

IN-DEPTH ANALYSIS

The European Union's trade policy, five years after the Lisbon Treaty

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Abstract

Despite the global economic crisis of 2008 and the spectacular rise of new emerging powers, the European Union (EU) remains one of the world's leading economies. Today more than ever, the EU is deeply reliant on trade and, in particular, on exports. In this post-crisis period, when demand for European products remains weak, both within the internal market and in other traditional markets, securing its presence in traditional markets and conquering new ones are priorities for the EU.

The EU's trade policy has fundamentally changed in recent years. One of the founding and most influential members of the World Trade Organisation (WTO), the EU has been compelled to acknowledge that the multilateral approach that it had adopted for many years has not yielded genuine progress. In response, the EU launched a new strategy in 2006 (called 'Global Europe') to combine its multilateral approach with renewed efforts to forge bilateral trade deals. This strategy has been largely described by the 'Europe 2020' trade strategy of the European Commission.

The Commission has launched three major legislative reforms in recent years: the revision of the Generalised System of Preferences (GSP), the reform of its Trade Defence Instruments (TDIs – antidumping and countervailing duties) and the 'reciprocity instrument' intended to secure EU goods and services fairer and more symmetrical access to public procurement markets in third countries.

The traditionally technocratic approach of the EU's trade policy was radically changed by the entry into force of the Lisbon Treaty in 2009; with this treaty, the Commission lost its unilateral control in the domain, while the European Parliament gained an important voice. Although it is still early to assess to what extent the Parliament's input has modified EU's trade policy, the only democratically elected European institution has certainly played a key role in defending the incorporation of EU values (human rights, labour rights and environment protection) in the Union's trade policy and bringing it closer to the people.

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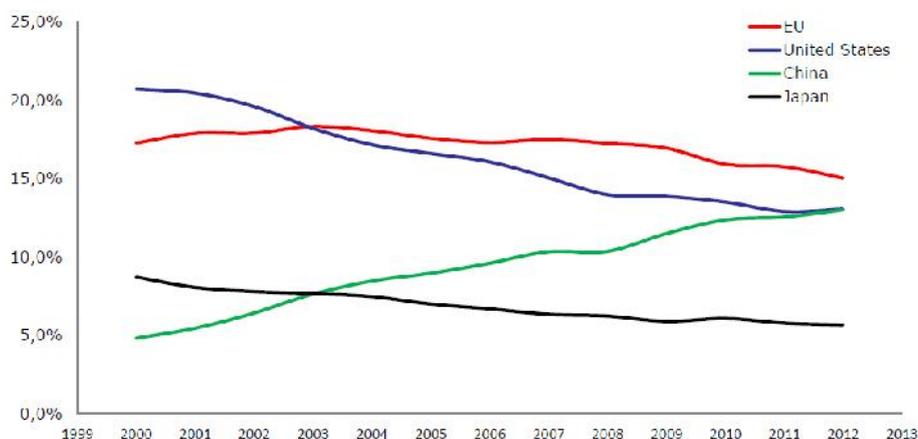
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1 Introduction

The EU remains the world's biggest trading block.

Despite the spectacular rise of new, emerging powers, the EU remains one of the world's leading economies, one deeply reliant on trade and, in particular, on exports. In 2012 Europe imported 15.3 % and exported 14.6 % of the world's traded goods, with EU transactions valued at more than EUR 3.47 trillion. Two thirds of goods imported into the EU were manufactures, a quarter were fuels and mining products, and the remainder agricultural goods. The purchasing power of the nearly 500 million people living in the 28 countries that make up the EU – which has a total gross domestic product (GDP) of over EUR 12.9 trillion – is one important factor underlying the clout of Europe's trade policy. Likewise, the vast scale of Europe's exports to and investments in the rest of the world provide the EU with a strong interest in commercial conditions abroad¹.

Figure 1:
The EU in world trade in comparison with the US, China and Japan (in %, excluding intra-EU trade)



Source: DG Trade based on WTO and Eurostat data

In this post-crisis period, when demand in the EU and in other traditional markets for European products remains weak, conquering new markets and securing a presence in traditional ones are priorities for the EU. In recent years, the EU has embarked on a new wave of free trade agreement (FTA) negotiations. After the successful conclusion of the deal with South Korea in 2009, the EU finalised FTAs with Colombia and Peru and Singapore. An FTA will soon be concluded with Canada, and Association Agreements, including strong trade chapters, will be signed with Central America, Moldova and Georgia. These agreements no longer focus solely on trade in goods, but also include meaningful chapters on trade in services and investments. Other important issues included are intellectual property right (IPR) protection, anti-competitive practices, public procurement, health and industrial standards, and labour and environmental norms. The EU is also negotiating two ambitious FTAs with Japan and the United States (the Transatlantic Trade and Investment Partnership, or TTIP) and has recently opened talks for a deal on foreign investment protection with the People's Republic of China. The EU

¹ European Commission, DG Trade Statistical Pocket Guide (2013).

has also engaged in a series of ambitious FTA talks with ASEAN countries.

In conjunction with other major trading partners, the EU has participated in negotiations on the new generation of 'WTO plus' sectoral agreements, such as the Anti-Counterfeiting Trade Agreement (ACTA) and the Trade in Services Agreement (TISA).

The Commission has launched three major legislative reforms in recent years: the revision of the Generalised System of Preferences (GSP) mechanism, the reform of its Trade Defence Instruments (TDIs – antidumping and countervailing duties) and the 'reciprocity instrument' intended to secure EU goods and services fairer and more symmetrical access to public procurement markets in third countries.

The traditionally technocratic approach of the EU's trade policy was radically changed by the entry into force of the Lisbon Treaty in 2009; with this treaty, the Commission lost its unilateral control in the domain, while the European Parliament gained new important responsibilities, especially in the field of foreign direct investments and IPR protection. The European Parliament has become a co-legislator on (almost) equal footing with the Council.

The Treaty of Lisbon has significantly changed the EU's Common Commercial Policy and made the European Parliament co-legislator on equal footing with the Council.

Although it is still early to assess to what extent the Parliament's input has modified EU trade policy, the only democratically elected EU institution has certainly played a key role in defending the incorporation of EU values (human rights, labour rights and environment protection) in the Union's trade policy and bringing it closer to the people. The Parliament rejected ACTA, for example, on the grounds that it might infringe upon the fundamental rights of European citizens; the rejection underscored the Parliament's readiness to exert its new powers.

2 'Global Europe' (2006): An epochal shift in the EU trade policy

'Global Europe' linked internal competitiveness to external trade performance for the first time.

Launched at the end of 2006, the European Commission's 'Global Europe: Competing in the World'² communication was intended to codify a significant shift in the EU's international trade strategy and contribute to the successful implementation of the Lisbon Agenda for Growth and Employment (2000).

'Global Europe' arrived at a moment when the newly-appointed leaders of the Commission, headed by President José Manuel Barroso, realised that the Lisbon Agenda was not progressing at the expected pace and chose to adopt a modified approach, correcting those aspects of the Agenda which had proved ineffective or become outdated.

In fact, the original Lisbon Agenda did not focus on external aspects of EU competitiveness, but rather on the internal policies intended to enhance the competitiveness of the European economy, create new jobs and guarantee that economic growth in the EU would outpace the relatively modest rate registered at the end of the last decade.

² European Commission, 'Global Europe, Competing in the world' (2006)

The Lisbon Agenda included relatively few provisions on international trade – suggesting that coordination within the European Commission was not optimal. In the era of globalisation, it was unwise to overlook the huge challenges posed by the growth of China, Brazil, India and other emerging economies. That said, the Commission was not inactive in the field of international trade during the 2000-2005 period; it simply failed to coordinate internal and external policies in one coherent strategy.

For many years, the EU strongly privileged the multilateral approach of the World Trade Organisation (WTO) to bilateral preferential trade agreements.

This failure can be attributed to two principal factors.

1. For one, the EU in general and the European Commission in particular (the Union's executive arm, conducting trade negotiations) had a clear and avowed preference for multilateral agreements over bilateral or regional ones, barring exceptional and non-trade factors, such as enlargement or political relationships with neighbours. This meant that the negotiation of bilateral agreements with potentially interesting trade partners was significantly delayed. In comparison to the US, for example, the EU lagged in negotiating with third countries such as Singapore, South Korea and some Latin American countries (notably Colombia and Peru). When compared with other countries exploring two-way agreements – South Korea, Australia or even China – the EU proved even slower.

