



ERT

Expert Paper

The EU's Trade Policy Review

November 2020

Executive Summary

- 1. Twenty years into the 21st century, the political and economic challenges we face are intensifying.** After a decade of extraordinary developments, we have entered a time of less openness, less free trade, growing protectionism, and risks of dismantling of global trade institutions. The COVID-19 pandemic has accentuated these trends, strained international cooperation, and led to a debate on how to strengthen resilience in global supply chains. **With its highly trade-oriented economy, Europe is particularly exposed to these shifting realities.**
- Against this background, **Europe must strengthen its role in the world through a more strategic approach towards industry, technology, and not least trade.** The European Round Table for Industry (ERT) therefore welcomes the European Commission's Trade Policy Review as an opportunity to adapt the EU's policy to the new challenges.
- An updated EU trade & investment policy **needs to respond to foreign protectionism, and build more resilience in global supply chains, without becoming protectionist itself.** The concept of open strategic autonomy must not undermine strategic global supply chains or be an excuse for reshoring.
- An **updated EU trade policy should also continue to safeguard the rules-based multilateral trading system** by pushing meaningful reform of the World Trade Organization (WTO) and saving the Dispute Settlement System.
- However, in this more complex and competitive world, and in the absence of a fully functioning WTO, **the EU must also quite forcefully increase its activity and build its capabilities on the trade side.** An updated EU trade policy should go beyond safeguarding fairness into actual promotion of the EU interests and key EU businesses.
 - The EU should deliver new trade and investment opportunities by negotiating ambitious agreements with its partners.
 - The EU, the Commission and Member State together, should drive European economic diplomacy.
 - The EU needs to put significant effort into Member States, enforcing, and implementing existing free trade agreements (FTAs).
 - The EU should arm itself with defensive and offensive trade instruments – using existing ones more actively and develop new ones if necessary.
- An updated EU trade policy must safeguard the EU's **strategic trade and investment relationship with the US.** The US and EU are historical allies and the aim should be to recapture the traditional mutual trust, leverage our economic weight and build an agenda for the future. The EU must also **develop rules-based trade relations with China and secure a level playing field in economic relations.**
- An updated EU trade policy needs to be **strategically coherent.** The EU's trade policy cannot be conducted in isolation from other policies. Common goals and promotion of European interest must guide trade policy. An especially clear link should be established to the top priorities such as the major **twin green and digital transitions.**



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1. Building more resilience in an increasingly complex world

1.1 Resilience in global supply chains through diversification and flexibility

- Twenty years into the 21st century, the political and economic challenges we face are intensifying. After a decade of extraordinary developments, we have entered a time of less openness, less free trade, growing protectionism, and the risk of dismantling of global trade institutions. The COVID-19 pandemic has accentuated these trends, strained international cooperation, and led to a debate on how to strengthen resilience in global supply chains. With its highly trade-oriented economy, Europe is particularly exposed to these shifting realities.
- Europe is highly dependent on free and fair trade and its companies are deeply embedded in global value chains. ERT fundamentally believes it must be up to every individual company to decide on their own supply chain architecture. It is also important to recognise that even under very difficult circumstances during the COVID-19 pandemic's most intense phases, the existing international supply chains continued to serve Europe surprisingly well. Supply chain failures were arguably not the main reason for the most critical shortages experienced.
- We stress the importance of building resilience and robustness in strategic supply chains. Because of the inherent difficulty in predicting the nature of future external shocks to the trade system, the main guiding principle for building such resilience is not reshoring but diversification and flexibility.

1.2 "Open strategic autonomy" should mean that Europe has a choice over its technological development

- While we understand these are exceptionally challenging times globally, it is crucial to ensure that any new measures do not bring increased uncertainty and challenges to global companies. Open strategic autonomy and improving resilience must not be interpreted in a protectionist manner, which would undermine the benefits of global trade and investment, and should not result in a competitive depositioning of EU businesses in global markets.
- Open strategic autonomy should mean that Europe has a choice over its technological

development – not an autarchic Europe with all technology produced locally, but a Europe able to make strategic decisions about technologies it depends on. This involves strengthening Europe's technology capabilities in key strategic value chains by boosting investments, creating an innovation-friendly environment and delivering the digital and green transformations.

