

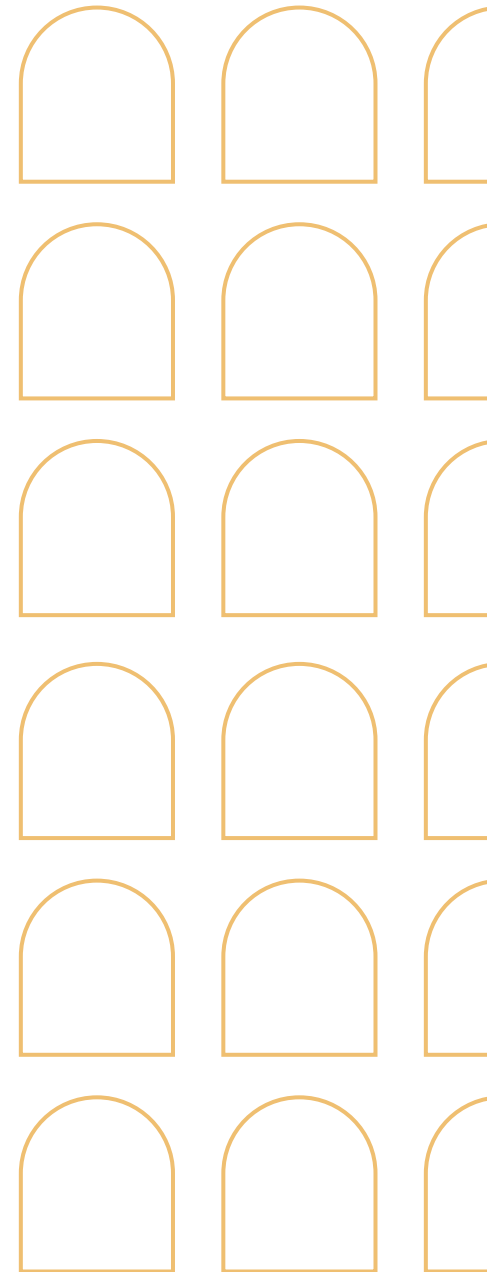
# POLICY BRIEF

## The End of Naivety: Assertiveness and New Instruments in EU Trade and Investment Policy

### Introduction

For decades the European Union (EU) was a pillar of free trade liberalisation in the world. It pursued a liberal free trade agenda predicated on achieving true freedom of movement within its internal market and using access to its market as both carrot and stick for the rest of the world. EU commercial policy was guided by a liberal ideology rooted in a strong belief that the opening of markets around the world was essential for prosperity, democracy and peace – in addition to being a goal in itself. As one of the world’s three largest traders, the EU has long been a central player in the World Trade Organization (WTO) regime and one of its most ardent defenders. When the first cracks appeared in political support for globalisation in the late 1990s, the EU doubled down its efforts to open markets and bring emerging economies such as China into the multilateral fold. Indeed, exporting its regulatory model by building capacity and increasing membership of the WTO and other international organisations became one of the EU’s main instruments in its attempt to ‘manage’ globalisation.<sup>1</sup> After the 2008 financial crisis, with the multilateral system and, more broadly, the liberal international economic order increasingly challenged, the EU continued to carry the torch of liberal globalisation and to try to lead by example, even in the face of growing unilateral protectionist actions by its largest trade partners.

In recent years, however, EU trade policy has markedly shifted. When former European Commission President Jean-Claude Juncker de-



Issue 2022/55  
November 2022

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<sup>1</sup> Wade Jacoby and Sophie Meunier, “Europe and the Management of Globalization,” *Journal of European Public Policy* 17, no. 3 (1 April 2010): 299-317, <https://doi.org/10.1080/13501761003662107>.

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clared in 2017 that “we are not naïve free traders,”<sup>2</sup> it started a new era of assertiveness in EU commercial policy, the objective of which was summarised by the Commission in 2021 as being “open, sustainable and assertive.”<sup>3</sup> On the one hand, the EU has been quickly creating a Pandora’s Box of autonomous unilateral instruments, including a foreign investment screening mechanism, anti-foreign subsidies regulation, an international procurement instrument and an anti-coercion instrument. On the other hand, it has started using trade policy to achieve strategic autonomy and, more generally, geopolitical objectives. This obviously accelerated in the wake of the Russian invasion of Ukraine.

