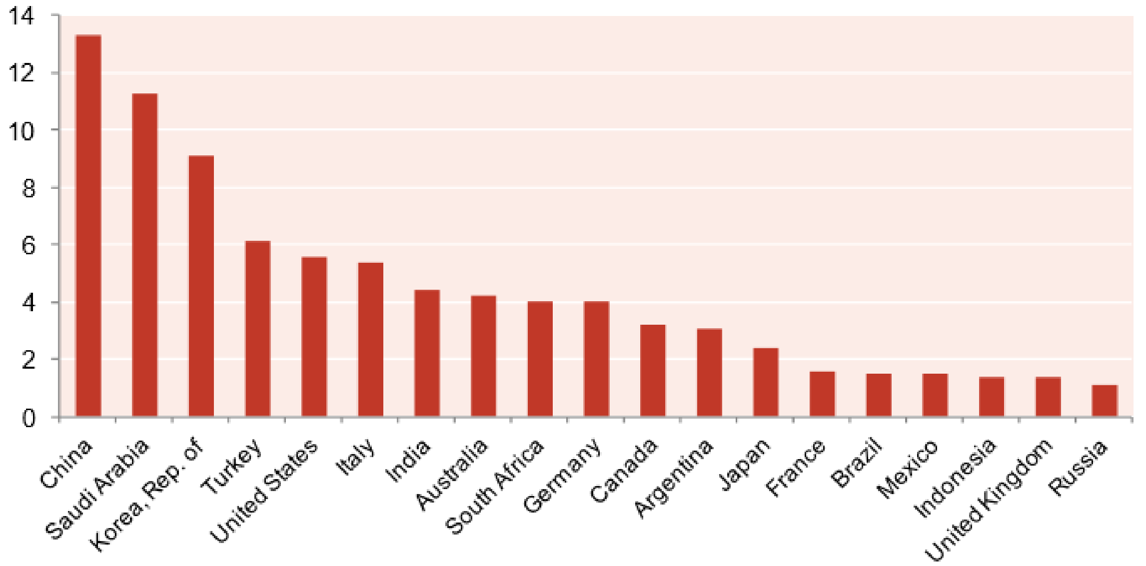
in 2012, as the euro area was in the midst of its second recession since the start of the crisis, did the growth of China's economy dip below 8 percent.

The reasons for this were twofold. Firstly, according to McKinsey, China's economic growth had been progressively less dependent on exports; the wave of domestic investment into infrastructure, mainly transport and cities, as well as rising household consumption had made the economy less sensitive to disruptions in foreign demand. Secondly, in response to the worldwide economic slump, in 2008, Chinese authorities chose to engineer a massive stimulus[15] to avert a significant fall in Chinese economic growth, widely seen as the foundation on which the credibility of the ruling Chinese Communist Party rests.

Chinese stimulus measures dwarf those of the USA and the EU

In this, China was not alone. In the wake of the September 2008 Lehman Brothers bankruptcy that sent shockwaves through international financial markets, the heads of state and government of the world's leading industrial nations, meeting at the G20 summits in November 2008[16] and April 2009[17], agreed to adopt fiscal measures to stimulate domestic demand, thereby preventing the world economy from slipping into recession.

Figure 1 – G20 2008-2009 stimulus (as % of 2008 GDP, weighted averages)



Source: European Commission – International Institute for Labour Studies Joint Discussion Paper Series No 5

The Obama administration in the USA, while moving boldly to recapitalise failing banks and provide unprecedented amounts of liquidity to the financial system, had to deal with increasing Republican Party opposition to its stimulus plans. As a result, spending plans were scaled down; critics[18] contended[19] that the boost to the economy would fall far short of what was needed.

[15] Naughton B., Understanding the Chinese stimulus, Package 28, January 2019.

[16] Declaration of the Summit on Financial Markets and the World Economy, 15 November 2008.

[17] See more details on OECD and the London G20 summit in 2009.

[18] See Reuters, Krugman fears lost decade for US due to half-steps, 11 May 2011.

[19] See, opinion, The Guardian, Obama's stimulus failure, 19 December 2011.

In the euro area, German chancellor Angela Merkel pushed through a €50 billion stimulus[20] at the beginning of 2009, aiming at averting a recession that would have been the worst in the post-war period. Again, economists were of the opinion[21] that the spending boost was not big enough to deal with all the downside risks the economy faced. Dominating discussions on how to solve the euro area banking and sovereign debt crises, Berlin did not heed these warnings. On the contrary, under pressure from its own ranks and the increasingly sceptical public, the 'grand coalition' introduced a debt brake[22] in the German constitution and insisted[23] on its euro-area wide application (through the balanced budget rule in the Fiscal Compact[24]), as a precondition for pooling funds for bank bailouts and stabilisation of government bond markets.

Experts have underlined[25] that this turn to austerity in 2011, combined with a rise in interest rates by the European Central Bank[26], pushed the euro area economy back into recession, exacerbating the problems in a banking sector already struggling under massive amounts of bad debt left over from the 2008 crisis. As Martin Sandbu notes in 'Europe's orphan: the future of the euro and the politics of debt'[27], excessive fiscal austerity and monetary tightening 'produced a new recession in 2011-2012, created misery for millions of unemployed people and only increased the debt burdens it was supposed to bring down'.

Given the nature of the Chinese political system, Chinese authorities were not constrained by political opposition to their spending plans; they could also count on their Chinese central bank to support fiscal measures with monetary easing. In 2008, with state-owned enterprises (SOEs) and government-controlled banks taking the lead, China engineered 'the biggest stimulus package in the world[28], equal to three times the size of the United States effort'. Not only did the stimulus make China the engine of the post-crisis world economy, the investment drive was focused on sectors where the country needed to catch up to make its economy more competitive (see Table 1).

Table 1 – Composition of Chinese stimulus package (March 2009, revised plan)

Sector	
Transport & power infrastructure (railroads, roads, airports, electricity grid)	50 %
Affordable housing	13 %
Technological innovation & structural adjustment	12 %
Rural infrastructure	12 %
Environmental investment	7 %
Health	5 %

Source: Barry Naughton, Understanding the Chinese stimulus package.

[20] See DW, Germany Passes Stimulus Plan Despite Wary Public, 13 February 2009.

[21] See more details, The German fiscal stimulus package in perspective, 23 January 2009.

[22]See Frankfurter Allgemeine Zeitung, Eine Entscheidung von historischer Tragweite, 29 May 2009.

[23] See Der Spiegel, The Great Debt-Brake Swindle, 18 August 2011.

[24] The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (entered into force on 1 January 2013).

[25] See more details, Did Fiscal Consolidation Cause the Double-Dip Recession in the Euro Area?, P. Heimberger, October 2016.

[26] See Financial Times, ECB raises interest rates to 1.5%, 7 July 2011.

[27] See Financial Times, Europe's Orphan, 23 October 2015.

[28] See more details, The Fiscal Stimulus Programme and Public Governance Issues in China, C. Wong, 2011.

As Adam Tooze notes in 'Crashed'[29], his analysis of the financial crisis, the investment push allowed China to become a world leader in rail technology and infrastructure[30]. When the European Commission blocked the proposed merger between the rail businesses of Siemens and Alstom in February 2019, representatives of Germany and France, where the two companies are headquartered, criticised the decision[31], saying the merger was needed to create a European industrial champion capable of competing with Chinese companies on the world market (more below).

This stimulus stabilised the Chinese economy in the immediate aftermath of the crisis. Growth rates, however, have continued to falter. This is also a result of economic convergence; as the Chinese economy catches up with advanced industrial economies, its growth rates have been converging towards their levels.

Figure 2 – Chinese economic growth

Source: Trading economics

However, China might be entering the middle-income trap[32]; a concept based on an observation that a number of countries remain in the middle-income category for a long period, and do not join the group of rich, advanced countries. 'The underlying reason is that the initial development strategy based on labour-intensive production and the attraction of foreign technologies and capital runs out of steam after a while, whereas the new growth strategy, driven by productivity gains, is often difficult to establish.'

Made in China 2025: following in the footsteps of advanced economies

In 2015, the Chinese authorities unveiled the 'Made in China 2025' (MIC25) strategy[33], which addresses these challenges. 'To some extent, China follows the blueprint of Japan, Singapore, South Korea and Taiwan in breaking through the ceiling of low-tech and labour-intensive manufacturing that restricts the growth of developing and emerging economies. This 'East Asian development model' is characterised by industrial policies that target strategic sectors, and a strong government

[29] See The Guardian Crashed by Adam Tooze review – a masterful account of the financial crisis, 26 September 2018.

[30] See Caixin, What's Not Great About China's High-Speed Rail? The Debt, 29 January 2019.

[31] See Euractiv, Six takeaways from Siemens-Alstom rejection, 6 February 2019.

[32] See Economic Review, National Bank of Belgium, June 2018.

[33] See Evolving Made in China 2025: China's industrial policy in the quest for global tech leadership, Merics, 2 July 2019.

that effectively aligns business interests (state-owned as well as private) with national targets,' wrote the analysts of the Mercator Institute for China Studies (Merics).

Since the adoption of the strategy, Merics have found that:

- Chinese companies like Huawei and ZTE(two telecommunication companies) are set to gain global dominance in the rollout of 5G networks;
- More than 530 smart manufacturing industrial parks have been established in China, with many focusing on big data (21 percent), and cloud computing (13 percent);
- China has secured a strong position in areas such as artificial intelligence (AI);
- In 2017, seven of the top ten electric vehicle battery companies were Chinese, accounting for 53 percent of the global market share;
- In 2018, 58 percent of the value of Chinese foreign direct investment in Europe could be attributed to core industries of the MIC25 strategy.

As political scientist Kirsten Hopewell notes, these are the results of a fairly standard industrial policy, which the advanced economies were also implementing in the process of their economic development, together with state intervention, tariffs and subsidies, adoption of advanced technology and strong regulation of foreign investment.