- Trade policy has an important role to support this. It must take account of today's new economic and technological realities and take a proactive strategic approach that enhances European competitiveness and leadership on a geopolitical level. The EU's trade strategy should be guided by its common European values such as freedom and the rule of law. The support for open and fair trade and the rules-based multilateral trading system must be a fundamental building block of this approach.
- It is critical that governments around the world cooperate on the basis of open and fair trade and global markets in order to recover from the crisis. The EU should continue to foster strategic partnerships, global eco-systems and international value chains. It is crucial for a future European trade policy to open up as many options as possible for European companies and not limiting their choices.
- Open strategic autonomy must therefore be built relying on trusted partners. The EU should foster its trade ties with key partners and deliver new trade and investment opportunities by driving an ambitious agenda at both the multilateral and bilateral levels. Above all, the EU must strengthen its strategic trade and investment relationship with the United States.
- It is equally important to create a level playing field which allows European companies to thrive and compete globally. The EU has to become more strategic in its response to unfair behaviour by its trading partners, especially from non-market economies, such as distorted competition, unfair trading practices, forced technology transfer, theft of intellectual property, and subsidised industry. Developing a rules-based trade relationship with China is fundamental.
- Taking account of the COVID-19 crisis, the EU also needs a more strategic approach in the case of unforeseen crises, such as pandemics or climate catastrophes.

1.3 Supporting the European renewed industrial policy

- Given rising international industrial competition, Europe must strengthen its role in the world through a more strategic approach towards industry, technology and trade. An updated EU trade policy needs to be strategically coherent with the EU's industrial ambitions and create the strategic partnerships and the infrastructure needed for European companies to develop, produce and market products and services worldwide.
- There is an estimated 9.2% drop in extra-EU27 exports of goods and services due to the COVID-19 lockdowns.¹ In order to recover swiftly, Europe's economy urgently needs to expand both via progress on the Single Market and international markets. For this to happen, industrial recovery is key and this in turn is dependent upon the functioning of global value chains.
- The EU's trade policy can support a renewed industry policy through reinforcing the mechanisms which help secure global supply chains for European businesses. The EU should lead on international standards and certification schemes to ensure flexibility in supply chains.
- An especially clear link between trade policy and industry policy exists in relation to the major twin green and digital transitions. Europe needs large-scale investments in technological fields that will dominate the future of the digital economy and underpin the green and digital transitions. An updated trade policy must be deliberately designed to support the innovation process and the outcome of these large-scale R&D-efforts and address current trade and market access related obstacles in relation to the green and digital economy. The EU must lead in the standard setting for digital trade globally and foster collaboration to boost technological capacity, notably by seeking geopolitical alliances with like-minded partners at the WTO and through trade and investment agreements.
- An important precondition for the green and digital transitions is access to raw materials. We encourage the European Commission to continue to leverage the EU's raw materials

strategy which has delivered positive results such as the inclusion of provisions on access to raw materials in the EU's FTAs.

- Finally, it will be critical for the EU to pursue its objectives relating to industrial and competition policies with instruments like foreign direct investment (FDI) screening, the instrument on foreign subsidies, the international procurement instrument, the green deal, and the upcoming enforcement package.
- ERT has published a scorecard of 28 key performance indicators (KPIs) to track progress in implementing the EU's Industrial Strategy and benchmark the EU's performance against other world regions.² Against the backdrop of the current discussions about "open strategic autonomy", the publication invites the Commission to set targets for 2030 on a number of indicators (such as economic openness, exports, FDI inflows, etc.) which would help to regularly monitor the EU's competitiveness and thus help to avert protectionist reflexes.

