

**BUSINESSEUROPE**



# A TRADE STRATEGY FIT FOR THE 21<sup>ST</sup> CENTURY



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## WHO ARE WE ?

BusinessEurope is the leading advocate for growth and competitiveness at the European level, standing up for companies across the continent and campaigning on the issues that most influence their performance.

A recognised social partner, we speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.

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## FOREWORD

BusinessEurope remains strongly committed to free, fair and rules-based trade. At a time when global trade is facing so many challenges, unilateralism and protectionism to name the most significant ones, it is even more important for the business community to stand up in support of rules-based trade. With the increasing politicisation of trade comes more uncertainty for business. A stable, transparent and predictable trade environment is key to promote more investment, innovation and job creation in Europe.

The EU should be able to respond to these challenges with a strong and multi-faceted trade strategy as we are proposing in our paper.

Safeguarding an effective World Trade Organisation and developing new rules in areas that are key for our companies to be able to trade and invest today and in the future are top priorities for BusinessEurope. We welcome the EU's leadership in bringing concrete proposals and trying to find a viable solution to the current crisis. The European business is strongly committed to support these efforts and also bring innovative ideas to the table.

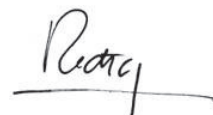
The EU should also use all instruments at its disposal to ensure the effectiveness of its trade policy. The EU already has an extensive network of free trade agreements with partners around the globe, which will be further expanded over the next years. It is crucial that

these agreements promote access to markets, modern rules as well as sustainable trade. At the same time, it is equally important that they are properly implemented and enforced. We call on the EU to focus more on this aspect in its future trade strategy. Businesses are the main users of trade agreements and have an important role to play in this regard.

Furthermore, the EU should develop an ambitious strategy on attracting and protecting investments, which are key drivers for growth and employment. The current climate in global trade also invites the EU to look at more powerful solutions aimed at levelling the playing field, for instance in the area of public procurement.

We hope that the proposals presented in this position paper will be a useful contribution in the development of the future trade policy of the EU – a trade policy fit for the 21st century.

**Pierre Gattaz**  
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Director General





# CONTENT

EXECUTIVE SUMMARY .....	5
WHAT WE AIM FOR .....	6
HOW TO ACHIEVE IT .....	8
<b>Introduction .....</b>	<b>8</b>
<b>1. Trade and investment as a centrepiece in a comprehensive foreign policy .....</b>	<b>9</b>
<b>2. Relations with the EU's main trading partners - the United States and China .....</b>	<b>11</b>
USA - setting a positive agenda while addressing irritants .....	11
China - a new era in our trade and investment relations .....	12
<b>3. Promoting stability and prosperity in the neighbourhood .....</b>	<b>14</b>
Brexit and the future EU-UK relation .....	14
Russia and the Eurasian Economic Union .....	15
Enlargement countries .....	16
Western Balkans .....	16
Turkey .....	17
Strategy towards Africa and the Mediterranean countries .....	18
Africa .....	18
Mediterranean countries .....	19
<b>4. Setting the rules that business needs to compete in the 21st century .....</b>	<b>20</b>
Multilateral trading system and the role of the WTO .....	20
FTAs - building a network of like-minded partners .....	22
FTAs and sustainability - promoting high environmental and labour standards with the support of business .....	24
FTAs - ensuring implementation and enforcement .....	25
Multiplying the benefits of FTAs .....	27
A more consistent investment strategy .....	27
<b>5. Levelling the playing field .....</b>	<b>30</b>
An ambitious market access strategy .....	30
Levelling the playing field in public procurement .....	31
Effective trade defence instruments .....	32
<b>6. Tools to leverage our export potential .....</b>	<b>32</b>
Export credits .....	32
Supporting SMEs .....	33
Economic diplomacy and export promotion .....	34

## EXECUTIVE SUMMARY

A future trade strategy should ensure that the EU remains open for trade and investment, while it is able to adapt to increasing geopolitical and economic challenges. Safeguarding a rules-based trade that covers multilateral and bilateral strategies is important in this respect.

The USA and China are not only our main trading partners; they are also our competitors, therefore the EU's strategy towards them should be recalibrated carefully to better reflect the nature of the relationship. The EU also plays an important role in the neighbourhood. In this regard, it is essential to ensure a close and as frictionless as possible relationship with the UK, post-Brexit, promote an ambitious approach towards Africa and ensure progress in relation with countries in the Western Balkans and Turkey.

The EU should also work on rules that reflect the current and future needs of trade and investment. Starting at the multilateral level, the EU should lead the reform process in the World Trade Organisation, in order to safeguard the organisation and ensure the effective functioning of all its pillars – trade liberalisation, monitoring and enforcement. Deficiencies in the functioning of the WTO Appellate Body should be addressed as a matter of priority. At the same time, developing new rules, for instance in the area of e-commerce and reinforcing existing rules, such as on industrial subsidies and state-owned enterprises should also be promoted.

At the bilateral level, the EU already has a vast network of free trade agreements which will be further expanded once those currently under negotiation are concluded. These agreements have ambitious and comprehensive provisions, ranging from access to markets to high-level technical and sustainability standards. It is important that, as more and more agreements enter into force, greater attention is paid to implementation and monitoring. This requires the active participation not only of EU institutions, but also of Member States and the civil society with an important role for business.

Finally, the EU should look at all instruments at its disposal to ensure a level playing field in trade and investment, for instance by reinforcing the Market Access Strategy and looking at solutions in the area of public procurement. The EU should also use tools to better leverage the export potential of EU companies, especially SMEs.



## WHAT WE AIM FOR

- ➔ The EU remains open for trade and investment, effectively safeguarding its political and economic interests through multilateralism and rules-based open trade.
- ➔ The EU trade policy needs to remain transparent and inclusive. Defending the benefits of trade while recognising the need for flanking policies to mitigate the potential negative impact on citizens and companies.
- ➔ The EU-UK future relationship should be as close and frictionless as possible to deliver unprecedented cooperation while preserving the integrity of the Single Market. Both partners should also assess as a matter of urgency how they can work together multilaterally on trade policy and foreign policy issues to further matters of mutual interest and protect against joint concerns.
- ➔ The EU maintains strong and stable relations with the USA and its traditional partners and looks for opportunities to develop a positive agenda that reduces the costs of trading and investing across the Atlantic. Developing regulatory cooperation in key sectors, eliminating tariffs for industrial goods, reforming the World Trade Organisation (WTO) and developing modern trading rules in areas of common interest are some of the issues that should be covered in our bilateral agenda. In parallel we should address trade irritants. The EU should look for long-term cooperation with the USA and its long-standing allies in key strategic areas like digital trade and cybersecurity.
- ➔ The EU rebalances its relationship with China by promoting a framework that takes differences of the economic models into account, pursues the elimination of asymmetries in trade and investment conditions, ensures the effectiveness of European trade defence instruments, and improves market access with fair and equal treatment for European companies. The timely conclusion of an ambitious comprehensive agreement on investment should remain a priority. The EU should also engage with China to address key multilateral challenges such as the WTO reform, while insisting that China complies with its commitments and actively contributes at a level that is proportional to its current economic and technological development. It is also important for the EU to follow-up on its Connectivity Strategy in Asia.
- ➔ The EU ensures peace and stability at its borders by forging deeper and closer political and economic ties with neighbourhood countries. The type of relationship and level of integration should be adapted to the specificities of the neighbourhood country.

