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CONTRIBUTION TO TRADE POLICY REVIEW – PUBLIC CONSULTATION

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

As a starting point, we would like to highlight the importance of maintaining openness and enhancing the level playing field in the EU's trade and investment policies. Free, open and fair trade that is based on rules, are fundamental elements in building the EU's resilience and in developing a model of open strategic autonomy. Especially at this time, where we are working on the recovery of our economy and society from the COVID-19 pandemic. The EU should continue to lead against protectionism in trade and have an ambitious agenda that strives to increase access to third markets while, at the same time, ensures that products and services entering the EU market are not distortive and meet EU standards.

Although it is still too soon to assess the full impact of the COVID-19 pandemic, it is clear that there is a disruption in global value chains. This is either because of the significant drop in demand for most goods and services, a difficulty to source inputs, or because of a global surge in demand for certain goods, such as pharmaceuticals and personal protective equipment. Combined with major disruptions in production capability, demand and transportation at the beginning of the crisis in particular, which have not fully recovered yet, global supply chains are experiencing significant pressure and companies may need to adapt their strategies and operations to new ways of working and to build future resilience. Some analysts are already talking about possible consolidation of supply chains.

Trade is inextricably connected with global value chains and plays a crucial role in the recovery of the economy as a whole after the pandemic, and more particularly in improving the EU's resilience. First, this can be achieved by pursuing stronger cooperation with our trading partners. Crises such as the one related to the COVID-19 pandemic are global in nature and, thus, require global solutions. What the pandemic has shown is that, very often, governments' first reaction is to turn towards protectionism. In this regard, we would like to stress that any emergency measures that come as a response to a crisis must be targeted, proportionate, transparent, temporary and avoid creating unnecessary barriers to trade and disruptions in global supply chains. Resilience should therefore be improved at the multilateral level, by ensuring that all the governance and cooperation fora, such as the World Trade Organisation (WTO), the Organisation for Economic Cooperation and Development (OECD), the G7 and the G20, work efficiently and coordinate their efforts accordingly to manage global trade disruption. The EU, being a key supporter of multilateralism, must play a leading role in this context.



In the area of healthcare in particular, the discussion on the expansion of the WTO Pharmaceuticals Agreement to include more products and countries is welcome by the European business community. Furthermore, additional initiatives promoted by the EU that aim to complete the liberalisation of trade in areas such as healthcare products are also welcome and we hope that work in the WTO, at least in plurilateral format, will begin soon. This agreement should introduce disciplines in order to not only increase access to markets in general, but to ensure that all countries play by the same rules, including on import and export restrictions, and that access to crucial goods is maintained during future crises. This will contribute to the improvement of resilience in the EU and globally. We understand that discussions are at a very early stage. We also recognise that getting into the details of an agreement on healthcare, the negotiating parties will face a number of challenges, including on definitions of goods. To this end, BusinessEurope would like to propose that, instead of entering into a discussion on developing lists of products, it would be perhaps better to start with a list of principles or conditions that should be respected in the conduct of trade in the area of healthcare.

As we also argue later in the document, in order for the EU to build its resilience, close collaboration is required between trade and industrial policies, but also to take into account the objective of achieving digital and green transformations and lead globally in these areas. The EU's wealth and well-being are and will remain dependent on imports of goods – final, intermediary and raw materials – and services as well as on investments, both within the EU and foreign. We often tend to undervalue the role of imports in the development of growth, jobs and innovation – including the development of new technologies, focusing on the role of exports only. Exports and imports are the two sides of the same coin and, in that sense, it is critical to ensure that the EU remains open in the pursuit of its strategic autonomy. This especially applies in the area of digital trade, as an ambitious EU strategy will drive innovation and inclusive growth while protecting European values in the area of data privacy and security. To achieve this, we call on the EU to support 'smart technological sovereignty' in order to tackle the economic and technological challenges ahead by creating a positive vision for a technologically sovereign Europe and avoiding restrictive and protectionist policies.

Some voices call for the reshoring of production in Europe. Although this may take place in some areas following the COVID-19 pandemic, it cannot be the result of state intervention, but rather the result of market-based decisions of companies and in full compliance with WTO rules. What is important is to ensure that the right framework conditions are in place to allow businesses to prosper and thrive in Europe. For this to be achieved, a more coordinated and coherent approach is required at EU level and among Member States, in particular in the context of the EU's industrial policy. For us, the preferred path to achieve resilience is the diversification of supply chains, while also discussing the deployment of other measures, such as stockpiling. The EU can help companies in their sovereign decisions by providing a comprehensive set of tools, by liberalising trade and increasing access to markets through Free Trade Agreements and rules – multilateral, plurilateral or even unilateral – on levelling the playing field and addressing market distortions in the EU and abroad.



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

The EU's trade agenda must remain ambitious, covering all aspects of trade – multilateral, regional, bilateral and unilateral. In question 1 we stressed the importance of international cooperation. The EU cannot solidify and diversify supply chains alone. This requires the joint efforts of the EU and like-minded trading partners, such as the U.S., the U.K., Switzerland, Norway, Japan, Canada, Australia, New Zealand, South Korea and others.

Of course, the area of healthcare is a prominent example in the light of the COVID-19 pandemic, as discussed in the previous question. Nevertheless, there are more areas where collaboration can bring positive results. For instance, the digital and green transformations are clear priorities for the EU, which has set ambitious goals. Trade policy plays an important role in promoting these priorities and convince our partners to share our ambitions. This can be concretely translated into setting global rules and standards that will help stabilise supply chains and ensure that the rules of the game are the same for all and respected by all. Areas where cooperation between the EU and like-minded partners is crucial to ensure a level-playing field include climate change, circular economy, cyber security and cross-border data flows. For instance, the conclusion of an E-commerce Agreement as well as the reinvigoration of negotiations on an Environmental Goods Agreement in the WTO can help advance these priorities.