2. Safeguarding the rules-based multilateral trading system

- ERT has been supporting the multilateral trade system for decades. We believe that the rules-based multilateral trade system has laid the foundation for the international economic growth and development that has lifted millions of people out of poverty over the last decades. The WTO has been the backbone of this system and a guarantor for stability in trade relations. It should remain the core instrument for global trade rulemaking and dispute settlement.³
- Thanks to industrial automation and digitalisation, companies possess very precise information on demand and production efficiency and capacity. With this knowledge companies may decide real time adjustments to their supply flows. Considering that supply chains remain global, it is increasingly difficult to rely on bilateral trade arrangements. Delivering multilateral arrangements must therefore remain a priority.
- The multilateral trading system is now facing a "make or break" moment. All three of the WTO's functions are under pressure and require

¹ https://trade.ec.europa.eu/doclib/docs/2020/april/tradoc_158713.pdf

² <https://ert.eu/documents/KPIs4industrialstrategy/>

³ See also ERT's position paper on WTO reform, April 2020 <https://ert.eu/documents/ert-position-on-wto-reform/>

unambiguous reform: serving as a forum for trade negotiations, administering global trade rules, and providing mechanisms to settle trade disputes. We believe that strengthening the WTO must be a top priority in future EU trade policy. All WTO members must redouble their efforts to reform the WTO system.

2.1 Saving the Dispute Settlement System

- An efficient and effective Dispute Settlement System (DSS) is crucial to maintaining fair and equal treatment in multilateral trade. ERT supports the EU's efforts to address the current deadlock concerning nominations of new members to the Appellate Body. We hope that more WTO members will join the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). As this is an interim solution, however, the reform of the Appellate Body must remain a priority.

2.2 Driving meaningful WTO reform

- To take account of today's constantly evolving environment, WTO members must revise and modernise the current WTO rules. This includes for instance tackling trade distorting practices related to, inter alia, subsidies, state-owned enterprises and forced technology transfers, facilitating digital trade and cross-border data flows, as well as new rules on "Special and Differential Treatment".
- ERT supports the rule that in principle multilateral solutions should always be the targeted approach. However, in case a multilateral solution cannot be achieved, the WTO must open up avenues for coalitions of the willing, front runners and critical masses to lead the way through plurilateral negotiations. We welcome the so-called "joint statement initiatives" on e-commerce, domestic regulation in services, investment facilitation, as well as Micro, Small and Medium-sized Enterprises (MSMEs).
- The current COVID-19 crisis has created an unprecedented challenge for healthcare systems. Many countries have been struggling to provide essential goods and services to their pandemic-stricken populations. ERT supports the EU's June 2020 proposal to the Ottawa Group to abolish tariffs for pharmaceutical and medical goods on a permanent basis as well as to eliminate all export restriction of these goods. Related services should also be considered.

- Finally, ERT believes that the EU should put forward a proposal to establish a mechanism for civil society and industry to provide input into negotiations and ongoing committee work. Such a stakeholder advisory body could be modelled on good practices adopted by other organisations and processes (e.g. OECD and BIAC). It would enable the WTO's monitoring and negotiating functions to avail themselves of the expertise and experience of civil society and industry – ensuring that WTO activities are fully connected to real-world trade experiences.

3. Fostering bilateral trade relations and increasing market access

- The EU should foster its trade ties with key partners and deliver new opportunities and market access for European companies by negotiating ambitious trade and investment agreements. It is key for the EU to use a broad network of FTAs to improve market access for EU exporters and investors and promote international regulatory cooperation, especially in relation to digital and green technologies. Such agreements are an important way of ensuring reciprocity, as long as sufficient resources are devoted to proper implementation as the key to fair market access.
- Any FTA should be accompanied by an investment protection agreement which describes the available procedures in a transparent manner. The already included Investment Court System in several recently concluded FTAs is the right way forward in case investments require a dispute settlement.

3.1 Strengthening the strategic transatlantic relationship and building an agenda for the future

- The EU and the US are historical allies and partners that share common values. They have the largest bilateral trade and investment relationship and represent the most integrated economic relationship in the world. ERT Member companies are deeply invested in the American economy.
- The EU has to continue to invest heavily in its relationship with the US on the basis of the strategic nature of our partnership despite the current obstacles such as the tariffs imposed on the basis of section 232 of the Trade Expansion Act of 1962, the lack of progress in

bilateral negotiations on industrial tariffs, the Airbus-Boeing dispute, the US blockage of the nomination of judges to the WTO's Appellate Body, and the constant threats of trade retaliation.

