CONSULTATION ON A RENEWED TRADE POLICY FOR A STRONGER EUROPE

Submission on behalf of the **RESPECT** consortium
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This submission draws on research findings from an ongoing Horizon 2020 research project "Realizing Europe's soft power in external cooperation and trade" (RESPECT) that brings together eight European universities and policy research institutions – the European University Institute (coordinator), the Center for European Policy Studies, the Center for Economic Policy Research, Central European University, European Center for Development and Public Management, Université Libre de Bruxelles, University of Bern, University of Sussex, Columbia University School of International and Public Affairs and the University of International Business and Economics. Research outputs are available on the project website at http://respect.eui.eu/.

SUMMARY OF MAIN RECOMMENDATIONS

- A Europe that is less open to trade and investment will not be a stronger Europe.
- Conditioning access to the Single Market as a tool to induce changes in foreign trade and nontrade policies and seeking to leverage access to the EU to 'export' EU regulatory approaches must be complemented by economic diplomacy and regulatory cooperation.
- More attention should be given to complementing trade agreements with other forms of international cooperation that do not entail reciprocal market access liberalization.
- The EU should recognize, bolster, and use better its substantial soft power in trade and sustainable development through multilateral engagement, including the WTO and the G20, and leverage its leadership as a provider of development assistance.
- An underappreciated instrument of EU external engagement is policy dialogue to establish good practice in different issue areas. Such 'soft law' cooperation complements 'hard law' trade agreements and should remain an integral part of EU external action.
- The EU should increase its engagement in international regulatory cooperation organized on an open plurilateral basis to both facilitate trade and achieve nontrade objectives, including the Sustainable Development Goals.
    - A priority for plurilateral cooperation is to determine the role of trade and subsidy policies in the European Green Deal. Doing so would bolster the credibility of the Union's commitment to multilateralism and attenuate risks of trade conflicts.
- Revitalize the WTO as a forum for deliberation and negotiation of rules to address the negative cross-border spillover effects of national policies. Priority reform areas include:
    - Changing the process for collection of data on national trade and subsidy-cum-industrial policies and analysis of the systemic effects of gaps in WTO rules;
    - Engaging in plurilateral negotiations with major emerging economies and OECD nations to agree on new rules for subsidies and for digital trade policies;
    - Resolve the conflict on the operation of the WTO Appellate Body by working with other WTO members to agree on a broader reform to dispute settlement processes.
- Better harness EU development and trade finance to support trade policy, building on experience with joint programming and implementation under the 'Working Better Together' initiative and the 'Team Europe' global response to the COVID-19 pandemic.
- Improve collection of data on applied trade policies, including for services and digital trade, support analysis of the effects of EU trade policy initiatives, and solicit input and feedback from private actors to better inform EU trade policy making and implementation processes.

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RESPONSES TO THE CONSULTATION QUESTIONS:

Question 1: *How can trade policy help to improve the EU's resilience and build a model of open strategic autonomy?*

The main elements of trade policy comprises import tariffs; trade defense instruments (antidumping actions and countervailing duties to offset the injury to EU producers of imports of goods that have benefitted from foreign subsidies); safeguard actions to assist EU industries adjust to import competition; negotiation and implementation/enforcement of trade agreements, bilateral, regional, plurilateral and multilateral (WTO); nonreciprocal tariff preferences for developing countries (GSP, EBA); and rules of origin to determine whether goods come from partners that are eligible for tariff exemption or reduction. Whether and how these trade instruments can be used to build a model of "open strategic autonomy" depends importantly on what the term is meant to describe.

It is important to define clearly what is meant with resilience and open strategic autonomy – in the process clarifying what it does not comprise. The terms are ambiguous and as a result, different stakeholders can have different conceptions leading to uncertainty and potentially false perceptions by EU trading partners. What is meant with "open"? What is "strategic"? What does "autonomy" encompass? DG Trade has emphasized in external communications that the terms denotes a greater focus on the use by the Union of policies to pursue and defend EU values and economic priorities, with openness signaling that this does not imply putting in place barriers to trade and investment. There is a tension here, however, insofar as trade policy is an instrument that discriminates against foreign firms and products, either through restrictions on imports or support for EU firms in contesting export markets. It is not difficult for a sceptic to read these words as code for greater self-reliance that motivates a more restrictive trade policy stance.

More restrictive trade policies are inconsistent with openness. Using trade policy to incentivize reshoring of productive activities and tasks done more efficiently outside the EU is counterproductive. Seeking to do so will have negative effects on EU exports (because of retaliation and emulation) and EU consumers (higher prices; less choice). It would also undercut the perceived credibility of the EU's stated emphasis in favor of multilateral cooperation

If strategic autonomy denotes a goal of greater self-sufficiency in certain sectors trade policy can be used to impede imports. A more restrictive trade policy stance is unlikely to enhance resilience to shocks and is likely to increase costs of the targeted goods or services and have broader negative effects throughout the economy. More effective and appropriate is the use of trade agreements to reduce policy uncertainty for firms and the costs of sourcing goods and services. Trade agreements and related cooperation in a range of related areas – trade facilitation; protection of intellectual property; investment in tangible and intangible assets – can support the design and operation of cross-border value chains, and offer the prospect of greater resilience to exogenous shocks by encouraging diversification across sources of supply.

Improving resilience requires bolstering the capacity of firms – in and outside the EU – to respond to shocks. Insofar as trade policy impedes the operation of supply chains it is likely to reduce resilience as it puts the burden on domestic industries to respond. As shocks are idiosyncratic and usually will not be global in nature, a strategy that uses trade policy to increase domestic production may not enhance resilience, as it is likely to be more efficient and effective to source from unaffected sources. What is called for is diversification. From a trade policy perspective this suggests a focus on negotiating more trade agreements and intensifying plurilateral and where possible multilateral cooperation on specific policies that enhance the joint capacity to withstand and recover rapidly from major shocks.

Trade policy can be an element of an effective strategy to enhance resilience by enhancing the ability of EU firms to invest in and source from other countries (through trade agreements and investment agreements) and through cooperation with partner countries to put in place governance arrangements to support coordination with the private sector to respond to crises and shocks. Key needs in this regard include collection and sharing of data on production capacity**,** public-private cooperation to identify and resolve supply chain frictions and bottlenecks, as well as policy regimes that reduce trade costs created by differences in product regulation. We discuss the latter elements under Question 2.

An important dimension of what is needed from a resilience and open autonomy perspective is to ***improve information and data collection*** and making this available to stakeholders, including researchers. Decisionmakers and the public should understand ***the objectives*** that will inform trade policy. There must be clarity on the ***baseline performance indicators*** to be able to assess progress in achieving the goals and ***periodic assessments*** whether the goals are being attained and at what cost. Determining whether policies are effective and efficient is important both from an economic (resource allocation) and a political legitimacy perspective.