'China's continued economic development will bring the country increasingly into direct competition[34] with the United States, which is why US President Trump has explicitly stated the proposed US tariffs are designed to impede[35] the Made in China 2025 programme', she writes. It is clear that the USA sees the strategy as a threat to its dominance in the world economy; in the US Trade Representative's report into China's unfair trade practices[36], the strategy was mentioned or cited 116 times.

In their joint communication to the European Parliament, the European Council and the Council, 'EU-China – a strategic outlook', the European Commission and the High Representative of the Union for Foreign Affairs and Security policy take a similar, if more balanced approach: 'China is, simultaneously, in different policy areas, a cooperation partner with whom the EU has closely aligned objectives, a negotiating partner with whom the EU needs to find a balance of interests, an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models of governance,' they write.

2. Level playing field: Strengthening EU policies

Faced with increasingly protectionist US and far-reaching Chinese trade agenda, the EU is pursuing a two-track approach consisting of:

1. Measures to re-establish a level playing field by strengthening EU policies addressing unfair trade practices, and
2. Measures to strengthen the EU's industrial base and competitiveness in the global market.

[34] See more When market fundamentalism and industrial policy collide: the Tea Party and the US Export–Import Bank, K. Hopewell, 26 April 2017.

[35]See also Bloomberg, How 'Made in China 2025' Frames Trump's Trade Threats, 10 April 2018.

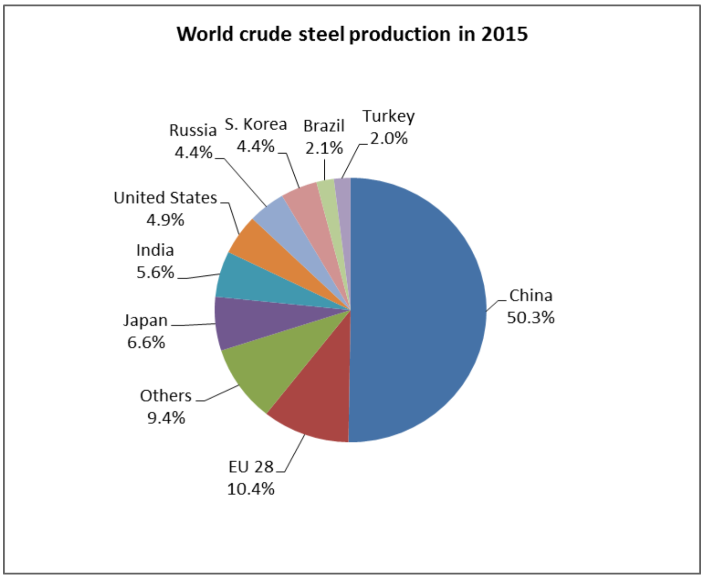
[36] See Council on Foreign Relations, Why Does Everyone Hate Made in China 2025?, 28 March 2018.

The following section will address these aspects in more detail while highlighting the role of the European Council in the process.

2.1. Modernisation of trade defence instruments

In recent years, excess global production of steel has put a heavy strain on the EU's steel industry. Structural overcapacity in the steel sector, owing largely to the volume of China's output, has had a destabilising effect on global crude steel markets leading to a reduction in steel prices worldwide. In 2015, overcapacity in China alone was estimated at around 350 million tonnes, almost double the EU's annual production. Given the surge in the volumes of steel on the markets and the reduction in steel prices, some countries reacted by imposing trade restrictions and other forms of trade barriers. Between 2015 and 2016, the Commission initiated ten investigations[37] against unfair trading practices relating to steel. In this context, in its 2016 communication on steel[38], the Commission announced a series of measures to support the steel industry and tackle unfair trade practices, including an overhaul of legislation on trade defence instruments. Trade defence instruments refer to anti-dumping and anti-subsidy duties but also to safeguard measures aimed at protecting the EU market from unfair trade practices.

Figure 3 – World crude steel production in 2015



Source: Commission communication on steel

In 2016, the European Council discussed the modernisation of trade defence instruments at four of its meetings, and at two meetings in 2017. In its first conclusions, in March 2016, it called for action to be taken forward on the basis of the Commission communication. The paragraph on steel overcapacity in its conclusions was added rather late[39] in the drafting process, highlighting the sensitivity of this issue. The Italian government proposed a much longer paragraph on the issue of

[37] See Commission communication Steel: Preserving sustainable jobs and growth in Europe, 16 March 2016.

[38] See Commission press release of 16 March 2016.

[39] See P. Ludlow., Briefing Note 2016/1-3, Eurocomment.

steel overcapacity, which however also mentioned low carbon technologies. Ultimately, paragraph 13[40] comprised three lines and the low carbon reference was removed.

The initial paragraph stated: 'It [...] calls on the Commission and the Council to use every means available and to take strong action in response to this challenge. This includes full and timely use of existing EU trade policy instruments to tackle unfair trade, a modernisation of these instruments as well as any further initiative that could help to monitor global over capacity. At the same time, it stresses the need for a long-term strategy regarding the steel industry, especially through the development of low carbon technologies'. While the issue appears in the March 2016 European Council conclusions in the context of tackling global overcapacity in the steel sector, EU leaders did not touch upon the underlying reasons behind the need to upgrade these instruments, among which included the expiry, in December 2016, of a provision on price comparability within China's World Trade Organization Accession Protocol[41].

When China joined the WTO in 2001, part of this section 15 on price comparability in determining subsidies and dumping (section 15(a)(ii)), was included in China's Accession Protocol and was set to expire no later than 15 years after its accession. However, the interpretation of the remainder of the provision (section 15) in favour of, or against, granting China market economy status for the purpose of calculating dumping margins has been highly controversial. To date, the EU has not recognised[42] China as a market economy[43]. In a non-market economy, due to government intervention distorting domestic prices, these prices are considered unreliable for determining the normal value of goods.[44] In these circumstances, alternative methods are used to calculate the value of goods and may lead to cases where countries ultimately apply higher anti-dumping duties on non-market economies.

Since granting market economy status to China was not considered feasible[45] in 2016, as the country did not satisfy[46] EU criteria[47] and given that section 15 (a)(ii) of China's accession protocol to the WTO expired in December 2016[48], EU legislation on trade defence had to be revised to ensure compliance with WTO rules. Under the revised EU legislation[49], a new method of calculation of anti-dumping duties was defined. The EU no longer makes a distinction between market and non-market economies[50], and the resulting duty depends on the extent of market distortions in the exporter

[40] See European Council conclusions, 17-18 March 2016.

[41] See more details, WTO Protocols of accession for new members.

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

[43] See European Parliament study Market economy status for China after 2016?, May 2016.

[44] On the basis of Article VI of the General Agreement on Tariffs and Trade WTO members are allowed to use a different methodology to calculate the normal value for 'imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State'.

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

[46] The EU set out its criteria for market economy status in two regulations, Council Regulation 905/98 of 27 April 1998 and Council Regulation 1225/2009 of 30 November 2009.

[47] See Status of market economy to China: What political answers can be given to this legal straitjacket?, Fondation Robert Schuman, June 2016.

[48] See EPRS briefing, Protection from dumped and subsidised imports, February 2018.

[49] Regulation (EU) 2017/2321 , OJ L 338.

[50] China has claimed that it should be considered a market economy and contested the EU legislation. Subsequently, on 12 December 2016, China launched a case at the WTO, arguing that it should be treated as a market economy and that the use of alternative methods to calculate anti-dumping duties should be discontinued. In May 2019, China withdrew its case.

country informed by a set of criteria amongst which features the degree of state intervention in the economy.

Box 1 – Section 15(a) of the Chinese accession protocol to the WTO:

'15.(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.'

Section 15(d) of the Chinese accession protocol to the WTO:

'**15(d)** Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a) (ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph(a) shall no longer apply to that industry or sector.'

Source: WTO China Accession Protocol.

At international level, a Global Forum on Steel Excess Capacity has been in place since 2016, bringing together 33 major steel producer countries to discuss and propose solutions to address steel overcapacity. Concrete measures[51] to curb excess production were agreed in November 2017, including steps taken to eliminate market-distorting subsidies and ensuring a level playing field in the steel industry. While progress has been made since, it has not measured up to initial expectations. In their joint letter ahead of the June 2019 G20 summit in Osaka, former Commission President Jean-Claude Juncker and former European Council President Donald Tusk highlighted[52] that the forum was needed to help reduce overcapacity and eliminate trade distorting subsidies as well as allowing for a level playing field globally. The mandate of the forum has not been extended beyond November 2019, as called for at the G20 meeting[53], since a consensus could not be achieved, given that in China's view[54], the forum had 'achieved its goals'. However, the remaining members have agreed to continue[55] working together to tackle the persistent global excess capacity.

[51] See report from the Global Forum on Steel Excess Capacity, 30 November 2017.

[52] See Joint letter of Presidents Donald Tusk and Jean-Claude Juncker on the upcoming G20 summit, 26 June 2019.

[53] G20 Osaka leaders' declaration, 29 June 2019.

[54] See South China Morning Post, China says it has done more than its share to cut steel production as global forum is scrapped, 27 October 2019.

[55] See Commission press release, European Commission welcomes continuation of Global Forum on Steel Excess Capacity work, 29 October 2019.

2.2. Screening of foreign direct investment

Following the entry into force of the Lisbon Treaty in 2009, foreign direct investment (FDI) became an EU competence and was included within the remit of EU common commercial policy. FDI was not defined in the Lisbon Treaty but it is generally accepted that it refers to a type of investment, where an investor acquires at least 10 % of the voting power of an enterprise, allowing for control over the company's operations. Conversely, in the case of portfolio investment, no control is exerted over the management of the enterprise. The Court of Justice of the European Union (CJEU) defines FDI as 'investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the target company in order to carry out an economic activity in a Member State'. In its Opinion 2/15 of 16 May 2017, the CJEU further clarified the division of competences on investment[56] between the EU and Member States. Accordingly, shared competences include: (i) foreign portfolio investment, (ii) investor-state dispute settlement, and (iii) state-to-state dispute settlement relating to provisions regarding portfolio investment.