In parallel, the EU's vast network of existing and future Free Trade Agreements (FTAs) can contribute tremendously to solidifying and diversifying supply chains. They establish geopolitical partnerships, open opportunities for European businesses in third markets, secure the most diversified and high-quality portfolio of goods and services entering the EU and, at the same time, they ensure a level-playing field. It is therefore necessary that simple and clear rules and new market opportunities are developed to help companies, including SMEs, assess risks and diversify supply chains.

Cooperation with our partners has to remain our top priority. However, the EU also has to find ways to mitigate and manage the risk caused by policies adopted by our partners in times of crises. This is because, as we discussed above, instinctively governments may lean towards protectionism under such circumstances and adopt measures that unnecessarily restrict trade. In those cases, the EU can use the tools provided under its Market Access Partnership and various dispute settlement resolution mechanisms, in order to limit undue general export restrictions that harm our supply of critical inputs and goods.

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

The centrality of the WTO in the multilateral trading system is undisputed. During the COVID-19 pandemic the WTO proved this through its exceptional work in monitoring new trade-restrictive measures that governments adopted in response to the crisis.



However, the organisation is currently entangled in an unprecedented structural crisis that threatens its very existence. It is not only the U.S.' stance towards multilateral trade in general or the blockage of the appointment of new judges in the WTO's Appellate Body in particular, that has brought the WTO into trouble. It is also the lack of willingness of emerging economies, most prominently China, to assume more responsibility and start giving back to the multilateral trading system, which they have tremendously benefited from over the past 25 years. A prominent issue to address in this regard is the special and differential treatment of self-declared developing countries in the WTO. Criteria should be put in place, for instance to ensure that special and differential treatment is temporary and that flexibilities given to members that are not Least Developed Countries (LDCs) are limited and strictly needs-driven.

Another problem of the WTO is that the decision-making process, which is based on the rule of consensus, is often hampered by the large membership of the organisation and the fact that different members identify different priorities, therefore blocking progress in the negotiation of new rules. As long as the Doha Development Agenda is not officially declared dead – in terms of the premise *“nothing is agreed until everything is agreed”* - there will be members of the WTO challenging any effort to move forward in a plurilateral context. Recognising that the issues included under the Doha Development Agenda remain relevant and important, our view is that the WTO and its members should look ahead and have a fresh start, avoiding to remain entangled in past discussions and procedures.

We are pleased to see that despite these challenges, a number of WTO members are pursuing negotiations and discussions under the so-called “joint statement initiatives”, such as e-commerce, domestic regulation in services, investment facilitation and rules to facilitate Micro, Small and Medium-sized Enterprises (MSMEs). BusinessEurope supports these initiatives and believes that WTO members that are ready to commit should be allowed to move forward. In addition, these are areas particularly relevant for modern business, where the lack of rules is resulting in trade and investment barriers. We hope that by the next WTO Ministerial Conference, planned to take place in June 2021, concrete results will be delivered.

Besides these “new” areas mentioned above, it is also important that the existing WTO rulebook gets updated in order to better reflect the changing reality in global trade. For instance, the rules on industrial subsidies (including export credit), forced transfer of technology and on export restrictions are incomplete and imprecise, allowing governments to take advantage to the detriment of global competition. In the area of subsidies in particular, we recognise the joint efforts by the EU, the U.S. and Japan to develop proposals to address this issue. These include rules to improve transparency and the notification of subsidies. What is important now is to bring these proposals to the WTO and convince all members – even the most reluctant ones – to come to the negotiating table. The next step should be to move the discussion beyond issues related to the notification of subsidies, looking at the concept of subsidies as such and discuss the expansion of the types of subsidies that should be prohibited and/or countervailable.

Finally, we would like to highlight the importance of an efficient and effective dispute settlement system in the WTO. Having agreed on common rules is not enough. The role of the WTO is also to ensure that all members respect and implement these correctly.



This brings stability and predictability, which are key requirements for businesses. The collapse of the Appellate Body in December 2019 has a broader impact on the dispute settlement pillar of the WTO. We welcome the leadership of the EU to find ways to address this gap through the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) and we hope that more WTO members – including the U.S. and Japan – will join this initiative. We also recognise, however, that this is a temporary solution. In this regard, the reform of the WTO's Dispute Settlement should be a priority for the organisation. This is in the interest of all members, including the U.S. The EU, together with other WTO members, can play a crucial role in convincing the U.S. to engage more constructively in this process.

The WTO will not be able to deliver unless it is further supported by its members as an institution. The process to elect the WTO's new Director General this time becomes even more important. Members should enable the new Director General to drive the modernisation process forward, for instance by increasing the currently reduced budget of the WTO and by giving a stronger role to the Secretariat, for example by allowing them to make compromise proposals in the negotiations. Ways to increase the participation of stakeholders, including businesses, in the WTO that go beyond the organisation of annual events should also be further assessed. Looking at structures developed in the context of the International Labour Organisation (ILO) or the Organisation for Economic Cooperation and Development (OECD) could provide useful insights.

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

Focusing on the effective implementation of the EU's broad network of FTAs should become a priority in the context of the Trade Policy Review. The Commission has already stepped up its efforts in this direction, through instruments provided in FTAs themselves (consultations and dispute settlement mechanisms), as well as through its Market Access Strategy, which is an established and successful framework of EU action to lift tariff and non-tariff barriers imposed by our partners in areas varying from traditional market access to intellectual property rights and digital trade. The EU should also use its trade policy, and FTAs in particular, to enhance regulatory cooperation, through dialogue, transparency and a system of early notifications. Proactive cooperation among regulatory agencies in the EU and in partner countries will also help develop regulations that are compatible, pre-empting future trade barriers and facilitating access to markets for economic operators.

Enhanced regulatory cooperation can also drive sustainable solutions, especially to promote digital and green transformations through regulatory approximation and mutual recognition. In this regard, the inclusion of a digital trade chapter and looking at possibilities on promoting green technologies and standards are further discussed in questions 10 and 8 respectively.