This policy brief has two objectives. First, I explain these new developments in European trade and investment policy by focusing on both external (notably the Trump presidency and the evolution of China under Xi) and internal factors (notably new supranational foreign direct investment competences and a change in the balance of ideological forces within the post-Brexit EU). My main argument is that there has not been a true paradigm shift but rather a continuation of the same ‘free and fair trade’ EU objectives although by different means.

Second, I discuss the implications of this new assertive turn for the EU in navigating this shift and for its partners in preventing a EU turn to protectionism and mercantilism, especially now that the war in Ukraine might necessitate more state intervention in the economy. Although I argue that this new panoply of unilateral instruments is not by design a turn to protectionism, it could easily slip into one. The EU has been creating new policy instruments designed to level the economic playing field and to address the national security implications of other actors’ economic interactions with Europe, in part by ‘commercialising’ foreign policy issues, but achieving these goals without resorting to protectionism and industrial policy has proven a delicate

balance that could easily be tilted by domestic actors with populist agendas.

## Assertiveness and the creation of new unilateral instruments

With its new trade strategy released in February 2021, the European Commission announced loud and clearly to its trade partners and to the European population that it was shifting gears to address contemporary challenges, such as post-pandemic economic recovery, climate change and growing unilateralism.<sup>4</sup> The new strategy was explicitly designed to support the EU’s strategic autonomy and broader geopolitical goals while still positioning the EU as the guardian of openness and multilateralism. To achieve these objectives, the EU has been creating a panoply of new instruments to level the economic playing field by redressing unfair trade practices and to prevent its economic competitors from making commercial transactions with negative national security implications.

### The foreign investment screening mechanism

With the 2020 implementation of its new investment screening mechanism (ISM), the EU joined the bandwagon of countries creating or reinforcing investment screening – the practice by which governments review inward foreign direct investment (FDI) transactions and deny entry to, or require the divestment of, investments that are deemed unacceptable, usually because they are considered to threaten national security.<sup>5</sup>

After Juncker’s 2017 speech the EU formally launched a policy process to screen inbound FDI.<sup>6</sup> The drafting and passing of the pan-European investment screening mechanism was surprisingly swift, with the final regulation adopted in March

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2 Jean-Claude Juncker, “State of the Union 2017,” European Commission, 13 September 2017, [https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2017\\_en](https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2017_en).

3 European Commission, “Trade Policy Review – An Open, Sustainable and Assertive Trade Policy,” Communication, 18 February 2021, [https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc\\_159438.pdf](https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf).

4 European Commission, “Trade Policy Review - An Open, Sustainable and Assertive Trade Policy,” Communication, 18 February 2021, [https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc\\_159438.pdf](https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf).

5 Bauerle Danzman, Sarah, and Sophie Meunier. “Mapping the Characteristics of Foreign Investment Screening Mechanisms: The New PRISM Dataset.” *International Studies Quarterly*, forthcoming (2022).

6 Zenobia T. Chan and Sophie Meunier, “Behind the Screen: Understanding National Support for a Foreign Investment Screening Mechanism in the European Union,” *The Review of International Organizations*, 13 July 2021, <https://doi.org/10.1007/s11558-021-09436-y>.

2019.<sup>7</sup> For the first time this regulation creates procedures for foreign investment in the Single Market to be reviewed by entities other than the host country and for Member States to recognise that some investments may be politically problematic. However, the ultimate decision to accept or reject an investment lies with the host country. This is by no means an EU version of the Committee on Foreign Investment in the United States (CFIUS). The main feature of the EU ISM is a cooperation mechanism between the Member States and the Commission to exchange information and raise concerns about specific transactions that “may threaten security or public order,” mostly concerning investments in critical technologies and infrastructure. Importantly, screening is not allowable on economic grounds.<sup>8</sup>

After over a year of its existence, the impact of the new EU investment screening policy can be felt in at least three ways. First, the number of national ISMs in Europe has drastically increased: while only 11 Member States had investment screening measures in 2017, 18 countries had adopted them by 2021 and another 6 plan to have them in the near future.<sup>9</sup> Second, the EU has screened a fair number of transactions (265) with investors coming mostly from the US, the UK, China, Canada and the UAE in a variety of sectors dominated by manufacturing, ICT and financial services.<sup>10</sup> Third, the success of the EU ISM has paved the way for the subsequent creation of other commercial instruments at the border between trade and security.