- Deeper transatlantic cooperation should provide a significant opportunity to ease the current trade tensions and enhance growth and jobs on both sides of the Atlantic. The EU and the US need to recapture their traditional mutual trust and leverage their economic weight and shared values to strengthen open, fair and rules-based global trade. Both sides should continue to build on the agreement from July 2018 of President Trump and President Juncker to strengthen the EU-US trade relationship.⁴ We are encouraged by the progress made with the August 2020 agreement on the elimination of some tariffs on a most-favoured-nation (MFN) basis.
- EU-US cooperation should focus on eliminating tariffs on industrial goods, enhancing regulatory cooperation (in particular in areas where standards do not yet exist) as well as collaborating on multilateral issues such as WTO reform, the plurilateral e-commerce negotiations and tackling challenges in third countries, e.g. through the trilateral efforts of the trade ministers from the EU, US and Japan.

3.2 Delivering the EU-China investment agreement and more reciprocal market access in China

- China is the EU's second most important trade partner and a key partner in addressing global problems such as climate change. However, the EU also considers China an economic competitor and a systemic rival. Existing imbalances include China's unfair trade practices, tariffs and non-tariff barriers and restrictions on investment.
- Securing a level playing field between China and the EU is of critical importance, together with mitigating the impact of China's government-induced market distortions. An urgent priority is to turn Chinese promises into actual policy changes which benefit business.
- In order to work towards substantial reforms in China, the EU has to become more assertive. It is essential that the EU, Member States and European businesses work together towards common objectives to ensure that Europe gets

the best out of its relationship with China. In order to achieve these objectives, it is important for the EU to develop a concerted approach with other likeminded countries around the world.

- ERT would in this context welcome:
 - a) Strengthening of the annual EU-China economic and trade dialogue
 - b) Promotion of European values and standards
 - c) Effective reciprocal market access (including for new technologies), evidenced by fair share of European companies on the Chinese market
 - d) Additional most-favoured-nation tariff cuts
 - e) A reduction in non-tariff barriers
 - f) Further reductions in the negative list for foreign investment
 - g) Acceleration of negotiation of the EU-China investment agreement
 - h) Ensure China implements its commitment to protect companies' intellectual property (IP)
 - i) Building on progress in Chinese competition policy through dialogue with the National Development and Reform Commission to seek a transparent and limited framework for state aid
 - j) Encouraging Chinese accession to the WTO Government Procurement Agreement

3.3 Deepening trade ties with other regions

- ERT supports a comprehensive and ambitious agreement with the United Kingdom that must be adopted in time to allow for ratification and entry into force by 1 January 2021. The aim must be to align trade regulation as much as possible. Companies continue to require support as they prepare for the major changes that will arise in the way that business will be conducted between the EU and the UK. As the threat of a hard Brexit remains very real, it is crucial to continue effective contingency planning.
- The Latin American region, which is the first region fully covered by free trade agreements (Mexico, Caribbean countries, Andean Community, Chile and MERCOSUR), is a reliable partner and a potential ally to defend common strategies on key global challenges, like the WTO reform. This relationship must be reinforced and enhanced, with a priority given to the ratification of the EU-Mercosur FTA. It is also important

⁴ http://europa.eu/rapid/press-release_STATEMENT-18-4687_en.htm

to ratify the new EU-Mexico FTA and finalise negotiations for a modernised FTA with Chile.

- ERT moreover encourages the finalisation of negotiations for FTAs with [Australia](#) and [New Zealand](#).
- The [ASEAN](#)⁵ region is the EU's third largest trading partner outside Europe. To ensure better access for EU exporters to the dynamic ASEAN market, ERT supports negotiations with the region as well as its individual countries.
- [India](#) is a market of huge potential but also represents challenges since the government attaches great importance to promotion of local companies at the expense of international players. Top political engagements should be directed to improve the trade relations based on balanced terms.
- Finally, extending the EU's engagement with [neighbouring countries](#) as well as [Africa](#) should be on the EU's future trade agenda. ERT believes that the EU should deepen its relations with Africa by implementing and strengthening existing Economic Partnership Agreements and ultimately replace these in the longer term by an EU-Africa Free Trade Agreement. The aim should be to create an investment climate conducive to FDI and addressing joint challenges like climate and migration.