Understanding more about how FTAs are implemented in practice is crucial. More recently, the Commission has been presenting annual reports on the implementation of FTAs, which analyse data such as the preference utilisation rate (PUR). These reports



show progress in the utilisation of FTAs, but they also show that a lot remains to be done in this area. We would like to propose that new indicators are applied in the context of the report, in order to have a more complete picture than the one offered by the PUR. For instance, more attention should be paid to the increasing value of trade in services and data collection, including sectoral data.

At the same time, access to more information on inward and outward FDI flows between the EU and its partners will help investors to understand more clearly the applicable legal framework and allow them to make better-informed decisions. The same applies to public procurement. The EU traditionally includes ambitious public procurement provisions in its FTAs, yet information on the level of access in third markets and the *de facto* and *de jure* barriers that European companies face is often lacking.

Overall, it is important to make sure that FTAs reduce the cost of doing business, especially for SMEs, whose experience trading outside the EU Single Market may be limited. As discussed in question 7, rules of origin are a prominent example in this regard, as the process of proving origin increases administrative costs and can involve bureaucratic hurdles for the exporting and importing companies. Hence, if the potential duty savings are low and the administrative procedures for proving origin are overly complicated, companies may choose to pay the MFN duty instead of applying for the preferential one. The Commission should aim at simplifying the rules of origin and the conditions to obtain preferential origin in its FTAs, taking the sensitivities of different sectors into account.

More attention should also be given to ensuring that information is communicated to stakeholders, notably economic operators. Even though the task of informing enterprises of the benefits brought by FTAs are today considered a prerogative of Member States, the European Commission should find ways to be more active in this area as well. We hope that the current study reviewing DG TRADE's Civil Society Dialogue will contribute to raising awareness on the EU's FTAs, especially among SMEs. To this end, we welcome the launch of the Access2Markets portal, which we hope will not only make information more accessible, but also easier to understand, contributing to the use of the EU's trade agreements.

Furthermore, the creation of the position of an EU Chief Trade Enforcement Officer (EU-CTEO) should provide the EU with dedicated structures to better implement trade agreements and, more generally, focus on the abolishment of trade and investment barriers that are detrimental to the EU's interests. This should take place in close coordination with EU Member States and the Civil Society, including business.

In our position paper "BusinessEurope's Recommendations on the Implementation of Free Trade Agreements" we offer specific proposals on ways to address the concerns raised above and share ideas on how an EU-CTEO can effectively contribute in the implementation of FTAs.



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

The U.S., China and the UK after its official departure from the EU, will remain the EU's main trading partners and, therefore, a key priority in the EU's trade policy. At the same time, the EU's approach should be recalibrated in order to better reflect the developments in the relationship especially with the U.S. and China. As our partners become more assertive in the conduct of trade policy, so should the EU in order to be able to defend its interests. The EU is a trade powerhouse on its own and should assume more leadership in the creation of international rules and standards. In this regard, the EU should pursue the strengthening of partnerships with countries with which we share common values and prioritise relations with its neighbours in Europe, the North, East and South.

Relations with the U.S.:

The EU should persuade the U.S. of the strategic nature of our long-standing partnership. We share the same values, having promoted and worked together on trade liberalisation for the past 70 years, including at the multilateral level. These fundamental premises are being challenged by the current U.S. administration, which pursues practices in the area of trade that harm transatlantic relations. A number of grievances can be mentioned, including: on-going investigations (and further threatened ones) under section 232 of the Trade Expansion Act of 1962, the lack of progress in bilateral negotiations for a limited in scope agreement (eliminating tariffs on industrial goods and on conformity assessment), or the continued blockage of the nomination of judges in the WTO's Appellate Body that resulted in its practical abolishment since December 2019. The imposition of tariffs and the threat of additional tariffs on a number of EU products further strain transatlantic relations at a time of economic hardship that requires intense cooperation between the two partners. Referring to the Airbus-Boeing case in particular and following the ruling of the WTO panel on the Boeing subsidies that allows the EU to get compensation from the USA for \$4 billion, a negotiated solution remains the preferred option of European companies. This will help avoid a further escalation of tensions and sanctions that hit both European and American companies as the two economies are highly interconnected. In the absence of an agreement, the measures proposed by the EU following the WTO award should be proportionate and not undermine EU business interests.

Despite these challenges, we still believe that a positive agenda in the EU-US relations should be found, building momentum in areas of common interest, including the reform of the WTO. The recently signed agreement between the EU and the US on tariff reductions in trade in lobsters gives a positive signal that progress can be achieved. Finally, following the invalidation of the Privacy Shield by the Court of Justice of the EU (CJEU), we urge both sides to do the utmost to put in place a new agreement on cross-border data transfer. A number of more concrete recommendations on how to advance a positive agenda with the US are developed in BusinessEurope's recently adopted position paper dedicated to EU-US relations.



Relations with China:

The EU and its Member States must become more assertive vis-à-vis China, whose state-driven hybrid economy is generating a number of problems in the bilateral relationship with the EU, but also with other trading partners and at the multilateral level. Although the EU disagrees with the way the U.S. is conducting its policy to address concerns created by China's policies, it agrees with much of the diagnosis of the problem – trade and investment driven by heavy, unregulated subsidies, forced technology transfers, local content requirements, *de jure* and *de facto* barriers in public procurement, all need to be brought in line with international rules. A more comprehensive EU approach is required to address concerns related to China, encompassing different policies and instruments. In its dedicated position paper – The EU and China – Addressing the systemic challenge – BusinessEurope makes concrete recommendations to (1) secure a level playing field between China and the EU, (2) mitigate the impact of China's government-induced distortions in the EU market, (3) reinforce the EU's own competitiveness and, (4) ensure fair competition and cooperation on third markets. More strictly from a trade policy perspective, the negotiations for the conclusion of the Comprehensive Agreement on Investment between the EU and China should continue. European business expects China to deliver both in terms of market access and a better regulatory framework. BusinessEurope supports the Commission's "substance over speed" approach, which aims at reaching a high-standard agreement that delivers real market access. Furthermore, the EU should increase its efforts to engage China more constructively in the context of the WTO.

