

'Trade for All' – All for Trade? The EU's New Strategy

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Executive Summary

- > The 'Trade for All' strategy presented in late 2015 is the culmination of a decade-long re-orientation of EU trade policy towards more competitiveness, including a shift to reciprocal free trade with developing countries.
- > The rise of the emerging economies and the stagnation of the Doha Round contributed to a proliferation of deeper and more comprehensive bilateral free trade agreements.
- > While EU trade policy has become more strategic, aiming at bigger partners, it has not yet found a way to deal with China and Russia.
- > 'Trade for All' also aims to respond to the heated debates about the TTIP negotiations by promoting transparency and high standards of protection.
- > Finally, implementing a 'more responsible' EU trade policy will require a convergence of rhetoric and action through a reconciliation of values and interests.

On 14 October 2015 the European Commission presented its new strategy 'Trade for All: Towards a more Responsible Trade and Investment Policy'. According to Commissioner Cecilia Malmström, the trade policy of the European Union (EU) "must become more effective, more transparent and more in tune with our values" – in short, "it must become more responsible", delivering growth and jobs without compromising core principles. Whereas any trade measure unavoidably entails distributional effects with winners and losers, the new strategy claims "that EU trade policy is for all". The Policy Brief traces the EU's road to this 'all inclusive' strategy and discusses its novelties and challenges.

The road to 'Trade for All'

Since the late 1990s the European Commission has pragmatically adapted its trade strategy every few years. In the wake of the collapse of communism, the worldwide embrace of neoliberalism and the spreading of anti-globalisation protests, the EU originally pursued a policy of 'managed globalisation', aiming at the adoption of global rules and the strengthening of international regimes. It strongly advocated the launch of a new multilateral trade round in the still young World Trade Organisation (WTO). Trade Commissioner Pascal Lamy announced in 1999 a moratorium on new bilateral and plurilateral trade negotiations for the Round's duration.

A few years later, the stagnation of the Doha Round and the new assertiveness of the emerging economies led to a questioning of this doctrine. The United States and others engaged in 'competitive liberalisation' by concluding ambitious bilateral free trade agreements (FTAs), while the EU came to a sobering assessment of its 'Lisbon Strategy' (2000), which had failed to turn Europe into the world's most competitive and dynamic knowledge-based economy by 2010. As part of the much less ambitious 'renewed Lisbon Strategy' (2005), trade was to primarily contribute to growth and jobs. In the past the EU had often concluded trade agreements for political reasons, in particular with neighbouring countries and former colonies. At the same time, the increasing fragmentation of global supply chains called for a common approach to 'behind-the-border issues' such as competition policy, public procurement, investment, intellectual property, or labour and environmental standards. Whereas in the WTO the EU failed to keep the major 'Singapore issues' (competition policy, public procurement, investment protection) on the agenda, it enjoyed more bargaining leverage to incorporate such 'WTO+' issues into bilateral FTAs, making them deeper and more comprehensive.

Going global – bilaterally

In 2006 Trade Commissioner Peter Mandelson launched the 'Global Europe' trade strategy that singled out future FTA partners based on their market potential (economic size and growth), level of protection against EU export interests and negotiations with EU competitors. 'Global Europe' envisaged in particular bloc-to-bloc agreements with the Association of Southeast Asian Nations (ASEAN), Mercosur and the Gulf Cooperation Council as well as bilateral deals with important trading partners such as South Korea, India and Russia. At the same time, a separate Communication was dedicated to China as "the single greatest test of Europe's capacity to make globalisation an opportunity for jobs and growth". In the framework of the European Neighbourhood Policy (ENP), the EU began to negotiate bilateral association agreements including Deep and Comprehensive Free Trade Areas (DCFTAs), with Ukraine at the forefront.

The far-reaching FTA with South Korea, signed in 2010, was celebrated as a benchmark agreement: the first of a 'new generation' of FTAs, the first with an Asian country and the first to be ratified by the European Parliament. With the entry into force of the Lisbon Treaty, the European Parliament had acquired more powers, foreign direct investment was added to the EU's exclusive competence and the common commercial policy was placed within the EU's objectives of external action.