3.4 Monitoring, enforcing and implementing existing FTAs

- The effective implementation of the EU's wide range of free trade agreements is fundamental. We welcome the European Commission's efforts to address trade barriers imposed by the EU's trade partners through its Market Access Strategy as well as through consultations and dispute settlement mechanisms as provided by the FTAs.
- The EU needs to further strengthen its efforts. The preference utilisation rate (PUR) is a good indicator of the existing shortcomings: while the average PUR for imports from EU preferential trading partner countries into the EU was 87% in 2018, it was generally lower for EU exports to partner countries, with e.g. 77% for EU exports to

Switzerland, 56% for EU exports to Peru or 37% for EU exports to Canada.⁶ Comprehensive and easily accessible information that is presented in a way that makes it understandable to non-experts is essential to enable companies of all sizes to benefit more from EU FTAs.

- Another good example of limited usability of the EU's FTAs is related to rules of origin. The process of proving origin involves administrative costs for the exporting and importing companies due to a complex grid of FTAs with varying rules of origin. The European Commission should simplify the rules of origin in EU FTAs by insisting on common, preferably global rules to the extent possible, while taking into account possible sensitivities of individual sectors.
- The EU should make better use of the Market Access Database (MADB) to show whether the tariff rate will be reduced over the course of the coming years as a result of FTA schedules. For companies this kind of information is crucial to facilitate their planning. The MADB also provides little information in relation to services although transparency on regulatory requirements in third markets is key for facilitating services trade. Moreover, the MADB should include a section dedicated to documenting progress in the area of regulatory cooperation.

3.5 Driving European economic diplomacy

- The EU's institutional architecture faces shortcomings when it comes to supporting European economic and political interests abroad. A relatively low number of EU SMEs manages to scale up and become active on international markets despite the growing market opportunities in emerging economies. Moreover, European companies continue to face challenges when exporting and investing in third countries.
- We therefore call for the development of a comprehensive strategy on European economic diplomacy. The EU's political support is required to foster industrial cooperation and business relations with developing markets and promotion of the expansion of European businesses internationally.

⁵ ASEAN: Association of Southeast Asian Nations

⁶ <https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-455-F1-EN-MAIN-PART-1.PDF>

- European economic diplomacy should be geared towards strengthening the links between trade policy and trade promotion, between the European Commission and the Member States and between the public and the private sector. It is key for Europe to make much greater use of its EU delegations in third countries and coordinate more between its excellent networks to pursue key European business interests.

4. Delivering a global level playing field

4.1 Securing open markets and reciprocity

- ERT is committed to free and open markets and fair competition. Progress in this direction is a prerequisite for the EU to remain a decisive and respected global player, without becoming protectionist. We believe the open strategic autonomy model should follow this direction.
- The renewed EU trade policy must be designed in a much more effective and timely manner when other countries do not play by the rules of fairness. The EU needs to address more forcefully market access barriers and lack of reciprocity in trading with partners through trade negotiations. It also has to promote EU economic interests abroad by export support, economic diplomacy and using EU soft power to advance EU economic interests with better internal coordination.
- The EU must also better address areas that are not handled by the WTO. We need an assertive approach of the EU in implementing existing trade and investment policy tools and developing new ones to ensure a global level playing field. The renewed approach should secure both the EU's defensive and offensive interests.
- A new balance must be found between outward- (trade measures) and inward-looking policy tools (such as competition law). A distinction between the two categories will progressively blur as policy makers must consider the global competition landscape and distortions to the level playing field. Global consistency should be sought in this area.

4.2 Ensuring fairness through effective instruments

- Trade Defence Instruments: The EU should first of all take advantage to the full extent of the arsenal already available before taking any further actions.
 - Antidumping instrument: ERT welcomes the modernisation of the instrument which now offers a shorter timeline of cases and a possibility not to use the lesser-duty rule. At the same time, ERT would welcome more cases launched based on a threat of injury, as already allowed by the Antidumping Regulation. Awaiting actual injury (i.e. a negative trend over a year's time) leads to deterioration of EU producers' financial standing and them closing down the production of the product concerned, rendering duties ineffective. At the same time, care should be taken that the incentives for EU companies for innovation and productivity increases are not taken away.
 - The threat of injury option might be particularly relevant during the post-COVID transition when the economic recovery will be uneven around the world. There is a risk that the regions that recover first will want to export their industrial overcapacity and gain market share in the EU.
 - In addition, the amount of information required from companies at a very detailed and time-consuming level at the complaint stage and throughout the investigation, should be investigated and reconsidered by the Commission. It constitutes a heavy burden even for large companies, effectively prohibiting access to measures especially for SMEs.
 - Anti-subsidy instrument: The anti-subsidy instrument, though allowed by the WTO rules, is used very rarely by the EU, as opposed to other countries such as the US. The Commission should be more decisive in using it and be more consistent at the complaint stage as to what it considers to be prima facie evidence of subsidies instead of requiring EU companies to prove that subsidies in other countries take place.