Relations with the UK:

The EU and the UK will remain important trading partners after the withdrawal of the latter from the EU. We need to agree on a comprehensive and ambitious agreement in time to allow for ratification and entering into force by 1 January 2021. This would give companies the stability, clarity and certainty they need while they are managing through the current COVID-19 crisis. Both sides should look at ways to avoid chaos and ensure a smooth transition to the new EU-UK relationship.

An agreement between the EU and the UK that includes the comprehensive coverage of goods and services trade, ambitious cooperation on regulation and meaningful cooperation on customs facilitation will be key to support a post-COVID-19 recovery across the continent. An agreement on level playing field and governance is necessary to ensure legal certainty and fair competition between businesses in the EU and the UK. It should also preserve the EU's and the UK's autonomy in the area of standard-setting.

It is of utmost importance that the EU-UK agreement is in accordance with the EU's overall trade strategy. For instance, it should include robust digital trade provisions, such as prohibiting data localisation requirements across all sectors and the forced transfer of, or access to, software source code or algorithms. An agreement on digital trade between the EU and the UK could serve as a standard for future negotiations globally. Finally, to the extent possible, an EU-UK agreement must avoid creating instabilities with other key partners, especially with other EFTA / EEA members and Turkey. For instance, present cumulation possibilities with third parties should be maintained, as a bilateral EU-UK trade agreement without reference to the pan-Euro-Mediterranean cumulation



and the PEM Convention is not sufficient to prevent distortions in European supply chains.

Therefore, we hope that the intensification of negotiating rounds will lead to substantial progress in all areas, including the most sensitive ones. Moreover, given the profound changes that will occur in the way to do business between the EU and the UK, it is essential to continue to help and support companies preparing to face this challenge, including by reinforcing contingency measures.

Relations with Switzerland:

Long-standing and important trading partners, the EU and Switzerland should prioritise the adoption of the EU-Switzerland Institutional Framework Agreement, which will allow to maintain and develop bilateral relations further as well as ensure smooth trade flows. Furthermore, the recent COVID-19 pandemic has highlighted the need to update the mutual recognition agreement, for instance by including the EU's Regulation on medical devices. Finalising agreements in the areas of energy, agriculture, food safety, product safety and public health is also of common interest. It should also be supported that Switzerland fully participates in Horizon Europe from the beginning.

Relations with Latin America and the Caribbean:

In general, the EU's trade policy in Latin America and the Caribbean has been particularly successful. This is exemplified by the provisional entry into force of the Comprehensive Agreement with Colombia, Peru and Ecuador, the Association Agreement with Central America and the Cariforum-EU Economic Partnership Agreement. Of significant importance are the successful conclusion of trade negotiations between the EU and Mercosur and the "in principle" political agreement on the trade part of the modernised EU-Mexico Global Agreement.

After almost 20 years of negotiations, the EU and Mercosur reached "an agreement in principle" on the trade pillar of a broader Association Agreement, concluded in 2018. This is a key agreement from an economic and geo-strategic point of view. Not only will it ensure a first-mover advantage for European companies that face extremely high duties of up to 35% for many products but it will also bring Mercosur countries closer to EU standards and rules, especially regarding sustainability, product quality and sanitary and phytosanitary standards, which are particularly relevant for European business. The agreement will also provide the ideal platform to discuss other important issues like climate change and deforestation. This deal can be an important leverage to discuss these sensitive issues. In the absence of it, our competitors will not miss the opportunity to enter the market. In this context, BusinessEurope supports the swift ratification of the agreement.

It is important to start the ratification process of the trade part of the modernised EU-Mexico Global Agreement and to also make progress in the on-going negotiations with Chile. The conclusion and subsequent ratification and implementation of these agreements would imply the geographical coverage, with minor exceptions, of Latin America and the Caribbean with trade agreements, a region with which Europe enjoys strong political and economic relations.



Relations with Africa:

Africa is one of the fastest growing regions. Together, the EU and Africa have come a long way to establish strategic partnerships aiming at promoting economic growth and sustainable development in Africa. Nevertheless, they have not been able to unlock the full potential of their partnership. More efforts are required to improve business and investment climate in Africa, as we have argued in BusinessEurope's position paper of June 2019, provided at the annex of this response. Trade policy can contribute in achieving this, for instance through the current process of the post-Cotonou Agreement as well as through the conclusion and deepening of Economic Partnership Agreements (EPAs), which should be used as building blocks towards a continental Free Trade Agreement with Africa. The role of the private sector should also be emphasised and the EU's future trade policy, in collaboration with the development policy and financial instruments, should put the right tools in place in order to better leverage private sector investment and improve the business environment. BusinessEurope recently published a position paper dedicated to the EU's external financing instruments, which proposes a number of principles that need to be taken into account for these instruments to help businesses step up their contribution to the 2030 agenda. Finally, the EU, in the context of its Africa Strategy should strive to achieve more coherence among different pillars and policy areas – development, trade, foreign policy, security.

Relations with Southeast Asia:

An important Free Trade Agreement between the EU and Vietnam entered into force on 1 August 2020, which will gradually remove duties on 99% of goods, delivering significant economic benefits on both sides. Besides the positive economic impact, the agreement is also delivering in the area of trade and sustainable development, for instance by being used as a lever to push Vietnam towards necessary labour reforms. From BusinessEurope's perspective, it is now important to focus on the ratification of the Investment Protection Agreement, which requires the consent of national Parliaments in the EU. Gaining access to markets is key. However, it is also crucial to ensure that this access is effectively protected. We urge the Commission and the Member States to mobilise in order to complete the ratification process soon and allow this part of the Agreement to also enter into force.