### Anti-foreign subsidies regulation

As part of its end to naivety and its newfound assertiveness, the EU is now trying to tackle an old regulatory gap in order to level the playing field

economically: the issue of subsidies paid by third countries to foreign companies active in the single market. The EU has long ensured a level playing field internally by severely limiting state aid given by its Member States and externally by using so-called countervailing duties that seek to nullify cost advantages of imports benefiting from foreign subsidies. However, the EU cannot address market distortions caused by foreign subsidies, which puts European companies at a competitive disadvantage at home and in world markets. Foreign companies can build market power in the EU by participating in mergers and acquisitions, bidding in public procurements and participating in other business transactions thanks to state subsidies that are not allowed in the EU, thus undermining the competitiveness of EU companies.<sup>11</sup>

In May 2021, the Commission issued a legislative proposal designed to eliminate the use of ‘unfair’ foreign subsidies that may result in market distortions. It therefore would enable companies operating in the EU “to compete on the basis of merit” regardless of their nationality.<sup>12</sup> This proposal introduces new instruments and procedures allowing the EU to monitor FDI transactions, to investigate potentially distortive subsidies and if necessary to adopt remedial measures. A political consensus was reached on the proposal in June 2022 and it is likely to be adopted in late 2022 with implementation in 2023.

### The International Procurement Instrument

After a decade of negotiations, in March 2022 the European Parliament and the Council finally agreed to set up a new international procurement instrument (IPI) in order to pressure foreign countries to

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7 European Union, “Regulation of the European Parliament and of the Council Establishing a Framework for the Screening of Foreign Direct Investments into the Union,” February 20, 2019.

8 Anna Vlasjuk Nibe, Sophie Meunier and Christilla Roederer-Rynning, “Pre-emptive Depoliticization: The European Commission and the EU Investment Screening Regulation,” paper presented at the EUSA conference, Miami, May 2022.

9 As of writing, so far only Bulgaria, Croatia and Cyprus have no plan for national ISMs. European Commission, “First Annual Report on the Screening of Foreign Direct Investments into the Union,” 23 November 2021, 21.

10 European Commission.

11 Robert Basedow, Sophie Meunier and Christilla Roederer-Rynning, “Fair Play? The Politics of Evaluating Foreign Subsidies in the European Union,” *Paper Presented at the 2021 CELIS Conference*, 2021.

12 European Commission, “Proposal for a Regulation of the European Parliament and the Council on Foreign Subsidies Distorting the Internal Market (COM(2021) 223 Final),” 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0223&from=EN>.

open their protected markets to EU operators.<sup>13</sup> The IPI is designed to restore a level playing field and introduce reciprocity in public procurement. It will constrain and limit the conditions under which companies from non-EU countries that do not offer EU companies similar access can bid open procurement tenders in the EU.

The new instrument instructs the Commission to determine if third countries allow EU companies fair access to their public tenders. IPI measures will apply to tenders worth at least €15 million for works and concessions (i.e. road construction) and €5 million for goods and services (i.e. purchases of computers). If the Commission finds that a third country from which a bid originates has existing procurement barriers, IPI measures can take, for instance, the form of a price penalty on the bid or even the exclusion of bids from particular countries.

### The anti-coercion instrument

The EU is currently developing an anti-coercion instrument to address pressing concerns about the increasingly porous border between the economy and security. In December 2021 the Commission proposed an anti-coercion regulation that would provide a tool with which to retaliate against countries that take economic action against a Member State's legitimate sovereign choices for political reasons. The Commission could take several countermeasures against the interfering state, including imposing tariffs and quotas, restricting access to EU capital markets and public procurement tenders, and blocking exports. The proposed regulation is now going through the EU legislative process with a sense of urgency because of the pressure applied by China on Lithuania and because of the French government having identified this as a priority for its EU presidency.

Taken together, all these instruments plus additional ones currently being developed<sup>14</sup> will enable the EU to restore some evenness to the economic playing field, to respond swiftly to economic actions

encroaching on national security by foreign actors and to achieve some degree of strategic autonomy.

## Explaining these new instruments: External factors

The confluence of several external factors, notably China under Xi's increasing use of economic relations for geopolitical purposes and the growing protectionism and retreat from multilateralism by the US under Trump, helps explain the development of these new trade and investment instruments.