- o **Safeguards:** The EU must use WTO-compliant safeguard measures to stop the redirection of overcapacity, as it already does in case of steel. As in the case of antidumping, safeguards might turn out to be indispensable in case of unforeseen, sharp increases in imports of certain products.
- **White Paper on Foreign Subsidies:** ERT welcomes the publication of the paper. The New Instrument will be an important part of the framework addressing a distortive impact of foreign subsidies and help to ensure the global competitiveness of European industries. ERT has provided a detailed response to the public consultation.⁷ It explains that the EU needs a broad, effective and workable regime to appropriately address distortive foreign subsidies, but without making inward investments less attractive or prompting third countries to adopt tit-for-tat rules that would be harmful for European investments abroad. ERT considers that this will require: (1) Legal certainty, starting with clear definitions of key concepts such as foreign subsidy, state-owned enterprise and distortion; and (2) Enforcement procedures that are not overly burdensome and that can be completed within short timeframes leading to effective redress.
- **Foreign Investment Screening Regulation:** ERT welcomes the Regulation. It is crucial that it is implemented effectively and proportionately to ensure that foreign acquisitions are genuinely market-driven and do not undermine national security, while upholding the principle of freedom of investment. We trust that transparency and coordination at the EU level will help to foster a more level playing field.
- **EU Enforcement Regulation:** ERT welcomes the proposed Regulation. We believe the new law will be an important tool in any future situations similar to the imposition of Section 232 tariffs by the US on European aluminium and steel in 2018, and will allow for a timely and proportionate reaction.
- **EU Chief Trade Enforcement Officer:** ERT welcomes the nomination of the EU Chief Trade Enforcement Officer. At the same time, we hope that the position will not be purely a symbol of the Commission's ambitions but will commence tangible change in trade enforcement by the EU.
- **New WTO rules to tackle trade distortions:** ERT supports the trilateral cooperation between the EU, US and Japan, whose objective is to develop new rules to address non-market oriented policies of third countries, including industrial subsidies.⁸ We hope that fast progress will be made, despite the constraints of the current pandemic.
- **The International Procurement Instrument** needs to be adopted swiftly to help achieve the goal of more open international markets and ensure reciprocity in third countries.
- Special attention also needs to go to the protection and enforcement of **intellectual property rights (IPR)** such as trademarks, patents, or geographical indications as these are considered critical for the EU's economic growth and Europe's ability to encourage innovation and stay competitive globally. Industry welcomes the fact that the European Commission is actively involved in strengthening the protection and enforcement IP rights, including through its trade agenda, in third countries.⁹
- The EU should equip itself with **new trade instruments** to safeguard the EU's economic interests and protect European companies from extraterritorial measures, such as the ones resulting from **third countries' sanctions policy**.

5. Supporting the green transition and making trade more sustainable & responsible

- ERT supports a transition to a climate-neutral economy by 2050. The European Union and its Member States have committed to the Paris Climate Agreement and are setting ambitious goals for the path towards a climate-neutral economy. The UN 2030 Agenda for Sustainable

⁷ <https://ert.eu/wp-content/uploads/2020/10/Expert-Paper-ERT-Response-on-the-White-Paper-on-Foreign-Subsidies.pdf>

⁸ See joint statement by BRT, ERT and KEIDANREN, April 2019 <https://ert.eu/documents/business-leaders-from-u-s-europe-and-japan-express-support-for-revitalized-multilateral-trade-system/>

⁹ See report published on 8 January 2020 https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158561.pdf

Development recognises international trade as an engine for inclusive economic growth, and an important means to achieve the Sustainable Development Goals (SDGs).