We similarly call on the ratification of the EU-Singapore Investment Protection Agreement, which was separated from the EU-Singapore Free Trade Agreement that entered into force in 2019.

Besides the two agreements that the EU has already signed with members of the Association of Southeast Asian Nations (ASEAN), namely Singapore and Vietnam, negotiations are also open with other ASEAN members, including Indonesia, Malaysia, the Philippines and Thailand. We recognise the political challenges that currently exist in pursuing these negotiations, which can provide access to important markets and support further diversification of supply chains. The option of a region-to-region agreement between the EU and ASEAN as a whole could also be considered as a long-term goal.



Relations with Turkey:

The EU and Turkey are important trading partners with interconnected value chains and investments. However, the accession partnership process has long been halted due to political developments and we are concerned that bilateral relations have reached a critical point with the latest developments in the Eastern Mediterranean Sea. Businesses are facing a growing number of problems in trade within the framework of the Customs Union, even more visible during the COVID-19 pandemic. Having said that, we believe that Turkey's alignment with the EU acquis and the Customs Union modernisation – that should include an effective and neutral dispute settlement as well as cover digital and green policies – remain the best guarantee for the rule of law and a prerequisite for a working Customs Union. In this regard, a constructive dialogue between the EU and Turkey should continue, to address trade irritants and promote progress in areas of common interest, including the de-escalation of political tensions and the successful roll-out of post-COVID-19 recovery strategies.

Relations with Mediterranean countries:

Association Agreements have been concluded between the EU and nearly all South Mediterranean countries. However, negotiations to deepen these agreements have stalled. As this is an important region for the EU in terms of trade, economy and security, it is important to maintain close contacts with our partners, identify areas of common interest and promote the completion of the EU's trade and investment agenda. A concrete example can be the full implementation of the revised PEM Convention by the countries in the region.

Relations with Russia, the Eurasian Economic Union and the Eastern Partnership countries:

It is clear that, over the past years, EU-Russia relations have been facing significant challenges, not least due to Russia's aggressive foreign policy especially towards Ukraine and the illegal annexation of Crimea, which resulted in heavy economic sanctions. Other important factors that have contributed to the aggravation of the relationship are measures adopted by Russia, such as import substitution that have a negative impact on the general business environment. Despite these challenges, Russia remains an important trading partner for the EU. In this regard, the approach of being open to dialogue, while insisting on Russia's compliance with international law, should be continued from the part of the EU. Channels of communication, including bilateral dialogues at the institutional level, should also remain open in order to be able to address existing and potential future grievances in the area of trade. The EU must be united in this action in order for this strategy to succeed.

At regional level, the Eurasian Economic Union (EAEU), comprised of Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia, has assumed competence over important areas of trade policy. In this regard, a dialogue between the EU's and the EAEU's relevant authorities can also contribute in the abolishment of barriers and the improvement of the business climate for EU companies, together ensuring that EAEU measures follow international standards and respect WTO rules.



An important Eastern Partnership Summit is scheduled to take place in the coming months, during which leaders will have the opportunity to discuss the future of the Partnership. This is a Partnership that brings value and exemplifies the principle of solidarity, as showcased by the support offered by the EU during the COVID-19 pandemic. BusinessEurope also recognises the importance of the Partnership, which provides tools to promote democracy, good governance, regional and bilateral cooperation, bringing as well the Eastern Partnership countries closer to EU standards and allowing them to participate in global value chains. It is important that these objectives are reiterated. At the same time, we also agree with the EU's approach to tailor its strategy to the individual needs and level of engagement of each of the six partners. In this regard, it is critical to focus on the effective implementation of the Association Agreements, which include Deep and Comprehensive Free Trade Areas (DCFTAs), signed with Ukraine, Georgia and Moldova.

Relations with the Asia-Pacific countries:

Australia and New Zealand are like-minded trading partners with the EU, and allies in defending rules-based multilateral trade. The conclusion of Free Trade Agreements between the EU on the one hand and Australian and New Zealand on the other hand are strategic not only because of their economic benefits but also because of their geopolitical value. They should be prioritised by the European Commission. At the same time, it is important that the EU defends its interests, namely in the areas of public procurement, geographical indications and sustainability.

Relations with India:

Negotiations for a Free Trade Agreement between the EU and India remain stalled over the past years and the political momentum to re-launch them is lacking. However, India remains an important but challenging market for EU businesses. It is essential that, in the absence of a bilateral trade deal, the Commission should use all other instruments at its disposal, such as the Market Access Strategy, to address trade and investment measures that affect EU companies.

Open FTAs:

As we discuss in our position paper "A trade strategy fit for the 21st century", rethinking trade agreements from a geo-strategic perspective is key to ensuring that their advantages will be further expanded, reaching more beneficiaries in a more effective manner. This could be an interesting concept for the current European Commission, which also wants to be perceived as a geo-political Commission.

Besides looking at more traditional instruments, such as trade facilitation, measures on transparency or cumulation of rules of origin, the concept of open FTAs is broader and more ambitious, as it covers all areas of trade. The objective would be to enhance regulatory approximation and the diagonal opening of markets and opportunities. In practice, an open FTA would make it possible for other countries to join, if they fulfil a number of conditions, including respecting level playing field conditions. The EU could test this concept with partners such as the UK, Switzerland and Turkey.



A more limited in scope example of open agreements could be in the area of digital trade, in the form of Digital Economy Partnership Agreements (DEPAs) such as the one recently signed between New Zealand, Chile and Singapore. Including provisions on Artificial Intelligence, intermediary liability, emerging technologies and data flows, but also on facilitation of digital trade and cooperation, these agreements can be used as stepping stones in the context of the EU's trade policy to build partnerships and develop rules and standards.

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

The EU's trade and industrial policies are connected. What we should make sure is that they also support each other. In order to achieve this, a fundamental premise needs to be fulfilled: trade policy should remain open while industrial policy should aim at strengthening the EU without taking a protectionist turn.