- ➔ The EU remains strongly engaged in the reform of the World Trade Organisation, fighting against unilateralism and protectionism, while promoting a more effective international trading order including stronger compliance with WTO rules. A functional, transparent and independent dispute settlement mechanism must remain a top priority. A bigger role by the WTO Secretariat in the rule-making pillar of the WTO should also be further explored.
- ➔ The EU is at the forefront of the development of modern and effective rules in key areas like digital trade and e-commerce, intellectual property, regulatory cooperation, subsidies and the role of state-owned enterprises, and the role of services in manufacturing. The EU secures the highest level of market access for its businesses outside the EU, including in public procurement, through multilateral trade negotiations, bilateral agreements and EU instruments.
- ➔ The EU continues to develop the most ambitious and comprehensive network of bilateral trade and investment agreements in the world promoting its standards, values and economic interests. Asia, Africa and Latin America are fast growing and promising regions and should be the focus of our efforts. Key trade negotiations, like the one with Mercosur, must be swiftly concluded, ratified and implemented. The signature and ratification of the agreement with Vietnam should also be prioritised.
- ➔ The EU improves the implementation and enforceability of trade rules and trade agreements. Through better market access the EU will ensure that more companies can benefit from trade and investment opportunities in third markets and will secure a level playing field for European companies both in the EU and abroad.
- ➔ The EU continues to liberalise trade in services with partners across the globe, ensuring that services become an indivisible feature of all future free trade agreements.
- ➔ The EU has a consistent policy on investment covering both market access and protection of investors. Investment protection should remain a key priority in the EU's bilateral trade negotiations.
- ➔ The EU needs to leverage its export potential by ensuring that more companies, especially SMEs, benefit from the opportunities generated by trade agreements while ensuring that financing instruments respect international rules.
- ➔ The EU promotes key economic interests through better coordination and joint action between Member States, the European Commission and the EU delegations in third countries.
- ➔ The EU ensures that its trade policy is coherent and consistent with other EU policies, such as the single market, industrial, environmental and competition policies.



# HOW TO ACHIEVE IT

## INTRODUCTION

Ahead of the European elections taking place in May 2019 that will determine the new European Commission and European Parliament, BusinessEurope would like to present its views on a future EU trade strategy. We recognise that since the presentation of the 'Trade for All' communication of the European Commission in 2015, the conditions of global trade and policy-making have changed. It is perhaps no longer the impact of the global financial crisis that raises most of the concerns among governments and the broader stakeholder community; it is rather the effect of a broader institutional – for instance in the World Trade Organisation (WTO) – and political and economic crisis – such as a trade war between major economies – that rings the alarm bells.

A discussion over the benefits of trade and how to ensure that they are more equally distributed in society has already started. We see the efforts at the global level, through the Sustainable Development Goals, as well as at EU level, through a number of initiatives, ranging from the inclusion of dedicated trade and sustainable development chapters in all free trade agreements to the adoption of legislation, for example, on the responsible sourcing of minerals.

At the same time, the everyday reality of trading and doing business has changed and there is a concern that the current rules do not cover sufficiently the needs of modern trade – for instance in the area of digital trade – or are not built to effectively address the use of protectionist or unilateral tools. The areas of industrial subsidies and the triggering of national security concerns serve as prominent examples.

In this context, it becomes urgent to put trade policy in its right position. This is amongst an array of policies that should work together in order, first to ensure that possible shortcomings from trade liberalisation are addressed, and second to complement trade policy in areas where responsibility is shared. It is therefore important that coordination among industrial, competition, skills and employment, digital, taxation and other policies is prioritised both at European and national level.

This paper will focus on concrete proposals to enhance the EU trade policy and develop a comprehensive strategy that equally extends to multilateral and bilateral levels. We argue that the EU must continue to pursue a rules-based liberal approach to trade while, at the same time, proving it is able to adapt to the currently challenging geopolitical environment and to mitigate the negative effects of certain policies followed by some of our partners.



## 1 TRADE AND INVESTMENT AS A CENTREPIECE IN A COMPREHENSIVE FOREIGN POLICY

Trade and investment policies have always been a tool used by governments to create positive economic effects for their citizens and companies and to reaffirm their economic and political power domestically and abroad. This is especially true for the EU, where there are only few areas of exclusive EU competence in foreign policy-making. Article 207 of the Treaty on the Functioning of the EU sets the legal basis for the common commercial policy, clearly stating that it shall be conducted in the context of the principles and objectives of the Union's external action.

In this regard, international trade rules, free trade and investment agreements and other trade policy instruments are used by the EU to expand its standards and policies in different areas ranging from intellectual property to environment and labour standards. The EU has been keen to use its soft power to expand the network of like-minded countries that share the same ideas about trade. This is more evident now that traditional allies seem determined to part ways and have their own views on how the world trade order should work.

In the Rome Declaration adopted on 25 March 2017 to commemorate 60 years of the Rome Treaties it is stated that the EU should enhance its role as a global player working to create a stronger Europe on the global scene namely by promoting free and fair trade. However, the EU's approach is still far away from what its two main trading partners are doing. Both China and the USA are using trade to pursue political goals and trade policy has become in some cases the major foreign policy tool. This is a cause of concern for businesses and we must try to reverse this trend.

First, decisions on trade should be based on economic rather than political criteria. For instance, the on-going dispute on steel and aluminium tariffs, which the USA impose in a political vein rather than for tangible economic reasons. Second, trade negotiations should avoid becoming highly politicised and should respect existing rules and regular procedures. Third, business should be allowed to bring a meaningful, evidence-based contribution to the process, from the preparatory stages of policy-making to the final outcome. Fourth, the EU should ensure that when businesses from third countries compete in the EU, they respect EU competition rules, for instance concerning subsidies and state aid.

How should the EU position itself in this context? As representatives of the business community, we firmly support an EU trade policy that is based on facts and economic decisions, leading to economic welfare for EU consumers, workers and businesses. This does not mean that the broader political framework shall not inform these decisions. It rather means that the EU's responses will have to be balanced, proportionate, and rules-based using all available instruments under multilateral and bilateral agreements.



Moreover, the EU should not be naïve when third countries use traditional foreign policy tools like sanctions to promote the competitiveness and economic interests of their companies to the detriment of European companies.

## RECOMMENDATION ON TRADE POLICY AND FOREIGN POLICY

The EU should urgently look at new ways of effectively safeguarding its economic interests and protecting its companies. Extraterritorial measures resulting for instance from non-coordinated sanctions against Iran and Russia are having an increasingly negative impact on EU companies and the economic interests of the EU. More and more business opportunities are impacted by foreign policy goals from third countries. Therefore, it is a priority to find effective ways of mitigating this negative impact and increasing the margin of autonomy for EU companies. Recent recommendations to reinforce the international role of the euro and possibly find alternative tools and means to settle international payments and to establish a level playing field on the issue of extraterritoriality are most welcomed. We need to find effective, reliable and secure solutions for EU companies. This requires strong political commitment from EU governments in cooperation with business including the financial sector.

## 2 RELATIONS WITH THE EU'S MAIN TRADING PARTNERS – THE UNITED STATES AND CHINA

The USA and China are our two main trading partners, but also economic competitors. The USA has also been the EU's key strategic ally with whom we have shared political and economic values. However, this strategic relationship is challenged by recent actions of the current US Administration. This may force Europe to adjust its policies and defend its own interests, also by building new alliances.