The new cycle of WTO negotiations, which began in Doha in 2001, was expected to end the stalemate of the 1998 talks in Seattle. A certain degree of optimism was justified in the post-September 11 period; a new and ambitious WTO deal, with a strong development component, appeared within reach.

2. The second factor that proved the undoing of the Commission's approach was the rise of new economic powers, which gradually challenged the US-EU dyad that had dominated the world economy and commerce since the creation of General Agreement on Tariffs and Trade (GATT) in 1947.

In 2005, the Commission was at last compelled to accept that WTO talks were not proceeding as expected and that the role of emerging countries in the world economy was growing much faster than initially foreseen. Revising its overall strategy, the Commission advanced a new set of external policies, coordinated with the revision of the Lisbon Agenda undertaken by President Barroso.

Along with the obvious commitment to conclude WTO negotiations quickly, the Commission proposed the following priorities:

- launching a new generation of bilateral and regional FTAs and completing the active negotiations;
- renewing its strategy for trade with China as part of an effort to create a broad strategy for a fair partnership;
- better protecting IPRs, with an emphasis on enforcement and co-

The failure to conclude the WTO's Doha Development Round and the global shift of economic power prompted the EU to alter its strategy.

operation with third countries;

- adopting a new strategy on market access to identify and remove non-tariff barriers to trade, in key countries and sectors;
- advancing new proposals for opening public procurement markets abroad;
- reforming the EU's trade defence instruments;
- prioritising access to resources (energy and raw materials) while being more attentive to climate change and environmental issues.

'Global Europe' did not produce the expected results, and the EU's reorientation of its trade policy only advanced slowly.

'Global Europe' represented an important advance towards a coherent and growth-oriented external trade policy. Yet its results were much like those of the 'Lisbon Strategy for Growth and Employment', from which it evolved. Launched with great fanfare and depicted as a decisive step towards a more competitive and stronger Europe, 'Global Europe' produced results far weaker than those anticipated by stakeholders and economic operators.

What is more, economic conditions meant that the strategy proved a greater disappointment than previous efforts. Following a devastating economic and financial crisis – which had severely damaged industrialised countries while largely sparing emerging countries like China – the EU's failure to implement a successful external-oriented set of trade policies was a serious setback.

The accomplishments of 'Global Europe' can be summarised as follows:

- one FTA signed with a middle-sized industrialised country (South Korea) known for its pro-active policy on free trade agreements;
- some tactical progress towards the suppression of unfair market restrictions, and
- a long series of 'wishful thinking' objectives.

The Commission's own evaluation of the strategy's successes was hardly more laudatory: 'notwithstanding the progress made since 2006 in accomplishing the 'Global Europe' agenda, important experiences have been acquired and lessons learned which will feed into the future EU strategy'. Experience may be the greatest accomplishment of 'Global Europe', although many expected more concrete results at the outset.

The burden of responsibility does not, however, lie entirely on the Commission's shoulders. In fact, divided Member States supporting divergent interests, coupled with internal fights between the 'free-traders' and 'protectionists' within the Commission, weakened the EU's position abroad and prevented the Commission from developing a coherent policy with widespread backing.

3 'Trade, growth and world affairs' (2010): EU trade policy back on track

'Trade, Growth and World Affairs' (TGWA) was more than a cosmetic touch-up to 'Global Europe'.

The Europe 2020 strategy aims to make the EU more competitive and more effective on the world's stage.

The European Commission's communication 'Trade, growth and world affairs' was launched in November 2010. 'Trade, growth and world affairs' (TGWA) builds on the 'Europe 2020 - A strategy for smart, sustainable and inclusive growth' communication published by the Commission on 3 March 2010³. The new trade strategy effectively replaced 'Global Europe'⁴.

As mentioned above, 'Global Europe' had attempted to fill an important gap in the Lisbon Strategy for Growth and Jobs, which had largely disregarded the challenges that trade liberalisation and globalisation presented the European economy. Unfortunately, the revised Lisbon Strategy (launched in 2005) was unable to meet its main objectives, while 'Global Europe' did not substantially strengthen the EU's position in the rapidly changing landscape of global trade.

The new Europe 2020 strategy gives more emphasis to the EU's external economic relations, regarded as a potential catalyst for growth and job creation, and recognises the need to coordinate the EU's internal and external policies. In the chapter dedicated to external policy instruments, the Commission confirms its commitment to an open and liberal international trading system and stresses the new opportunities that global growth would offer European companies.

The Commission committed itself to asserting the EU 'more effectively on the world stage' by actively contributing to shaping 'the future global economic order' and defending 'the European interest' worldwide. To this end, the Europe 2020 strategy advanced two distinct lines of action:

- (a) improving the external aspects of EU's internal policies (such as energy, transport, agriculture, research and development), and
- (b) ensuring that trade and international macroeconomic policies be pursued in a more coordinated and efficient manner.

In the communication, the Commission acknowledged that a serious effort was required to ensure that EU goods and services with a comparative advantage benefit from free and fair access to emerging countries' markets, where the post-crisis economic growth was expected to be more sustained. This implied the EU would adopt a more aggressive market access strategy and a dedicated approach to issues such as regulatory dialogues and other initiatives to remove non-tariff, behind-the-border barriers.

TGWA placed significantly less emphasis on the WTO than had 'Global Europe'. The EU commitment to concluding the Doha Round and strengthening the WTO remained unchanged, but multilateral negotiations were overshadowed by the new generation of free-trade agreements that

³ European Commission, 'Europe 2020, A strategy for smart, sustainable and inclusive growth (2010)'

⁴ European Commission, 'Trade, Growth and World Affairs. Trade policy as a core component of the EU's Europe 2020 strategy' (2010)

the Commission planned to conclude.

Finally, according to the Commission, TGWA represented a key element of the Europe 2020 strategy, embodying a 'clear statement of Europe's intentions to play an active and assertive role in promoting the trade policy agenda in the G 20 and all other relevant global fora'. In this context, sound trade practices and combatting protectionism were considered necessary preconditions to a return to strong, sustainable and balanced growth, as invoked by G20 leaders⁵.

4 Trade and external relations after Lisbon

The Treaty of Lisbon makes the Common Commercial Policy (CCP) part of the EU's foreign policy.

The European Commission has said, 'our aim is for the EU to play a role in foreign affairs and global management commensurate with our economic weight' under the cap of the EU's external action, to be conducted in coherence with the other areas thereof (foreign policy, development, etc.). This objective, unfortunately, can hardly be said to have been achieved. The EU – often depicted as an 'economic giant and a political dwarf' – has not always defended its interests and values in the world. EU Member States often have diverging, if not outright contradictory, foreign policy objectives, and finding a viable compromise has not always been possible.

Article 207 of the Treaty of Lisbon (TEU) mandates that 'the common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action'. This is an important innovation — the recognition, for the first time, that, external policies and international trade are strictly linked.

The unanswered question is whether the CCP should serve the EU's internal competitiveness objectives or Europe's foreign policy goals.

But this innovation also has some evident challenges. The main question here is whether the EU's Common Commercial Policy should be applied to bolster the EU's foreign policy or to support the Union's internal (industrial) goals. The EU trade policy may help meet the objectives of the Europe 2020 Strategy and contribute to the creation of a coherent industrial policy in the EU or it may be used as an incentive for foreign initiatives. But it cannot manage all these objectives simultaneously. Part of the Parliament's new power involves deciding (in conjunction with the Council) how to prioritise the use of this residual 'soft power', which once characterised EU foreign policy.

The conundrum the EU is facing can be illustrated by an example. In 2010 Pakistan was severely hit by flooding. On 16 September 2010, the Council mandated the European Commission to present a proposal to unilaterally suspend import duties levied on certain goods originating in Pakistan. In its presentation to the Parliament, the Commission described these autonomous trade preferences as exceptional measures responding to the flood. The measures entered into force after a long and difficult debate in late 2012, and the Commission explained in TGWA that this line of action would

⁵ Roberto Bendini (EP Policy Department), 'Trade Growth and World Affairs: A brief outline' (2011)

be the rule rather than the exception in similar cases in the future.

This new approach has important ramifications. Political or security (and humanitarian) considerations are likely to prevail over economic or commercial ones in the foreseeable future. Yet the application of these values may undermine the EU's efforts to adopt a coherent approach to international trade. If the economic situation of the EU were to decline, unconditional trade concessions may not only be expensive (concessions are not free and are likely to be paid by workers or farmers in the EU) but also dangerous; these concessions may affect the rationale underlying 'GSP plus' and other similar initiatives, which make trade concessions conditional on the respect of basic international conventions on human and social rights.