### Unfair competition from China with a geopolitical purpose

Every single one of these instruments enabling assertiveness and fair play has been created first and foremost in the shadow of China, with its state-imposed market distortions and objective of self-sufficiency by any means. According to French trade minister Franck Riester, "the tougher strategy on China and other 'disloyal' actors was part of a 'paradigm shift' in EU trade policy, that for too long saw free trade and opening new markets as an end in itself."<sup>15</sup>

The creation of investment screening at the EU level and in many Member States that did not have ISMs before stems directly from fears raised by increased levels of FDI from China in strategic sectors and in non-strategic sectors with a technological edge.<sup>16</sup> As the Commission states in its year one ISM report, "The past years have seen a clear change in investor profiles and investment patterns, i.e. increasingly non-OECD investors, occasionally with government backing or direction, whose motivation for a particular investment might not always be exclusively commercial."<sup>17</sup> Indeed, after a decade of Chinese direct investment in Europe, it has become clear that there is something inherently different about Chinese FDIs compared to other sources of FDI. Notably, they stem from an emerging economy playing technological catch-up, a unique political system with opaque management

13 <https://www.europarl.europa.eu/news/pt/press-room/20220309IPR25152/international-public-procurement-instrument-new-tool-to-support-eu-firms>

14 Such as a carbon border levy to increase the cost of imports the production of which creates many emissions.

15 "EU Ministers to Back Lithuania in China Trade Battle," [www.euractiv.com](http://www.euractiv.com), February 14, 2022, <https://www.euractiv.com/section/china/news/eu-ministers-to-back-lithuania-in-china-trade-battle/>

16 Chan and Meunier, "Behind the Screen."

17 European Commission, "First Annual Report on the Screening of Foreign Direct Investments into the Union."



of the economy and a non-ally in the security arena.<sup>18</sup> It is notable, however, that for some Member States investment screening has also been driven by fears of Russian investment.<sup>19</sup>

Similarly, the anti-foreign subsidies regulation was designed primarily with China in mind. The regulatory gap putting EU companies, which are prohibited from receiving state aid, at a disadvantage compared to foreign companies receiving state subsidies in European and world markets has existed for decades. The rise of Chinese companies as foreign investors and competitors in procurement markets gave the issue of distortive foreign subsidies a sense of urgency. The issue was first raised as a real problem in need of urgent action in 2019 when the EU released its strategy on China, identifying it as an “economic competitor” and a “systemic rival.”<sup>20</sup>

The International Procurement Instrument was also designed with China primarily in the EU’s sights. “The naïve Europe is in the past,” said French Trade Minister Franck Riester, explaining that access to the European public procurement market would now be conditional on reciprocity.<sup>21</sup> The timing of the agreement on this new instrument is telling. While the Commission proposed the IPI a decade ago, it was stuck in the EU decision-making process until 2019. Talks were revived after the Commission stressed the challenge posed by China, which does not allow Member States and the European Parliament reciprocal access to its own public tenders.

As for the anti-coercion instrument, not only was it designed with China in mind but the dispute between China and Lithuania, which happened as the instrument was being proposed, provided a textbook illustration of why it was needed. After Lithu-

ania exited the 17+1 forum and allowed Taiwan to open an office in Vilnius in 2021, China retaliated harshly with a variety of coercive economic measures in an attempt to force a change in Lithuania’s position, including by blocking all trade with Lithuania and all trade in products containing components made in Lithuania.<sup>22</sup> The EU launched a case against China at the WTO, but it is also speeding up negotiations on the anti-coercion instrument that would enable it to react faster in the future. Proposed before the Russian invasion of Ukraine, the anti-coercion instrument was also aimed partly at Russia as a deterrent against punishing countries for political dissent and speaking out against human rights violations.

### The US retreat from the liberal international economic order

The shift in EU trade policy towards assertiveness was also prompted by the unilateral and protectionist turn in US trade policy under the Trump administration, which did not hesitate to weaponise trade instruments and purposely weaken rules-based multilateralism as part of its ‘America first’ vision.

Certainly, the weakening of US support for the liberal international economic order started before the Trump administration. The EU has been a pillar of the WTO regime and ranks among the main users of the WTO’s dispute settlement system. Between 1995 and 2021, of the more than 600 formal dispute settlement procedures initiated at the WTO, the EU participated as either defendant or complainant in one third of the cases.<sup>23</sup> By contrast, starting in the early 2000s, the US started moving away from multilateralism and embarked on an ambitious agenda of ‘competitive liberalisation’ to conclude bilateral and regional agreements with as many countries

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18 Sophie Meunier, “Beware of Chinese Bearing Gifts: Why China’s Direct Investment Poses Political Problems in Europe and the United States,” in *China’s Investment Three-Prong Strategy: Bilateral, Regional, and Global Tracks*, Julien Chaisse (ed.) (Oxford University Press, 2019).