At the same time, China stresses its common interests with Europe in order to find an ally against the USA. But the EU shares many of the US grievances towards China and must stand firm, backing a multilateral, rules- and market-based international trading regime. Therefore, it is also working together with the USA and Japan in building more effective multilateral trading rules to address overcapacity, subsidies and the role of state-owned enterprises from China, which lead to strong market distortions in the EU and other markets.

### USA – setting a positive agenda while addressing irritants

Unfortunately, transatlantic relations have been driven by much more of a negative agenda lately. There are a number of irritants, including: the additional duties on steel and aluminium and the EU rebalancing measures, the threat of additional duties on cars, the USA blocking the appointment of judges to the WTO Appellate Body and the threat to pull out of the organisation, the open trade war with China, which impacts on EU interests, and the US sanctions policy.

The EU-USA joint statement issued on 25 July 2018 after the meeting between European Commission President Jean-Claude Juncker and US President Donald Trump was a positive step forward in maintaining strong EU-US trade relations. On 15 April 2019, the EU formally adopted two negotiating mandates, one on the elimination of industrial tariffs and a second one on conformity assessment. However, the two sides have different views regarding what the scope of a potential EU-US trade agreement could be. BusinessEurope agrees with the European Commission's approach of focusing on the industrial tariffs and takes note of the exclusion of agricultural products, public procurement and other issues from the scope of discussion. We also agree with the mandate of looking at conformity assessment. If the right conditions are there, for instance if current trade irritants<sup>1</sup> are eliminated, European business favours a more comprehensive and ambitious trade agreement with the USA.

However, the threat of the additional duties on cars and car parts continues to be a problem, with the recent submission of the Section 232 investigation report by the US Department of Commerce to the US administration. On the positive side the USA remain engaged in the trilateral discussions with the EU and Japan on addressing some of the concerns raised by China and the reform of the WTO, and this process should continue.

1 For instance, as agreed in the July 2018 EU-USA Joint Declaration, tariffs on steel and aluminium under section 232 should be resolved during the negotiations.



## RECOMMENDATION ON THE UNITED STATES

In line with the July 2018 declaration, the EU should continue to pursue a positive negotiation agenda with the USA. First, by acting on the current negotiating mandates on industrial goods and conformity assessment. Regulatory cooperation in key sectors such as automotive, chemicals, digital, engineering, medical devices, pharmaceuticals but also in new areas like cybersecurity could also be a positive force for ensuring good relations. Second, the EU should continue to cooperate with the USA, Japan and other like-minded countries to reform the multilateral trading system and address common challenges related to overcapacity and the role of state-owned enterprises. Existing trade irritants, notably the US additional duties on EU aluminium and steel imports, shall be addressed also in this general framework. If the USA take additional unilateral measures against the EU such as additional duties on cars, there should be a proportionate and balanced reaction from the EU.

### China – a new era in our trade and investment relations<sup>2</sup>

China is a trading powerhouse and its international economic role could surpass the EU and the USA in the near future. The assertiveness of the current Chinese leadership and China's state-driven hybrid economic model are generating economic and political friction, not only in China's immediate neighbourhood but also elsewhere including in Europe. The fact that China, through its 'Made in China 2025' strategy, has clear economic and industrial targets that contribute significantly to overcapacities in important economic sectors selected by central planners, is also aimed at dominating markets in China and other big economies. Its objectives compete with EU interests, and have led to a change in the EU's approach toward the country. First, by not considering China a market economy in anti-dumping procedures and, more recently, by proposing legislation on a framework to screen foreign direct investments (FDI), a response to the increase in Chinese FDI in strategic EU sectors.

China remains the second export destination of the EU and there is a large number of European companies with strong investments in the country. Opportunities are identified in many sectors of the economy. Nevertheless, there is much room to significantly improve the openness of the Chinese market to EU trade and investment and improve the implementation of existing rules. The Comprehensive Agreement on Investment (CAI) the EU is negotiating with China remains a top priority, but time is running as the

<sup>2</sup> BusinessEurope is currently preparing a dedicated position paper on EU-China relations

asymmetries in openness remain a disadvantage for European companies. European business envisages an ambitious agreement that not only increases access to the Chinese market, but also sets a clear legal framework in which investment can take place and be effectively protected. Areas such as intellectual property rights, competition and forced technology transfers need to be addressed ambitiously and to deliver results in the negotiations. We should also make sure that whatever rules are defined in these areas are also properly enforced.

China is a leading player in world trade and any meaningful reform of the world trading system cannot succeed without China. The challenge is how to engage China in a substantial reform while ensuring the country is ready to contribute more and not only benefit from the multilateral trading system. In this context, China should be reminded that it can no longer hide behind an undefined status as a developing country. China's position in international fora must be adapted to its current status. For example, despite being the number one exporter globally, China gains significant competitive advantages as a member of the Universal Postal Union. China enjoys lower postal tariffs than developed countries, which allows Chinese sellers to offer lower prices for products in comparison with sellers in the EU. The EU should also continue to call on China to join the WTO's Government Procurement Agreement (GPA), a commitment it made upon joining the WTO in 2001.

Earlier this year, the European Commission and the European External Action Service (EEAS) presented the Connectivity Strategy for Asia, as a European response to China's Belt and Road Initiative. European business welcomes the initiative and its emphasis on sustainable and comprehensive project management based on international rules and standards. However, no concrete information has followed since the release of the communication. European companies need a concrete commitment on the part of the EU as well as more details on how the strategy will be implemented. This is as a matter of priority.

## RECOMMENDATION ON CHINA

A comprehensive agreement on investment should remain a key priority in EU-China relations. The EU should also work with other trading partners like Japan and the USA in forging new, binding multilateral rules to address overcapacity, subsidies and the role of state-owned enterprises. The EU should cooperate with China where there is common interest, for instance on the reform of the World Trade Organisation and membership to the Government Procurement Agreement, but also take differing economic interests into account and act accordingly, ensuring that China effectively commits to open and rules-based trade.



### 3 PROMOTING STABILITY AND PROSPERITY IN THE NEIGHBOURHOOD

One of the conditions to boost Europe as a key global player is by deepening existing partnerships and developing new ones, especially with those countries and regions that are in our immediate neighbourhood. With heated debates around migration and populist views gaining traction it is even more important and a vital EU interest to ensure stability and prosperity near our borders. Trade, especially when it is combined with other policies, plays a very important role to achieve this objective.

Considering the current geo-political context, the EU's neighbourhood needs to be seen in a broader setting including:

- Brexit and the future EU-UK relationship,
- Russia and the Eurasian Economic Union,
- enlargement countries: Western Balkans and Turkey,
- a strategy towards Africa and the Mediterranean countries.

#### Brexit and the future EU-UK relation

According to the current timeline, the UK will cease to be a member of the EU by 31 October 2019. The UK will become a third country in the immediate neighbourhood of the EU. The two parties need to establish a very close and privileged relationship in the future. In this framework, trade and investment will play a central role. A transition period is crucial to ensure an unperturbed relationship to the greatest possible extent and prepare both partners for the day when the UK will be outside the EU.

BusinessEurope will issue a dedicated position paper on the future EU-UK relationship. It is our view that, while after Brexit the European business community aims to have EU-UK relations that are as close and as frictionless as possible, it must be kept in mind that the existing situation is based on the UK's membership of the Customs Union and the Single Market with its balance of rights and obligations. It is therefore necessary that the future agreement establishes the right balance between rights and obligations in order to safeguard a genuine level playing field and preserve the integrity of the Single Market.