Strengthening data collection and monitoring and evaluation is critical for accountability and learning about what does and what does not work. It is also important for the "openness" dimension: the Commission should be fully aware of both the potential and actual (ex post) spillover effects of Europe's trade policy choices on trading partners. Attenuating these – through both unilateral actions centered on the design of the policy instruments used and international cooperation – will help reduce the extent of "retaliation." Cooperation will be needed as insofar as EU action is at the expense of trading partners the countries concerned can be expected to take actions that are detrimental to the EU's interests. Such assessments should include an ex ante element – use of sustainability assessments to consider the likely effectiveness and incidence of interventions aimed at resilience and autonomy.

Question 2: *What initiatives should the EU take – alone or with other trading partners - to support businesses, including SMEs, to assess risks as well as solidifying and diversifying supply chains?*

One possible initiative the EU can take is to support the creation of institutional mechanisms through which businesses, including SME representatives, can engage with each other, with other stakeholders, and government agencies to identify risks (including weak links in supply chains) and how current policies impact on specific supply chains of interest. The aim would be to provide information to the Commission and member states on frictions created by policies or the absence of policies and identify opportunities to enhance the resilience of production networks and lower transaction costs. Elements of a possible model are discussed in greater length in Findlay and Hoekman (2020) (https://cadmus.eui.eu/handle/1814/68678). This builds on approaches that have been developed in multistakeholder initiatives focused on sustainability standards for products and production processes. Such a mechanism does not exist at present.

Mechanisms to support coordination between the public and private sector to respond to crises and shocks have not been a feature of EU trade policy to date. The European Enterprise Network does not provide a platform for this, nor do other mechanisms at EU level such as the Market Access Partnership, which has a bilateral focus and is limited to supporting EU exports. The COVID-19 experience makes clear this should be given greater attention. What follows provides two suggestions (Hoekman et al., 2020b: https://www.globalpolicyjournal.com/blog/30/04/2020/enhancing-trade-supply-responses-covid-19-pandemic).

The first is to develop a ***network of sector-specific international information systems*** that spans the EU and major partner countries (sources of supply/demand) that assists governments (Commission) to monitor market conditions and identify slack and chokepoints in global production. Governments need information systems that allow them to determine where supply capacity exists and that helps to understand the relevant supply chains. Firms generally will have information on supply options, but the Commission and EU governments will not have such information readily to hand. Both sets of actors need to be able to identify bottlenecks in the supply chain in real time and mechanisms to share information and support joint actions to address them expeditiously.

During the COVID-19 crisis the absence of such information systems meant that authorities did not have a good understanding of the prevailing global supply chains and production capacity. There are exceptions, such as the New Zealand Medicines and Medical Safety Authority, which requires firms to disclose their supply chain, including where active ingredients for medicines are made and where they are packaged. However, most authorities and jurisdictions seem to have been largely in the dark regarding the nature and composition of the relevant supply chains. There is a notable contrast here with other policy areas such as food products, where traceability throughout the supply chain has become a common feature of the production and distribution process.

Following the 2007-08 global food price shocks, which led to a third of global wheat production and over half of world rice output becoming subject to export restrictions, the G20 created the Agricultural Market Information System (AMIS). This has helped countries to generate information on supply-demand balances, stocks, and policies, supported by a network of international expertise. A similar system for the medical and protective product markets that are critical for effective responses to public health emergencies could help promote transparency and provide a platform for governments and relevant international organizations to coordinate crisis responses. This should extend beyond sector-specific information systems for EU member states and include cooperation with EU partner countries (ENP countries and nations with which the EU has concluded trade agreements), as well as the major suppliers of critical inputs and products – the United States and large emerging economies. As was done in the case of food, the international (extra-EU) dimension of operating the requisite information platform will be facilitated by drawing upon existing international organizations, including specialized UN agencies depending on the sector concerned.

A second suggestion to increase EU resilience to exogenous shocks and facilitate trade is to ***pursue greater cooperation with partner countries to reduce the trade costs associated with differences in regulatory regimes***. Ensuring products conform with regulatory requirements is critical for health and safety but associated regulatory enforcement processes can impede rapid responses to an emergency. Cooperation between the relevant sectoral regulators will facilitate trade and access to supplies from different sources. International cooperation to agree on common standards for products and production processes, while difficult and time-consuming, is one path to reducing regulatory heterogeneity and enhancing resilience over time. Supporting international cooperation between regulators to establish where regulatory regimes across countries/systems have the same goals and supporting work towards establishing where regimes are equivalent can make a significant difference in enabling the needed supply responses to crises by facilitating trade.

Question 3*: How should the multilateral trade framework (WTO) be strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment?*

The structure of the world economy has changed significantly since the WTO was established in 1995. Servicification, with associated cross-hauling of foreign direct investment (FDI), cross-border data flows and digitization of production, and the growth of emerging economies, notably China, that have successfully used a range of policies that are the source of trade tensions, call for updating the multilateral rulebook. The use of trade-distorting policies has been increasing in many WTO members, both instruments that are well understood and covered by WTO disciplines (e.g., border measures) and others that are less transparent and only partially covered by the WTO, if at all (e.g., tax incentives to attract FDI; subsidies to support local production or exports). Subsidies and measures with equivalent effect accounted for more than half of trade-distorting actions imposed by G20 countries between 2009 and 2019 (Evenett, 2020: https://cadmus.eui.eu/handle/1814/63665).

The EU has a strong stake in sustaining the rules-based multilateral trading system, both because many practices that generate negative cross-border competitive spillovers cannot be addressed effectively on a bilateral basis because large emerging economies – and to date the US – have not been willing to participate in deep agreements that include disciplines on investment, competition, industrial and regulatory policies. Any agreements to extend and update rules of the game in such areas must span the large emerging economies, notably China, to be meaningful. Ensuring that the WTO remains an effective forum for cooperation on trade is critical for European companies and consumers given that multilateral solutions are required to reduce policy uncertainty and trade costs and to support the realization of the SDGs.

Two operating modalities of the WTO – consensus-based decision-making; and special and differential treatment (SDT) of developing countries – have weakened to ability of the WTO to function as a venue to address trade tensions via new rulemaking. The first has been used by WTO members to block efforts to engage in deliberations with a view to prepare the ground for revisiting and updating the rulebook. The second has allowed advanced developing countries to offer less than full reciprocity in trade negotiations, feeding perceptions that large emerging economies have an 'unfair competitive advantage'. Moving forward requires cooperation centered on plurilateral initiatives that are not open to veto by countries that do not wish to pursue cooperation in a given area.

The situation confronting the trading system has parallels with the 1980s, which saw extensive recourse to trade-distorting measures in response to a rapid rise in exports from East Asian economies. This motivated a preparatory process that led to the launch of the Uruguay Round in 1986. A similar effort is needed today, aimed at resolving trade conflicts and tensions that are of greatest relevance from a systemic perspective. There are three areas where such efforts are both urgent and important from a systemic perspective: (i) cooperation to address issues that underlie rising trade tensions; (ii) resolving the impasse on the system to resolve trade disputes; and (iii) pursuing new approaches to address disparities in capacity and economic development in a more meaningful way.