Foreign ownership in the EU has been on the rise in the last 10 years according to the European Commission's 2019 analysis of trends in foreign direct investments in the EU. The Commission found that 80 % of all foreign-owned assets are controlled by countries such as Australia, Canada, Japan, Norway, Switzerland and the USA. However, acquisitions by Russia, China and the United Arab Emirates have tripled since 2007, with 18 acquisitions made by state-owned companies in 2017. Recent acquisitions, such as the takeover of Kuka, a German manufacturer of industrial robots, in 2016, and investments in strategic infrastructure such as the Greek Port of Piraeus (See Box 2)[57], have led several Member States to reinforce their foreign investment screening procedures in the last few years. At present, 15 Member States have a legal framework[58] in place to scrutinise[59] investments by non-EU investors, with differences among them in terms of scope and sector coverage, with some confined to national security concerns while others cover more areas.

Box 2 – Recent acquisitions by non-EU investors

Germany: In January 2017, Chinese manufacturer Midea acquired Kuka, a leading manufacturer of industrial robots in Germany.

Belgium: In September 2017, the APM Terminals Zeebrugge (Port of Zeebrugge) became China Ocean Shipping (Group) Company (COSCO)'s first 100 %-owned terminal in northwest Europe.

Greece: In August 2015, COSCO took a 51 % stake in the Port of Pireus Authority.

Analysts highlight that the increase in FDI in Europe by Chinese companies coincides with the launch of the Belt and Road Initiative (BRI) in 2013. China's growing presence in the EU neighbourhood and the Western Balkans through the 17+1 cooperation format is driven by overarching objectives under the BRI. Alongside China, 12 EU countries and 5 Western Balkan countries take part in the 17+1 cooperation format, aiming at deepening regional integration in the area. Analysts note that investments made in central and eastern European countries take the form of loans with a focus on energy and transport sectors, serving at improving corridors of access to the EU market and therefore promoting the BRI in the region.

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[56] See Court of Justice of the European Union press release No 52/17, 16 May 2017.

[57] See CEPS, Systemic rivalry and balancing interests: Chinese investment meets EU law on the Belt and Road, 21 March 2019.

[58] See List of screening mechanisms notified by Member States, 28 February 2020 (last update).

[59] See EPRS briefing, Foreign direct investment screening A debate in light of China-EU FDI flows, May 2017.

Given the surge of acquisitions in the course of 2016, in particular by state-owned enterprises, questions were raised as to the effectiveness of a decentralised[60] system for monitoring FDI flows in the EU, in particular given the cross-border implications of some of these investment decisions. In this context, several Member States expressed their concerns to the Commission early in 2017, over the increasing number of takeovers of European companies with 'key technological competences for strategic reasons', pointing to a threat of 'selling out European expertise' and a need for instruments to tackle the situation. The issue was subsequently taken up at the European Council meeting of June 2017.

In his invitation letter ahead of the summit, former European Council President Tusk framed the objective of the discussion as 'a serious debate on how to enhance reciprocity and screen investments from countries that impose unfair restrictions', emphasising that 'we must prove that we can defend Europe against those who want to abuse our openness'. The outcome of the summit was an invitation to the Commission and Council 'to deepen and take forward the debate on how to enhance reciprocity in the fields of public procurement and investment'.

Commentators noted[61] that, while the topic made for a lively discussion at the summit, several countries expressed reluctance at limiting the access of foreign investors to the EU market. Reflecting these concerns, the final text of the conclusions invites the Commission 'to analyse investments from third countries in strategic sectors', whereas in earlier versions of the text, the Commission was asked to 'examine the need and ways to screen investments from third countries in strategic sectors'. The latter formulation, although much stronger, did not garner the necessary support among EU leaders. By September 2017, a Commission proposal was on the table. Following interinstitutional negotiations, an agreement on the text was reached one year later. References[62] to the Commission's right to screen FDI in the initial proposal were removed and Member States have retained the final decision over the type of investments allowed in their territories. Two years later, in April 2019, the EU framework entered into force. Since then, the Commission and the Member States have worked towards ensuring that the framework is fully operational by October 2020[63], including by setting up a channel of regular information exchange.

Several criteria can be used to determine whether a foreign direct investment poses a risk to security or public order. These may include investments in critical infrastructure, technologies and the input essential for security or maintenance of public order. In addition, it should also be possible to take the context and circumstances of the investment into account, in particular whether a foreign investor 'is controlled directly or indirectly, for example through significant funding, including subsidies, by the government of a third country or is pursuing State-led outward projects or programmes'.

While the strengthening of oversight over foreign direct investments in the EU has been welcomed, making the Member States the ultimate decision-makers on the approval of an investment weakens its effectiveness, with analysts noting[64] that future reforms should focus on strengthening EU-level competencies in the screening of FDI. Nevertheless, whereas previously security concerns were

[60] See EPRS briefing, EU framework for FDI screening, April 2019.

[61] See P. Ludlow, Briefing Note 2017/5, Eurocomment.

[62] See EPRS briefing, EU framework for FDI screening, April 2019.

[63] See Commission press release of 5 March 2019, IP/19/1532.

[64] Jacques Delors Institute, Beyond industrial policy: Why Europe needs a new growth strategy?, Policy paper No.243, October 2019.

exclusively addressed at national level, being able to address this issue at European level is seen as a step forward in safeguarding European interests.

2.3. Adapting EU competition policy: Creating European champions?

Turning back to 'Made in China 2025' (MIC25), the joint communication of March 2019, 'EU-China – a strategic outlook'[65], notes that China's aim is to develop domestic champions and help them become global leaders in strategic high-tech sectors by excluding foreign companies from its large domestic market and supporting Chinese firms' expansion at home and abroad with cheap credit and generous subsidies. In the Commission's view, China should no longer be regarded as a developing country where such measures might still be necessary as part of an economic development policy; its increasing presence in Europe, supported by the MIC25 strategy, should therefore be accompanied by greater reciprocity, non-discrimination, and the openness of its system.

To achieve this, the Commission urged the Parliament and the Council to adopt the International Procurement Instrument[66] as leverage to open up the procurement market in China to European companies. It also committed to address, before the end of 2019, the distortive effects of foreign state ownership and state financing, which could be putting European companies at a disadvantage in their home markets as well as abroad. At the EU-China summit in April 2019, the parties reaffirmed the importance of a memorandum of understanding[67] from 2017, which sets up a dialogue aiming to prevent state aid and other measures from distorting and restricting competition.

Alarmed by the European Commission's decision to block the merger of rail businesses owned by Germany's Siemens and France's Alstom, the two countries, in a February 2019 'Manifesto for a European industrial policy fit for the 21st Century'[68], called for a radical overhaul of EU competition policy to allow for the creation of European industrial champions. They also highlighted the need for investment in new technologies (through InvestEU[69], the European Innovation Council and Important Projects of Common European Interest (IPCEI))[70], as well as the development of artificial intelligence in Europe.

At the Friends of Industry ministerial meeting, in December 2018, Berlin and Paris jointly emphasised[71] that IPCEI[72] could be an example to follow, e.g. by supporting investments in battery cell production for electric vehicles. Chinese companies are world leaders in this strategic sector, which is crucial for the transition to green mobility. Germany and France announced support for cooperation between companies, research institutes and platforms in the field of battery cell production and across the value chain, from raw materials suppliers to car manufacturers.

[65] European Commission and HR/VP contribution to the European Council, EU-China – A strategic outlook, 12 March 2019.

[66] See European Parliament legislative train file on this issue.

[67] EU-China Memorandum of Understanding on a dialogue in the area of the State aid control regime and the Fair Competition Review System, 2017.

[68] See A Franco-German Manifesto for a European industrial policy fit for the 21st Century, 19 February 2019.

[69] See European Parliament legislative train file on this issue.

[70] Commission call for applications for the Strategic Forum for Important Projects of Common European Interest, 2017.

[71] Joint statement by France, Austria, Croatia, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Spain, 18 December 2018.

[72] See European Commission press release of 18 December 2018.

In July 2019, Poland joined France and Germany in their quest for an EU competition policy that would be more accommodative to the creation of industrial champions. In a common statement[73], they urged the Commission to take state intervention by third countries in merger control into account, and to 'tackle the excessive market power of big tech firms'. They also called for 'upgrading' of the role of the advisory committee for mergers, strengthening the influence of Member States over one of the Commission's exclusive powers.

Box 3 – Strategic value chains and Important Projects of Common European Interest (IPCEI)

The European Commission's 2017 communication on an industrial policy strategy called for the establishment of a Strategic Forum for IPCEI to identify key strategic value chains and investment projects. These strategic value chains are 'interlinked and integrated industrial activities with great potential to contribute to Europe's green and digital transformation and to improve Europe's competitiveness'. As early as February 2019, the Commission released preliminary results of the work carried out in the high-level group. The Forum released its final report in November 2019. Six new areas have been selected:

1. Connected, clean and autonomous vehicles
2. Smart health
3. Low-carbon industry
4. Hydrogen technologies and systems
5. Industrial internet of things
6. Cyber-security

This will complement ongoing initiatives to strengthen the value chains for batteries, microelectronics and high-performance computing. A special instrument under state aid rules (Art. 107(3) (b) TFEU), IPCEI can be used to strengthen the competitiveness of strategic value chains when it comes to new breakthrough technologies. The provision refers to: 'aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State'. In 2014, the Commission adopted a communication laying out the conditions for its application.