5 A new trade and investment policy

Procurement, trade in services and FDI have become priorities under the EU's revised trade strategy.

In TGWA, trade in services, foreign direct investment (FDI) and public procurement are privileged.

Services were already ranked high in the EU's list of priorities before TGWA. For example, the EU-South Korea FTA (whose negotiations started in 2007) essentially provides an easier market access for Korean industrial products – and notably vehicles – in exchange for enhanced access for EU service providers. The commitments contained in the General Agreement on Trade in Services (GATS) date to the mid-1990s, but are very heterogeneous, with most countries largely uncommitted or unbound in their schedules of services liberalisation. In general, trade in services has not been liberalised to the same extent as trade in goods, for both political and technical reasons (certain sectors have only become 'tradable' thanks to recent technological progress). The global picture of barriers to services' trade is therefore blurry and protections are not consistently implemented.

Given that the EU is the world's service leader, the Union expected that gains from liberalising the trade in services would be higher than those from liberalising the trade in manufactured goods. Yet the EU's strategy – which privileged efforts to liberalise services over those to further free up the trade in goods – places a supplemental burden on the EU's declining industrial sector. Such an approach was adopted in FTA agreements negotiated by the EU after the Korea agreement, and their content was largely inspired by the earlier deal. Like other developed countries, the EU has recognised the lack of progress in the WTO's services negotiations and is participating in negotiations for a plurilateral agreement on services known as 'TISA'⁶.

Foreign direct investment (FDI) became an exclusive competence of the EU after the entry into force of the Lisbon Treaty. On 7 July 2010 the Commission

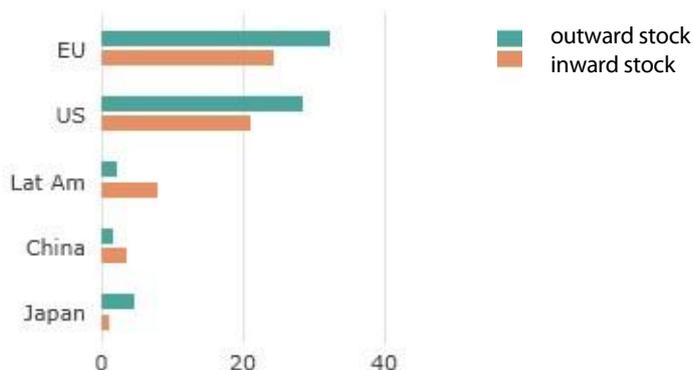
⁶ Pasquale De Micco (EP Policy Department), 'The Plurilateral Agreement on Services: At the starting gate' (2013).

Foreign direct investments have become an exclusive competence of the EU, which must oversee the 1 200 bilateral deals previously negotiated by Member States.

published a communication titled 'Towards a comprehensive European international investment policy'⁷. The communication was accompanied by a legislative proposal⁸ aiming to introduce a comprehensive new investment policy for the Union and to regulate the bilateral investment agreements that Member States had signed in the past years.

The EU is the largest source and destination of FDI in the world (measured by either stocks or flows). In 2010, the Union accounted for almost 33 % of the globe's outward investment and 24 % of inward investments (see table below).

Figure 2
Share of world FDI in 2010 (%)



Source: DG Trade

The EU's foreign direct investments are in general secured through bilateral investment treaties (BITs). BITs provide guarantees on the conditions of investment in Member States and in third countries in the form of specific commitments that are binding under international law. Although agreements remain binding for the Member States as part of public international law, the entry into force of the Lisbon Treaty and the EU's new exclusive competence on foreign direct investment has meant that Member States' investment agreements have had to be reconsidered. In the absence of an explicit transitional regime in the TFEU clarifying the status of BITs, the EC put forward a regulation specifying the terms, conditions and procedures under which Member States are authorised to maintain, amend or conclude bilateral investment agreements with third countries.

The debate on investment before the European Parliament (EP) and the Council was rather intense. The EP in particular was interested in introducing non-economic elements (references to human rights, development and social and labour conventions) in the proposed regulation, while the Council preferred a restrictive reading of the TFEU to reduce the competences

⁷ European Commission, 'Towards a comprehensive European international investment policy' (2010).

⁸ European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing transitional arrangements for bilateral investment agreements between Member States and third countries' (2010).

effectively transferred to the EU. In the end, a deal was struck, and a revised regulation entered into force on 20 December 2012⁹.

The Commission also suggested updating the FDI chapter in the negotiating mandate with Canada¹⁰, India and Singapore, and proposed launching negotiations for a stand-alone investment agreement with other countries (in particular China and Russia). In particular, the deal reached with Canada contains innovative clauses dealing with FDIs and represents a significant advance in the field of investment protection. Negotiations for an agreement on investment with China¹¹ were officially launched on the occasion of the EU-China Summit in Beijing on 21 November 2013, and the first round of negotiations was held in Beijing on 23-24 January 2014¹².

Public procurement is another area of significance for the EU. In 'Global Europe', the EC projected that it would launch initiatives in the field of public procurement in order to make public procurement procedures in third countries more open and competitive. Stressing the importance of public procurement for the EU economy, the Commission concluded that 'this is probably the biggest trade sector remaining sheltered from multilateral disciplines', and that 'the challenge is to find new ways of opening up major foreign procurement markets without closing our own'.

Despite its public commitment to open public procurement markets abroad, the Commission has not dealt with this issue for a number of years. Its inactivity was apparently due to serious political disagreement between various services of the European Commission regarding which actions would secure better and fairer access to foreign government procurement procedures. Some Member States also declared their opposition to a system based on reciprocity.

The publication of TGWA in 2010 reopened the debate on public procurement. In its text, the Commission suggested it would introduce a new legislative proposal creating an EU instrument to guarantee an appropriate level of symmetry in third countries' public procurement markets. The proposal was finally published on 21 March 2013 and submitted to the EP and Council for consideration¹³.

As expected, the Commission's proposals have faced opposition from those trading partners who have so far enjoyed relatively free access to the EU markets while protecting their own procurement procedures with laws and

The EC tried to reshape access to EU public procurement markets by introducing a system based on reciprocity.

⁹ Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries.

¹⁰ European Commission, Investment Provisions in the EU-Canada free trade agreement (CETA) (2013)

¹¹ European Commission, EU and China begin investment talks (2013).

¹² European Commission, The EU's bilateral trade and investment agreements – where are we? (2013)

¹³ European Commission, Proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries (2012)

regulations discriminating against foreign potential bidders. Opponents of the proposal argued that the EU's *de jure* open public procurement market belies its *de facto* relatively protected market.

Strong political support within the EU is a necessary precondition for this innovative initiative to succeed. However not all MS have welcomed the Commission's new approach. On the contrary, some have criticised the principle of 'symmetry' proposed by the EC. The EP's own response to the EC's proposal was also rather lukewarm. This ultimately delayed the original bill, which is today – in a watered-down form – still pending before the EP.

Such a reluctance to commit to fairer procurement markets abroad may undermine the EC's entire strategy and condemn it to failure.

The EU's only, limited accomplishment in the field to date has been the inclusion of an extended public procurement chapter in its second-generation FTAs. The Commission has not yet succeeded in convincing China to make an ambitious offer and finally become a member of the WTO's General Procurement Agreement (GPA) – as was foreseen in the Chinese protocol accession to the WTO.

The Commission has also proposed revising the WTO's 1996 Information Technology Agreement (ITA) by extending its scope and removing burdensome non-tariff barriers. In 2010 the EC published a study prepared by Copenhagen Economics¹⁴ highlighting possible improvements to the ITA, but international talks have not yet produced a new deal – a failure that also derives from the Beijing's intransigent position on product coverage¹⁵.

The soon-to-be-launched talks on a Green Goods & Services Agreement, which are to be held under the aegis of the WTO (with most-favoured nation application), demonstrate that the EC is willing to address sectorial issues outside the WTO's 'single undertaking' (in which 'nothing is agreed until everything is agreed').