In the future, the EU and UK should work closely together on areas of mutual interest to project their shared values, further their joint prosperity and protect the common international rules that benefit all countries. Multilateral cooperation between these closest of partners must not be significantly downgraded by Brexit, and the EU and UK should assess how they can work together on international trade issues to ensure a powerful European voice on protecting and strengthening the WTO, on pushing back against protectionism, and on ensuring a global and accessible level playing field for business.

## RECOMMENDATION ON FUTURE EU-UK RELATIONSHIP

The future EU-UK relationship should be as close and as frictionless as possible while preserving the integrity of the EU Single Market. Both partners should assess as a matter of urgency how they can work together multilaterally on trade policy issues to further matters of mutual interest and protect against joint concerns.

### Russia and the Eurasian Economic Union

Over the past years, since the illegal annexation of Crimea by Russia in the spring of 2014 and the role of Russia in the conflict in Eastern Ukraine, relations between the EU and Russia have become significantly aggravated. The EU, following decisions by the international community, established sanctions against Russia, including economic measures. Since then, economic sanctions are being renewed by the European Council twice a year.

Despite sanctions, the EU and Russia remain important trading partners. Russia is the EU's fourth largest trading partner and the EU is Russia's biggest trading partner. However, already before sanctions were imposed, EU companies noticed a deterioration of the business climate in Russia. This became visible through a number of measures affecting areas such as government procurement and import bans, as well as intellectual property rights and enforcement. Following the EU sanctions, Russia reacted by focusing on a broader import substitution policy, local content requirements, discriminatory procedures and other non-tariff barriers against foreign companies. These measures continue to negatively impact business today. A number of cases launched between the EU and Russia are currently pending under the WTO Dispute Settlement Body.

Moreover, in August 2017, the USA adopted the Countering America's Adversaries Through Sanctions Act (CAATSA), which could potentially be translated in additional unilateral sanctions against Russia as well as secondary sanctions that could negatively impact EU companies involved in trade and investment in Russia.

In this context it is indeed challenging to develop a positive agenda for EU-Russia trade relations. Bilateral dialogue is limited to technical issues. Moreover, the fact that there are no official relations between the EU and the Eurasian Economic Union (EEU)<sup>3</sup> further complicates the problem, even though technical discussions are possible. We acknowledge that there are political and legal reasons that have not allowed official relations so far, including the fact that some of the EEU members are not members of the WTO. At the same time, an increasing number of trade and regulatory measures

<sup>3</sup> Members of the Eurasian Economic Union are: Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia



that have an impact on EU business stem from the EEU. In the interest of European companies, we need to ensure that these measures follow international standards and respect WTO rules.

## RECOMMENDATION ON RUSSIA

The approach of being open to dialogue and insisting on Russia's compliance with international law should be continued. Europe must be united in its action in order for this strategy to succeed. The European Commission should also maintain a channel of communication with Russia and establish closer contacts with the Eurasian Economic Union, in order to effectively address challenges currently faced by EU business in Russia, particularly in the area of market access, standards and regulations as well as import substitution and forced localisation.

### Enlargement countries

The current enlargement agenda covers the partners of the Western Balkans and Turkey. Accession negotiations have been opened with candidate countries: Montenegro (2012), Serbia (2014) and Turkey (2005). The Republic of North Macedonia is a candidate country since 2005 and Albania obtained candidate status in 2014. Bosnia and Herzegovina submitted the application to join the EU in February 2016 and Kosovo has signed a Stabilisation and Association Agreement with the EU that entered into force in April 2016. The latter two countries are potential candidates.

#### **Western Balkans**

The EU is strongly supporting a regional economic area where goods, services, investments and skilled workers can move without obstacles. The process is ongoing but it should contribute to boost trade and investment within the region and between the region and the EU.

Western Balkan countries are joined in a Central European Free Trade Area. It is in the interest of both the members of the CEFTA and the EU to ensure the effective implementation of the agreement as a means to promote regional integration and the EU accession process. Taking further steps to support the Western Balkans, the EU has set up a special preferential trade regime with the countries in the region, ensuring that the vast majority of exports from the region are entering the EU at zero duties. It would be the task of the new European Commission to renew these preferences before 2020. Finally, the EU should further support the process of accession to the WTO of Serbia and



Bosnia and Herzegovina. This would be a crucial step to ensure that these partners and the region as a whole are part of the multilateral trading system. Furthermore, these efforts should go hand-in-hand with implementation by the countries in the region of a legal framework guaranteeing fair competition in their domestic market between EU business and companies from third countries.

## RECOMMENDATION ON WESTERN BALKANS

The EU should continue its efforts to promote regional economic integration and the EU accession, and also to support the accession of Serbia and Bosnia and Herzegovina to the World Trade Organisation.

### Turkey

The EU and Turkey are important trading partners with interconnected value chains and investments. Turkey's process of alignment with the *acquis* within the framework of the integration to the EU process is crucial for business and it has been a key driver for closer trade and investment ties. The long-standing relationship is facing significant challenges, with trade irritants on both sides. These should be addressed by maintaining a constructive dialogue and open channels of negotiation.

## RECOMMENDATION ON TURKEY

The dialogue between the EU and Turkey should remain open. Turkey's integration to the EU process remains the best guarantee for the rule of law and a prerequisite for a working Customs Union. Priority should be given to the modernisation of the Customs Union Agreement while ensuring that Turkey maintains the process of alignment with EU legislation in key areas. An upgraded Customs Union needs to address existing barriers to trade and investment, define standards and regulations and establish an effective, depoliticised, dispute settlement mechanism. It should also be an instrument to promote the rule of law, accountability and transparency as well as sustainability. In the meantime, the European Commission should also address the current trade and investment concerns, including barriers in customs procedures.



## Strategy towards Africa and the Mediterranean countries

### Africa<sup>4</sup>

Home to a young population of 1.2 billion people and some of the world's fastest growing economies, Africa is a vibrant continent that presents tremendous business opportunities. At the same time, however, many of the continent's countries are struggling with long-standing conflicts, contested regimes and stagnant economies. Africa will need between an incremental USD 200 billion and USD 1.2 trillion per year to reach the Sustainable Development Goals by 2030. To provide opportunities for a population that is expected to double by 2050, improving the business and investment climate and creating conditions for countries to economically develop in sustainable ways will thus be key, and the African and European private sector must be closely involved in this process. While public funding institutions need to make more extensive use of blended finance instruments that leverage private-sector investment through reducing investment risk, structured public-private dialogues at various levels need to identify measures to improve the investment climate in African countries.

Moreover, conditions need to be created for African countries to diversify their economies and become part of regional and global value chains. The African Continental Free Trade Area could unlock the tremendous development potential of intra-African trade, joining up Africa's fragmented markets, igniting industrialisation and creating millions of jobs. While it will take time to accomplish this ambitious project, the economic partnership agreements could be important building blocks towards continental free trade as they play a key role in supporting the regional integration processes of the African, Caribbean and Pacific (ACP) countries, for instance in terms of harmonisation of regulation, taxation, customs procedures, free movement of goods or strengthening regional institutions.

The negotiations of the Post-Cotonou Agreement between the EU and the African, Caribbean and Pacific countries provide a golden opportunity for Africa and the EU to move closer and European business is eager to play its role.