Progress requires agreements that encompass the EU, China, and the US. The trilateral process with Japan and the US to identify ways to strengthen disciplines of subsidies, state-owned enterprises (SOEs) and technology transfer policies has been closed door and does not appear to have been informed by economic analysis and assessments of the potential effects and effectiveness of alternative options. The same applies to the WTO dispute settlement system. Coming to an accommodation with the United States is necessary to re-establish binding adjudication of disputes in the WTO. The multi-party interim arrangement (MPIA) put in place by the EU is a good interim stopgap but what is needed is engagement with and among all WTO members on a long-term solution that improves the system put in place in the early 1990s and that many WTO members agree can be improved. This calls for a revision of dispute settlement processes as part of broader WTO reform.

While the rapidity and magnitude of Chinese economic growth and perceptions that the increasing role played by Chinese SOEs and the extent of industrial policies are major factors driving calls for action to ensure there is a level playing field, it is important to recognize that the challenges confronting global trade governance and cooperation extend beyond China.

EU leadership is needed to work with WTO members – both like-minded and not – to define a new work program for the organization. A key missing ingredient is a common understanding of the problems that need to be addressed. A necessary condition for developing such an understanding is analysis of the size and incidence of the spillover effects of contested policy measures that distinguishes between measures of systemic importance (that distort competition in a major way) and those that are not. This requires information on applied policies (evidence) and analysis of their effects. Both are lacking.

RESPECT consortium papers suggest specific action along four lines:

1. ***Leadership by the EU to improve the extant information of applied trade-related policies*** by mobilizing support for the WTO secretariat to work with other international organizations to create and maintain an up-to-date database of trade-related policy measures for goods, services and digital products and cross-border data flows that is used to generate regular information reports for WTO members, as well as analysis of the effects of observed policies on global trade patterns and the SDGs. The most comprehensive and timely data on policies currently is collected by universities and think tanks, which reflects the WTO not performing one of its core functions: to assure full transparency of member trade policies. This is the case for policy areas covered by WTO agreements. Looking forward, the WTO secretariat should have a mandate to collect information on its own initiative as opposed to relying on notifications from members and this mandate should encompass a broad definition of trade relevant policies – including production subsidies, export support policies and investment incentives (Hoekman and Nelson, 2020: https://cadmus.eui.eu/handle/1814/66586).

2. ***Engaging in deliberations to discuss the spillover effects of national policies*** to determine what types of policies are of greatest potential concern from a systemic perspective and considering how and where cooperation can be designed to attenuate the negative spillover effects. Such deliberation must be open to all WTO members but organized in a manner that aims at negotiation of an open plurilateral agreement that is applied by a group of WTO members if not all WTO members desire to participate (Hoekman and Sabel, 2019: https://cadmus.eui.eu/handle/1814/60905).

3. Launching an effort to go beyond monitoring of trade policies to ***evaluate the effects of implementation of WTO agreements in collaboration with stakeholders*** with an interest in a given policy area – e.g., regulators; ministries of finance and economy; consumer protection, etc. – and associated international organizations. Learning from experience and understanding the effects of policy is important to provide a basis for improving the operation of the WTO and for engagement with citizens (Hoekman, 2019: https://cadmus.eui.eu/handle/1814/66051).

4. ***Leading deliberations to reform WTO dispute settlement procedures.*** This should focus on both the operation of the first and second stage of the process (panels and the Appellate Body) and the role of the Secretariat. There has been too much focus on the Appellate Body. While understandable, given that the operation of this body has been the primary focus of the United States, the current crisis offers an opportunity to bolster the whole system. There is an extensive scholarly literature as well as numerous official submissions by WTO members that illustrate many improvements can be

made, building on the experience that has accumulated in the past 25 years (Hoekman and Mavroidis, 2020: https://cadmus.eui.eu/handle/1814/65965; https://cadmus.eui.eu/handle/1814/67008).

Plurilateral initiatives are an important path for multilateralization of regulatory cooperation dimensions of bilateral and regional trade agreements concluded by the EU. Leadership by the EU on new open plurilateral agreements (OPAs) is not only a path forward in revitalizing the WTO as a forum for deliberations and negotiation. ***OPAs also offer the opportunity to address more effectively economic development and capacity differences*** by addressing specific constraints on an issue-by-issue and country-specific basis and linking trade to development policy – official development assistance and EU aid for trade programs – policy areas in which the EU is a global leader and which are important sources of EU soft power.

Question 4*: How can we use our broad network of existing FTAs or new FTAs to improve market access for EU exporters and investors, and promote international regulatory cooperation– particularly in relation to digital and green technologies and standards in order to maximise their potential?*

The EU has increased the focus on enforcement of trade agreements with the creation of the Chief Trade Enforcement Officer position in DG Trade. This is an important step in using FTAs (and the WTO) to enhance market access. More emphasis on enforcement must be complemented by greater investment by the Commission in monitoring of foreign trade policies and ***analysis of the effects of such policies, including services, digital economy and investment-related measures*****.** This should encompass policy instruments that may not be covered by trade agreements. Such an effort can be outsourced and the data should be made publicly available so that businesses have access and the research community in the EU and in partner countries can use the information to analyze the effects of policy.

Information and analysis are needed to permit ***ex post empirical assessments*** of the implementation of trade agreements and their effects on both economic and nontrade objectives. These should include a focus on policy areas that have not performed as expected or that should have been but were not included in an agreement. The Commission at present devotes considerable resources to ex ante impact assessments of FTAs but devotes less attention to ex post monitoring and evaluation (M&E) of FTAs and trade relationships. Greater effort to assess the effects of FTAs can help to identify areas where cooperation can be improved to enhance benefits for both the EU and partner countries.

A finding from RESPECT research is that trade agreements (liberalization) should not be seen as the only instrument to improve market access. ***International regulatory cooperation (IRC) is an important complement to trade agreements***, with associated targeted economic development assistance for developing country partners. As regulatory policies are increasingly a key factor affecting the costs and ability to trade across borders, and are critical in improving partner country performance on nontrade issues and the realization of EU values, IRC should come to be a more prominent element of trade cooperation.

Improving regulation may be achieved more effectively and efficiently without embedding IRC in trade agreements. This is the case when regulators may have concerns of linkages being made that could undercut the realization of regulatory goals to achieve market access objectives. However, in other cases satisfying regulatory requirements will be necessary to access a market, whether for EU exporters or partner country exporters to the EU. Determining such instances should inform the decision whether to "link" regulatory cooperation to trade policy. In practice, the inclusion of regulatory matters in FTAs may be affected by what falls under the Commission's competence in that a resulting agreement does not become mixed.

More attention needs to be given to identifying where the performance of regulatory regimes and institutions will determine the size of the potential gains from an FTA for both the EU and partner nations. Research has shown that the quality of regulation and institutions may determine the size and even the existence of benefits of trade agreements for developing countries. Not focusing on regulatory improvements may then also have dynamic consequences, reducing support for deepening trade relations in the partner countries concerned. A corollary is the importance of bringing development cooperation instruments together with EU trade policy initiatives (FTAs; GSP), so that the former can support the latter and vice versa (Fiorini and Hoekman, 2018a, 2018b: https://cadmus.eui.eu/handle/1814/59951; https://cadmus.eui.eu/handle/1814/60572).