Another contribution to the debate was the letter[74] that 17 Heads of State or Government from predominantly smaller Member States sent to the former President of the European Council, Donald Tusk, in February 2019. There, they pushed for an 'offensive industrial policy to innovate and remain globally competitive in key technologies and strategic value chains'. However, Berlin and Paris stand out by not being among the signatories. Nevertheless, both the manifesto and the letter cover much of the same ground. They focus on the challenges of digitalisation and highlight the need for the EU to become a leader in artificial intelligence by unleashing the data economy.

The EU's Commissioner on competition, and now Executive Vice-President, Margrethe Vestager, agreed[75] that the time was right for a more nuanced and more pragmatic approach to competition policy, but warned that diluting merger rules would mean a strategic choice to change Europe's economic model, based on fair competition. Nobel laureate in economics Jean Tirole[76] was however more blunt, saying there might still be room for industrial policy in Europe, provided this 'did not

[73] Proposals from ministers of economy of France, Germany and Poland, Modernizing competition policy, July 2019.

[74] Letter to President of the European Council, 26 February 2019.

[75] See Financial Times, Vestager warns against weakening merger rules, 4 March 2019.

[76] See Keep Politics Out of Europe's Competition Decisions, J. Tirole, 4 March 2019.

involve the traditional French practice of ministers picking winners'. Back in December 2019, Commissioner Vestager announced that the Commission would review[77] the way in which markets are defined in antitrust and merger cases, and review the Notice on Market Definition[78] from 1997.

Most recently, on 4 February 2020, in a letter[79] to Executive Vice-President Vestager, the economy ministers of France, Germany, Italy and Poland reiterated their concerns and urged for concrete proposals, in particular on the revision of guidelines on the assessment of horizontal mergers and the definition of the relevant market. They called for more scrutiny of digital platforms and, if relevant, for a specific regulatory framework to avoid distortion of competition. In addition, they urged for the adoption of interim measures to address uncompetitive behaviour in the event of lengthy investigations. Reinforcing the role of the Advisory Committee in merger control to allow for broader competition policy discussions, was also once again emphasised in the letter. Following the unveiling of a package of measures on the future European digital strategy[80] on 19 February 2020, the Commission indicated that the evaluation and review of EU competition rules would take place until 2023. Given these recent developments and with a forthcoming discussion on economic policy expected at the next European Council in March 2020, these issues are likely to feature high on the agenda.

The leaders also want to see the EU establish itself as a leader in the digital economy, the data economy, and artificial intelligence, all strategic objectives for the EU in the next few years, as emphasised in the strategic agenda for 2019-2024. Leaders consider world-class connectivity, coupled with an emphasis on access to, sharing of, and use of, data as key in an 'environment of trust'. Network security is an important issue, and in March 2019, acting on the European Council's request, the Commission published a recommendation on a concerted approach to the security of 5G networks[81].

Huawei, a Chinese company, is a world leader in 5G technology; contrary to the US administration’s approach, the Commission did not recommend banning EU companies from using Huawei networking equipment in their drive[82] to encourage 5G networks. However, Member States have undertaken an analysis of risks and vulnerabilities related to the rollout of 5G and published a joint EU risk assessment[83] in October 2019, later complemented by an assessment[84] of the European Agency for Cybersecurity. At the end of January 2020, the Commission endorsed the joint toolbox of mitigating measures[85] agreed by Member States and called for measures to be put in place by 30 April 2020 and for an implementation report covering each Member State by 30 June 2020.

In March 2019, the European Council said[86] it wanted to secure the EU's role as an industrial power through an assertive industrial policy, complemented by competition policy that addresses the distortive effects of foreign state ownership and state-aid financing in the single market. The Heads

[77] See speech of EU Commissioner for competition, Margrethe Vestager, 9 December 2019.

[78] Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997.

[79] Letter to EU Commissioner for competition, Margrethe Vestager, 4 February 2020.

[80] See Commission press release of 19 February 2020, IP/20/273.

[81] Commission Recommendation of 26 March 2019 on Cybersecurity of 5G networks C(2019) 2335.

[82] Commission and Finnish Council Presidency press release of 9 October 2019 IP/19/6049.

[83] Commission and Finnish Council Presidency press release of 9 October 2019 IP/19/6049.

[84] See Report on the EU coordinated risk assessment on cybersecurity in 5G networks, 21 November 2019.

[85] See factsheet on EU toolbox for 5G security, 29 January 2020.

[86] See European Council conclusions of 21- 22 March 2019.

of State or Government also highlighted the importance of greater risk-taking and stepping-up of investment in research and innovation through further support to the European Innovation Council[87] and more efficient implementation of IPCEI[88]. The European Council invited[89] the Commission to present, by the end of 2019, a long term vision for the EU's industrial future, with concrete measures for implementation and touching upon all relevant policy areas. However, the release of the industrial strategy is now expected in early March 2020 and EU leaders will likely follow up on this issue at their meeting in March 2020.

Box 4 – Big data

To compete successfully in the 'big data' era, the EU needs to make it easier for companies to access vast amounts of data; and huge computing power is needed to process and put this data to work. The European Council has recognised both challenges: in June 2016, the leaders called for the coordination of EU efforts in high-performance computing; they have also repeatedly insisted on removing barriers to the free flow of data in the EU.

The leaders again highlighted the importance of the data economy at their informal summit in Sofia in May 2018. 'Data is an increasingly critical asset not only for innovation, business and growth, but above all for our daily lives', reads the Leaders' Agenda note 'Innovation and Digital', which highlights, inter alia, the need to ensure the free flow of non-personal data in the EU and secure support for high-performance computing.

Parliament and Council followed up on these commitments in November 2018 when they adopted legislation that will ban restrictions on data localisation, thereby removing barriers for data storage and processing services, such as cloud computing. The Commission, on the other hand, proposed to establish the European High-Performance Computing Joint Undertaking; the Parliament and the Council adopted the proposal in 2018.

In its June 2018 conclusions, the European Council emphasised that 'High-quality data are essential for the development of artificial intelligence', inviting the co-legislators to swiftly examine the latest data package. In April 2019, Parliament supported the agreement reached with the Council on the directive on open data and re-use of public sector information, opening the path to exploitation of the large data sets needed for successful deployment of machine learning and artificial intelligence.

In December 2018, France and Germany announced the establishment of a working group on artificial intelligence, a field, where China aims to become the world leader. It is based on the Commission's Coordinated plan for AI, published in the same month and which builds on the communication on artificial intelligence and the European AI alliance.

The European Council's Strategic Agenda (2019-2024) sets strategic guidelines in this area with a strong focus on all aspects of the digital revolution and artificial intelligence including infrastructure, connectivity, services, data, regulation and investment.

[87] See Commission press release of 18 March 2019, IP/19/1694.

[88] Communication from the European Commission – Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest.

[89] See European Council conclusions of 21- 22 March 2019.

3. Trade and investment relations with strategic partners

The current global trading environment has been marked by a US administration centred on an 'America first' foreign policy and a trade agenda aimed primarily at reducing trade deficits with partners. Trade tensions have escalated in particular following the imposition by the USA of additional duties on EU steel and aluminium, and its blockage of nominations in the WTO Appellate Body. Moreover, US actions in recent years appear to indicate a policy of disengagement vis-à-vis China, symbolised by the US-China trade war, with experts concerned about the potential implications for the EU's foreign policy agenda. In this context, a concerted effort at EU level through a coordinated strategic guidance by the Commission and the European Council appears all the more relevant. The European Council has paid particular attention to the unfolding situation, including facilitating the launch of trade talks with the USA, holding a strategic discussion over the future of EU-China relations and highlighting the urgency of WTO reform.

In recent years, the EU has concluded a number of important trade agreements with a wide range of partners, including Canada, Japan, Singapore, and Vietnam[90]. Most recently, in June 2019, an 'agreement in principle'[91] was reached with Mercosur (Argentina, Brazil, Paraguay, and Uruguay) on the trade pillar part of a wider Association Agreement. In April 2018, an 'agreement in principle'[92] was also reached with Mexico on the modernisation of the trade pillar[93] of the EU-Mexico Global Agreement. Regarding trade talks with the USA, following the election of US President Donald Trump, negotiations on a Transatlantic Trade and Investment Partnership (TTIP) effectively came to a halt and were formally closed in April 2019. In late 2018, the EU assessed the prospects of entering new negotiations and relaunched talks with the USA early in 2019, on a narrower trade agreement limited to industrial goods, alongside an agreement on conformity assessments.

Regarding China, the EU launched negotiations on a Comprehensive Investment Agreement in 2013 and has so far concluded more than 20 rounds of negotiations. The joint 2013 European External Action Service (EEAS)-Commission 'EU-China 2020 Strategic Agenda for Cooperation'[94] envisages the negotiation of a deep and comprehensive trade agreement with China, once the conditions are 'right'. Despite reforms undertaken by Chinese President Xi Jinping since 2013 aimed at improving China's economic and social model, the EU has expressed concerns[95] regarding the level of opening of the Chinese market and the slow progress in giving the market a more decisive role in the economy in key areas of concern for the EU.

3.1. EU-US trade talks

Following the election of US President Trump in November 2016, talks on TTIP and the Trans-Pacific Partnership (TPP) were suspended. This was the first in a series of measures that the current US administration has taken vis-a-vis its trading partners. The transatlantic relationship took a turn for the worse with the imposition of additional duties on EU steel and aluminium imports. Thus, on

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[90] Forthcoming entry into force upon conclusion of the ratification procedure by Vietnam.

[91] See EPRS briefing, International Agreements in Progress: The trade pillar of the EU-Mercosur Association Agreement, August 2019.

[92] See Commission press release of 26 April 2018.

[93] Outstanding issues such as public procurement offers are currently being addressed, following which legal scrubbing can commence.

[94] See EU-China 2020 Strategic Agenda for Cooperation, 2013.

[95] JOIN(2016) 30 Elements for a new EU strategy on China, 22 June 2016.