19 Sarah Bauerle Danzman and Sophie Meunier, “Naive no More: Foreign Direct Investment Screening in the European Union,” 2022 (under review).

20 European Commission, “EU-China Strategic Outlook: Commission and HR/VP Contribution to the European Council (21-22 March 2019),” 12 March 2019, [https://ec.europa.eu/commission/publications/eu-china-strategic-outlook-commission-contribution-european-council-21-22-march-2019\\_en](https://ec.europa.eu/commission/publications/eu-china-strategic-outlook-commission-contribution-european-council-21-22-march-2019_en)

21 János Ammann, “With China in Mind, EU Agrees on Rules to Force Open Tenders,” [www.euractiv.com](http://www.euractiv.com), 15 March 2022, <https://www.euractiv.com/section/economy-jobs/news/with-china-in-mind-eu-agrees-on-rules-to-force-open-tenders/>

22 Gideon Rachman, “China and Russia Test the Limits of EU Power,” *Financial Times*, 17 January 2022, <https://www.ft.com/content/a9dfbaef-e913-460a-8e0a-2b702efa7edb>

23 Christian Freudsperger and Sophie Meunier, “The EU and the WTO,” in *The Elgar Companion to the WTO*, forthcoming.

as possible. Under the Obama administration, the US criticised the judicial activism in the WTO and continued the policy of negotiating trade and investment agreements outside the multilateral system, including with the EU through the Transatlantic Trade and Investment Partnership (TTIP).

The Trump administration's unilateral turn greatly magnified these challenges to the liberal international economic order. Trump's mercantilist rhetoric and deep suspicions about multilateralism turned into actual policies, including withdrawing the US from the Trans-Pacific Partnership (TPP) on his first day in office, starting "trade wars" with China and also the EU, and directly attacking the WTO system, notably by incapacitating the Appellate Body. But the EU has not given up on the multilateral process. Instead, it is currently pursuing a multi-pronged reform agenda to resuscitate it, which involves reforming the Appellate Body, adapting the WTO agenda to respond to new technological and environmental challenges, and breaking down negotiations into smaller pieces.<sup>24</sup>

The COVID pandemic further accelerated the EU's drive to create a multiplicity of new assertive trade and investment instruments in a world where US support and cooperation could no longer be taken for granted. Indeed, even though the EU's anti-foreign subsidies proposal was already in the works, it was the rumoured acquisition of a German vaccine company with funds from the US government that put the issue in the news in 2020.<sup>25</sup>

One exception is investment screening, which has not been created in reaction to changes in US policy. Even though the US has been the top origin of investor transactions reviewed by the new EU ISM, American officials have worked quite closely to help

EU investment screening get started, share best practices and encourage the EU to go even further.

## Explaining these new instruments: Internal factors

The assertive turn in EU trade policy has also resulted from internal factors, including the transfer of FDI policy competence resulting from the Lisbon Treaty and Brexit.<sup>26</sup>

### Transfer of investment competence

Several of the new assertive instruments could not have existed in previous decades simply because the EU was not in charge of foreign investment issues. This changed with the 2009 Lisbon Treaty, which formally transferred FDI competence to the EU level by including "foreign direct investment" in Article 207 dealing with common commercial policy. However, since the competence transfer had not been debated beforehand and since the legal wording was so vague, an inter-institutional fight over the exact nature of the competence transfer erupted in the years following the implementation of the Treaty.<sup>27</sup> The issue was finally settled between 2017 and 2019 after a series of European Court of Justice cases.<sup>28</sup> This competence transfer explains, for instance, the timing of the new European investment screening mechanism.

### Brexit

Brexit also played a role in the paradigm shift in EU trade policy. First, the 2016 Brexit vote, which reflected growing populism and put economic nationalism at the centre of the debate, led the EU to refocus its commercial policy on more purely economic objectives – namely jobs and growth – instead of

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24 On the links between the collapse of the multilateral process and the rise of EU unilateral instruments, see Ferdi De Ville, "The European Union's unilateral turn in trade policy," paper presented at the 2022 ECPR conference, May 2022.

25 "Germany Confirms That Trump Tried to Buy Firm Working on Coronavirus Vaccine," POLITICO, 15 March 2020, <https://www.politico.eu/article/germany-confirms-that-donald-trump-tried-to-buy-firm-working-on-coronavirus-vaccine/>.