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<sup>4</sup> See also BusinessEurope's [position paper](#) on the Post-Cotonou partnership between the EU and ACP countries, 8 May 2018

## RECOMMENDATION ON AFRICA

The focus of the Post-Cotonou process should lie on Africa, taking a one-continent approach. For the new partnership to bring tangible benefits, it needs to give a strong role to the EU and the African, Caribbean and Pacific private sector. It must also be underpinned with instruments to leverage private-sector investment and improve the investment climate, as foreseen in the Joint Africa-EU Strategy for sectors of joint strategic interest such as agriculture, minerals, energy and digitalisation. Moreover, the agreement should include strong provisions to promote the finalisation and implementation of the economic partnership agreements, which are essential to support regional integration among ACP countries.

### Mediterranean countries

Following the Arab spring of 2011, the situation in the south Mediterranean countries remains politically complex and, in some cases, unstable. This situation has not always allowed for closer trade and investment relations, although traditionally, this region shares common linkages with the EU. Cooperation with Mediterranean countries is also considered a key to ensuring an effective migration policy. In this context, an enhanced trade relationship with the EU can offer benefits, for instance job creation and the attraction of long-term, sustainable investments in the region.

The EU is currently negotiating Deep and Comprehensive Free Trade Agreements (DCFTAs) with Morocco and Tunisia. These agreements would replace the existing association agreements and seek further market access liberalisation in key areas like public procurement, agriculture and services. Rounds of negotiations have been sparse and there is not much sense of progress.

The EU has also been negotiating the pan-Euro-Mediterranean Convention on cumulation of origin with Mediterranean countries, which aims at facilitating the use of tariff preferences and the promotion of further industrial and economic integration in the region. Negotiations are ongoing for already a number of years, unfortunately without yielding the successful results that businesses on both sides of the Mediterranean anticipate. BusinessEurope therefore calls for greater progress in the negotiations.



## RECOMMENDATION ON MEDITERRANEAN COUNTRIES

The EU should rapidly conclude the negotiations on the Deep and Comprehensive Free Trade Agreements with Morocco and Tunisia. The EU should push for a rapid conclusion of the negotiations on the Pan-Euromed Convention on rules of origin. The EU should continue to monitor concluded free trade agreements in the region with a focus on their effectiveness and the enforcement of the rules. The EU should also encourage Algeria to join the World Trade Organisation and, in the meantime, address current barriers to trade.

## 4 SETTING THE RULES THAT BUSINESS NEEDS TO COMPETE IN THE 21<sup>ST</sup> CENTURY

Are today's rules fit for tomorrow's trade, and how should they be changed? For example, the harmonised system of classification no longer reflects all aspects of today's trade reality. Some innovative goods like information technology products present challenges in their classification, which often opens the way to protectionism by allowing countries to choose HS codes with the highest bound tariffs. Another good example is services incorporated in goods, the so-called Mode 5. Can we find ways of extracting the value of services from goods when applying customs duties? That might significantly reduce the level of duties paid on goods worldwide.

In parallel, we see trade being used more and more to pursue other policy objectives and this is shaping trade rules. For instance, the trade and sustainability chapters in FTAs are increasing in scope and enforceability as civil society organisations see trade policy as a means to deliver faster and more effectively than other policy areas.

For business it is important that trade rules remain a way to foster EU competitiveness while promoting a level playing field. The EU should lead the process of developing global and European rules. To this end, the EU should invest in and fully use international fora and institutions, including the G7, the G20 and the OECD.

### Multilateral trading system and the role of the WTO<sup>5</sup>

The WTO is currently facing an unprecedented crisis. The lack of progress in delivering substantial market access gains, in reforming the rules to fit 21st century trade and investment needs, and the emergence of global players that take advantage of loopholes

<sup>5</sup> See also BusinessEurope's [position paper](#) on reinvigorating the WTO, 2 October 2018

in the system, has led to an existential crisis of the WTO, putting at risk the multilateral trading system. The blocking of the appointment of judges to the Appellate Body by the USA creates further pressure.

The WTO shall remain the main point of reference for governments and businesses in rule-setting and trade disputes. In our view, solutions to the current problems can be found within the WTO, through its modernisation as an institution and the reinforcement of its three pillars: negotiations, dispute settlement and monitoring. Furthermore, increased engagement with non-state actors, including business, will also contribute to discussing viable solutions.

The WTO has 164 members and decides by unanimity. Therefore, the reform of the organisation will not be possible without their strong political will. We are pleased to see the EU taking a leadership role in this process and we urge for the achievement of tangible results by the next WTO ministerial conference that is planned to take place in 2020 in Kazakhstan.

Regarding priorities in potential negotiation areas, BusinessEurope would like the WTO to accelerate its work on e-commerce. The announcement of the launch of negotiations on 25 January by 76 WTO members is welcomed. We now ask for an ambitious and comprehensive agreement that creates legal clarity and levels the global playing field, in terms of market access for goods, digital and other services as well as for rules. We expect these results to be delivered in a timely fashion. An ambitious e-commerce agreement is crucial for the competitiveness of the European industry that is in the middle of a digital transformation process.

BusinessEurope would also welcome an agreement on industrial subsidies that would aim at dealing with unfair competition and clarifying the rules by which state-owned enterprises operate in the economy. A first step has been made towards this end, with a joint proposal signed by the EU, the USA and other WTO members, which aims at improving the compliance with existing notification commitments and agreeing on new ones, especially on subsidies. We would like to see these efforts further supported by all WTO members. Sanctions for a lack of transparency or a failure to notify should be explored in this regard.

Besides the negotiation of new rules, the WTO has to ensure that existing agreements are implemented correctly and diligently by all members. We would like to refer in particular to the Trade Facilitation Agreement. Furthermore, in order to improve compliance and facilitate negotiations, members should also give the WTO Secretariat a stronger role and more resources.

The way the WTO negotiates and implements trading rules should also change. The members of the WTO have not only increased in number since 1995, but also in political dynamics and economic power. A number of new powers have emerged over the past years, including China. This is not always reflected in the WTO's rulebook, that should be adjusted. The "special and differential treatment" should be reserved to those WTO members that are in need, according to their real and evidential economic strength.



Finally, unless a solution is found rapidly for the nomination of members in the WTO Appellate Body, we risk the collapse of the multilateral trading system by the end of the year. One of the most important innovations of the WTO is that it takes the General Agreement on Tariffs and Trade (GATT) system further and ensures that global trading rules are effectively enforced by all WTO members. In turn, a well-functioning dispute settlement mechanism also contributes to a stable and predictable environment for businesses all over the world. BusinessEurope welcomes the approach of the European Commission for solving the crisis in the WTO Appellate Body and improving its functioning.

## RECOMMENDATION ON THE WTO

The efforts to reform the World Trade Organisation should be accelerated ahead of the ministerial conference in 2020. The EU should be a leader in this process, working in close cooperation with other WTO members. The EU should be proactive in defining an effective solution to ensure that the Appellate Body remains functional. In parallel, the EU should support an ambitious negotiating agenda that corresponds to the needs of future trade, including issues such as e-commerce, as well as addressing long-term deficiencies, for instance in the area of subsidies and state-owned enterprises.