23 March 2018, the USA imposed duties of 10 % and 25 % on certain imports of aluminium and steel into the USA. These measures targeted all US trading partners except Australia, while a few countries were subject to quotas instead of tariffs. This decision followed an investigation conducted by the USA under Section 232 of the 1962 Trade Expansion Act[96], which concluded that the import of these products amounted to a threat to US national security.

Despite obtaining a temporary[97] exemption from the application of the duties until 1 May 2018, EU leaders underlined that these could not be justified on the grounds of national security as alleged by the USA under Section 232, and called for a permanent exemption. EU leaders expressed their support for the safeguard and rebalancing measures[98] proposed by the Commission[99] aiming at tackling the diversion of steel to the EU from countries affected by the tariffs, as well as for the legal proceedings initiated by the EU at WTO level. In an effort to de-escalate the situation, EU leaders discussed the issue in the margins of the Western Balkans summit in May 2018 (Sofia summit) and agreed to start talks with the USA in several areas, provided that the EU were granted a permanent exemption to the tariffs[100]. Former Commission President Juncker and US President Trump subsequently discussed those objectives at their meeting on 25 July 2018 and agreed to work together on:

1. Zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods;
2. Strengthening cooperation on energy, (liquefied natural gas (LNG));
3. Launching a dialogue on standards;
4. Reforming the WTO and addressing unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state-owned enterprises, and overcapacity.

Progress has been made on most of these areas since 2018 with one notable exception: tariffs on European steel and aluminium are still in force (and have since been extended[101] to derivative products), although the statement showed a willingness to resolve the situation. The March 2019 European Council thus urged for a rapid implementation of all elements in the joint statement as agreed.

In April 2019, the Foreign Affairs (Trade) Council endorsed two negotiating mandates on: 1) a trade agreement[102] to remove tariffs on industrial goods,[103] excluding agriculture; and 2) an agreement[104] on conformity assessment[105] allowing companies on both sides of the Atlantic to recognise the

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[96] See US White House statement issued on March 8, 2018.

[97] See US White House statement issued on March 22, 2018.

[98] See Commission press release of 18 July 2018, IP/18/4563.

[99] On 1 February 2019, the Commission imposed definitive safeguard measures on imports of steel products, replacing the provisional measures of 18 July 2018. On 20 June 2018, the Commission adopted rebalancing measures. Lastly, on 1 June 2018, the EU requested consultations with the USA. On 25 January 2019 a dispute panel was established at the WTO.

[100] P. Ludlow, Briefing Note 2018/3, Eurocomment.

[101] Proclamation on Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles into the United States, 24 January 2020.

[102] Council directives for the negotiations with the United States of America for an agreement on the elimination of tariffs for industrial goods, 9 April 2019.

[103] Industrial goods encompass all goods other than those included in Annex I of the WTO Agreement on Agriculture.

[104] Council directives for the negotiations with the United States of America for an agreement on conformity assessment, 9 April 2019.

[105] The conformity of a product is assessed before it being placed on the market, thus the product must meet all legislative requirements in the applicable product legislation. Conformity is assessed through testing, inspection and certification.

technical requirements of the other party, and thus reduce the costs of testing and certification of products. Other issues are also being discussed in view of facilitating trade in a number of sectors, such as services, cybersecurity, chemicals, pharmaceuticals, medical devices and soy beans. These talks do not fall under the scope of the two negotiating directives mentioned above.

After more than a year, the talks have not progressed much in delineating the contours of a trade agreement, for several reasons. First, the mandate for launching talks with the USA has been contested from the outset, due to the imposition of tariffs, placing the EU in a position of 'negotiating under threat'. EU officials and several EU leaders underlined that the opening of negotiations with the USA was conditional on the removal of US tariffs. However, since then, the EU position has changed, and negotiations have begun, although the conclusion of the agreement remains conditional on the removal of the tariffs.

In this context, the European Parliament was not able[106] to issue recommendations on the future negotiations, as was the case previously for the negotiations on TTIP. In addition, several EU leaders have stressed that the US withdrawal from the Paris Agreement[107] is a clear red line. Sustainable development chapters[108] have been included systematically in recent trade agreements negotiated by the EU and involve a shared commitment to implement the Paris Agreement. France voted against the adoption of the mandate to launch the negotiations, while Belgium abstained.

Former European Council President Donald Tusk was firm in his statements[109] ahead of the Sofia summit in May 2018. 'And my objective is simple: we stick to our guns. This means a permanent exemption from US tariffs on aluminium and steel if we are to discuss possible trade liberalisation with the US. The EU and USA are friends and partners, therefore US tariffs cannot be justified on the basis of national security.' Moreover, earlier that year, he recalled[110] that the last time the USA imposed tariffs on the EU, was in 1930 and it had led to a trade war. 'But I do this to demonstrate the broader perspective. Transatlantic relations are a cornerstone of the security and prosperity of both the United States and the European Union'.

Moreover, in February 2019, the US administration finalised a Section 232 investigation on imports of cars and car parts, as a result of which President Trump has signalled his intention[111] to place tariffs on imports from the EU. On 17 May 2019, President Trump signed a proclamation[112] setting a six-month deadline for the US to reach a deal with the EU to 'address the threatened impairment of the national security with respect to imported automobiles and certain automobile parts'. In July 2019, former EU Trade Commissioner Cecilia Malmstrom stated that the EU would not accept any tariffs, quotas, or voluntary export restrictions[113] and that the EU could not accept the US argument that

[106] See Euractiv, Parliament rejects opening trade talks with Trump, 14 March 2019.

[107] See Politico, Trump begins US withdrawal from Paris climate deal, 11 April 2019.

[108] Trade agreements negotiated after the Paris Agreement will '(i) reaffirm a shared commitment to the effective implementation of the Paris Agreement, (ii) commit the parties to close cooperation in the fight against climate change, (iii) and commit the parties to agree on and carry out joint actions'.

[109] Remarks by President Donald Tusk ahead of the EU-Western Balkans summit, 16 May 2018.

[110] Invitation letter by President Donald Tusk to the members of the European Council ahead of their meetings on 22 and 23 March 2018.

[111] On 23 May 2018, the US Department of Commerce started a Section 232 investigation into US imports of cars and car parts. The report was released on 19 February 2019, but was not made public.

[112] Adjusting imports of automobiles and automobile parts into the United States, issued on May 17, 2019.

[113] Voluntary export restraints are bilateral arrangements whereby an exporting country (government or industry) agrees to reduce or restrict exports without the importing country having to make use of quotas, tariffs or other import controls.

EU imports of car parts was considered a threat to its national security. In any event, if further tariffs were to be applied by the USA, the EU would de facto suspend[114] the negotiations.

In terms of substance, the two negotiation agendas are currently too far apart in terms of coverage, with the US objectives aiming to cover a wide[115] number of areas, whilst the EU mandate is more limited in scope and broadly based on the July 2018 joint statement. Divergences over the inclusion of agriculture in the negotiations have also surfaced, with the EU stating on many occasions that agriculture was outside the scope of these talks, whereas statements[116] by US officials indicated otherwise.

Experts note[117] that the gains to be made from an agreement limited to industrial goods are small considering the already low tariffs in place, however substantial economic benefits can be achieved on reaching an agreement on conformity assessments. Regarding the latter, the Commission tabled an EU proposal[118] on 22 November 2019 covering several industrial sectors. Moreover, the second strand of talks over technical standards is progressing and a 'horizontal agreement'[119] could include areas such as medical devices, pharmaceutical products and cybersecurity and even 3D printing or robotics.

In addition to the stalemate in the negotiations, the WTO recently settled a long-standing dispute between the EU and USA on subsidies granted by the EU to the Airbus aircraft manufacturer. The WTO decision[120], issued on 2 October 2019, was favourable to the USA, which entitled it to take action against the EU in the form of additional tariffs. The USA imposed countermeasures worth nearly US$7.5 billion on certain EU goods[121], e.g. wine, cheese, last October. On 14 February 2020[122], US Trade Representative announced a tariff increase on aircraft imported from the EU from 10% to 15%. As the US has not increased tariffs on agricultural products however, while it could have done so, EU Commissioner for Trade Phil Hogan, has welcomed the news as a positive sign that the US was willing to engage in negotiations. Following the outcome of a meeting[123] between European Commission President Ursula von der Leyen and US President Trump at the Davos World Economic Forum, in January 2020, Commissioner Hogan indicated he would be working towards reaching[124] a "mini-deal based on the terms of reference that was given to us ... by President von der Leyen and Trump in Davos."[125]

Moreover, US legislators in Washington have put forward legislation[126] to eliminate a tax break[127] granted to Boeing which had been deemed illegal under WTO rules. This comes at a time when the

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[114] See Council of the EU press release of 15 April 2019.

[115] United States Trade Representative, Summary of Specific Negotiating Objectives for the Initiation of United States-European Union Negotiations, January 2019.

[116] See Euractiv, No trade deal without agriculture, warns US ambassador to the EU, 9 May 2019.

[117] Bruegel, What is in store for the EU's trade relationship with the US?, 16 May 2019.

[118] See European Commission press release, 22 November 2019.

[119] See Borderlex, US auto tariff threat: Malmström announces retaliation on €35bn worth of trade, 23 July 2019.

[120] WTO Decision WT/DS316/ARB of 2 October 2019.

[121] See DW, US imposes record $7.5 billion tariffs on European goods, 18 October 2019.

[122] See Agence Europe Europe Daily Bulletin No. 12427, 18 February 2020.

[123] See Euractiv, Von der Leyen and Trump fine tune transatlantic relations in Davos, 21 January 2020.

[124] See Politico, More than peanuts: EU woos Trump with farming and industrial concessions, 21 February 2020.

[125] See Politico on press remarks by EU Commissioner for trade Phil Hogan, 20 February 2020.

[126] See The Heraldnet, Boeing asks that its big state tax break be suspended, 19 February 2020.