26 Sophie Meunier and Kalypso Nicolaidis, "The European Union as a Trade Power," in *International Relations of the European Union*, 2022.

27 Meunier, Sophie. "Integration by Stealth: How the European Union Gained Competence over Foreign Direct Investment." *Journal of Common Market Studies*, 2017. <http://onlinelibrary.wiley.com/doi/10.1111/jcms.12528/abstract>. Basedow, Johann Robert. *The EU in the Global Investment Regime: Commission Entrepreneurship, Incremental Institutional Change and Business Lethargy*. Routledge, 2018. <https://www.routledge.com/The-EU-in-the-Global-Investment-Regime-Commission-Entrepreneurship-Incremental/Basedow/p/book/9780367890575>.

28 Opinion 2/15 on the EU-Singapore free trade agreement rendered in 2017 and Opinion 1/17 on the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada rendered in 2019.

normative power and guardianship of multilateralism. Becoming more assertive on the global stage and acting to establish an economic level playing field were seen as ways to respond to discontent with the distributional impacts of globalisation. Like the British who voted for Brexit, the EU has been “taking back control.”

Second, Brexit transformed the ideological balance of power among the Member States. They had long been split in two factions: liberal free-traders opposed to any policy introducing market distortions (anchored by the UK, Denmark, Sweden and the Netherlands) and the more Colbertist countries believing that some dose of reciprocity, dirigism and even protectionism is sometimes necessary (anchored by France and some southern States). The UK’s departure from the EU tilted this balance of power and gave greater voice to the critics of free trade at all costs. Moreover, this ideological rebalancing coincided with an ideological shift in German industry, which was traditionally opposed to defensive and aggressive measures, as a result of the perception of unfair competition and pressure from Chinese manufacturers.

## Paradigm shift or simple change in methods?

The EU’s ‘end of naivety’ means that while it continues to preserve openness policymakers are less hesitant to take some unilateral actions when trade is not fair or when partners use trade for non-trade purposes. I argue that this is not a true paradigm shift but rather a continuation of the same EU ‘free and fair trade’ objectives although by different means. However, reaching these goals without resorting to protectionism and industrial policy has proven a delicate balance that could be easily tilted.

### Same objectives; different means

The overall objective of EU trade policy is still the same as it has been for over sixty years: to ensure free and fair trade. This, I argue, has not changed. But since other actors, chief among them China and to a lesser extent the US, have altered both their objectives and their methods, and as the multilateral trade system has collapsed to all intents and purposes, the EU had to adapt and create new policy instruments to adjust the means with which it can achieve its old objective. These new policy instruments are designed to level the economic

playing field and to address the national security implications of other actors’ economic interactions with Europe.

In particular, the EU had to change its instruments to ensure an open and rule-based trading system in order to adjust to a trade world where multilateralism is no longer an effective forum to address issues and disputes. As Bernd Lange, chairman of the European Parliament’s trade committee (INTA) puts it, “Ten years ago, our principal approach was to open markets, trying to reduce tariffs and non-tariff barriers, thinking that everybody respects global rules, be it WTO rules or bilateral ones. This is not the case anymore. We see trade used as a weapon, which is what China is doing against Lithuania. We see trade used as a managed tool, like in the US, and we see a lot of protective measures, particularly regarding the pandemic. [...] We need more defensive instruments to protect our economic and political interests. [...] Sometimes you have to put a gun on the table, even when you know that you might not use it.”<sup>29</sup>

Regarding the level playing field, not all the new EU assertive trade instruments are created equal. Some are clearly economic in nature and designed to establish a level playing field to ensure fair competition. This is the case of the proposed anti-foreign subsidies regulation and the newly agreed International Procurement Instrument. Others are of a more political nature and deal with the security implications of economic relations. That is the case of the new investment screening mechanism and of the proposed anti-coercion instrument.

Since the EU started creating these new unilateral instruments, China has doubled down on its *de facto* withdrawal from multilateral policies governing trade and on its strong state-directed industrial policy, leading to a world in which trade is less fair and less free. We can therefore expect the EU to continue churning out new policy instruments to confront China’s challenge to economic openness.