More generally, TGWA acknowledged the growing relevance of regulatory issues to international trade. In this respect, the EC advanced two proposals: reinforcing regulatory cooperation with third countries (promoting the equivalence or convergence of standards and reducing costs worldwide), and strengthening links between internal and external regulatory actions. These initiatives, which build on the EU's single market principles, may potentially help the EU perform better abroad by removing unnecessary and expensive regulatory barriers. Third countries have often requested that the EU reduce the standards of protection for consumers and other stakeholders currently guaranteed within the internal market. These requests are usually made by those EU trading partners who find it difficult or expensive to comply with the EU's strict rules.

After tariff barriers were dismantled, regulatory issues became the most serious limit to free trade.

¹⁴ Copenhagen Economics, Expanding the Information Technology Agreement (ITA) Economic and trade impacts - Final report (2010)

¹⁵ The Diplomat, China, US Clash Kills IT Trade Agreement (2013)

One of the most interesting and challenging issues of the coming years will be whether the EU internal market rules will be kept in place or modified to please third country producers and European importers. Whatever the outcome, a better understanding among industrialised countries – and notably with the US – would improve the level of protection for consumers while dramatically reducing the costs of duplicate testing procedures and certification practices. The EC has also repeatedly stressed that more has to be done in order to ‘leverage the effectiveness of internal and external policies’.

Another interesting point in Chapter 2 of TGWA concerns the liberalisation of what the WTO labels ‘Mode 4’ services – those involving people who move from one country to another. The Commission correctly argued that the temporary movement of managers and experts is likely to boost international exchanges and investments, and suggested that executives’ movement was often hampered by domestic legislation. According to the Commission, the proposed¹⁶, if it had been adopted, would have helped to clarify the issue at the EU level and might serve as a platform for negotiating similar concessions with third countries. The Commission is currently working with Member States to try to identify constructive ways to offer to third countries commitments on transparency and harmonised procedures for visas in FTAs and plurilateral talks.

Unlike ‘Global Europe’, TGWA attaches great importance to development. Besides reforming the EU’s GSP system and negotiating an economic partnership agreement (EPA) with African, Caribbean and Pacific (ACP) countries, the EC expressed its intention to adopt a communication on trade and development¹⁷. The communication, published in 2012, includes provisions on unilateral trade concessions to be provided when natural disasters affect developing countries (*see above on autonomous trade preferences for Pakistan*).

This communication is likely a response to the criticism that many non-governmental organisations (NGOs), developing countries’ governments and other stakeholders have levied at the Commission’s trade policies (in particular its EPAs) with traditional ACP partners. International trade can certainly help poorer countries to find their way to growth, but development and business objectives often diverge. The same can be said for EU development and trade policies. Yet, while it is important to ensure greater clarity and coordination between these two essential aspects of the EU’s external action, the Communication does not involve revolutionary changes. Some updates take into consideration the progress of developing countries in the era of globalisation, but the essential separation remains in place.

On 15 May 2011, the Commission published a set of proposals to reform the EU’s preferential import schemes for developing countries. The legislative

Development issues were integrated into the EU trade strategy, but preferential agreements with African, Caribbean and Pacific countries have not been rapidly concluded.

¹⁶ [Directive on conditions of admission of third country nationals in the framework of an intra-corporate transfer](#)

¹⁷ European Commission, Trade, Growth and Development (2012)

text was finally adopted in October 2012 and entered into force on 1 January 2014. The new GSP scheme introduces some interesting changes to the current regime. It significantly reduces the number of beneficiaries (from 176 to 80), reinforces the enforcement aspects of the instrument and further promotes the core human rights and social rights principles enshrined in the GSP¹⁸.

The impact of the new regulation is likely to be significant for a restricted number of countries, which will either lose preferential access to the EU or receive benefits previously denied (this is the case for new 'GSP plus' beneficiaries). The new regulation may provide a general advantage (the so-called preference consolidation) for those countries that remain eligible – particularly for developing countries and least developed countries (LDCs).

EPA negotiations with the ACP group – essentially composed of former European colonies – have proven to be more difficult than originally expected. The European Union's preferential trade regime for ACP countries adopted in the Lomé Conventions (and the subsequent Cotonou Agreement) was found to be in breach of the rules governing international trade, and the WTO requested that the regime be repealed and replaced with a WTO-consistent version. In recent years, the EU also had to acknowledge that the extensive funding and preferential trade regime accorded by the EU did not alleviate poverty or secure sustainable development in the ACP region.

The EPA process was launched in the framework of the 2000 Cotonou Agreement and an extension (waiver) of the old regime was granted by the WTO until 31 December 2007¹⁹. This period was supposed to be sufficient to negotiate the new bilateral agreements that would replace the old trade regime. However, negotiations proved slower and more thorny than expected. To cope with the deadline and to avoid disrupting trade when the preferential trade regime ended, the EU pushed for interim EPAs covering only trade in goods. The majority of ACP countries – which were not least developed countries (and could therefore profit from alternative forms of privileged market access to the EU, such as the 'Everything But Arms' initiative) – agreed to either initial or sign such interim agreements. Since 2007, negotiations on EPAs have progressed very slowly; their conclusion is still not within reach²⁰. To convince ACP countries to take the necessary steps to ratify EPAs or conclude comprehensive regional negotiations, the EC proposed suspending preferential access to the EU market for those countries that had not signed or ratified their agreements. The new regulation will enter into force on 1 October 2014²¹.

TGWA acknowledged that globalisation has negative effects on certain

¹⁸ See the GSP page at the EP site.

¹⁹ For more details on the EPA background and possible outcome please refer to the booklet on 'Economic Partnership Agreements EU-ACP, Facts and Key issues' prepared for the Office for the promotion of Parliamentary Democracy (2012).

²⁰ At the time of closing this note, only one full-fledged EPA (the one with CARIFORUM) had entered into force. Other ACP countries signed or initialled an interim EPA covering only trade in goods. See attached table prepared by DG Trade.

²¹ See more on the 'Market Access regulation' (ref. 2011/0260(COD)) at the EP page.

domestic sectors exposed to international competition (especially when measured in terms of job losses), despite the generally positive effect for the EU economy. Yet the Commission's response was tepid. The text pointed to the European Globalisation Adjustment Fund (EGF), which had provided useful, though limited, relief for the victims of globalisation. For the 2014-2020 period, the EGF's beneficiaries will be expanded and the fund will be simplified, but the link between trade policy and labour force seems still to be missing. The EGF is still seen as a tool to support workers in times of global economic crisis, rather than as a tool to help them in transition from sectors hurt by a FTA to sectors likely to grow in the future.

No new financial programmes or support schemes were proposed by TGWA. The issue of job loss was, in fact, more extensively debated in the Commission's earlier, 'Global Europe' communication.

The EC has introduced some changes related to trade and the environment. An EC proposal would remove barriers for environment-friendly goods and services, although the Commission rejected the idea of introducing border adjustment measures. More generally, the EC acknowledged that trade policy has a central role in supporting and promoting green growth and said that chapters on 'implementation of sustainable development' would be included in all new FTAs. Those with South Korea, Central America, Colombia and Peru and Singapore contain provisions on trade and sustainable development. The requirements instituted include adhering to key international labour and environment standards and agreements, using natural resources (such as timber and fish) prudently, and promoting practices favouring sustainable development, such as corporate social responsibility.

In 2008, the Commission published a communication titled 'The raw materials initiative – meeting our critical needs for growth and jobs in Europe'²², highlighting the importance of a safe and reliable supply of raw materials and energy for the EU. In 2011 the Commission published a second communication, titled 'Tackling the challenges in commodity markets and on raw materials'²³, in which it reiterated its views on trade in energy and raw materials and insisted that a coherent raw material strategy figure among the EU's external priorities. The EU is, in fact, heavily dependent on imports of raw materials and energy, and any disruptions of its supply sources may have disastrous effects on its industrial output and economic performance in general. On the other hand, the enforcement tools available to the EU are limited and not always very efficient. A new communication on raw materials may be released during the current year.

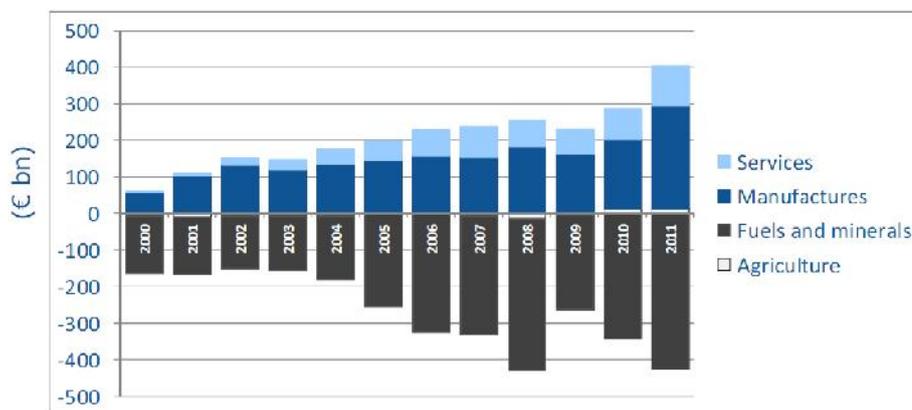
The EC published a coordinated strategy in 2011 to secure fair access of raw materials and energy.