5.1 Promoting global rules and spreading sustainable technologies through openness and market access

- The EU should continue to promote global rules in multilateral contexts and build on existing international frameworks, to raise sustainability standards globally and strengthen a green transition.
- European industry is an engine for sustainable innovation and Europe has tremendous influence to shape a sustainable future, not least based on our technological strengths, values, and high standards.
- Trade policy is vital to help create the open framework needed to allow for the transfer and spread of green innovation and sustainable solutions worldwide (low carbon technologies, circular economy etc.). Such market access would also generate the possibility to scale up innovative technological solutions and create cost-efficiency and competitiveness. A priority should be the revival of the plurilateral negotiations for an Environmental Goods Agreement in the WTO.

5.2 Raising standards through FTAs

- The new generation free trade agreements include Trade and Sustainable Development (TSD) Chapters with provisions related to corporate social responsibility (CSR). There is a need to ensure a level playing field in this area, including in terms of green measures, considering the high standards EU companies have to comply with, which are to be mimicked in the countries where they invest. This is a condition for European companies to be able to reach their CSR commitments, as the European legislation framework tends to expand the responsibility of European companies to the suppliers with which a business relationship is established. As such, the absence of a level playing field constitutes a risk of compliance for European companies. Trade policy, through FTAs and enforcement policy, can play a crucial role raising the standards.
- The European Commission should make an

impact assessment on TSD chapters and communicate on the contributions of European businesses to the UN SDGs, highlighting their engagement and actions. Companies which invest in sustainability should be rewarded. High environmental/human rights standards induce higher costs and reduce the competitiveness versus those (foreign) players which do not follow the same standards.

- Any new obligations should also capture foreign companies with commercial activity in the EU.

5.3 Making use of defensive trade instruments

- Only a competitive European industry can make the transition towards climate neutrality. Reducing greenhouse gas emissions requires a global level playing field for European industry, ideally via harmonised carbon pricing at least at G20 level. However, in the absence of a global carbon price, measures that complement existing carbon leakage prevention instruments, such as a Carbon Border Adjustment Mechanism (CBAM), Contracts for Difference, or alternative instruments are required to ensure that non-EU producers bear the same carbon costs.
- A Carbon Border Adjustment Mechanism could become part of the mix of relevant instruments, under certain conditions, and after a pilot phase, following an extensive analysis of sector specificities/value chains, its impact on European exports and a full assessment of potential trade risks.
- Moreover, international co-operation based on article 6 of the Paris Agreement would unlock new markets for low carbon technologies developed and/or manufactured in Europe and would deliver investment, knowledge and technology around the world.

5.4 Linking economic diplomacy to the SDGs

- The EU should adopt a new approach to value-based European economic diplomacy, in which the objectives of the SDGs become the central foundation, both for the European economy and politics, as well as for projects between partner countries. Companies that make a significant contribution to the SDGs should benefit from active EU promotion for their projects in third countries (e.g. through EU business missions on top of national delegations).

6. Accelerating the digital transition and technological development

6.1 Promoting Europe's recovery through digital trade

- The COVID-19 pandemic has highlighted the urgency to accelerate the digital transformation (digital transition and technological development) for a robust and sustainable recovery of the economy. The digital transformation also serves as a key enabler to deliver the green transition. The digital and green “twin” transitions are cornerstones of the EU Recovery Plan to create a modern and sustainable economy. Hence, digital trade becomes increasingly important in strengthening Europe's economic recovery but also competitiveness and its position as a global player.
- Digitalisation also boosts opportunities to participate in global trade for all players, including SMEs, thanks to e-commerce, remote delivery of services, reduced costs of reaching global audiences through new technologies, digital facilitation of trade in the form of digital customs declarations, new means to build verifiable online transaction records with blockchain, and more efficient logistics.
- Cross border data flows in particular are critical for today's smooth operation of the economy and fundamental to competitive business models and to all sectors. The ability of companies to locate data storage and processing centres where it makes the most technical and commercial sense has been an enabling factor in the growth in digital trade and technologies and will only increase in importance in the future.