[127] See Politico, Washington state moves to eliminate Boeing tax break deemed illegal by WTO, 19 February 2020.

EU expects a decision by the WTO, later this year, on a case brought by the EU against the USA regarding subsidies granted to Boeing (including the tax break). The EU has already engaged with the USA seeking to reach a compromise solution[128] that would have avoided this tariff escalation, however the USA rejected the proposal. Commissioner Hogan indicated[129] at a meeting in the European Parliament's International Trade Committee (INTA) that he would continue to engage with the US and reach an agreement within the limits of the existing mandate as agreed in July 2018.

3.2. EU-China investment talks

The first European Council President, Herman van Rompuy, started his presidency by outlining his vision of the 'place and role of Europe in the world', as well as the responsibilities enshrined in the European Council and its president in the EU Treaties. In his address to the College of Europe in 2010, he acknowledged that his job was 'to find consensus on all external matters' and 'establish a shared sense of direction'. Early in his time in office, President Van Rompuy aimed at strengthening relations between EU and China, however, the worsening of external crises (Libya, Syria and Ukraine) and the Eurozone crisis placed a heavy strain on his presidency, leaving little room for discussions on relations with China.

The EU's engagement with China covers a large number of areas (over 60 sectoral dialogues) with the trade relationship the most developed area of cooperation. In this area, the EU is negotiating several agreements with China, among which a Comprehensive Agreement on Investment (CAI, since 2013) and an Agreement on the Cooperation on, and Protection of, Geographical Indications (GI) (with the latter recently concluded in November 2019)[130]. A number of strategic documents guide EU relations with China, inter alia, a 2016 joint communication, 'Elements for a new EU strategy on China'[131] and subsequent July 2016 Council conclusions[132] as well as the 'EU-China 2020 Strategic Agenda for Cooperation'[133] (2013). The most recent communication of March 2019, EU-China-A strategic outlook[134], marks a change in EU discourse towards China, with the EU labelling China both as a 'cooperation partner', but also as an 'economic competitor'.

China is no longer a developing country, but rather a 'key global actor and leading technological power'. Back in 2016, the Council called[135] on China to assume a role commensurate with its standing on the global stage, including in its support for the multilateral system, from which it has also largely benefited. European Council President Tusk has echoed the same request at recent EU-China summits. For instance in 2018, 'Let us remember, here in Beijing, and over there, in Helsinki, that the world we were building for decades, sometimes through disputes, has brought about peace for Europe, the development of China, and the end of the Cold War between the East and the West'[136].

[128] See Commission statement of 18 October 2019, STATEMENT/19/6132.

[129] See Agence Europe, Europe Daily Bulletin No. 12429, 20 February 2020.

[130] Negotiations were concluded on 6 November 2019 and the agreement will be submitted for the approval of the Council of the European Union and the consent of the European Parliament.

[131] Elements for a new EU strategy on China, JOIN(2016) 30, 22 June 2016.

[132] See Foreign Affairs Council conclusions of 18 July 2016.

[133] EU-China 2020 Strategic Agenda for Cooperation, 2013.

[134] European Commission and HR/VP contribution to the European Council EU-China – A strategic outlook, 12 March 2019.

[135] See Foreign Affairs Council conclusions of 18 July 2016.

[136] See remarks by European Council President Donald Tusk after the EU-China summit in Beijing, 16 July 2018.

And in 2016: 'As two of the largest economies in the world, the EU and China have an important stake, as well as responsibility, in ensuring the growth and stability of the global economy'[137].

While the USA has taken unilateral measures, outside the WTO framework (notably tariffs to target Chinese goods), in an effort to exert influence and accelerate reform of Chinese policies that it deems unfair, the EU approach has been to cooperate with China in addressing the very same issues. Therefore, the 2019 EU-China annual summit concluded with important Chinese commitments, inter alia: concluding the GI Agreement in 2019 and the EU-China CAI in 2020, the latter improving market access for EU investors in China; reaffirming joint commitment to WTO reform and finding areas of convergence, and in particular committing to resolve the WTO Appellate Body crisis[138]. Both sides agreed to establish a political mechanism to continuously monitor progress in the negotiations and to report to leaders by the end of the year.

Regarding WTO reform, an EU-China working group was set up following the 2018 annual summit and a first tangible result has been China's commitment to work together with the EU on strengthening rules on industrial subsidies. 'The two sides reaffirm their joint commitment to cooperate on WTO reform to ensure its continued relevance, and allow it to address global trade challenges. To this end, both sides will intensify the discussions with the aim of strengthening international rules on industrial subsidies.' In his press remarks[139] after the summit, former European Council President Tusk welcomed the joint statement, which 'sets the direction for our partnership based on reciprocity' and applauded the Chinese decision to engage in discussions on industrial subsidies.

While the 18th and the 19th EU-China summits, in 2016 and 2017, did not produce any joint statements, the following two years have seen commitments by China on important issues for the EU, in particular on climate change. The earlier summits were overshadowed by divergences[140] between the parties, including the request by China to be recognised as a market economy and its intention of launching a comprehensive free trade agreement with the EU. The EU has indicated[141] that once the negotiations on the investment agreement were finalised successfully, a trade agreement with China could be considered.

At the March 2019 European Council preceding the 2019 EU-China summit, EU leaders held a discussion on the state of EU-China relations in preparation for the annual summit. In their joint contribution[142] ahead of the European Council meeting, the Commission jointly with the High Representative outlined its vision of future EU-China relations and proposed 10 actions for endorsement by EU leaders. The actions cover the entire spectrum of areas where China and EU cooperate, with almost half of the actions focused on trade and investment. As expressed in the text[143] 'Finding the right balance of policy approaches is a political judgement, requiring the attention of the European Council'. The communication stands out due to the strong language used,

137 See remarks by European Council President Donald Tusk at the EU-China summit in Beijing, 16 July 2016.

138 See more on results of EU-China Summit, April 2019.

139 See remarks by European Council President Donald Tusk after the EU-China summit in Brussels, 9 April 2019.

140 See EPRS study A new era in EU-China relations: more wide-ranging strategic cooperation, July 2018.

141 Saarela A., A new era in EU-China relations: more wide-ranging strategic cooperation, EXPO, European Parliament, July 2018.

142 European Commission and HR/VP contribution to the European Council, EU-China – A strategic outlook, 12 March 2019.

143 Ibid

with China described as both a 'cooperation' and 'negotiation partner', but also as an 'economic competitor' and 'systemic rival' promoting an alternative model of governance.

Although the European Council did not endorse the joint communication in its conclusions[144], the final text includes references to the trade and investment issues as outlined in the communication, however without singling out China. In his report[145] to the European Parliament, as well as in all his remarks before and after the 2019 March European Council, former President Tusk only addresses the discussion over the economic relationship with China and climate (briefly), while mentioning[146] the EU-China dialogue on human rights, which are 'as important as economic interests'.

Concluding the EU-China Investment Agreement in 2020 remains high on the EU agenda, and two high level meetings are already scheduled with China, a regular EU-China summit in spring, followed by a second meeting in the fall at the level of the Heads of State or Government during the German Council Presidency.

Box 5 – External representation of the European Union

By virtue of Article 15 of the Lisbon Treaty, the European Council represents the EU externally on matters related to Common Foreign and Security Policy (CFSP), at the level of Heads of State or Government, with its president chairing bilateral summits with third countries jointly with the President of the European Commission. The High Representative for Foreign Affairs and Security Policy represents the EU at ministerial level on matters related to CFSP.

The European External Action Service (EEAS), created in 2010, supports the President of the European Council and the European Commission in ensuring the external representation of the Union (Article 2 EEAS Decision). At the European Council meeting of September 2010, EU leaders endorsed the division of work between the European Council and the High Representative according to the EEAS Decision. 'At service level, it [EEAS] will, under the authority of the High Representative, provide support to the European Council, the Council and the Commission concerning the strategic overview and coordination necessary to ensure the coherence of the European Union's external action as a whole'. Moreover, EU leaders adopted 'Internal arrangements to improve the European Union's external policy', intended to promote better coordination with EEAS and European Commission services, with concrete measures to improve the preparation of both bilateral and multilateral summits.

	CFSP	**Non-CFSP** **External action**	**Non-CFSP** **External aspects of sectoral policies**
Heads of State or Government level	President of the EU Council	President of the European Commission	
Ministerial level	High Representative	Commissioners (including the High Representative acting as Vice President)	
Administrative level	European External Action Service (EEAS)	Commission services EEAS HQ services	
In third countries / In international organisations	EU Delegations		

Source: Vademecum on the external action of the European Union, European Commission, 2011.

[144] See European Council conclusions of 21-22 March 2019.

[145] Report by European Council President Donald Tusk to the European Parliament on March European Council meetings, 27 March 2019.

[146] Remarks by European Council President Donald Tusk after the EU-China summit in Brussels, 9 April 2019.

4. Reform of the World Trade Organization

Over the years, the European Council has regularly expressed the EU's commitment to preserving the rules-based multilateral trading system, as embodied by the WTO, the world's main forum for negotiating trade rules and settling trade disputes. Since the beginning of the WTO Doha Round[147] negotiations in 2001, however, limited progress has been made. The institution is currently at a crossroads, with each of its main functions, rule-making, monitoring and dispute settlement under pressure.

Box 6 – WTO two-tiered adjudication

Settling disputes is the responsibility of the WTO Dispute Settlement Body (DSB), which consists of all WTO members. Parties first engage in a consultation process before taking further action. If the consultation proves unsuccessful, the complainant country can request the creation of a panel to hear the two parties' arguments and make a ruling or recommendation to the DSB in the form of a written report. The report becomes the DBS ruling or recommendation within 60 days, unless rejected by a consensus.