## FTAs – building a network of like-minded partners

The EU holds the largest network of trade and investment agreements of all WTO members, with partners from around the globe. Once ongoing negotiations have been concluded, the EU will have agreements with almost all countries and regions. Prominent examples are the successful implementation of the EU-Korea FTA and the recent entering into force of the EU-Japan Economic Partnership Agreement and the EU-Singapore FTA. Business counts on the swift ratification of the EU-Vietnam FTA and the modernised agreement with Mexico, as well as the timely conclusion of the negotiations with Mercosur. The EU should also push ahead with FTA negotiations with Australia, New Zealand, Association of Southeast Asian Nations (ASEAN) countries and modernise its agreement with Chile. India is also an important emerging economy and remains a key trade and investment partner for the EU. The European Commission should aim, as a matter of urgency, to negotiate a bilateral investment agreement with India, while not excluding the possibility of concluding the FTA negotiations, if the proper level of ambition is met.

The EU uses its ambitious bilateral trade agenda to overcome shortcomings in the multilateral front by promoting further market openings for European companies and defining a set of rules that in most cases go beyond the level of WTO provisions. They are comprehensive, ensuring additional market access for companies in terms of goods,

services, investment and public procurement, but they also include rules that improve the broader framework to conduct trade and facilitate investment. In this category, the European Commission for instance negotiates provisions on rules of origin, competition, the protection of intellectual property rights or cross-border data flows. As these areas are becoming increasingly important in the attraction of investments, the European Commission should seek to negotiate clear, precise rules that companies can use.

If we take the example of rules on cross-border data flows, the Commission should put more effort into agreeing ambitious disciplines to prevent digital protectionism, addressing local content requirements, restrictions in the flow of data or cybersecurity.

Looking at the services sector, the EU should aim to liberalise trade in services with its partners worldwide. Services chapters should be an indivisible element of all future FTAs. The liberalisation of services has the potential to unlock great competitive potential in the European economy and FTAs must be reflective of that reality and ensure that services chapters are integral to the EU's approach to trade policy.

Furthermore, ensuring a high level of protection of intellectual property rights is key for further access to third markets. While provisions in this area are part of FTA negotiations, the European Commission should further prioritise it.

Finally, it is particularly important that the benefits of these agreements, for instance on economic growth and job creation, are better communicated throughout the EU. This will also contribute to a smoother and more rapid signature and ratification process. In this regard, it is important that the European Commission, Member States as well as businesses, who are key users of FTAs, work together to promote a greater understanding of the benefits of FTAs, and trade in general in the society.

## RECOMMENDATION ON FTAs

The EU should continue to pursue an ambitious negotiating agenda for free trade agreements. Emphasis should be put on concluding timely agreements with partners in Latin America, Asia and the Pacific. In terms of content, these agreements should be comprehensive and seek to develop rules that correspond to the trading environment of the future, including in services, digital trade and intellectual property rights. FTA negotiations should also be used to create a consistent floor of standards and rules in as many countries as possible, also with a view to creating a stepping stone for rules at the multilateral level.



### FTAs and sustainability - promoting high environmental and labour standards with the support of business

The EU also uses its bilateral agenda to promote consensus among like-minded partners and to develop a network of relations that can promote not only economic but also political goals, including in the social and environmental areas. This is in line with the Sustainable Development Goals and reflects the broader recognition that trade and sustainability are interlinked and mutually supportive.

At the same time, because the EU has been successful in concluding ambitious trade agreements in times of protectionism and strong anti-globalisation feelings, there is a concern that bilateral trade agreements become victims of their own success. Some argue for instance that, if the EU pushes too much for a non-economic agenda, third countries might be less interested in negotiating or might request further economic concessions from the EU.

Business supports a high level of standards in the social and environmental areas. Pursuing these standards in our bilateral trade negotiations can boost the competitiveness of European business and make trade fairer. However, these objectives cannot supersede economics and prevent the EU from pursuing its bilateral trade agenda.

Sustainability policies depend on a good balance between economic, environmental and social objectives. Trade agreements can and should support sustainability objectives while pursuing their primary objective related to trade. Indeed, trade agreements are aimed at creating new market and business opportunities and can also be successful in pursuing sustainability objectives.

In this regard, we support the current sustainability agenda of the European Commission in the context of FTAs. In terms of scope, the trade and sustainable development chapters are inclusive and comprehensive, covering labour issues, the protection of the environment, responsible business conduct and human rights. We also recognise that more efforts should be dedicated to the monitoring and enforcement of these chapters and we welcome the proposals of the European Commission on the way forward to strengthen enforceability.

BusinessEurope recognises the need for a robust enforcement mechanism of social and environmental norms in FTAs. In order to remain credible, the EU should have adequate means at its disposal to act effectively and decisively to address repeated and systemic violations of international obligations by third countries. However, evidence suggesting that a sanctions-based model provides the most effective enforcement approach is far from conclusive. Furthermore, a sanctions-based model has many potential shortcomings related to triggering requirements, the scope of sanctions and potentially diminishing the EU's negotiation leverage with third countries.



## RECOMMENDATION ON FTAs AND SUSTAINABILITY

The trade and sustainable development chapter needs to strike a good balance between economic, environmental and social objectives. It should focus on:

- promoting a level playing field through common standards;
- improving relations between governments and civil society, including business;
- promoting sustainable trade and encouraging business projects that contribute to the Sustainable Development Goals;
- ensuring responsible business conduct and the fight against corruption.

The sustainability chapter cannot and should not replace flanking policies that might be needed to ensure a fair distribution of trade benefits or to mitigate potential negative effects of trade liberalisation. Other EU policies are designed for those purposes.

### FTAs – ensuring implementation and enforcement

An ambitious trade agenda that promotes further market opening and trade and investment liberalisation must go hand-in-hand with proper enforceability and legal tools that ensure a level playing field. In these days when many are questioning rules-based trade it is critical that the EU continues to set the example by actively engaging in the modernisation of existing trading rules through its free trade agreements. It is important that rules under these agreements are enforced in order to ensure their effectiveness and address market distortions.

As the number of the trade agreements concluded by the EU is increasing, more resources will need to be allocated to their implementation and enforcement. This includes the efforts of individual EU Member States, that need to promote the agreements and help companies understand how to use and benefit from them. For instance, this could be achieved by developing a clear national implementation plan for each FTA before they enter into force. Recent reports confirm that the utilisation rate of preferences by EU operators under EU free trade agreements should be improved<sup>6</sup>. Although a core factor remains in some cases the negotiation of complex provisions, such as rules of origin, another important element remains the lack of awareness of opportunities under free trade agreements.

<sup>6</sup> The average total 'preference utilisation rate' (2009-2013) of the EU's free trade agreements is 90 percent for partner country exporters and 67 percent for EU exporters. *In: UNCTAD and Kommerskollegium, The Use of EU Free Trade Agreements, 2018*



If we look at rules of origin in particular, their complexity and differences from one FTA to the other often limit opportunities for European companies. Recent changes in origin verification, shifting responsibilities to importers, are a concern for European companies, as they might put in question the ability to properly safeguard business sensitive information.

At the same time, our partners should also deliver on their commitments. Trade agreements offer structures that allow partners to build the right instruments to cooperate and enforce provisions. Businesses and other civil society organisations can also support this process, for instance through their participation in the Domestic Advisory Groups (DAGs). Experience under these groups has been cumulated over a number of years already. So far, the DAGs are mandated to monitor the implementation of the trade and sustainability chapters of trade agreements. There is now the intention to ask these groups to monitor the implementation of the whole agreement. This can present a number of challenges for the stakeholders involved in the DAGs with a potential impact on the outcome of the monitoring exercise. For instance, it raises questions of resources and expertise and how the economic objectives might be undermined by other concerns putting in question the overall balance of the agreement.