IRC should be pursued outside FTAs and the bilateral settings that to date have been the focus of the EU. Prominent examples are data adequacy decisions, the Forest Law Enforcement, the Governance and Trade action plan and the GSP+ program. These types of initiatives are important in linking market access to the pursuit of/support for attaining EU nontrade goals and values – which we recognize are often norms that have been established through international fora – but are largely bilateral in nature: it is the EU that sets the criteria for cooperation on a bilateral basis. Open plurilateral agreements offer a means to extend the governance and participation in IRC ventures to a broader group of like-minded countries. Doing so can be a steppingstone to gradual multilateralization of regulatory cooperation. Moving from bilateral arrangements to a plurilateral framework can reduce transactions costs, support sharing of resources and promote learning.

Priorities for such plurilateral IRC include (i) the digital economy; (ii) cross-border flows of products, service providers and data; and (iii) the use of trade policy instruments when implementing programs to address climate change. Digital economy agreements and digital economic partnership agreements (DEPAs) that have been/are being negotiated in the Asia-Pacific region (involving Australia, Chile, New Zealand, Singapore) as well as the ongoing negotiation on an open plurilateral Agreement on Climate Change, Trade and Sustainability (ACCTS) between Costa Rica, Iceland, Fiji, New Zealand, and Norway are examples of plurilateral cooperation that the EU should learn from and consider emulating. There is a distinct risk that a reliance on EU market power (the "Brussels effect") to justify unilateral setting of norms and criteria that determine the tax on digital services-related revenues, the additional carbon adjustment tax to be applied to products when entering the EU, or whether data protection regimes are adequate, may be regarded by partners, at times justifiably, as arbitrary in their implementation, open to politicization, and resulting in de facto discrimination. The prospects of contestation of EU trade policy before the WTO is apparent as is the likelihood of retaliation by large trading partners and the associated acceleration of already nascent trends towards regional fragmentation of the global economy. This is not in the EU interest. Engaging with non-EU countries on the design and application of measures in these areas and seeking to move forward on a concerted basis will both help attain EU goals and regulatory objectives while reducing trade costs for firms and thus supporting global trade.

Question 5*: With which partners and regions should the EU prioritise its engagement? In particular, how can we strengthen our trade and investment relationships with the neighbouring countries and Africa to our mutual benefit?*

Bolstering trade and investment relationships with neighboring (ENP) countries and Africa is vital given the importance of these regions for the EU on many dimensions, ranging from peace and security to migration and deep historical ties. But it is also important to continue and bolster engagement with

China, other large emerging economies, and the United States. Africa is a dynamic region with great economic potential, but China, India and the US are very large markets that should not be neglected.

The EU has made significant progress in better connecting its trade and investment objectives with its development policy instruments, boosting its aid for trade, but also increasing its focus on support for private sector engagement and leveraging private investment. The principles underlying the External Investment Plan (EIP) should be extended through the enhanced European Fund for Sustainable Development (EFSD+) and fostering greater cooperation between European Development Finance Institutions (DFIs), the EIB and EBRD. Trade finance, notably for SMEs, should be given greater attention in this context.

Efforts should be made to better connect trade and private sector related activities of EFSD and DFIs, with relevant activities of Export Credit Agencies (ECAs) and Investment Promotion Agencies (IPAs), in the EU and in partner countries. In addition, support to trade and investment related activities of the private sector should be more coherently pursued in practice, effectively linking the three pillars of the External Investment Plan – 1) EFSD/guarantees, 2) technical assistance, 3) investment climate – including in connection to trade opportunities (Bilal, 2020: https://ecdpm.org/publications/towards-eu-global-covid-19-response-2-0-boosting-smarter-finance/).

Input and feedback from the private sector can be improved to better inform EU trade policy making and implementation processes. Such feedback can be mobilized through various initiatives ranging from the Enterprise Europe Network (EEN) to the Sustainable Business for Africa (SB4A) platforms. This can also inform aid for trade, as well as "investment for trade" to address targeted trade and investment bottlenecks, and help promote relevant value chains, better harnessing the "Jobs and Growth Compact" approach of the EU to relevant trade and investment opportunities. In its programming exercise, ***the EU should better target value chains and sectors with high trade and investment potential, for local markets and to the EU***, drawing on business interests and incentives. To do so effectively, more grant funding should be allocated to project development in these strategic economic sectors, notably those projects helping to address trade-related opportunities and constraints. Such project development efforts are one of the main conditions to unleash more significant investment, as envisaged under the EIP for instance. Overall, the EU could better harness its development and trade finance initiatives to its trade policy, in closer relations with EU member states initiatives, including by taking advantage of the 'Team Europe' approach adopted in the EU Global Response to the COVID-19 and the 'Working Better Together' approach (through joint programming and joint implementation).

To strengthen its trade and investment relationship with neighbouring and African countries, the EU should seek to better understand and build on local dynamics in these countries and regions. ***EU trade negotiations, in North and sub-Saharan Africa, have too often been hampered by the perception that the EU is pushing its own agenda***, with insufficient recognition of the constraints faced by local economies (Bilal and Hoekman, 2019: http://respect.eui.eu/respect-e-book/). Connecting better to local dynamics and initiatives is an imperative for the EU trade and investment policy to become more successful. For trade and investment partnerships to be effective, they must rely on initiatives developed jointly, building on joint strategic priorities and interests. In Africa, this is the African Continental Free Trade Area (AfCFTA), which offers a most relevant political anchor to harness the relations between the two continents.

The AfCFTA is not only about intra-Africa trade, but also about productive capacity for economic transformation. On trade issues, it is the high-political platform to address trade-related issues in Africa. The EU aid for trade agenda can be tailored to most effectively support the AfCFTA broad agenda, including in terms of localisation of production and development of value chains, including towards Europe. More attention should be given to the synergies and complementarities between the continental integration with the AfCFTA, sub-regional integration processes centred around the Regional Economic Communities (RECs), and the implementation and further negotiations of economic partnership agreements (EPAs). Deepening of the EPAs, as currently negotiated with five East and Southern African countries (Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe) should be conducted in coherence with the AfCFTA, so as to strengthen it. Similarly, the long-term prospect of a continent-to-continent free trade agreement could start with technical alignment of the EPAs and the EU PTAs with north African countries to the AfCFTA, to simultaneously facilitate intra- and inter-continental trade. Sharing the experience of the EU own integration and trade policy formulation, as well as accompanying policies, could be of great benefit to Africa.

Building on the EU EIP initiative, the 2018 EU's *Africa-Europe Alliance for Sustainable Investments and Jobs* and the 2020 European Communication *Towards a comprehensive Strategy with Africa*, as well as national initiatives such as the *German Marshall Plan with Africa* and the *French Choose Africa initiative*, and international ones such as the *G20 Compact with Africa*, ***the EU should devote greater efforts to stimulate investment based on African initiatives, with African actors and through African public and private financial institutions***. Joint initiatives and platforms could be established, for instance to bring together European, international and African public development finance institutions. The EU engagement in Africa could contribute to more effectively build local trade and financial markets and institutions. The EU Green Deal can also help promote a green recovery through sustainable investment. The ability of the EU to build upon and respond to partner country priorities in a flexible manner is a key component of success (Apiko et al., 2019; Lui and Bilal, 2019: http://respect.eui.eu/wp-content/uploads/sites/6/2019/12/RESPECT-Report-WP4-3-EU-trade-and-aid-coherence.pdf).