Both sides can appeal the report and three members of a permanent seven-member Appellate Body hear each appeal. Under the rules of the Dispute Settlement Understanding (DSU), countries that win a case at the panel stage are not entitled to seek compensation/remedy if an appeal is pending. As of December 2019, this means that, in order to avoid implementing the decision of a panel, the losing party could initiate an appeal with the Appellate Body, which could not hear the appeal in the absence of three members, thereby undermining the entire dispute settlement process.

The WTO's 164 diverse members and its working procedures based on consensus have resulted in an inability to reconcile the increasingly diverse interests of its members with criticism directed in particular at its ability to address the unfair trade practices of some members. Experts have underlined[148] that the failure of the Doha Round has impeded WTO members from engaging in a collaborative effort to update WTO rules to reflect the changes that have occurred in the global economy since the WTO treaty[149] was negotiated.

The dispute settlement mechanism has been under significant pressure given the US blockage of the appointment of members to the WTO Appellate Body, the body responsible for hearing appeals regarding disputes brought by WTO Members (see Box 7). As of 11 December 2019, the Appellate Body has only one member left and can no longer accept any new appeals.

US criticism[150] is not new, but, essentially, the USA argues, that in their decisions[151], Appellate Body members have overstepped their remit and the body 'has appropriated to itself powers that WTO members never intended to give it' with regard to 'procedural issues, interpretative approach, and substantive interpretations'[152]. The USA has also argued[153], inter alia, that the current system is outdated and WTO rules cannot protect its members against unfair practices by non-market economies, e.g. China. In addition, the distinction between developed and developing countries[154] has allowed the latter to

[147] See WTO explanatory section on WTO round negotiations.
[148] See Bertelsmann Stiftung report, Revitalizing Multilateral Governance at the World Trade Organization, July 2018.
[149] See more on WTO and its treaty instruments.
[150] See article on Three approaches to fixing the world trade organization's Appellate Body: The good, the bad and the ugly, J. Hilmann, December 2018.
[151] McDougall R., Crisis in the WTO: Restoring the Dispute Settlement Function, CIGI Papers No. 194, October 2018.
[152] 2019 Trade Policy Agenda and 2018 Annual Report of the President of the United States on the Trade Agreements Program, March 2019.
[153] See Factsheet President Donald J. Trump is Confronting China's Unfair Trade Policies, May 29, 2018.
[154] Memorandum on Reforming Developing-Country Status in the World Trade Organization, 26 July 2019.

avail themselves of special and differential treatment at the detriment of other members, especially given that WTO law does not provide for a definition of either, thereby allowing countries to self-identify as developing countries.

The urgency of the situation has led WTO members, including the EU, to seek ways of breaking the deadlock by addressing US concerns. The June 2018 European Council invited the Commission to propose a comprehensive approach[155] to improving the functioning of the WTO in crucial areas, together with like-minded partners. The identified areas include: (i) more flexible negotiations, (ii) new rules addressing current challenges, e.g. industrial subsidies, intellectual property and forced technology transfers, (iii) the reduction of trade costs, (iv) a new approach to development, (v) a more effective and transparent dispute settlement and (vi) the strengthening of the WTO as an institution, including in its transparency and surveillance function. On 18 September 2018, the Commission published a concept paper[156] outlining potential ways to modernise the WTO under its three pillars: rule-making, monitoring/enforcement and dispute settlement. Since then, notable progress has been made on the monitoring function, with a proposal[157], supported by the EU, aimed at improving compliance with notification obligations, as well as proposals[158] to improve the functioning of WTO bodies[159].

WTO members, including the EU, have responded to US concerns regarding the Appellate Body. However, none of the proposals has managed to alleviate[160] those concerns. From the EU perspective[161], the binding nature of dispute settlement, the two levels of adjudication and the independence of WTO members, should not be undermined. Given the lack of progress, EU trade ministers agreed[162] at the Foreign Affairs Council in May 2019, that the EU 'should reach out to other WTO members to work on an interim solution that preserves the binding character and the two levels of adjudication of the WTO dispute settlement system'.

As such, on 25 July 2019, the EU and Canada agreed on an interim solution[163], an 'Interim Appeal Arbitration Arrangement', based on Article 25 of the WTO Dispute Settlement Understanding[164], which allows for the use of arbitration as an 'alternative means of dispute settlement'. This was followed by a similar agreement with Norway in October 2019. On 15 October 2019, David Walker, the WTO appointed facilitator regarding the disagreement over the Appellate Body, outlined a proposal[165] to address the impasse, which was then discussed at the WTO General Council in December 2019, however without any success[166].

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[155] See European Council conclusions of 28 June 2018.

[156] Commission concept paper on WTO modernization, 2018.

[157] Proposal JOB/GC/204 of 1 November 2018 discussed at WTO General Council 12-13 November 2018.

[158] EU statements at WTO General Council meeting of 23-24 July 2018.

[159] See conclusions of Foreign Affairs of 21 November 2019.

[160] U.S. Statements Delivered by Ambassador Dennis Shea at WTO General Council Meeting in Geneva, 7 May 2019.

[161] See Commission press release of 26 November 2018.

[162] Foreign Affairs Council conclusions of 27 May 2019.

[163] See Agence Europe, Europe Daily Bulletin No. 12304 of 25 July 2019.

[164] See Article 25 of WTO Dispute Settlement Understanding.

[165] See Agence Europe, Europe Daily Bulletin No. 12350 of 16 October 2019.

[166] Statements delivered to the General Council by Ambassador Dennis Shea, U.S. Permanent Representative to the World Trade Organization, Geneva, 15 October 2019.

In the absence of a functional WTO Appellate Body, the Commission announced[167] amendments to the EU Enforcement Regulation[168] in December 2019, ensuring that the EU is able to enforce international trade rules in circumstances where the WTO is no longer able to deliver binding dispute-settlement decisions. Most recently, on 24 January 2020, in the margins of the Davos World Economic Forum, the EU and ministers from 16 WTO members[169] agreed[170] to develop a multi-party interim appeal arrangement to preserve the two-step dispute settlement.

The work on the reform of the WTO is conducted in parallel with the work on outstanding multilateral and pluri-lateral issues. Following the WTO Ministerial Conference in 2017, tackling fisheries subsidies[171] is one of the areas where negotiations have stepped-up in recent months, and a number of pluri-lateral negotiations have been launched on issues such as e-commerce[172], investment facilitation[173] and domestic regulation on services[174]. The aim is to agree on new rules in these areas in time for the 12th WTO Ministerial Conference that will take place in Kazakhstan in June 2020, while allowing all willing countries to join in the talks at a later stage.

At the same time, trilateral talks bringing together the EU, Japan and the USA have also been taking place with the aim of addressing the trade distorting practices of non-market economies, with progress being made in particular on industrial subsidies and forced technology transfers. In this respect, on 14 January 2020, the three agreed[175] that the current list of subsidies prohibited under the WTO rules was insufficient and proposed[176] new types of unconditionally prohibited subsidies to be added to the WTO Agreement on Subsidies and Countervailing Measures[177].

Former European Council President Tusk has actively championed for protecting and maintaining the multilateral trading system, in his various appearances in recent years, including at G20 and G7 summits, and at bilateral summits, for instance at EU-China annual summits. In their joint letter[178] ahead of the 2019 June G20 meeting, former President Tusk and former President Juncker urged G20 members: 'to step up non-discriminatory collective efforts to de-escalate trade tensions by addressing their main root causes while acting within the rules-based order. These include levelling the playing field, stopping unfair trade practices; tackling distributional imbalances that go beyond trade; and addressing unilateral actions that undermine the rules-based multilateral trading system'. At the August 2019 G7 meeting in Biarritz, leaders adopted a declaration[179] showing their resolve 'to overhaul the WTO to improve effectiveness with regard to intellectual property protection, to settle

[167] See Commission press release of 12 December 2019.

[168] See more information on the Commission documents register, EU Enforcement Regulation.

[169] Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, Guatemala, Republic of Korea, Mexico, New Zealand, Norway, Panama, Singapore, Switzerland, and Uruguay.

[170] See Commission press release of 24 January 2020.

[171] See WTO on negotiations on fisheries subsidies.

[172] See Commission press release of 3 May 2019.

[173] COM(2019) 314 final Recommendation for a Council decision supplementing the negotiating directives for the Doha Development Agenda regarding the negotiations of a multilateral framework on investment facilitation, 3 July 2019.

[174] See Commission press release of 23 May 2019.

[175] See Commission press release of 14 January 2019.

[176] Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union, 14 January 2020.

[177] See WTO Agreement on Subsidies and Countervailing Measures.

[178] See joint letter of European Council President Donald Tusk and European Commission President Jean-Claude Juncker of 26 June 2019.

[179] See G7 Leaders' Declaration in Biarritz, 26 August 2019.

disputes more swiftly and to eliminate unfair trade practices'. Despite the resolve in G20 and G7 forums, WTO Deputy Director-General Alan Wolff deplored[180] the lack of 'a single document setting forth an agenda for WTO reform'.

5. Strategic agenda 2019-2024

Noting that in recent years 'the world has become increasingly unsettled, complex and subject to rapid change', the European Council adopted its strategic agenda[181] for the period 2019-2024 in June 2019, focusing on four main areas: 1) Protecting citizens and freedoms, 2) Developing a strong and vibrant economic base, 3) Building a climate-neutral, green, fair and social Europe and 4) Promoting European interests and values on the global stage. While the previous strategic[182] agenda emphasised economic growth as a means of transitioning from the economic crisis, the new agenda places economic growth in the context of safeguarding EU economic sovereignty amidst the 'technological, security and sustainability challenges' that are reshaping the global landscape. The EU strategy for the forthcoming five years will therefore aim at strengthening the EU both within as well as outside its borders.

EU leaders emphasise the need to strengthen the EU economic base to increase its resilience and competitiveness on the world stage by notably designing an industrial policy fit for the future, addressing the digital transition and ensuring fair and effective taxation. The EU is to become 'digitally sovereign', and 'work on all aspects of the digital revolution and artificial intelligence, namely infrastructure, connectivity, services, data, regulation and investment'[183]. These efforts will be accompanied by investments in skills and education, as well as more resources devoted to a fragmented European research and innovation sector.