In reaction to the global economic and financial crisis that hit Europe in 2008, the 'Europe 2020' strategy, following up on the 'renewed Lisbon Strategy', aimed at smart, sustainable and inclusive growth. In this context, Trade Commissioner Karel De Gucht presented the 2010 'Trade, Growth and World Affairs' (TGWA) strategy as an update of the 'Global Europe' strategy. It emphasised reciprocity – especially *vis-à-vis* the emerging economies – and that the EU's trade and foreign policies should be "mutually reinforcing", encouraging partners to promote the respect of human rights, labour and environmental standards. In addition to the already standard human rights clause, new provisions on sustainable development and on investment were introduced in FTAs.

Enter TTIP

The target partners of TGWA were for the first time heavy weights like Canada, Japan, the United States and – as the region-to-region approach had failed – bilateral agreements with individual ASEAN countries such as Singapore, Vietnam, Malaysia and Thailand. While the

United States engaged with 11 partners in a Trans-Pacific Partnership, the EU launched talks on a Bilateral Investment Agreement (BIT) with China. The negotiations of a Transatlantic Trade and Investment Partnership (TTIP), opened in 2013, were perceived as a strategic response to the changing global trading order, with the potential to kick-start the WTO negotiations again.

The magnitude of the expected economic benefits was contentious, but TTIP was believed to strengthen the transatlantic alliance between like-minded democratic powers in an era of conflicts, and to allow the West to shape the future regulatory global framework for trade and investment. The notion of TTIP as a 'living agreement' – allowing regulators to identify new areas for convergence (mutual recognition, equivalence or best practices) without re-opening the treaty – has led to concerns that a joint regulatory cooperation body would take decisions beyond democratic control. However, such a body cannot replace the respective administrative, regulatory or legislative procedures on either side of the Atlantic. Moreover, the investor-to-state dispute settlement (ISDS) mechanism fuelled fears that firms – mainly big business – could sue EU governments for compensation outside the normal judicial process if their investor rights were curtailed by public policies.

'Trade for All': a shopping list or a strategic turn?

Amidst this increasing controversy over TTIP and at the half-way juncture of the 'Europe 2020' strategy, the new Trade Commissioner Cecilia Malmström presented the 'Trade for All' strategy in 2015.

A response to TTIP and beyond

In this strategy, the Commission has to some extent taken on board demands of critics as regards transparency, regulatory issues and dispute settlement in investment as well as concerns about the external effects of FTAs. In an unprecedented effort, it has been publishing virtually all the EU's negotiating positions and proposals, starting with a declassification of the (already leaked) TTIP negotiating mandate. The strategy makes this greater transparency in trade negotiations standard practice and extends it to trade defence as well. After an online consultation on ISDS in TTIP, the Commission proposed to replace this mechanism – present in many BITs concluded by EU member states – in all ongoing and future agreements by an Investment Court System that would work with publicly appointed judges and clear rules.

In addition, the strategy places a strong focus on the liberalisation of services trade, the promotion of mobility for professionals, digital trade and small and medium-sized enterprises which make up the backbone of the European economy. Moreover, future trade agreements are to include an energy and raw materials chapter. With regard to regulatory cooperation, the Communication attempts to counter public concerns by clearly stating that no trade agreement will ever lower levels of regulatory protection and that the right to regulate will always be protected.

Beyond safeguarding the European social and regulatory model at home, the trade strategy also aims to use trade agreements and preferences to promote abroad values associated with the notions of sustainable, inclusive, climate- and environmentally-friendly and ethical trade. While the inclusion and monitoring of human rights, labour rights and sustainable development is not new, the explicit support for 'fair trade', the conservation of natural resources and the fight against climate change and corruption in FTAs as well as the commitment to ensuring a responsible management of supply chains or to abstain from requiring governments to privatise public services (like water, education or health) are new steps.

This 'shopping list' does not leave much to be desired. One might point to the omission of gender and the economic empowerment of women as crucial actors in poverty eradication; or to the traditional focus on trade distortion in agricultural markets and food production rather than on small farmers, local production and pro-poor rural development.

Of course, while the inclusion of values in trade policy may make EU external action more coherent, others may consider it 'hidden protectionism'. Trade policy inevitably produces, at least in the short run, losers that will have to adapt to the changing circumstances. It creates tensions between overall growth and sectoral job losses, between sustainable development and export-led growth or diversification, between market opening and infant industry protection in developing countries, between bilateral and multilateral trade liberalisation, and so on. In other words, trade measures are not automatically 'for all' – nor are all for trade.