As we have argued in our reply to question 1, the EU relies on imports of goods – final, intermediary and raw materials – as well as services. It is therefore essential to remain open to trade and investment and, in this respect, trade policy and the new industrial strategy should be mutually supportive and reinforcing. An open EU is better able to attract key investments, while at the same time it has to make sure that concerns over predatory take-overs of EU companies are tackled. An open EU leads by example and is better able to promote its high economic, environmental and labour standards globally, while also ensuring that foreign companies operating in the Single Market respect the EU's rules.

How trade and industrial policies are connected could not be better exemplified than in the European Commission's White Paper on levelling the playing field as regards foreign subsidies, in the context of which BusinessEurope has contributed separately. As we also argue in question 12, it is important that different instruments are complementary and mutually reinforcing. For instance, any action developed under module 3 of the White Paper on foreign subsidies in EU public procurement procedures should not contradict and be complementary to the efforts concentrated under the EU's International Procurement Instrument, which is currently under discussion.

Moreover, it is essential that a smooth procedural interplay is achieved between module 2 and the EU FDI screening regulation to avoid delays and undue administrative burden. The treatment of public procurement at EU level as well as of EU projects that may be subject to investment screening are areas where particular attention should be paid.

To offer another concrete example where close coordination between trade and industrial policies can bear fruit, is the area of raw materials. As mentioned above, access to raw materials is key to ensuring that the EU has a competitive edge on important areas of the economy, including high-end manufacturing, IT or the necessary infrastructure to enable the spread of 5G, cloud technologies and Artificial Intelligence. The first pillar of the EU's Raw Materials Partnership is specifically dedicated to access to markets and has brought positive results. To name a few, we have seen the completion of bilateral raw materials agreements between the EU and a number of



trading partners, as well as the inclusion of specific provisions on access to non-energy raw materials in the EU's FTAs. Furthermore, the partnership has also delivered at multilateral level, for instance in the context of the WTO and the successful conclusion of the case against Chinese export restrictions in the area of raw materials and rare earths. These are not insignificant results but we would like the European Commission to pay more attention on what can be further achieved in the context of the EU's Raw Materials Partnership. We take note of the European Commission's Action Plan on Critical Raw Materials and look forward to contributing to its realisation with concrete initiatives.

A third example is how trade policy can facilitate market opportunities for industrial output aimed for export. The lowering of tariffs on industrial products, rules on conformity assessments and regulatory cooperation can significantly facilitate access to third markets and widen commercial outlets for EU industry.

Finally, also making the connection with question 7, SMEs are a key part of both the EU's trade and industrial policies. We welcome the additional focus on SMEs announced by the European earlier this year in the context of the New Industrial Strategy for Europe as well as well the increasing attention on the needs of SMEs in the EU's Free Trade Agreements. Ensuring that SMEs are aware of all the tools that are their disposal under the EU's trade and industrial policies is very important.

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

SMEs are the backbone of the EU's economy and their potential for growth through trade is significant. To this end, we welcome the fact that the European Commission has started the tradition to negotiate dedicated SME Chapters in its Free Trade Agreements, which aim, among others, to improve transparency and increase access to information.

What the Commission should further make sure is that rules negotiated with partners in different FTAs are harmonised as much as possible. This is key in order to make sure that a common set of rules is applied, levelling the playing field for all companies, but especially SMEs, to compete globally.

At the same time, it is important to make sure that trade rules in general, whether part of an FTA or a specific piece of legislation, reflect the needs of SMEs and are clear and easy to implement. An example can be drawn from the area of rules of origin – if they are too complex to comprehend and implement, then SMEs will not be able to benefit from increased market access opportunities. The question of cost is also a concern for SMEs, more than for larger companies, especially as legislation in the area of trade is becoming more complex. It is therefore important to make sure that highly technical and legally demanding legislation, for instance including due diligence requirements, is accompanied by appropriate measures to support SMEs to implement it.



More can be done to inform SMEs about opportunities of internationalisation and encourage them to do business outside the EU. The Enterprise Europe Network (EEN) offers information and advice that could be further expanded to reach more companies from different sectors. In addition, the Access2Markets platform, inaugurated recently by the Commission, should be a key instrument in helping SMEs reach trade-related information and increase their awareness of opportunities. SMEs benefit from one-stop-shop for export and import information and the Commission should continue its work to expand its digital instruments and provide for national contacts for SMEs in the EU's FTAs. In this regard, cooperation with business associations, chambers of commerce and export promotion agencies is key. Finally, access to finance that will help SMEs internationalise remains a key concern and the Commission should make sure that awareness is also raised on the availability of relevant funds and projects.

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

Different instruments can be leveraged to facilitate the transition to a greener economy at all the levels of trade policy – multilateral, bilateral and unilateral. BusinessEurope's recently published position paper "What trade can do for climate" analyses different options and comes up with a set of concrete recommendations.

At the multilateral level, our priorities include the revival of negotiations for an Environmental Goods Agreement in the context of the WTO as well as looking for ways to deal with industrial subsidies and overcapacities, which should be disciplined accordingly. At the same time, reaching an agreement on emissions trading and carbon markets (finalising the rulebook on Article 6 of the Paris Agreement) is crucial. The EU should also work with other countries to harmonise standards, labels and regulatory frameworks to facilitate the commercialisation of green products and services and unlock the potential of a circular economy.

At the bilateral level and through its network of FTAs, the EU could in the future explore options to include targeted provisions on trade in environmental goods and services, including tariff reductions and addressing non-tariff barriers. Moreover, the EU should explore the possibility to extend the Trade and Sustainable Development Chapters in the EU Economic Partnership Agreements (EPAs) with Africa, the Caribbean and the Pacific, as well as include provisions on investments that would also cover incentives for green investments. In general, it is important that rules are complemented by appropriate capacity building and technical assistance, with the active involvement of the private sector. To offer a concrete example: companies are frontrunners in developing innovative, frontier technologies aimed at supporting governments in their climate targets. It is, therefore, important to maximise the transformative potential of technology through an increased collaborative and integrating approach. As the COVID-19 pandemic has shown, the areas of climate, digital and health are interlinked. We should make sure that policies such as crisis management, protection of biodiversity, sustainable farming, sustainable transport or harnessing the power of data work well with each other.