## RECOMMENDATION ON THE ENFORCEMENT OF FTAs

The EU should put stronger focus on the enforcement and implementation of free trade agreements and a common vision with industry of how to translate FTAs into economic benefits. This includes engaging proactively with trading partners to prevent the adoption of trade-distortive measures. It is essential that such efforts are not only conducted by the European Commission, but also by Member States and our trading partners, making use of structures envisaged under the FTAs with a strong, balanced and active participation of civil society including business. The European Commission should also negotiate rules that are coherent and user-friendly, especially for small and medium-sized enterprises. In this regard, the European Commission should reconsider its position on the verification of origin and use the model of the EU-Canada Comprehensive Economic and Trade Agreement rather than the model of the EU-Japan Economic Partnership Agreement.

## Multiplying the benefits of FTAs

Rethinking trade agreements from a geo-strategic perspective is key to ensure that their advantages will be further expanded, reaching more beneficiaries and in a more effective manner.

A more traditional way to achieve this is through cumulation of rules of origin. This approach provides solutions but is limited to problems related to trade preferences. Another idea that we would like to invite the new European Commission to explore is having “open FTAs”. This is a more ambitious approach, as it would cover all areas of trade included in an FTA, not only cumulation. In practice, this would enhance regulatory approximation and the diagonal opening of markets and opportunities.

The Commission could use one of the most modern agreements as an example in order to test the concept. The key principle is that open FTAs make it possible for other countries to join under certain conditions. For instance, they would have to accept the rules of this agreement and negotiate a schedule of commitments that the existing parties agree upon. Open FTAs could be tested, for instance, with partners such as Switzerland and Turkey.

## RECOMMENDATION ON MULTIPLYING THE BENEFITS OF FTAS

The EU should explore different approaches to multiply the benefits of free trade agreements. For instance, the idea of launching open FTAs could be explored and discussed with European business, as a way to achieve further harmonisation and multiply the benefits of existing FTAs.

## A more consistent investment strategy

European business wants to continue to invest in Europe and in third countries to strengthen global value chains and the competitiveness of European companies. A conducive environment for investment implies open and transparent rules as well as legal certainty and the ability to use the system to enforce legal rights. The EU should promote a more comprehensive investment strategy that comprises both external and internal pillars, ensuring a level playing field for investors across the board.

It is also important that instruments that leverage resources for investment within and outside Europe, such as the Investment Plan for Europe, the External Investment Plan of the EU or the EU Connectivity Strategy, are well coordinated and follow the same set of principles, which is not always a given when we look at similar long-term investment strategies of the EU's trading partners.



## External pillar

The 'Trade for All' communication of 2015 introduced a new approach to investment via the Investment Court System (ICS). The objective was to establish a better balance between the right of states to regulate and the rights of investors to be protected. We welcome the ICS as an important step in the right direction. So far, this model has been introduced in CETA, Singapore and Vietnam FTAs. Mexico has also agreed to include ICS in the modernised agreement with the EU. However, the ICS has not yet been tested in practice. The European business community remains concerned as those changes introduced in the investor-state dispute settlement may result in lower levels of protection and, above all, could lead to the exclusion of small investors due to long proceedings and costs. In addition, a case has been launched by Belgium at the European Court of Justice (ECJ), requesting the opinion of the Court on the legality of the ICS under EU law. On 29 January 2019, in his Opinion, the Advocate General found the ICS is compatible with EU law. The final decision of the ECJ is expected in the spring of 2019.

The reform of procedural aspects of investment protection is also currently discussed at multilateral level by the members of the United Nations Commission on International Trade Law (UNCITRAL). The EU is active in this debate and has already proposed the establishment of a multilateral investment court (MIC) that would further institutionalise the system.

An earlier European Court of Justice (ECJ) ruling on the EU-Singapore FTA led to the adoption of a new architecture for trade agreements, where the part dedicated to the protection of investments is effectively split from the free trade agreement, which is of exclusive EU competence. BusinessEurope believes it is important to ensure that investment protection remains a key priority in our bilateral trade negotiations.

The future framework for the screening of foreign direct investments into the EU will also be part of the external pillar of an EU strategy on investment. For BusinessEurope, this instrument should be implemented under a security-centred approach that respects the balance between achieving legitimate security and public order objectives, while protecting private property, securing the freedom of contract and maintaining an open and attractive environment for investment. The role of Member States is critical in this regard and close cooperation between them and the European Commission is essential to ensure a level playing field for FDI in the EU<sup>7</sup>.

Finally, the External Investment Plan of the EU, launched to support investments in neighbouring countries and Africa, should also be considered part of a comprehensive strategy. In this context, we should ensure that the plan is implemented in a way that facilitates the participation of companies of all sizes and from different sectors. Moreover, the amount of funding provided by public institutions to leverage private-sector investment in risky environments should be substantially increased in the next Multiannual Financial Framework.

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<sup>7</sup> See BusinessEurope's [position paper](#) on the screening of FDI into the EU, 6 June 2018

### Internal pillar

While investment has become an exclusive competence of the EU, we observe an increasing number of initiatives with a potential impact on investments from European companies in Europe as well. According to the ECJ Opinion on the 'Slovak Republic v Achmea BV' case, the investor-to-state dispute settlement (ISDS) in the "intra-EU Bilateral Investment Treaties" is not compatible with EU law. Based on this opinion, the termination of these agreements needs to be accelerated.

However, the potential impact on investment flows of the termination of these agreements should be considered seriously by the European Commission. In particular, it would be unacceptable to have a situation where European companies are less protected than non-EU companies, which can benefit from FTAs with the EU or from bilateral investment treaties with EU Member States. From a business perspective an alternative dispute settlement mechanism, compatible with EU law, should be proposed. This mechanism needs to follow high-level standards to ensure efficiency in terms of timing and costs, effectiveness in the conduct of dispute settlement procedure and the enforcement of the decision, be impartial and transparent.

### RECOMMENDATION ON INVESTMENT STRATEGY

The EU should develop a comprehensive investment strategy that puts emphasis both on attracting valuable foreign direct investment into the EU and enabling European investment to take place in third countries. At the same time, it should ensure the states' rights to regulate in the public interest, while protecting investors. To protect cross-border investments within the EU after the termination of the intra-EU bilateral investment treaties, an alternative dispute settlement mechanism compatible with EU law should be put in place in order to guarantee the right level of protection for investors.



## 5 LEVELLING THE PLAYING FIELD

### An ambitious market access strategy

Companies face a number of problems in third-country markets, many of which are not covered by a trade agreement, or problems have not been properly solved during bilateral negotiations. It is therefore important that the market access strategy of the European Commission is reinforced in order to become more oriented towards results, accelerating the process of removal of trade barriers.

The negotiating agenda of the Commission absorbs expertise, leaving the Market Access Unit in need of more resources to deal with day-to-day market access problems. Furthermore, the efforts to improve coordination between the European Commission, Member States and the experts on the ground should be continued. Business also has a vital role to play, as they are often the first to identify trade barriers or potential irritants.

Local content requirements, trade-distorting effects of public subsidies, digital protectionism and restrictions in trade in services are areas where we experience a growing number of problems. The EU should not be afraid to use all the tools at its disposal through economic diplomacy, the Market Access Strategy, but also resorting to the WTO dispute settlement procedure.