²² European Commission, 'The raw materials initiative — meeting our critical needs for growth and jobs in Europe' (2008).

²³ European Commission, 'Tackling the challenges in commodity markets and on raw materials' (2011)

Figure 3

The EU is heavily dependent on imports of raw materials and energy while it is a net exports of goods and services



Source: DG Trade

The EC has, however, invested considerable energy in securing better transparency in the financial markets. Commodity markets are often murky and dominated by a handful of multinationals. According to the Commission, 'increased transparency of financial as well as physical trading activities should allow regulators and market participants to better understand the interaction between financial and physical commodity markets, a help to prevent abusive practices'.

6 The multilateral approach at risk

Despite some limited progress in the WTO's Bali Ministerial meeting, the end of the Doha Development Round is far from imminent.

The state of the global economy and trade relations has radically changed since the Doha Development Round (DDA) was launched in 2001. Even before the start of the crisis, industrialised countries had lost significant ground to emerging and developing countries. Today, the 'club' that had governed world trade and economy for 50 years (dominated by the US, the EU and Japan) is no longer able to impose its views on other parties. New trading powers have emerged, and world trade has become more 'democratic' but also more difficult to govern.

The WTO has proven, on the whole, rather effective, bringing some order to the otherwise chaotic world of trade business. Dispute settlement rules have avoided a number of dangerous and disruptive trade wars of the sort that once undermined entire economies and the welfare of nations. The WTO has also kept protectionist temptations at bay, notably through peer pressure (Trade Policy Reviews) and reporting to the G-20. Despite all this, certain aspects and rules of the Geneva-based institution are outdated and require revision.

In recent years the EU has lost the control and the influence it once enjoyed within the WTO. Despite huge and often painful concessions, the EU has been unable to secure a working compromise in Geneva and has been largely marginalised since a 2008 confrontation between the US and India. The recent agreement at the Ninth WTO Ministerial meeting in Bali, reached at the very last moment, has been lauded as the institution's first success in years. The active role of mediation played by the European Union contributed to the meeting's outcome. However, the deal does not solve the

most contentious issues, such as agriculture. The Bali consensus was, rather, built around a few ‘deliverables’ that were considered easier to achieve. Most of the stumbling points that have so far prevented the conclusion of the Doha Round are still in place, and they are unlikely to be removed in the foreseeable future; the Ministerial’s success does not necessarily pave the way to a successful conclusion of the Doha Round. This, in turn, means that the WTO is likely to face a serious dilemma: either maintain its current, outdated configuration or move towards a new approach that accounts for the changes that have occurred since the Uruguay Round agreements were signed in 1994. The WTO’s core rules should also reflect recent progress made at the bilateral and multilateral level (on services, ‘Singapore’ issues, energy, etc.)

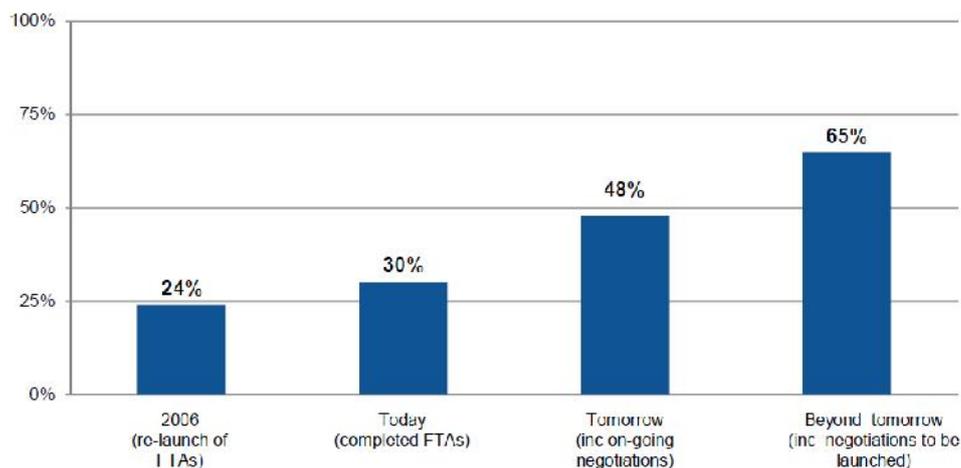
In TGWA, the EC proposed launching a reflection on the reform of the WTO. Poor timing and unsuitable economic and political conditions have so far prevented the launch of this initiative. This serves as further demonstration that no new meaningful reform of the only international trade institution is within reach. The rush to conclude new bilateral trade agreements is likely to continue in the coming years.

7 From a multilateral to a bilateral approach: Second-generation FTAs

After some hesitation, the EU adopted a more coherent approach to bilateral trade agreements.

The EU negotiating agenda has been influenced by two distinct factors. The failure of the Doha Round negotiations, which are now entering their tenth year, and the activities of other major trading partners, whose negotiations of a new generation of international trade agreements began well before the EU’s.

Figure 4:
Share of Trade covered by free trade agreements (FTAs)



Source: DG trade

The wording used in TGWA differs from that of ‘Global Europe’. ‘Global Europe’ relayed some optimism about the successful conclusion of the Doha Round, while TGWA refers to multilateral negotiations only in a succinct and unconvincing manner. This tone reflects the ‘fresh start’ sought by the trade commissioner, who proposed establishing a group of eminent experts from developed and developing countries to make proposals to reform the WTO.

Essentially, having bet and lost on multilateral negotiations (and specifically

the Doha Round), the EU had no choice but to seek alternatives to guarantee better access to third countries' markets. A renewed strategy had already been announced in 'Global Europe': introducing a new generation of FTAs going beyond tariff cuts and liberalising trade in goods. But initial effort to forge these new agreements was long and produced only modest results. In four years of intense negotiations, only the FTA with South Korea was finalised (and recently ratified). Significant progress was made with Colombia, Peru and Central American countries. The EU also opened separate negotiations with individual ASEAN members (notably Singapore, Vietnam and Malaysia) after a regional deal proved impossible to reach²⁴.

TGWA mentions a handful of negotiations that the Commission expected to conclude within a reasonable period of time. While talks with Canada resulted in a political deal in late 2013 and are today close to being concluded, negotiations with India have lagged behind, and those with the Gulf Cooperation Council (GCC) and Mercosur – supposed to be reopened after a brief stalemate – remain at an impasse.

Deep and Comprehensive Free Trade Agreements (DCFTAs) within the framework of the Eastern Partnership and the Euro-Mediterranean Partnership were also EU priorities over the last decade. DCFTAs are second-generation trade agreements that significantly extend the scope of Association Agreements. They typically include trade in services, government procurement, competition, intellectual property rights, energy and the gradual integration of the third country's economy into the EU single market by legal and regulatory approximation – for example, in areas such as industrial standards and technical regulations or sanitary and phytosanitary measures. DCFTAs aim not only to remove traditional tariffs but also to diminish regulatory differences, dismantle unjustified non-tariff barriers, and improve the investment and business climates of the partner country.

The Commission successfully concluded negotiations for DCFTAs with Ukraine, Georgia, Armenia and Moldova. The EU and Ukraine concluded bilateral negotiations in December 2011. However, Ukraine chose to suspend preparations for the agreement in late 2013, and it is no longer clear if or when the process may be resumed, given the country's complex political situation. The official initialling of the Association Agreements with Moldova and Georgia took place during the Eastern Partnership Summit held on 29 November 2013 in Vilnius. Armenia's decision to join the Eurasian Customs Union – a move incompatible with the DCFTA – has halted its EU negotiations.

The EU's Eastern Partnership strategy has not been welcomed by Russia,

Deep and Comprehensive Free Trade Agreements (DCFTAs) with Eastern European and Mediterranean countries constitute an effort to assert the EU's influence in neighbouring areas.