Continued prioritization of the EU's relations with neighboring countries is important, not only in the interest of political stability, but for the promotion of sustainable development as well. The EU has already deployed some instruments – financial assistance, mobility agreements, and DCFTAs – to promote trade and non-trade related objectives in the framework of the European Neighborhood Policy. All these instruments can be improved. Common sources of complaints by stakeholders from neighboring countries referred to limited financial assistance, too few benefits and high costs of DCFTA implementation, and low institutional capacity to implement expected reforms. Enhancing the magnitude of benefits generated through expansion of trade and investment is paramount to encourage neighboring countries to continue to deepen their ties with the EU.

Strengthening the developmental capacity of domestic state organizations to design and implement programs that increase the positive and decrease the potential negative externalities of increased trade is of paramount importance. It is important to further assist programs that increase the capacity of domestic business and labor organizations to enhance quality of jobs through investments in skills and enforcement of labor standards. Such programs, involving state actors where possible, would ensure that economic benefits are shared with broader segments of society and could result in a reduction of migratory pressures. EU measures to facilitate new benefits has become especially important as new – sometimes competing – powers have emerged both to the east and south of the EU, and several governments from these regions seek to diversify their international economic relations. More differentiation is needed in deploying assistance and capacity building programs *within* both the eastern and southern neighborhoods, depending on the domestic conditions in individual countries and preferences of key stakeholders to deepen their ties with the EU.

Finally, the EU should ***ensure that trade preferences granted to developing countries through its GSP scheme are offered on a stable and durable basis***. Uncertainty about market access conditions can be detrimental to exporters planning to invest in products eligible for preferential treatment in the EU; conversely, the removal of trade policy uncertainty leads to sizeable increases in trade for affected countries (Borchert and Di Ubaldo, 2020: https://cadmus.eui.eu/handle/1814/66268).

Question 6*: How can trade policy support the European renewed industrial policy?*

Maintaining an open market should be the main way for trade policy to support a renewed industrial policy. A basic principle should be to recognize that a restrictive trade and investment policy will rarely be an effective instrument to promote innovation and productivity growth. This is a matter for other policy instruments ranging from fiscal and investment incentives, provision of digital infrastructure, innovation and R&D policies, capital markets and education/skills-related-policies.

Insofar as more emphasis will be put on addressing potential market distortions associated with competition by foreign firms that have benefitted from subsidies and foreign SOEs it is important to consider taking a competition policy-informed approach that centers on welfare effects and whether there is a good case for competition concerns that cannot be addressed through the application of EU competition law. A feature of EU trade defense instruments is that, notwithstanding the inclusion of language regarding action should be determined to be in the EU public interest, in practice the main criterion is injury to European competitors and not injury to competition on (contestability of) the European market. A more competition policy-informed approach would help ensure that if trade policy instrument use is motivated by industrial policy objectives this is welfare improving.

Priority should be given to reform of the WTO to revitalize the organization as a forum for negotiating rules to discipline policies that create negative global spillover effects. No matter what the EU and the member states decide to do in regards of screening of inward investment and use of countervailing duties on subsidized imports, these are not measures that will affect firm behavior and distorted competition on third markets. Negotiating rules on the use of industrial policies that give rise to negative spillovers internationally is important to support exports by EU firms, both directly and indirectly by reducing the prospects for retaliation against the perceived effects of EU industrial policies by trade partners. Agreeing on rules of the game in the area of subsidies/industrial policy will benefit the EU by helping to ensure that any European policies to promote specific industries will be designed in a way that limits the scope for negative effects in third markets while at the same time preserving the ability of the EU and foreign countries to pursue sustainable development objectives. We return to this issue in the response to Question 12 below.

Question 7*: What more can be done to help SMEs benefit from the opportunities of international trade and investment? Where do they have specific needs or particular challenges that could be addressed by trade and investment policy measures and support?*

The Enterprise Europe Network (EEN) is an effective mechanism to foster cross-border match-making and stimulate innovation for European SMEs, predominantly in the internal market. Its potential to help the internationalization of European SMEs remains largely untapped. ***The EU should enhance the international dimension of the EEN and similar initiatives***. While EEN collects feedback from SMEs on existing and upcoming EU policy measures, not enough attention is paid to collecting feedback from SMEs in relation to trade policies, and little use is made of it to inform and shape EU trade policy and implementation. These issues are discussed in Seters and Bilal (2020a, 2020b: https://ecdpm.org/great-insights/square-pegs-round-holes-trade-policy/potential-trade-investment-europe-network/; https://ecdpm.org/publications/sustainable-eu-business-trade-enterprise-europe-network-promote-trade-beyond-europe/).

EU tools to support SMEs that take advantage of the internal market opportunities could be better harnessed to international dimensions, as SME needs and challenges to engage in cross-border exchanges are often similar whether within or beyond the EU, including in terms of the provision of market information, access to finance, support to innovation and sustainability, and connecting with new markets. The EEN, a tool that is particularly strong in promoting business-to-business (B2B) linkages and trade within the internal EU market, is well placed to step up its contributions as regards extra-EU trade, if sufficient resources are provided for this.

In terms of risk assessment and coverage, more could be done ***to build on the information and activities from Export Credit Agencies*** (ECA), Development Finance Institutions (DFI) and Public Promotional Banks and Institutions (NPBI), which could benefit European SMEs. In this context, more attention should be paid to trade finance and SME-relevant investment programmes under the European Fund for Sustainable Development (EFSD), not only as a source of potential support to SMEs, but also as source of potentially relevant market trade-related information for SMEs, an opportunity which does not exist currently.

Previous suggestions regarding the need to expand and improve available information on applied trade policies in foreign markets and to support regulatory cooperation on a plurilateral and not only a bilateral basis will benefit SMEs seeking to sell on international markets. The more EU trade policy can reduce the costs for firms arising from regulatory heterogeneity across countries through regulatory cooperation the better for smaller firms that find it much harder to overcome the fixed costs associated with differences in regulation across markets.

Foreign public procurement regimes provide an example. Encouraging partner countries to join the WTO Government Procurement Agreement and include public procurement in FTAs can help EU SMEs win foreign contracts. This is another area where IRC should complement the market access focus of procurement trade agreements. Research by RESPECT consortium members has shown that specific characteristics of EU procurement regulation benefit SME participation in tenders. Encouraging adoption of similar procurement practices could benefit both EU trading partners and EU SMEs (Hoekman and Tas, 2020: https://link.springer.com/article/10.1007/s11187-020-00414-z

Here again we would re-iterate the importance of ex post assessment. Investing more in mechanisms to generate data on participation by SMEs in trade and assess the effectiveness of EU instruments – export promotion, the DG Trade helpdesk functions, the Market Access Partnership and European Economic Diplomacy – will help identify if these tools serve the needs of SMEs and how they could be improved.