6.2 Delivering a level playing field in digital trade

- Digital policies will define the future trade landscape, to the same extent as laws regulating import and export of (physical) goods have defined trade in the past.
- The EU has to secure Europe's leadership in technology and avoid a weakening of European players due to unfair competitive conditions globally. Given the openness of the European

Single Market, EU trade policy should help ensure that European businesses engaging in digital trade outside the EU can benefit from the same level of openness that the partner countries enjoy when their companies sell products and services in the European Union.

- It is key to ensure a level playing field, reciprocity and an opening of markets for digital trade. Having transparent, non-discriminatory and competitively neutral rules is vital to increasing legal certainty and benchmarking high standards in the conduct of digital trade at a global level. Digital developments have to serve societies as a whole, and rules governing them have to ensure fairness and be human-centric. These efforts should be pursued at the multilateral, plurilateral and bilateral level.

6.3 Facilitating cross-border data flows

- Both plurilateral and bilateral trade agreements should acknowledge and enhance the free, cross-border flow of non-personal data, and should be equipped with the means to address unjustified restrictions. Digital trade chapters in FTAs should include provisions governing these data flows both into and out of Europe and prevent unjustified data localisation requirements such as forced localisation of IT infrastructure in third countries. Any restriction to the free flow of data and/or any action confining activities in-country should be scrutinised in light of the general exceptions of GATS Article XIV to prevent unjustified measures¹⁰. The recently concluded UK-Japan FTA contains provisions on cross-border data flows. It is key to include provisions on data flows in the Japan-EU FTA as well.

6.4 Driving plurilateral negotiations

- As the first and most significant plurilateral tariff liberalisation arrangement ever negotiated in the WTO, the [Information Technology Agreement \(ITA\)](#) and its expansion have proved very successful not only for the IT and ICT industries but for society and industry as a whole. It has supported the overall digitalisation and enabled innovation and growth among participants. The next steps at WTO level should be to ensure that current participants are living up to their commitments and to expand the global

¹⁰ See also ERT position on cross-border data flows in trade agreements <https://ert.eu/documents/ert-position-on-cross-border-data-flows-in-trade-agreements/>

participation in this agreement.

- As COVID-19 lockdowns across the world have incentivised companies to shift their offline business online, we hope to see swift progress in the WTO [e-commerce negotiations](#). Such an agreement has the potential to bring benefits to all industries through a horizontal perspective, including manufacturers of technologies, by removing barriers to digital trade. In this context, we also advocate for a [permanent moratorium on customs duties on electronic transactions](#).
- It is pivotal to finalise a future-proof [agreement on e-commerce](#) as soon as possible, so that digital trade rules are available worldwide. Key elements are to:
 1. Prohibit internet tariffs and customs formalities on electronic transmissions
 2. Facilitate the flow of data across borders
 3. Prohibit requirements to localise the storage and processing of data, with the recognised exceptions
 4. Ensure the protection of personal data
 5. Prohibit requirements to disclose source code, algorithms, or encryption keys
 6. Promote government cooperation and regulatory best practices for cybersecurity
 7. Expand market access for ICT goods through accession to the WTO Information Technology Agreement
 8. Promote state-of-the-art good regulatory practices and government cooperation in the regulation of digital services in order to reach a global level playing field
 9. Pursue Trade Facilitation Agreement (TFA) “plus” provisions that facilitate e-commerce, including through increasing de minimis levels and simplifying customs clearance for low-value shipments
 10. Promote acceptance of electronic contracts, signatures and authentication

bilaterally with partner countries. Regulatory cooperation is particularly beneficial for fast developing areas high on the agenda of regulators, such as the digital transformation. Regulatory approximation and mutual recognition of compatible local regulation is the best way to avoid non-tariff barriers.

- The Commission should continue bilateral ICT dialogues with countries such as China or India on key technology trends such as Artificial Intelligence, cloud computing and data economy. This should be done in close cooperation with EU Member States. In addition, the dialogues could cover topics paramount to the economic recovery which could include green and digital transition, public sector transformation, digital upskilling and healthcare.

6.5 Promoting bilateral ICT dialogues and regulatory cooperation

- Digital trade chapters in the EU's free trade agreements as well as regulatory cooperation also offer further opportunities to engage



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This expert paper has been prepared by the Trade & Market Access Working Group of the European Round Table for Industry.

For more information, go to: <https://ert.eu/focus-areas/trade-and-investment/>

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