²⁴ The EC has always expressed its preference for regional agreements over bilateral ones. In this spirit, the Commission began negotiating with ASEAN as a single block. ASEAN countries have, however, reached different levels of development and do not always share the same economic and commercial objectives. This, coupled with some substantial political obstacles (e.g. the situation in Myanmar), ultimately led to the failure of negotiations. The Commission then resumed talks on bilateral basis with those countries that had expressed their interest in pursuing meaningful trade negotiations with the EU (including Singapore, Vietnam and Malaysia).

which chose not to participate in the group. Moscow considers that the EU's expanded sphere of influence – essentially in Russia's 'back yard' – constitutes a threat to its own security and economy. The Eurasian Union (composed of Belarus, Kazakhstan and Russia) is Moscow's 'alternative' to the EU – a competing political and economic project. So far, the Eurasian Union consists essentially of a customs union for three former Soviet Union republics, responding to Moscow's need to enlarge the market for Russian output and rally otherwise lost associates. But Russia has also engaged other former Commonwealth of Independent States (CIS) countries in the process: Armenia has officially announced it will join, and Tajikistan and Kyrgyzstan are weighing accession.

Russia can offer massive economic assistance in support of its neighbours' economies – as it did, for example, when it promised to cut's Ukraine energy prices and provide a loan of up to USD 15 billion. But Moscow has also proven willing to apply economic blackmail against dissenting countries – as when it banned imports of on wine and spirits from Moldova and Georgia. Under these conditions, it is not surprising that the Ukrainian and Armenian governments have hesitated to side with the EU.

The 'Arab Spring' gave new impetus to discussions about a more comprehensive Euro-Mediterranean partnership. The southern Mediterranean countries (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria²⁵ and Tunisia) are already connected to the EU through an extensive grid of Association Agreements that include meaningful FTA chapters. The EU has entered DCFTA negotiations with Morocco (the third round took place in January 2014), and the Commission has received a mandate to launch a similar process with Tunisia, Egypt and Jordan. FTA talks with Libya, on the other hand, are currently suspended, and it is unclear when they will be resumed. As far as the Mediterranean region is concerned, the EU has tried to assist its southern neighbours (mainly with goals that are more political than economic), but the current instability and economic crises affecting most of these countries²⁶ has effectively delayed the conclusion of deals that might have had a positive – if limited – impact on the southern Mediterranean economies.

In TGWA, the Commission stressed that EU trade policy should pay particular attention to the US, China, Russia and Japan. However, this statement did not lead to formal commitments to opening FTA negotiations with these partners. TGWA did not focus on China – which had been the object of a separate communication coinciding with 'Global Europe' – and did not suggest significant changes in trade relations with the US. The results of the Transatlantic Economic Council (TEC) were below expectations, and dialogues with China did not significantly advance issues of interest to the EU.

²⁵ Trade provisions of the agreement with Syria are currently not applied.

²⁶ The significant drop in the EU's domestic demand and a decrease in the investments from Europe have also inevitably affected the fragile economies of southern Mediterranean countries.

TGWA did not anticipate that negotiations with the US and Japan would be opened.

Figure 5
Potential impact of trade agreements on GDP, exports and jobs in Europe

	USA*	Japan	Canada	ASEAN	India	Mercosur	China Investment*	Total	Productivity effect**	Total (incl. productivity effect)	Jobs*** (1000)	South Korea (applied since 1 July 2011)
GDP (%)	0.52	0.34	0.08	0.035	0.03	0.17	0.03	1.2	0.8	2.0		0.075
(€ billion)	65.7	42.9	10.1	4.4	3.8	21.5	3.8	152.2	103.1	255.3		9.5
Total Exports (%)	1.40	1.20	0.69	1.60	0.55	0.65	0.07	6.2			2164	1.20
(€ billion)	29.4	25.2	14.6	33.7	11.6	13.7	1.4	129.6				25.2
Total Imports (%)	1.35	1.20	0.39	1.40	0.55	0.66	0.06	5.6				1.10
(€ billion)	29.0	25.8	6.0	30.1	11.8	14.2	1.3	118.2				23.6

Source: Based on studies commissioned by DG Trade. Comparisons between different agreements should be done with caution due to different methodologies used. Note: Absolute figures refer to EU GDP and trade figures for 2011.

The situation changed dramatically shortly after the publication of TGWA. At the EU-US Summit held on 28 November 2011²⁷, it was decided to establish a High-Level Working Group on Jobs and Growth, chaired by US Trade Representative Ron Kirk and EU Trade Commissioner Karel De Gucht. The Working Group was charged with identifying policies and measures to increase bilateral trade and investment, in order to support job creation, economic growth and international competitiveness. The Working Group was also asked to recommend practical ways to implement any policy measures identified. These could include a range of possible initiatives, from enhanced regulatory cooperation to the negotiation of one or more bilateral trade agreements.

The Working Group published an interim report in June 2012 and a final report on 13 February 2013. The HLWG strongly recommended proceeding with a comprehensive agreement addressing a broad range of bilateral trade and investment issues, including regulatory issues, and contributing to the development of global rules. These recommendations were accepted and paved the way to launching negotiations on a US-EU Transatlantic Trade and Investment Partnership agreement (TTIP).

The EU expects to gain substantial advantage from the TTIP²⁸. However, if concluded, the effects of the EU-US deal are likely to go beyond the creation of a transatlantic market. Despite their recent decline, the two trading partners have maintained their leading positions in the global trade in goods and services and in foreign direct investment. An enhanced transatlantic relationship is therefore likely to redefine the shape of the global economy as a whole and contribute to instituting new technical standards on an unprecedented, global scale.

The TTIP, when concluded, is likely to mark a cornerstone in 21st-century

²⁷ European Commission, EU-US Summit: Fact sheet on High-Level Working Group on Jobs and Growth (2010)

²⁸ An independent study mandated by the Commission suggested that an ambitious agreement could result in substantial savings to companies and create hundreds of thousands of jobs. The study calculated that each European household would gain an average of EUR 545 annually, as the EU economy would be boosted by 0.5% of GDP, corresponding to EUR 120 billion annually, once fully implemented.

Partnership agreement (TTIP) could pave the way to an integrated transatlantic market and set global standards.

international trade relations. On one hand, the topics under negotiations are not new to the transatlantic dialogue – or to any trade negotiators – but the agreement’s degree of ambition is high, and its potential scope enormous. Any deal between the EU and the US would have major international consequences, both political and commercial, by setting precedents, rules and standards for other countries to follow if they wish to trade with the EU and the US.

Negotiations have only just started on the TTIP. Despite a few early tiffs about the scope and the depth of the deal, the current political situation and the apparent good will of both parties mean that the conclusion of the ambitious deal is not unrealistic. Still, negotiations are not going to be concluded in fewer than two years – i.e. by the end of 2014 – as suggested by Commissioner De Gucht.

More problematic for the EU is the fact that the US was largely responsible for opening the TTIP talks. In ‘Global Europe’, the Commission had been compelled to acknowledge that, ‘despite some progress’, finding a common understanding on non-tariff barriers with the US had ‘proven to be difficult territory and a further injection of momentum is necessary’. TGWA does not mention a possible launch of FTA talks with the US. According to the EC, ‘our priority should be squarely on the avoidance of future barriers, and in particular in the innovation, energy efficiency and hi-tech sectors, a point which comes out clearly in our public consultation exercise’. This suggests that the decision to launch TTIP talks was only reached after TGWA was published, and that the initiative was essentially taken by the US after modifying their previous more restrictive approach to EU-US trade cooperation.

The EU may be judged to be lagging elsewhere as well: while the US is advancing on two fronts – the Atlantic, with the TTIP, and the Pacific, with the Trans-Pacific Partnership (TPP) – the EU’s strategy on the Asia-Pacific region has been less coordinated.

Negotiations with Japan on a free trade agreement (FTA) were opened with stringent conditions.

Japan presents a particular problem. The EU attitude towards a trade deal with Japan has been lukewarm. Despite the fact that the Asian country remains the world’s third economy and represents an interesting market for EU products and services, trade relations with Japan have declined over the last ten years as the EU has faced – and lost – to new competitors. Coupled with massive and well-known behind-the-border barriers, EU negotiators has been discouraged from initiating trade talks with Japan. While TGWA recognised Japan as a ‘strategic partner’, it did not advance any proposals for a full-fledged FTA with the country. In the past, Tokyo has adopted a trade policy that – like the EU’s – tended to privilege the WTO and a multilateral approach rather than a network of a bilateral FTAs. The Japanese government only revised its trade strategy when faced with persistent, weak internal growth and the rise of China and South Korea. These factors, more than a deep-seated enthusiasm, paved the way to opening talks on an EU-Japan FTA and to Japan’s accession to the US-led TPP.