In 2018, just over one third of EU SMEs exported goods or services, with the percentage of exporting companies increasing with company size. Only a quarter of micro firms exported outside their domestic market, as compared with more than half of medium-sized and large companies (ECB, 2019) Increasing the number of smaller exporters is therefore as or more important for the EU's international trade performance than increasing the involvement of firms already exporting. Any new export strategy should therefore support entry into exporting. This is particularly true for the larger EU Member States. Eurostat data show that the share of SMEs in the value of exports to outside the EU was highest in Cyprus (87.9 %) and Estonia (79.7 %) and lowest in Germany (17.9 %) and France (19.3 %).

Exporting involves costs of entry into foreign markets and – in comparison with domestic sales – a longer time span between the export order and the final payment for the sale. Accessing the finance needed to alleviate the costs and risks of exporting is a barrier faced by many SMEs. Supporting SME export strategies therefore requires the availability of official export financing when the commercial financial sector is unwilling to take the risk. Official export credit support for small businesses is typically associated with short-term financing and small transactions, which are covered by EU State aid rules.

European ECAs can increase support to SMEs by approving more financing and recalibrating towards more active engagement with small businesses to better understand the supply chain reach of their financing. If the large successful exporting companies monopolise official credit support, this will be at the cost of the growth of smaller and start-up companies. Foreign buyers are also increasingly preferring to trade in their local currencies to avoid exposure to fluctuations in exchange rates. This is a challenge for exporting SMEs because accepting these terms exposes them to potential financial losses due to a subsequent devaluation of that foreign currency. If SMEs can only sell in Euros, it can result in lost export opportunities to other ECA competitors that are willing to accommodate the foreign buyer. By offering foreign exchange risk cover via an ECA, the process of mitigating foreign exchange risk becomes much simpler for SMEs.

EU longer term official export credit transactions are regulated by the OECD Arrangement and the WTO Agreement on Subsidies and Countervailing Measures (ASCM). Given the increasing number of ECAs that operate outside of the scope of the OECD Arrangement, this hitherto smart framework is outmoded and exhibits weak transparency and enforcements mechanisms. The dynamic and significant nature of contemporary export financing transactions require a new international framework capable of providing a level playing field in official export credit support, that can also support SMEs exporting potential. ***The EU could usefully work further to ensure that domestic firms compete for foreign markets on price and quality and not on the terms of publicly funded export support***, as with short term transactions under the State aid rules. This will help to improve the competitiveness of EU SMEs vis-à-vis larger and international firms – allowing them a stronger position on the international market. It will also avoid crowding out the private financial sector and fuelling a non-transparent subsidy race at the expense of the public purse and the well-being of the level playing field in the Single Market and, sustainable development and the international economy. To this end, it is recommended that the EU expand the coverage of State aid rules to medium and long term official export credit support, along with more forcefully advocating the negotiation of a successor to the OECD Arrangement with more representative members, and more relevant and enforceable rules (Dawar, 2019: http://respect.eui.eu/wp-content/uploads/sites/6/2019/12/Final-K-Dawar-Horizon2020-Work-Package-4.2.pdf)

Question 8: *How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?*

A strong focus on non-trade policy objectives is central to EU trade policy. This includes human rights, environmental sustainability, labor standards, and the SDGs more broadly. An important question therefore concerns the effectiveness of the linkage between EU trade policy and the realization of nontrade objectives. An expert survey conducted among representatives of the European Institutions, member state governments, businesses, civil society organizations and third country governments and stakeholders to solicit views on the salience and efficacy of linking trade policy to non-trade policy objectives suggests there is broad support for the strategy. But the survey also points to perceptions by practitioners that non-trade policy instruments are more effective in supporting progress on sustainable development (Fiorini et al., 2019: https://cadmus.eui.eu/handle/1814/63685; Yildirim et al., 2020: https://onlinelibrary.wiley.com/doi/10.1111/jcms.13100).

Research by the RESPECT consortium points to five conclusions pertinent to the trade policy review.

1. *Effects of trade (market access) – nontrade issue linkages are very heterogenous across trade partners and there is no evidence of a positive aggregate affect*. To date, the answer to the question whether trade policy can be an effective tool to achieve EU non-trade policy objectives remains inconclusive. The extant research literature is often limited to the analysis of a single non-trade issue, with studies suggesting that the strategy only works under certain conditions. In those cases where empirical methodologies are used that are designed to rigorously identify the direction of causality, researchers generally find no effects. Ongoing research by the RESPECT consortium tackles this question by applying a synthetic control methodology on a large sample of EU trade partners whose performance in many non-trade policy issues is observed over time. Current results from this exercise confirm a high degree of heterogeneity in the effect of EU trade policy strategy across trade partners and within each specific policy issue. Overall there is no evidence of a systematic positive impact of inclusion of non-trade issues in EU trade agreements on partner countries performance on related non-trade outcome indicators.

2. *There is clear need to strengthen monitoring and evaluation*. Better data and more analysis are required for a systematic and rigorous monitoring and evaluation of the current EU strategy of linking trade policy to non-trade policy objectives. If the strategy does not have a systematically positive effect it is necessary to identify conditions that are likely to make non-trade issues in trade policy to reach their objectives. This analysis is a necessary condition for any effective revision of the current strategy and calls for greater investment in research capacity.

3. *Go beyond trade agreements*. EU trade policy does not operate in a vacuum, especially when it tackles non-trade objectives. There are other instruments available and other actors involved, including development assistance of the EU and EUMS, regulators, international organizations, private forms of transnational governance. When asked to identify the most effective instruments available to (used by) the EU to attain non-trade policy objectives, the practitioners participating in the RESPECT survey consistently identified two instruments regarded as most effective: targeted assistance to nongovernmental organizations and expert dialogues between the EU and partner countries. On the contrary there is broad alignment in views that trade agreements are not the most effective instrument. While these findings are only indicative given the survey design, they point to diverging preferences on what particular instruments to use to pursue non-trade objectives, and the salience of efforts by the EU to enhance policy coherence and complement trade agreements with aid for trade.

4. ***Engage more effectively with concerned stakeholders***. The trade and sustainable development chapters of FTAs foresee such engagement, through a Domestic Advisory Group (DAG) structure or a Consultative Committee as in the EU-Cariforum EPA). Our consultations with concerned stakeholders led to the identification of a list of concrete recommendations to improve the functioning and effectiveness of the DAGs, summarized in Table 1.

RESPECT research (Ashraf & Seters, 2020: https://ecdpm.org/publications/recommendations-strengthen-civil-society-engagement-eu-trade-agreements/) has identified key challenges hindering the effectiveness of non-state actor engagement in EU trade agreements. The growing number of FTAs and the associated civil society mechanisms is only adding to the fatigue of actors who are already critical of the usefulness of these mechanisms. It is thus imperative for DAGs to show results that justify the investment being made towards them and prove to civil society actors and others that these mechanisms play a useful role in promoting sustainable dimensions of EU FTAs.