Foreign economic diplomacy is also important in this regard. The vast network of EU delegations should be better utilised to support the EU Market Access Strategy. One suggestion would be to increase the importance of economic counsellors in EU delegations, to better seize opportunities created by trade and investment agreements, to overcome persistent market access barriers and to promote strategic pan-European commercial projects. EU economic counsellors should create opportunities for EU business and work in closer connection with Member States' embassies.

In addition, EU delegations can help enhance relations and information exchange with the business community in the EU as well as with EU businesses present in the country and can facilitate contacts with local authorities and business organisations.

## RECOMMENDATION ON MARKET ACCESS STRATEGY

The new European Commission should further strengthen its ambitious market access strategy in its work programme, for instance by allocating more resources and by ensuring closer coordination among business, Member States, the European External Action Service and EU delegations in third countries and all institutions involved. The new Commission should not hesitate to launch trade disputes whenever they are legally justified under the EU's free trade agreements or the World Trade Organisation rules.

### Levelling the playing field in public procurement

The area of public procurement provides significant market access opportunities for European companies. The EU has the most open public procurement market globally and is a party to the WTO Government Procurement Agreement (GPA). Nevertheless, our companies do not always enjoy similar access to third markets, especially those that have not yet acceded to the GPA.

There is therefore the need to level the playing field. On the one hand, we have to make sure that when companies originating in third markets participate in the EU's public procurement market, they respect the rules. On the other hand, we also need to reinforce our efforts to open third-country public procurement markets for European companies. In this regard, it will be of significant importance to promote and achieve the accession of major EU trading partners such as China and Russia to the GPA with acceptable offers. It is also important to strive for dedicated comprehensive rules in the EU's free trade agreements, as well as to resume discussions on the development of an international procurement instrument.

## RECOMMENDATION ON PUBLIC PROCUREMENT

The new European Commission should put more emphasis on monitoring and enforcement of the rules in the area of public procurement at global level and support and encourage more partners to join the WTO Government Procurement Agreement. At bilateral level, the EU should also promote ambitious and comprehensive rules through its free trade agreements. Equally, the Commission should explore appropriate solutions under an international procurement instrument, while avoiding any drawback or extra burden for European companies.



### Effective trade defence instruments

Since the publication of the 'Trade for All' communication, two major accomplishments have been achieved in this area. First, the adoption of a new methodology to calculate anti-dumping for countries in which there are market distortions and second, the modernisation of the whole trade defence legislation. European business expects to see how these changes will work in practice and what the potential impact will be on the procedures and, ultimately, on the market itself.

The EU is also looking at other ways to address some market-distortive practices that might not be properly addressed by existing WTO rules. The preferred option would be to change existing WTO rules and this is the main aim of the trilateral discussions involving Japan and the USA. However, many are starting to look at other policy areas and tools like competition to address certain trade-distorting practices on the EU market.

### RECOMMENDATION ON TRADE DEFENCE INSTRUMENTS

The EU needs to ensure that its trade defence instruments remain efficient and effective in addressing market distortions and are useful for the European industry. In particular, the EU needs to address unfair competition due to trade-distorting subsidies.

## 6 TOOLS TO LEVERAGE OUR EXPORT POTENTIAL

### Export credits

Export credits are one of the main official tools in support of cross-border trade. An export credit<sup>8</sup> is an insurance, guarantee or financing arrangement which enables a foreign buyer of exported goods and/or services to defer payment over a period of time. These instruments are used by many governments, including European ones, to support exporters in reaching third markets. Since the 1970s, OECD countries have agreed on the Arrangement on Export Credits and the Export Credits Sector Understandings to safeguard a level playing field for the provision of these instruments.

The global trade landscape is significantly changing, challenging the scope and regulatory content of the Arrangement and, consequently, the level playing field for exporters. Non-OECD countries are aggressively using export credits and other financial instruments for cross-border trade as subsidies. This is significant when considering that in 2016 China, for instance, accounted for the highest share of global exports at 17%. Within the OECD, unfair competition is increasingly difficult to counter, and innovative financial

8 <http://www.oecd.org/trade/exportcredits.htm>



instruments to match it are beginning to surface outside the regulatory scope of the Arrangement.

This presents serious challenges for European exporters. Discussions are currently taking place regarding the need to update the OECD Arrangement as well as on how to include China in the Arrangement.

## RECOMMENDATION ON EXPORT CREDITS

The OECD Arrangement is soft law, a “gentlemen’s agreement”, which the EU has nonetheless implemented in EU law. Member States are therefore formally bound to these rules. This is not the case for other participants to the Arrangement and, consequently, they are more dependent on it being fit for purpose. The new European Commission should engage actively in the modernisation of the Arrangement in order to meet today’s challenges in global trade and find ways to reinforce the respect of multilateral rules on export credits globally.

### Supporting SMEs<sup>9</sup>

Small and medium-sized enterprises (SMEs) are the backbone of the European economy and an important source of employment. SMEs also have an excellent potential to grow and stimulate innovation. It is therefore important that their export capacity is further enhanced and better supported. In this respect, the inclusion of a dedicated SME chapter in the EU-Japan Economic Partnership Agreement is an important step in this direction. The new Commission has to make sure that similar chapters are included in all EU FTAs.

In general, more emphasis should be put on ensuring that help desks and one-stop-shops for SMEs are functioning and that information is duly communicated in order to reach the vastest number of potential beneficiaries. In the same manner, the tools of the Market Access Strategy of the Commission, including the Market Access Database, should become more user-friendly.

<sup>9</sup> See also BusinessEurope’s Memorandum “[Setting ambitious goals for the future EU SME policy](#)”, 19 February 2019



## RECOMMENDATION ON SUPPORTING SMES

Supporting small and medium-sized enterprises through especially designed tools in the framework of the EU trade policy is important to ensure European SMEs export potential. The new European Commission should include dedicated SME chapters in all its free trade agreements and step up efforts to increase the visibility and effectiveness of other, existing instruments, for instance the market access database.

### Economic diplomacy and export promotion

The EU should use its leverage to generate new market opportunities for European companies in third markets, while ensuring strong coordination between EU and Member States' actions and, most importantly, staying in close cooperation with businesses. Any additional action in this field needs to be undertaken in alignment with Member States since business promotion is a national competence. However, we believe that more can be done to align national and EU long-term goals better.

One way to achieve this objective would be placing economic issues like trade and investment on the agenda during all EU official visits, high-level meetings and missions to third countries and providing political and business leaders with the opportunity to openly exchange on these topics. For example, setting a framework providing businesses with the possibility to be part of Commission missions and visits abroad. Initiatives like the "Missions for Growth" initiated in the past had the potential to trigger positive externalities for companies and their reintroduction should be considered. We also suggest using high-level meetings and missions in third countries to witness the signing of memoranda of understanding and deals.

In addition, coordination between the Commission and Member States' trade promotion organisations should serve as a tool to improve the coherence of external policies and to foster growth and jobs in Europe. Ultimately, to become more efficient in pursuing our economic interests abroad.



## RECOMMENDATION ON ECONOMIC DIPLOMACY

When preparing and realising missions to third countries, the EU should include businesses and industry. Furthermore, closer cooperation between the European Commission and Member States' trade promotion organisations should be fostered.



# BUSINESSEUROPE



**BusinessEurope** is the leading advocate for growth and competitiveness at the European level, standing up for companies across the continent and campaigning on the issues that most influence their performance. A recognised social partner, we speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.



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Ireland



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