Before opening trade negotiations, the EU asked Japan to seriously reduce its

almost impenetrable system of non-tariff barriers – a condition the EU had rarely imposed in the past. The proposed negotiating mandate issued by the Council included the provision that if Japan did not deliver non-tariff barrier roadmaps within a year, negotiations would be halted. Such roadmaps had also been imposed to ensure that European tariffs were only phased out in parallel Japanese regulatory barriers²⁹.

8 Enforcement and implementation

The 2007 'Market Access Strategy' produced some good results, but better cooperation between the Commission and Member States is needed.

While the Commission made some serious efforts in 'Global Europe', enforcement and implementation were the Achilles' heel of the 2006 communication. To rectify this, TGWA introduced closer monitoring of compliance and advocated a more systematic implementation of trade agreements. The EU had also made intermediate efforts, notably with its 2007 'Market Access Strategy', which marked the beginning of a new and more pro-active phase in defending EU commercial interests abroad. Since the strategy was announced, 33 market access teams have been created in third countries and at the EC's headquarters in Belgium.

Market access teams led to more concerted action with Member States and business representatives; they have produced appreciable – though limited – results in tackling non-tariff barriers faced by EU exports. Notwithstanding some dimensional limits, the EU 'Market Access Strategy' has demonstrated that the EU has a central role to play in fighting illegal trade barriers.

When it was published, TGWA proposed improving the services offered to stakeholders and called for better coordination between the EC, Member States' diplomatic representatives and EU companies. The communication warned that resources were limited and that it was *de facto* impossible to address all barriers denounced by exporters. Yet, since 2009 the EC has conducted more comprehensive 'key barriers exercises', and these have identified 220 barriers in 32 markets that the EC should consider priorities. Additionally, the EC regularly published two reports on the progress of its market access initiatives³⁰. The combination of these efforts has yielded positive results, and the EU has demonstrated the success of applying coordinated pressure on countries breaching their WTO or bilateral obligations³¹.

Negotiations on the Anti-Counterfeiting Trade Agreement (ACTA) began in 2006 and were concluded in 2010, a few months before TGWA (April 2011).

²⁹ Marika Armanovica, (EP Policy Department), 'Trade and economic relations with Japan: Assessing the hurdles to the FTA' (June 2012).

³⁰ European Commission, Trade and Investment Barriers Report 2013 (28 February 2013) and Tenth Report on potentially trade-restrictive measures identified in the context of the financial and economic crisis (1 May 2012 – 31 May 2013), September 2013.

³¹ The TGWA, however, lacks punch in areas where EC and MS interventions have proven incapable of obtaining the withdrawal of the measures at stake. The WTO Dispute Settlement procedure is relatively long and expensive – like actions before national courts. The EC is currently exploring future options to introduce faster and more efficient dispute resolution tools in new FTAs, but the results have been so far limited.

The European Parliament rejected the Anti-Counterfeiting Trade Agreement (ACTA) for allegedly breaching basic liberties. The rejection has prevented the EU from ensuring better enforcement of intellectual property rights.

Streamline enforcement on IPRs was a main objective for the EU, given that its economy has maintained a comparative advantage in up-market, branded and design products protected by IPRs³². ACTA built on the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) and aimed to introduce new international standards for enforcing IPRs. According to the Commission, ACTA offered the opportunity to advance in key sectors of interest to the EU (such as IPR protection) in which there was little or no chance of reaching a general understanding in the WTO. In fact, the deal was negotiated by a handful of (mostly) industrialised countries – with the notable exception of Morocco – and did not include China or other emerging economies known for their poor compliance with IPR protection. Negotiations on ACTA proceeded relatively smoothly, and an agreement was reached in a short period of time.

Yet a number of concerns arose in the EU (as well as in other participating countries) about the lack of transparency in ACTA negotiations and over the agreement's compatibility with the *acquis communautaire* and the TRIPs Agreement. Although criticisms focused on the treaty's internet provisions, and although many stakeholders agreed that the IPRs of physical goods should be better enforced (and better coordinated internationally), the EP rejected the treaty in July 2012³³.

The proposed reform of trade defence instruments has proven difficult for the Commission.

ACTA was not, unfortunately for the Commission, the only EU trade reform to fail. In 2007, trade defence instruments (TDIs) strongly backed by Commissioner Mandelson proved a fiasco. In this domain at least, the Commission then seemed to adopt a more cautious approach. TGWA did not include projects for further reforming investigations into antidumping and countervailing duties, although the communication did promise to launch a reflection on 'whether and how to further update and modernize our trade defence instruments [...] in the light of the changes brought about by the Lisbon Treaty and/or the future results achieved in the Doha Round under the 'Rules' chapter'³⁴.

Less than two years issuing TGWA, the Commission changed its mind and revisited TDIs 'with a view to updating them, but also bearing in mind that the multilateral WTO framework will not change in the foreseeable future'. In other words, the new proposal for reform had not been prompted by the entry into force of the Treaty of Lisbon, but by the (rather unsurprising) observation that the Doha Round had stalled. The Commission's proposals – advanced in 2013, after consultations and a study on TDIs in Europe – were more balanced than those of Commissioner Mandelson had attempted to

³² For the European Union, protecting EU intellectual property rights (IPR) is of the utmost importance, as future EU competitiveness essentially depends on the Union's ability to move into higher value added activities, for which strong IPR enforcement is essential.

³³ European Parliament, ACTA before the Parliament (2012). See also: Pasquale De Micco (EP Policy Department), Does ACTA still matter? Protecting intellectual property rights in international trade (January 2013).

³⁴ Trade, Growth and World Affairs.

introduce a few years earlier. The 2013 versions redefined the scope of the 'lesser duty rule'³⁵, modified the 'shipping clause'³⁶ and tweaked the rules on reimbursing duties when measures were terminated³⁷.

The debate on the reform of TDIs is on-going (at the moment this note is being finalised). The discussions have highlighted a persistent gap between the positions held, on the one hand, by southern and eastern EU Member States – who tend to be more supportive of their national industries and do not accept a dilution of TDIs – and, on the other hand, by Nordic Member States – who tend to privilege an import-oriented approach. An inter-institutional gap has also appeared: the EP has privileged a more 'defensive' approach than the Council appears ready to accept³⁸.

Another exercise the EC planned to launch concerns competition and state aid rules, which have proven almost completely ineffective in many third countries. At the moment, the EC has yet to present new initiatives on this topic³⁹.

The EC has, on the other hand, launched a new communication on small and medium-sized enterprises (SMEs) and foreign trade. Titled 'Small Business, Big World — a new partnership to help SMEs seize global opportunities'⁴⁰, the communication aims to facilitate SMEs' internationalisation. SMEs represent more than 97 % of all companies operating in the EU, although they export relatively little. The Commission's proposal was intended to correct, *inter alia*, one of the major flaws affecting 'Global Europe': the relatively scant attention that the 2006 communication had accorded SMEs and its privileging of bigger companies and multinationals. Initiated by DG Enterprise, 'Small Business, Big World' focused on how to support those SMEs willing to enter foreign or third markets. Yet the Commission itself has proved divided on the project. Some Commissioners favour more hands-on support for SMEs, while others prefer to allow the private sector to identify and generate business opportunities in third countries. DG Trade's contribution to this debate has lacked ambition and resulted in largely 'cosmetic' proposals, such as an SME helpdesk. No evidence suggests that the Commission has actually reoriented its negotiating agenda or tactics, its talks with trade partners on trade/investment barriers, or its anti-dumping/anti-subsidies measures to favour European SMEs in recent years.

Finally, TGWA touched on another significant domain: the pending regulation on origin marking. The communication described future initiatives

³⁵ European commission, Types of Trade Defence Measures (2013)

³⁶ Swedish National Board of Trade, The Shipping Clause in Trade Defence Investigations (2013)

³⁷ European Commission, Communication from the Commission to the Council and the European Parliament on Modernisation of Trade Defence Instruments. Adapting trade defence instruments to the current needs of the European economy (10 April 2013).

³⁸ See the procedural page of the TDI reform at the EP website.