Regarding the United States, even though the Biden Administration has overall been a much closer partner of the EU in a variety of policy areas than the Trump Administration was, some recently enacted domestic policies suggest that Americans, whether Democrats or Republicans, may be moving away from the so-called ‘Washington Consensus’ on economic liberalism and towards industrial policy, regardless of the consequences for the rest

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29 Allenbach-Ammann, János. “Bringing a Gun to Trade Negotiations.” [www.euractiv.com](https://www.euractiv.com), 2 June 2022. <https://www.euractiv.com/section/economy-jobs/news/bringing-a-gun-to-trade-negotiations/>.



of the world.<sup>30</sup> In particular, the Inflation Reduction Act (IRA) includes several provisions that benefit the production of electric vehicles in the US, which the EU sees as discriminatory.<sup>31</sup> The Commission plans to use the collaborative transatlantic forum provided by the Trade and Technology Council to solve some of the potential disputes arising from the IRA, but it also needs tools to address some of them unilaterally.

### The fine line between assertiveness and protectionism

Although this new panoply of unilateral instruments is not by design a turn to protectionism, it could easily slip into one. Achieving the goals of levelling the economic playing field and addressing the national security implications of other actors' economic interactions with Europe without resorting to protectionism and industrial policy has proven a delicate balance that could be easily tilted for a variety of reasons, including the ones below.

First, technological innovations have blurred the line between the economy and security. Technological advances, from the ubiquity of mobile apps to the internet of things, have created new risks related to intelligence gathering, misinformation and even control of critical infrastructure. As a result, it has become easier to see economic exchange through a national security lens. Investment screening in Europe, which is designed specifically to scrutinise the potential security implications of economic transactions, is not an economic instrument *per se*, as FDI in the EU is not screened on the basis of an economic cost/benefit analysis. However, it could potentially be used for economic purposes by national and EU actors with a very expansive definition of security.

Second, state intervention in the economy is growing in the EU, as a result in part of the vulnerabilities in supply chains revealed by the pandemic, tit-for-tat retaliation against third countries' use of indus-

trial policy and a war economy on the European continent following the Russian invasion of Ukraine. Evidence of this includes the recent relaxing of EU state aid rules, the EU's own CHIPS Act, which will enable Europe to nurture its semiconductor industry, and the recent creation of the Single Market Emergency Instrument, which provides the EU executive with powers to manage some elements of the economy in times of crisis.<sup>32</sup> This rise of state interventionism in order to achieve more European self-sufficiency could easily bleed into trade policy.

Third, new geopolitical rivalries are mobilising economic instruments, not only by using traditional tools of economic statecraft such as sanctions but also by 'weaponising' economic interdependence.<sup>33</sup> In response, the EU has called for increasing "strategic autonomy" through more economic self-reliance and has been developing its own policy instrument to counter the political coercion exerted by some foreign actors on EU Member States, chief among which are China and Russia. However, the proposal for an anti-coercion instrument (not yet adopted at the time of writing) is also seen by some Member States as a potential protectionist measure. Indeed, it will be easy to subsume a variety of economic interactions under the 'security' and 'political coercion' banners and use these banners as excuses for protection.

Fourth, whether the three previous developments turn into protectionism depends on which actors are in power in Europe. The democratic rise of populist policymakers in the domestic politics of many Member States, including most recently Italy, suggests that the new assertiveness instruments could indeed be captured for protectionist purposes. Indeed, the European Commission is setting the agenda in trade and investment matters, but a coalition of far-right populist leaders in several Member States at the Council and of Members of the European Parliament could lead to a real paradigm shift in EU trade policy – whether on negotiating and ratifying trade agreements, screening foreign invest-

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30 United States Trade Representative. "Remarks by Ambassador Katherine Tai at the Roosevelt Institute's Progressive Industrial Policy Conference." Accessed 11 October 2022. <http://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2022/october/remarks-ambassador-katherine-tai-roosevelt-institutes-progressive-industrial-policy-conference>.

31 Fleming, Sam. "EU Urges US to Rethink Tax Breaks in Landmark Green Legislation." *Financial Times*, 9 October 2022.

32 European Commission. "Single Market Emergency Instrument (SMEI)." 2022. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_5443](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5443).

33 Drezner, Daniel, Henry Farrell and Abraham Newman. "The Uses and Abuses of Weaponized Interdependence." *Brookings* (blog), 26 May 2020. <https://www.brookings.edu/book/the-uses-and-abuses-of-weaponized-interdependence/>.



ment for economic purposes or relaxing sanctions and export controls on certain countries.