At the unilateral level, the EU can assess how environmental and climate standards can be taken into account in public procurement processes, making sure that these standards are respected by all bidders, both domestic and third-country ones. The EU should ensure the positive engagement with trading partners on this transition, taking into consideration different production methods and conditions around the world. Furthermore, the EU's Generalised System of Preferences (GSP) is currently undergoing a modernisation process and one of the areas where BusinessEurope would welcome more activity is specifically the environment and climate change. One example is the inclusion of the Paris Agreement in the list of international conventions that the GSP+ beneficiaries should comply with. BusinessEurope has contributed in the dedicated public consultation, offering more detailed recommendations to overall improve the EU's GSP scheme.

The discussion on possible EU unilateral initiatives linking trade and climate policies would not be complete without referring to carbon border adjustment (CBA) measures. This is a sensitive discussion and BusinessEurope does not take a position either for or against it. We would like, however, to contribute to the discussion by bringing up a number of important elements that should be taken into account. A CBA must be WTO-compliant and EU ETS-compliant. It should also be transparent, manageable and effective in reducing carbon leakage without undermining the competitiveness of EU industry. Consequently, it should also be limited in scope and duration and cover climate-related objectives only. Moreover, the EU should engage in a dialogue with our key trading partners in order to mitigate the risk of retaliation.

Beyond the activities dedicated to facilitating the transition to a greener economy, we recognise that the EU leads by example in the area of sustainability and trade more broadly. Trade and Sustainable Development Chapters are included in all its Free Trade Agreements. These Chapters are very comprehensive, covering issues related to the respect of human rights, the environment and climate change, as well as labour rights, Corporate Social Responsibility, anticorruption and antibribery provisions. It is our view that these Chapters should strike a good balance between economic, environmental and social objectives. They can play a very positive role in promoting sustainable trade, for instance by levelling the playing field through common standards, by improving relations between governments and the civil society or by encouraging business projects that contribute to the Sustainable Development Goals. At the same time, the TSD Chapters cannot and should not replace flanking policies at national level necessary to ensure a fair distribution of the benefits of trade. We have to continue to look closely at possibilities provided under international organisations and fora, such as the United Nations and the International Labour Organisation (ILO).

The implementation of these Chapters is closely monitored by dedicated government-to-government bodies – the TSD Committee and the Trade Committee, but also by the Civil Society, through the work of Domestic Advisory Groups and Civil Society Fora. The implementation of FTAs can be effective in incrementally improving sustainability in partner countries. This cooperative approach that enables and encourages is preferable to approaches that count on economic sanctions. BusinessEurope supports strengthening the enforcement of the existing scope and content of TSD Chapters, with efforts concentrated at making the procedure more effective, for instance by including specific timelines for each of the actions foreseen under the agreement.



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

Responsible business conduct is a core element of the values, strategy and international operations of many companies. European companies, in particular, are leaders in the field of responsible business conduct, committed to promoting sustainable and responsible supply chains. Responsible business conduct forms part of the EU's comprehensive Trade and Sustainable Development Chapters in the context of its FTAs. Relevant provisions promote collaboration between the EU and its trading partners, but they also encourage exchange of good practices and a dialogue with business. Responsible business conduct is closely related to the process of due diligence in the supply chains and the role of the private sector. The debate is elevating on the possibility to adopt an EU legislative framework in the area of due diligence. It is important to stress a number of points that should be taken into account in this discussion in order to create and guarantee the necessary level-playing field for European businesses.

Any future action should be based on internationally recognised standards and guidelines, such as the OECD guidelines for multinational enterprises and the United Nations Guiding Principles on Business and Human Rights (UNGPs), given that many European companies – large enterprises and SMEs alike – are part of global supply chains and must be able to maintain global competitiveness and reflect meaningful requirements on their international supplies. EU action must be also accompanied by a comprehensive impact assessment to ensure that measures are balanced and proportionate. Furthermore, it is important to ensure that the primary responsibility of the State and that of a secondary nature of responsibilities endorsed by economic operators are not inverted. Businesses cannot be assigned with the role of governments to enforce human rights or tasked with filling the regulatory and enforcement gap left by local authorities. Flexibility should be maintained, as companies should continue to be able to devise solutions fit for their size, sector, part of the supply chain, operating markets and business model. The voluntary nature of due diligence schemes offers the greatest potential for flexibility.

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

Digital trade is critical and the COVID-19 pandemic has further highlighted this. Digital trade connects businesses with customers, as well as with other businesses and the authorities. For instance, during the recent crisis, e-commerce has allowed a significant number of enterprises, many among those SMEs, to maintain their business and access the same cutting-edge technologies and solutions as major multinational companies. Digital platforms have also facilitated the conduct of business tremendously. Moreover, digital trade enables less developed countries to engage in global trade and join global value chains.



Digital trade goes beyond e-commerce, offering solutions in the area of services and manufacturing through the use of technologies such as AI and blockchain. Digital transformation is a key priority for the EU and trade plays a constructive role to achieve this, both in the EU as well as globally. The EU is a leader in a number of high-end technologies. However, a lot remains to be done to ensure that our capacities are fully exploited and our economy and society can reap the benefits of digitalisation. The question is how to develop the right tools to allow for this transition to take place in a smooth and beneficial manner, without putting in jeopardy the competitiveness of European companies. To offer a concrete example, the digitalisation of customs procedures can effectively contribute in this context. Close collaboration and coordination between the EU's trade and industrial policies, as well as between the EU and its trading partners, is essential. We recognise that digital trade will play a key part in the recovery from the current crisis.