³⁹ However, FTAs that are part of the new generation (see e.g. the one with Republic of Korea) include a chapter on state aid and competition that is likely to be generalised to other trade deals in the coming years.

⁴⁰ European Commission, 'Small Business, Big World — a new partnership to help SMEs seize global opportunities' (2011)

to ensure better consumer safety in cooperation with third partners. The proposed regulation set out requirements for labelling and marking products and their packaging with a 'Made in' mark, referring to the country-of-origin, according to the applicable EU non-preferential rules of origin. The proposal was approved by the EP on 21 October 2010 but was not upheld by Council. Then, in February 2013, the EC announced it would withdraw the proposal because it had been deemed inconsistent with the EU's WTO obligations following the Appellate Body's decision (in the US 'Certain Country of Origin Labelling' – ref. WT/DS/384)⁴¹.

9 Public consultation and impact assessment

Thanks to pressure from the EP, the CCP is gradually becoming more open and transparent.

In TGWA the EC reiterated its firm commitment to ensuring that civil society and key stakeholders would be properly consulted when the Commission was drafting policy or considering action. This approach had been initiated by the EC with its introduction of regular civil society dialogues on trade a few years previously.

The EC also committed in TGWA to producing impact assessments and evaluations of trade policy. Sustainable Impact Assessments (SIAs)⁴² are normally prepared for each new FTA, and internal impact assessments for new internal legislative proposals (under ordinary legislative procedure). The EC proposed extending this approach to 'all new trade initiatives with potentially significant economic, social and environmental impact' for the EU and its partners.

The Commission also committed to systematically producing *ex post* evaluations. This commitment represents a real step forward for EC trade policy; *ex post* assessments may better shape EU trade policy, avoiding expensive and dangerous errors in negotiations with third parties.

The EC has consistently implemented its own guidelines for *ex ante* and sustainability impact assessments. Although the quality is not always homogenous, SIAs and the EC's impact assessments represent an advance in transparency and the definition of priorities. The EC has yet to published an *ex post* impact assessment.

⁴¹ Hogan and Hovels, No EU Regulation for 'Made In' Labelling in Sight – Commission Set to Withdraw Proposal (February 2013). The EC decision was not unanimously welcomed by the Parliament, which considered the decision to be the Commission's elimination of an inconvenient file, which had been submitted to legislators more than seven years before and for which no agreement was manifestly possible.

⁴² European Commission page on Sustainability Impact Assessment.

10 Conclusions

The EU trade policy remains in a phase of modernisation and has yet to fully integrate the changes made by the Treaty of Lisbon.

For many years, the EU's Common Commercial Policy was technocratic and far from transparent. As acknowledged by some scholars, the system, based on the two pillars of the European Commission and the Council, 'facilitated efficiency by keeping trade policy at arm's length from political and protectionist forces. National and EU policy interests were based on largely informal contacts with the private sector interests'.⁴³ Over the years, EU trade policy has become less defensive and more open to the world. The EU was a strong supporter of a rule-based multilateral system and largely contributed to the consolidation of the WTO.

In the last decade, the EU has faced a number of new challenges. Globalisation, delocalisation and the surge of integrated supply chains have radically changed Europe's economic structure. The rise of new economic powers, the unprecedented growth of international exchanges and the gradual opening of trade in services obliged Europe to reflect deeply on the role and nature of its trade policy. The improvements introduced by the Treaty of Lisbon have been substantial. Foreign investments are now a full competence of the Union, and the Parliament has become co-legislator on (almost) equal footing with the Council. Since the treaty's entry into force, the European Parliament has demonstrated great moderation; the Parliament has endorsed most Commission proposals while continuing to work to make EU trade more 'democratic' and less technocratic.

Defining objectives at the EU level is difficult given the often-divergent interests of Member States and stakeholders.

EU trade policy has also had to adapt to 'accommodate' a wider range of interests. The positions of the EU's Member States could generally be described in terms of two main 'blocks': the post-industrial, liberal north, and the industrial, more cautious and more defensive south. But over the years, more voices have joined the debate on international trade and globalisation, meaning the discussion is no longer confined to small groups of officials and stakeholders. The rejection of ACTA served as a clear demonstration of this shift: an unprecedented mobilisation of activists ultimately resulted in the treaty's rejection.

The Commission had not immediately understood how the rules of the game had changed; the institution was slow to realise that its trade diplomacy needed to be refreshed and made more open and transparent. Today, soliciting the participation of stakeholders (including NGOs and human right activists) has become standard in the EU's international trade negotiations. The European Parliament has been very vocal in demanding that the Union's trade policy grow from a meaningful debate among civil society members and respond to citizens' expectations. This process of 'democratisation' will not weaken an otherwise efficient and results-oriented policy; rather, democratisation will make the EU's position stronger and more resilient.

It is not easy to reconcile alternative and often diverging trade priorities.

⁴³ Stephen Woolcock, European Union trade policy: domestic institutions and systemic factors (April 2011)

Member States have often been difficult to please, and some of their requests or wishes have simply proved impossible to achieve. The Commission has had the arduous task of finding a common denominator and delivering results. A lack of coherence driven by diverging interests and objectives may well undermine the EU's role. Also problematic is the undefined nature of the Common Commercial Policy: is it a complement to EU internal policies on competitiveness, or is it a pillar of the EU's external action? Deciding on this fundamental point would provide much-needed clarity and determine the orientation of EU trade policy for years to come.

Concluding FTAs is now a priority, but the EU still lacks a coherent approach and is losing its position in emerging markets.

Responding to the activities of many of its competitors, the Commission has been compelled to change its strategy and turn its back on the multilateral approach it had always preferred, increasingly engaging in international trade negotiations. The Commission's first efforts to this end were not particularly promising; only one deal – the FTA with South Korea – was concluded under 'Global Europe'. But it has appeared in recent years that the number and pace of negotiations have increased. This does not necessarily mean that the EU's actions are the result of a coherent and defined strategy. In some cases (e.g. the TTIP) the EU seems to have been caught by surprise by the advance of negotiations, while in other cases (e.g. discussions with the GCC and India) the Commission grossly underestimated the difficulties of reaching agreements. Besides bilateral trade agreements, the EU has committed itself to a number of plurilateral sectoral deals. Despite the rejection of ACTA, these deals may represent a way to emerge from the quicksand of the Doha Round and achieve deeper integration with partners who share the Union's goals.

In a note published in 2007⁴⁴, the Commission warned against concentrating EU exports in a limited number of external markets (mainly the US and other industrialised countries). Faced with the gradual erosion of the EU's market position in rapidly growing emerging markets (particularly in Asia), the Commission called for new initiatives to be adopted. Although the trends the Commission warned of have been corrected – at least in part – the EU still lags behind direct competitors in certain emerging markets and has often proved incapable of defining or delivering results on a regional or plurilateral basis.

The entry into force of the agreement with South Korea paved the way to a new generation of trade deals that extend well beyond tariff reduction and the liberalisation of trade in goods. The new FTAs negotiated by the EU also cover services and investments and include chapters on non-trade matters such as competition and state aid, IPR enforcement, dispute settlement, human and social rights protection and the environment. This is not unique to EU trade agreements. The US and other countries are also negotiating extended trade deals, and the trend seems to favour deeper and more comprehensive cooperation, especially as far as regulatory issues are concerned.

⁴⁴ European Commission, Global Europe, EU performance in global economy (2007)

Defining new technical standards and achieving regulatory approximation have become priorities for both the EU and the US. Codifying standards may help the EU and the US secure greater market access and secure the leading positions they enjoyed for many years. The two transatlantic partners have realised that they no longer command the 'latitude' they would need to conclude the Doha Round and they are now trying to achieve some of the Round's goals with a bilateral agreement. TTIP negotiations are apparently progressing rather quickly, but it is still too early to say whether they will be (fully) successful. Significant delays – not to mention outright failure – remain a real possibility, and could have a very negative impact on the two trading blocks.

Defending the WTO's achievements remains a priority for the EU. The WTO system has worked relatively well – in particular its Dispute Settlement System, which, contrary to all expectations, has usefully shaped a rule-based international trading system. However, despite the recent breakthrough in Bali, the successful conclusion of the Doha Round is far imminent. In a more general sense, the Geneva-based organisation would benefit from a makeover. Yet its renewal has proven difficult to achieve, and there are no real perspectives for an in-depth revision. The Commission itself, for all its support of the organisation, also apparently considers reform unlikely – and it is this doubt that likely underpins its decision not to launch a reflection group on WTO.