Table 1: Recommendations to enhance effectiveness of civil society mechanisms

Area	Recommendations	Main actor
Composition	Enhance the promotion of best practices for the establishment and functioning of DAGs and joint civil society forums, including by developing guidelines	European Commission
	More firmly persuade trade partners to ensure the constitution of independent, representative and balanced civil society mechanisms	European Commission
Scope	Strengthen efforts to identify and monitor concrete TSD priorities which can help DAGs to focus and gather information	European Commission, trade partners
	Consider creating DAG sub-groups pertaining to different sustainability dimensions, which can be feasible and valuable in some but not necessarily all cases	European Commission
Organisation	Ensure that civil society mechanisms have a sustainable stream of resources, possibly confirmed in an explicit commitment in the text of trade agreements	European Commission, trade partners
	Enhance synergies with development cooperation instruments, including civil society roadmaps that can reflect commitments to support non-state actor engagement in EU trade agreements	European Commission
	Conduct more frequent meetings using virtual tools	DAG members
	Create thematic groups to communicate across DAGs and/or organise (in-person) DAG and joint meetings one after another in a short period of time	European Commission, DAG members
Channels of input	Establish reporting mechanisms including the right to present DAG views in meetings of the TSD committee and other intergovernmental bodies of FTAs, and right to a response from parties	European Commission
	Strengthen engagement between civil society mechanisms and relevant actors beyond the intergovernmental bodies of the agreement, such as DG Environment and DG Social Affairs of the European Commission, EU delegations, the European Parliament and national parliaments of EU member states.	DAG members, European Commission, EEAS, European Parliament and national parliaments
	Establish a complaint mechanism that is open to civil society	European Commission
	The person fulfilling the new Chief Trade Enforcement Officer position in the European Commission and his/her staff to engage actively with DAGs and civil society actors more broadly	European Commission (CTEO and his/her staff in particular)

5. ***Focus more on trade in services and services trade policies in partners countries*** to support specific SDGs. Liberalization of trade in services by partner countries can enhance access to key services that matter for specific SDGs (Fiorini and Hoekman, 2018a: https://cadmus.eui.eu/handle/1814/59951). Inclusion of services in FTAs has often been rejected by developing countries in negotiations with the EU based on mercantilist arguments: a perception that this will only increase EU exports. This ignores the development dimension of services and the potential role services trade and investment can play to improve SDGs by enhancing access to basic services and bolstering sustainability in partner countries. To realize this potential a greater focus is needed on the complementary measures needed to improve regulatory institutions. Benefits may not materialize if the institutional environment is not supportive or regulatory regimes are not in place. This points to the importance of more effective coordination between implementation of trade agreements and provision of development assistance,

and more specifically for a greater focus on allocating aid for trade resources to support trade in services – both cross border and FDI – as opposed to primarily seeking to promote merchandise exports (Hoekman and Shingal, 2019: https://cadmus.eui.eu/handle/1814/66052; Hoekman and Shingal, 2020: https://cadmus.eui.eu/handle/1814/67007).

Question 9*: How can trade policy help to foster more responsible business conduct? What role should trade policy play in promoting transparent, responsible and sustainable supply chains?*

EU trade policy should ***deepen its engagement with voluntary sustainability standards*** (VSS). Developed by business actors, civil society organizations, and multi-stakeholder initiatives, VSS are a widely used instrument to govern environmental, social, and ethical issues in global supply chains. Over the past decade, the market uptake of these programs has grown considerably. For example, in the agriculture sector, commodities with significant share of global production certified by a sustainability standard include cocoa (25%), coffee (23%), cotton (16%), tea (16%), and oil palm (12%) (see https://www.sustainabilitymap.org/trends). The use of VSS is also widespread in other industries, such as forestry, fishery, electronics, and textiles and garments. This means that private sustainability standards now apply to millions of farms, plantations, and factories around the world

Given the pervasiveness of VSS in the global trading system, the EU can foster more responsible business conduct and promote sustainable supply chains by designing trade policy strategies that exploit complementarities and potential synergies with the VSS landscape. Such strategy hinges on detailed and updated information on VSS market footprint across countries and products as well as on their institutional design and the potential linkages between their requirements and sustainability objectives. The EU could support and integrate the data collection and analytical exercises conducted by the ITC (Bissinger et al., 2020: https://www.intracen.org/publication/Sustainable-Development/).

Furthermore, RESPECT research discusses the complementarities between EU trade policy and sustainability standards looking at EU trade agreements with environmental protection provisions. Increasingly, countries are signing up for environmental protection provisions in their bilateral trade agreement with the EU including, for instance, Canada, Chile, Colombia, Croatia, Mexico, Peru, Singapore, South Africa, South Korea and Vietnam. At the same time, there has also been an increasing uptake of voluntary environmental programs, which are diffused by firms in their value chains. The EU-governed Eco-management and Audit Scheme (EMAS) is one such standard, amongst others such as the ISO 14001 series of environmental certifications. The EU's trade agreements with environmental protection provisions complement the effect of these private standards in the reduction of air pollutants and greenhouse gases (Di Ubaldo et al., 2020: http://respect.eui.eu/wp-content/uploads/sites/6/2020/09/ISO14001_emissions_EU_draft.13.12.19-1.pdf). Soliciting more analysis of how trade policy can best complement private standards in promoting responsible and sustainable supply chains would help to inform the appropriate design of provisions to do so.

Question 10*: How can digital trade rules benefit EU businesses, including SMEs? How could the digital transition, within the EU but also in developing country trade partners, be supported by trade policy, in particular when it comes to key digital technologies and major developments (e.g. block chain, artificial intelligence, big data flows)?*

The digital transformation has deeply affected how businesses reach out to consumers, promote their services, and engage with each other. This transformation has created uncertainty among businesses not only in Europe but all over the world related both to their business models and to technical aspects of the digital transformation. On one hand, businesses have to develop new ways of offering their services and reaching out to their potential customers. On the other, and this is where the EU trade policy can have a role, businesses face uncertainty related to which regulations apply when they trade through the Internet (issue which is further complicated by conflicts of jurisdiction and extraterritorial application of regulations) and how to protect their consumers when processing data abroad (both from a privacy and a security perspective). Helping businesses to clarify regulatory and technical uncertainty on digital trade issues would surely support them in engaging more in digital trade and feeling more confident on how to protect their consumers online.

The response to this uncertainty should start with promoting ***more transparency about the policy measures which apply to digital trade and can constitute restrictions in the digital era***. This would include the analysis of new types of restrictions around intermediary liability, content access, taxation, e-commerce, e-payments, among others. There are cases where even traditional regulatory measures have become restrictions in the digital era (an example is the requirement to store a copy of accounting data in the premises of the company). The EU should have a clearer understanding of these new restrictions, including by mapping where these measures are implemented within EU Member States and abroad. In this exercise, supporting the management and expansion of databases of digital trade restrictions like the DTRI database created by the ECIPE (https://ecipe.org/dte/) and the DSTRI created by the OECD (https://qdd.oecd.org/subject.aspx?Subject=STRI_DIGITAL) could be a good starting point.