## Conclusion

The recent emergence of all these new unilateral trade instruments in rapid succession does not yet signal a paradigm shift. The EU is still trying to promote economic openness, notably by acting as the last safeguard of multilateralism, but it has been designing and enacting new policy tools to force the compliance of partners who do not honour their international commitments and to ensure that it is not naively taken advantage of by other countries. By its very nature and its long insistence on multilateralism, the EU may seem poorly equipped to thrive in the new world of tit-for-tat threats, divide-and-rule attempts and plain coercion. Yet it has finally joined, albeit reluctantly, the bandwagon of major powers which weaponise market access in order to pursue strategic autonomy.<sup>34</sup>

So far, assertiveness has been the dominant characteristic of the new “open, sustainable and assertive” trade policy of the EU. In the current tense geopolitical environment in which economic interdependence can be weaponised, as is evidenced by the Russian war in Ukraine, assertiveness has been seen as more pressing than openness. This assertiveness has resulted in new commercial instruments designed to ensure fairer international competitiveness for European economic actors and to help the EU in its quest to achieve strategic autonomy.

In the process, the EU has included several issues that have traditionally been in the domains of foreign policy and security, such as how to deal with coercion, in trade policy. I call this ‘commercialisation of foreign policy.’ Decisions on foreign policy issues are usually made by consensus, which makes it difficult to reach a decision to forcefully sanction or engage with third countries such as China and Russia which can easily coerce one of the individual Member States. By moving some of these issues under the trade policy umbrella, however, decisions become subject to qualified majority voting and the Commission has a louder voice and guiding hand in determining policy.

This institutional development may have implications for the EU’s ability to exercise geopolitical

power. As Reinhard Bütikofer, an influential MEP very involved in trade issues, puts it, “The interconnection between trade and foreign policy all of a sudden allows us to use trade policy for a more effective pursuit of foreign policy.”<sup>35</sup>

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34 Meunier, Sophie and Kalypso Nicolaidis. “The Geopoliticization of European Trade and Investment Policy.” *JCMS: Journal of Common Market Studies* 57, no. S1 (2019): 103-13. <https://doi.org/10.1111/jcms.12932>.

35 Rachman, Gideon. “China and Russia Test the Limits of EU Power.” *Financial Times*, 17 January 2022.

## The Global Governance Programme

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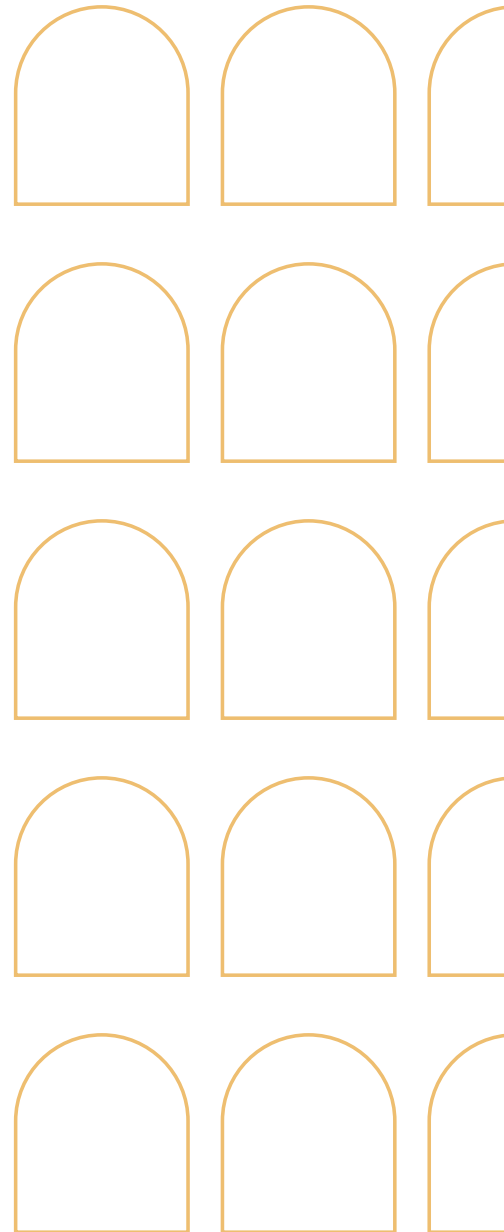
Co-funded by the  
Erasmus+ Programme  
of the European Union

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Published by  
European University Institute (EUI)  
Via dei Roccettini 9, I-50014  
San Domenico di Fiesole (FI)  
Italy



doi:10.2870/786453  
ISBN:978-92-9466-253-8  
ISSN:2467-4540  
QM-AX-22-055-EN-N