Missing: China and Russia

In terms of partners, 'Trade for All' appears to prioritise major projects: the Doha Round and WTO-related plurilateral agreements (like the Trade in Services

Agreement or the Environmental Goods Agreement), TTIP, the EU-Japan FTA and a continued 'pivot to Asia' with new negotiations in the Asia-Pacific region (Australia, New Zealand, the Philippines and Indonesia) but also a modernisation of the older FTAs with Mexico and Chile as well as the customs union with Turkey. The Commission also hopes to restart FTA negotiations with ASEAN as a group, building on the individual agreements.

Yet, the new trade strategy remains silent about how the EU intends to engage with its second and third largest trading partners: China and Russia. The BIT with China might serve as a test case that could eventually lead to a bilateral FTA – based on China's future market economy status at the WTO on which the document remains mute as well. Any resumption of negotiations on a new trade agreement with the Russian Federation requires overcoming the current sanctions. Whereas China primarily poses an economic challenge, Russia represents a political challenge for the EU. Regarding the other BRIC countries, the on-going FTA negotiations with India and with Mercosur have been dragging on and further highlight the EU's difficulties to negotiate with partners of equal size. The EU's 'strategic turn' thus encounters many obstacles in practice.

Finally, the strategy calls for a 'redefined' relationship with Africa, the fastest growing continent. It focuses on the implementation of existing rather than new initiatives and highlights the key role of regional integration to promote the extremely low intra-continental trade. Since 2002 the Commission has, with limited success and much criticism, negotiated Economic Partnership Agreements (EPAs) with regional groups of African, Caribbean and Pacific countries. However, some of these groups do not match the integration schemes on the ground. Moreover, the reciprocal EPAs, which replace the non-reciprocal trade preferences of the Cotonou Agreement to make them WTO compatible, contain review clauses to extend to trade in services and investment in the future. With the 2014 reform of its Generalised System of Preferences (GSP) the EU drastically reduced the number of beneficiaries to focus on those countries most in need, while incentivising the others to conclude FTAs such as the EPAs. The EU continues to support in particular the least developed countries, for instance by pushing for special conditions in the WTO – most recently at the Ministerial Conference in Nairobi in December 2015 which granted them preferential treatment for services and rules of origins and committed to eliminate subsidies for farm exports.

A 'more responsible' EU trade strategy?

Values should inform interests and actions. In this regard, the 'Trade for All' strategy is bound to face a classical dilemma. While the Commission seems more determined than ever to defend Europe's commercial and strategic interests, it is also committed to upholding a higher number of values close to Europeans' hearts. However, the EU has a long record of inconsistent application of political conditionality (such as human rights clauses in trade agreements, the withdrawal of GSP preferences or other trade-related sanctions).

That trade agreements can be powerful foreign policy instruments must have dawned upon the EU at the latest with the Ukraine crisis in 2013. Russia interpreted the DCFTAs with the EU's Eastern partners as a geopolitical offensive to which it responded with the creation of the Eurasian Economic Union, its enlargement to Armenia and interference on Ukrainian territory. The new strategy acknowledges that "trade policy has significant repercussions on the geopolitical landscape". TTIP is another agreement whose geopolitical implications needs careful consideration, especially with regard to the

question how this 'mega-regional' deal could be multilateralised, which the strategy leaves open.

To render a 'more responsible' trade policy a 'mission possible' for the EU requires a convergence of rhetoric and action and a reconciliation of European interests and values – with values expected to prevail over interests in case of conflict. In this regard it should be kept in mind that the EU's trade strategy is not the only strategy to have undergone a review in 2015, but so have the ENP and the European Security Strategy. 'Trade for All' recognises that, contrary to earlier assumptions, not all ENP countries are interested in closer integration with the EU and that trade agreements other than the DCFTAs might be needed. This was confirmed in the ENP review issued a month later which, at the same time however, retreated on values. With regard to the new EU Global Strategy on Foreign and Security Policy, due in June 2016, the European External Action Service acknowledges that in a more connected, contested and complex world, the EU needs a joined-up approach to external action. Time to remember that a real strategy, even if it attempts to address all important issues, must single out priorities and provide some guidance for its implementation.

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