A second step would be the ***analysis of the effects of digital trade restrictions*** in order to identify the costs they create and whether there are alternative measures that could achieve the same policy objective while being less trade restrictive. Some studies in this regard have been attempted by ECIPE in relation to data flows (see e.g., Ferracane et al., 2018: https://voxeu.org/article/cost-data-protectionism), but more studies are needed to clarify the impact of these measures. In this analysis, it is important to investigate the technical aspects of the internet in order to identify how effective certain measures are in achieving their expected non-economic policy objectives and whether alternative measures could be implemented which are more effective and less trade-restrictive. In this context, a dialogue with the private sector could support the development of good regulatory practices that facilitate trade, while protecting consumers.

It is also relevant to consider how SMEs are relying on platforms and digital services offered by companies located outside the EU to reach their consumers. SMEs should be supported in making the most of these services, while being protected from potential abuses. In this regard, the current proposals of DG CONNECT and DG COMP related to *ex ante* regulation of gatekeeper platforms and a new competition tool for platforms should be designed in a way that incentives SMEs to engage in digital trade. We consider that DG TRADE has an important role in defining how these new regulations should be designed to avoid unnecessary barriers to trade, while protecting competition in the European market.

Trade policy could also contribute to building a stronger European market for risk investment by incentivizing investment from third countries into EU companies (especially in pre-seed and seed stages of startups).

Question 11*: What are the biggest barriers and opportunities for European businesses engaging in digital trade in third countries or for consumers when engaging in e-commerce? How important are the international transfers of data for EU business activity?*

Transfers of data are crucial for today's economy. The EU could start engaging more actively in promoting free and safe transfer of data across borders. A way to start is to ***broaden the Free Flow of***

Data Initiative (FFDI) to other countries and extend 'adequacy' status to other countries which implement strong data protection rules. To promote legal certainty, a revision of the process to grant adequacy could be considered so that the process is more transparent and does not create concerns about arbitrariness and de facto discrimination.

The EU has an important role in advancing the WTO discussion on digital trade issues in order to promote legal certainty on which rules apply to digital trade at the multilateral level and avoid the imposition of new restrictions all over the world. Restrictions on cross-border data flows are among those issues whose legal clarity at the multilateral level is needed, including in the context of GATS commitments. When multilateral discussion is not viable, then plurilateral discussions such as those under the Joint Statement Initiative (JSI) should be supported. It is important that developing countries are encouraged to join these discussions so that their concerns are addressed and clarified. It is also important that FTAs do not replace the role of multilateral institutions to avoid creating a spaghetti-bowl of different types of commitments a country must apply with different trading partners.

It is important to clarify concerns of third countries connected to digital trade and, when possible, address these concerns through open dialogue with partner countries and capacity building programs. It is often the case, in fact, that government officials are concerned with lifting policy restrictions on digital trade because of a lack of understanding on how to protect important non-economic policy objectives such as privacy, national security and law enforcement. An example are restrictions on data flows, which are often implemented as a precautionary measure when governments do not have a proper understanding of how to protect these policy objectives with alternative means. Ferracane, 2018 (https://ssrn.com/abstract=3490193) undertakes a multi-disciplinary analysis of the interface between national security and data flow policies. Supporting countries to build their capacity to protect relevant non-economic policy objectives would contribute to lifting costly restrictions for EU businesses.

Question 12*: In addition to existing instruments, such as trade defence, how should the EU address coercive, distortive and unfair trading practices by third countries? Should existing instruments be further improved or additional instruments be considered?*

As noted previously, the appropriate path that is most consistent with the EU's commitment to multilateralism is to use the EU's trade policy capacity to pursue new agreements in the WTO, including on a plurilateral basis. Providing effective leadership in support of WTO reform to ensure the organization remains fit for purpose in providing an effective forum to agree on measures to attenuate the negative effects of national trade practices on both EU interests and on the global trading system should be a priority. An additional reason for this is because a rules-based trade order is critical for sustainable development, the ability of low-income countries and LDCs to compete on international markets, and for firms in these countries to operate on a level playing field.

We would also reiterate the importance of action in generating up-to-date, comprehensive information on the policies that are applied by trading partners, and investment by the EU in objective empirical analysis of the effects of contested policies on competition and trade.

Both internal EU law and the WTO Agreement on Subsidies and Countervailing Measures (ASCM) do not fully capture distorting subsidies granted by country A to companies active or established in country B. This regulatory gap in motivates the suggestions made in the 2020 White Paper on levelling the playing field as regards foreign subsidies. The paper features a complex structure with four different Modules. Module 1 represents the general instrument to capture distortive effects of foreign subsidies. Module 2 is intended to be a specialist module tackling the distortions caused by foreign subsidies facilitating the acquisition of EU companies while Module 3 is a specialist module to regulate foreign subsidies in the context of EU public procurement procedures. Finally, Module 4 deals with foreign subsidies in the context of EU funding.

This suggested regulatory framework raises questions regarding the relationship and possible overlap between the different modules and the jurisdiction and competence of the supervisory authorities. How can, for example, the roles of the EU Commission and the national authorities in Module 1 be properly divided? Other issues pertain to the potential overlap between very similar instruments. This is clear with the case of the current system of merger control (which, on admission of the Commission, could already tackle the issue of foreign subsidies) and the proposed Module 2 on foreign-subsidized acquisitions. Coherence at every level – substantive assessment, timing, procedures, institutional set-up – are essential. Similar concerns are raised for Module 3 on public procurement. Foreign subsidies in public procurement markets in effect reduce the costs of public services and any distortion can already be assessed through the sustainability criteria of European Directives.

The standards to assess subsidy-related distortions are not clearly defined in the White Paper. For example, in Module 2 there is either a scenario where a subsidy directly granted to influence an acquisition is prohibited or one where any subsidy granted to an acquirer in a certain period of time preceding the acquisition that could strengthen the financial situation of the recipient is prohibited, without any analysis of the actual impact these subsidies. This is both too general and too strict. There is a lack of clarity regarding the type of distortions that Module 2 seeks to capture. While the indicators used in the assessment under the general Module 1 have been substantially taken from prevailing EU state aid law, what is lacking is a methodology that specifies how factors will be weighted and the use of these indicators in assessing if there is a distortion. The goal of the White Paper is to re-establish a level playing field and ensure that companies receiving foreign subsidies are treated in the same way as they would be if they were receiving support from an EU Member State. But it is not clear whether a fully equal treatment can (will) be assured. Moreover, it is not fully clear whether a unilateral action against foreign subsidies is in line with the exclusive application of WTO subsidy disciplines (Art 32.1 ASCM).

While not denying the value of putting forward a concrete proposal for action to tackle issues of competition-distorting subsidization, unilateral action that has not been discussed in the WTO risks triggering counteraction and retaliation and adding to perceptions that the EU is less committed to multilateral approaches than it claims. Putting forward the ideas contained in the White Paper for deliberation in the WTO as an element of WTO reform appears to us as the appropriate path form the EU to pursue. Many WTO members share the EU view that this is an area where the rules must be updated. Bringing more countries on board would help to enhance both the legitimacy and the effectiveness of the approaches proposed by encouraging other countries to act in concert with the EU. We appreciate that in its most recent Inception Impact Assessment the Commission recognizes that multilateralism is the only way to address the problem of foreign subsidies 'at their source'; we strongly endorse this view.

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