In a global environment where common rules and standards are being challenged, guaranteeing a level playing field has become the EU mantra, especially regarding trade policy, which has taken centre stage in recent years. 'Ensuring fair competition within the EU and on the global stage, promoting market access, fighting unfair practices, extraterritorial measures and security risks from third countries, and securing our strategic supply chains'[184]. In that context, an updated EU competition framework will contribute to pursuing an ambitious trade policy anchored within the framework of a reformed WTO able to address the needs of its diverse membership. But to better defend its interests and values on the global stage, the EU must 'be more united in the stances'[185] it takes.

While the Van Rompuy presidency was dominated to a large extent by internal problems, such as the euro area crisis, Donald Tusk's presidency was largely marked by external factors such as the migration crisis, the shift in the US administration's foreign policy, as well as the ineluctable economic rise of China. While the previous strategic agenda (2014-2019) emphasised the importance of a strong transatlantic relationship, the new agenda stresses that 'relations with strategic partners, including our transatlantic partners, and emerging powers have to be a key component of a robust foreign policy'. The new agenda therefore reflects the positioning of the EU

[180] Speech of WTO Deputy Director-General Alan Wolff, at Chatham House, London, on 14 October 2019.

[181] See European Council strategic agenda for 2019-2024, June 2019.

[182] See European Council strategic agenda for 2014-2019, June 2014.

[183] Ibid

[184] Ibid

[185] Striving for unity: The European Council, May 2016 to June 2018, report by European Council President Donald Tusk.

in relation to the rise of emerging economies on the global market, as well as the need to overcome global challenges by reinforcing its policies and redesigning them to better cope within a rapidly changing environment.

The main directions underlined in the strategic agenda are reflected in the mission portfolios entrusted to the newly appointed EU commissioners in their respective areas. The mission letter[186] addressed to EU Commissioner for trade policy, Phil Hogan, thus gives a good indication of the major issues that will be pursued in the next years.

They include the following elements:

Externally:

Strengthening Europe's global leadership in trade, by working towards:

- a positive, balanced and mutually beneficial partnership with the USA;
- a comprehensive agreement on investment with China by 2020;
- implementation of the African Continental Free Trade Agreement as a stepping stone for a continent-to-continent free trade area between Africa and the EU;
- conclusion of ongoing negotiations with Australia and New Zealand;
- reform of the WTO, notably on subsidies, forced transfer of technologies and dispute settlement, in view of reaching a comprehensive agreement by 2022;
- progress on WTO negotiations on e-commerce;

Internally:

- strengthening the EU's ability to protect itself from unfair trade practices, in particular implementation of new legislation on trade defence instruments and foreign direct investment screening and achieving a level playing field in public procurement;
- appointing a Chief Trade Enforcement Officer responsible for monitoring and improving compliance with trade agreements, in particular with respect to climate, environmental and labour provisions;
- upgrading the EU's Enforcement Regulation to allow for the use of sanctions in the event of 'illegal measures';
- assessing the distortive effect of foreign subsidies in the internal market;
- designing and introducing a carbon border tax in full compliance with WTO rules.

In a similar manner, the mission portfolio entrusted to Margrethe Vestager, Executive Vice-President responsible for digital and competition policies, includes the following objectives:

- maintaining EU digital leadership by strengthening its innovation and industrial capacity; more specifically, coordinating the work on the EU's approach to artificial intelligence, upgrading liability and safety of digital platforms, coordinating work on digital taxation;
- working (together with the Executive Vice-President for an Economy that Works for People) on developing a long-term strategy for Europe's industrial future, including developing tools and policies to address the distortive effects of foreign state ownership and subsidies;
- linking EU competition policy more closely with the new EU industrial policy, by supporting a level playing field through state aid rules, which correct market failures and strengthen value chains. To that end, also making the most of Important Projects of Common European Interest;

[186] Mission letter to EU Commissioner for Trade Phil Hogan, 10 September 2019.

- evaluating and reviewing the EU's competition framework, with regard to antitrust rules, merger control and state aid rules, as well as strengthening competition enforcement.

The first milestones have been set in the 2020 European Commission Work Programme[187] with a broad initiative foreseen for autumn 2020, following the next WTO Ministerial Conference in June 2020, as well as initiatives aimed at achieving European economic and financial sovereignty.

Given the high number of trade agreements concluded in the last few years, the current institutional cycle will see significant attention paid to their implementation. In addition, strengthening the enforcement of commitments by third countries, in particular regarding trade and sustainable development chapters (TSD), will play an important role, as also emphasised[188] by the March 2018 European Council. In this regard, the Commission has worked towards ensuring a more effective implementation[189] and enforcement of the TSD chapters in EU trade agreements as outlined in its 15-point action plan[190].

Moreover, the proposal[191] put forward by French President, Emmanuel Macron, on the creation of a Chief Trade Enforcement Officer, has been taken forward by the Commission. Regarding the latter, according to information[192] provided to the European Parliament by EU Trade Commissioner Phil Hogan, the new position will 'ensure a more coherent and coordinated approach as well as streamlined procedures to deal with problems linked to the implementation of our agreements – be it on market access or on sustainable development commitments'.

6. Conclusion

Realisation has grown in recent years that the European growth model faces major technological, security and sustainability challenges, such as the digital transformation of our society and the transition to a low-carbon economy. This comes at a time of high uncertainty in the global environment, with the rules-based multilateral system being challenged and emerging economies rising to prominence on the world stage. As emphasised in the strategic agenda 2019-2024, competing in the current global environment will require structural changes with the development of a new EU industrial strategy, building on a strong single market and a forward-looking digital policy. It also entails an ambitious and robust trade policy anchored in fair competition and reciprocity, as well as increased research and innovation in key technologies and strategic value chains. The direction set by the European Council and a number of proposals made by Member States, are reflected in the Commission's 2020 work programme.

Efforts have been made to address current trade tensions and the existential threat to the rules-based multilateral trading system, as embodied in the WTO, which has seen its dispute settlement system questioned and its rule-making deemed unsuitable to address today's economic realities. The EU has advocated for the reform of the WTO, and has engaged with WTO members on finding areas of convergence on the way forward, including with strategic partners such as the USA and

[187] See key documents in Commission Work Programme for 2020.

[188] See European Council conclusions of 22 March 2018.

[189] See more on Civil Society Dialogue on Trade and Sustainable Development.

[190]See Commission press release of 27 February 2018.

[191] Speech of President of the French Republic Emmanuel Macron at Sorbonne, 26 September 2017.

[192] Answers to European Parliament questionnaire to the Commissioner-designate, 2019.

China, but also with Canada and Japan, among others. Ensuring a level playing field at global level has seen the EU engage with like-minded and willing partners to strengthen rules on industrial subsidies and state-owned enterprises, intellectual property and forced technology transfers, as well as to promote rules in new areas, such as e-commerce. The Commission's approach and efforts to reform the WTO have been informed and endorsed by the European Council, while its former President Donald Tusk has promoted WTO reform at his appearances during G20 and G7 meetings, as well as at bilateral summits with strategic partners. Following this direction, the Commission will, in the second half of 2020, launch a broad initiative on WTO reform.

Experts and analysists alike emphasise that the unilateral measures taken by the USA in recent years have stemmed primarily from a rationale of economic security. The WTO crisis is seen as reflecting a much wider issue, namely a fierce battle for technological supremacy in the face of heightened competition from emerging economies, notably China. In particular, as regards the latter, US actions can be seen as a response to the 'Made in China' 2025 strategy, where winning global competition over emerging technologies, such as big data and artificial intelligence, are stated as national security and economic imperatives for China.

Relations with China will likely feature near the top of the agenda of the European Council in 2020, with two high-level meetings with China scheduled, a regular EU-China summit in the spring, and a meeting at the level of Heads of State and Government during the German Council Presidency. While the EU has recently taken a more assertive stance towards China, the ultimate challenge will be in maintaining and reinforcing the EU's economic sovereignty while at the same time reaching a balance between a strong transatlantic relationship and a partnership with China on issues of common interest. The EU is now at a stage where action is needed to safeguard its interests especially in light of the US-China trade war, the final outcome of which could potentially benefit, but also damage, EU interests. The recently elected President of the European Council Charles Michel has highlighted the challenge for Europe in the next few years, the need for more unity and assertiveness[193]: "Greater European unity will provide more stability, more security and more fairness for our citizens. Europe is at the forefront of global cooperation -- a credible, respected, and valued partner at the international table. So we shouldn't be shy about promoting our interests and values more confidently. We must be at the table. Not aggressive, but more assertive. Self-confident, at the heart of today's core debates".

[193] Speech by President-elect Charles Michel at the University of Amsterdam, 20 November 2019.

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In recent years, international trade has gained increasing visibility on the European Council agenda. A high level of economic interconnectedness and the ineluctable rise of emerging economies on the world stage, notably China, have highlighted differences across economic systems and divergences over the impact of certain policies and practices in the global economy. Moreover, the United States administration's pursuit of an 'America first' foreign policy has been accompanied by a trade policy aimed primarily at reducing trade deficits with partners. The existential threat which the World Trade Organization now faces, as the core of the multilateral trading system, has compounded growing trade tensions and translated into a highly unstable global environment. The European Council has reacted to these developments promptly, with the past three years seeing the adoption of measures to strengthen the European Union's capacity to address such challenges. It has placed high emphasis on the need for the EU to be able to defend itself against unfair trade practices, through strengthened defence instruments, greater surveillance of foreign direct investment, and broader access to public procurement markets abroad. The objectives set out in its Strategic Agenda for 2019-2024 reflect a need for a more assertive and united European Union on the global stage, able to tackle the technological and environmental challenges of the coming decade.

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