What can the EU's trade policy achieve in particular?

Having rules in the area of digital trade, including on e-commerce, is key to increasing legal certainty and benchmarking high standards in the conduct of digital trade at a global level. The need to agree on rules should not only be evident to developed economies such as the EU, but also to developing economies. Raising awareness and putting in place capacity building programmes will also be crucial in this respect. The realisation of the role of digital trade in the aftermath of the COVID-19 pandemic will, hopefully, reinvigorate the negotiations on an e-commerce agreement in the WTO. BusinessEurope supports the delivery of an ambitious and comprehensive agreement, that combines further trade liberalisation (market access) with a set of clear and enforceable rules to enable and facilitate e-commerce, for instance rules on e-signatures, and shield it from protectionist tendencies, tackling important questions such as cross-border data flows and liabilities. We also expect that a future e-commerce agreement will make the moratorium on customs duties on electronic transmissions permanent. We understand that particular disciplines are the most difficult to negotiate. At the same time, they are essential and we hope that the EU will continue to contribute to the discussions in an open and constructive manner. Regarding market access, the e-commerce negotiations should also be used to highlight possibilities in the context of the WTO's Information Technology Agreement (ITA) and its expansion to more countries.

At a bilateral level, the European Commission should look into ways to enhance its Free Trade Agreements with a comprehensive digital trade chapter. This is critical in order to ensure that the EU's FTAs keep pace with economic and societal changes, including to answer the call for more governance in the digital economy. Besides rules on e-commerce and cross-border data flows, this chapter should provide a broader disciplinary framework that enhances market access, protects intellectual property, prohibits forced technology transfers and instils trust in the system. A digital trade chapter should also enable the development of emerging technologies and include a regulatory cooperation component. This would be a tool to facilitate dialogue on digital trade, including on issues related to the protection of personal data in cross-border data flows and the promotion of the EU's General Data Protection Regulation (GDPR).



A final point that we would like to mention is digital taxation, as a measure that may have a trade dimension and impact trade. In this regard, we believe that it is preferable to pursue solutions at the multilateral level, in order to reduce the risk of disputes and market fragmentation. In this context, we would welcome a solution at OECD level.

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

International data transfers are key for business activity. They enable the development of innovative, high-quality goods and services. They are also used by companies of all sizes and are relevant for all sectors in the economy, from IT and manufacturing, to banking, transportation and agriculture. Simply put, without data flows, there is no trade and no access to the necessary tools and inputs to engage successfully in the digitalisation of the economy and benefit from it.

At the same time, digital protectionism is on the rise, as governments realise the criticality of data and access to it. A number of barriers are reported every year that affect the flow of data between the EU and the rest of the world. These can take the form of data localisation requirements, mandatory source code deposits or the fulfilment of national requirements. We have seen such measures being adopted by a number of trading partners, including China, Russia and India, and they are also reported in the annual Trade and Investment Barriers report of the European Commission. There has been a lot of discussion about how rules enabling the flow of data can at the same protect personal data. We believe this is feasible, as the EU's approach with the General Data Protection Regulation (GDPR) has shown. However, not all of our trading partners follow this approach. The problem is that, without a clear legal framework, either at bilateral or plurilateral/multilateral level, there is a high risk of governments misusing the exception for the protection of personal data for reasons of national economic interest. Businesses need to be protected against this kind of practices. There should be a way for the EU to assess whether exceptions applied by our partners are in place to fulfil a public policy objective and do not result in measures more restrictive to trade than necessary.

We believe that the Trade Policy Review should look at how it can use all the instruments at its disposal to tackle barriers that affect the flow of data and, at the same time, effectively protect personal data both within the EU and abroad. Reinforcing their efforts under the Market Access Strategy would be one way to pursue the abolishment of such barriers. However, we would welcome more attention on this subject in the EU's Free Trade Agreements. As we argue in question 10, a comprehensive and ambitious digital trade chapter – with clear and enforceable provisions on cross-border data flows – in the EU's FTAs would also be an effective instrument. Ultimately, should an agreement on e-commerce be adopted in the WTO, the EU should not shy away from pursuing its rights under dispute settlement.



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

Over the past years, a vivid debate is taking place on the behaviour of foreign business operators in the EU. This is related to the issue of access to the EU market of foreign entities that are heavily subsidised and the distortions that are subsequently caused in the Single Market, to the detriment of the competitiveness of EU companies. It is crucial that the EU is able to defend its industry against unfair competition. We believe that the White Paper of the European Commission on levelling the playing field as regards foreign subsidies is an opportunity to frame the problem and discuss solutions to effectively address it. Although this is an approach to address concerns in the context of the EU's Single Market, trade policy can play a crucial role to achieve the objective of levelling the playing field. If we look at the different modules of work proposed by the European Commission, modules 2 – on the acquisition of EU companies, 3 – on foreign subsidies in EU public procurement procedures in particular, but also module 4 – which describes additional measures in the context of EU funding, all have important linkages to trade policy in general as well as to existing or currently under discussion trade instruments specifically.

As we have argued in question 6, it is our view that initiatives pursued under the White Paper and more traditional trade policy instruments – such as the FDI Screening Regulation and the currently under discussion EU International Procurement Instrument – should be part of a European strategic trade toolbox and designed as complementary, mutually reinforcing and respecting the fundamental principle for an open EU trade policy. This also means that particular attention should be paid at the procedural aspects of the different tools, which should avoid putting additional burden to European businesses. BusinessEurope will also contribute with more detailed input in the context of that public consultation process.

With regards to the EU's FDI Screening Regulation in particular, which will be fully implemented as of 11 October 2020, it is important to allow adequate time to let it bring results and see how it works in practice. For BusinessEurope, it is immature to consider signals to speed up the review of the Regulation before it is even properly applied.

The EU is also finalising the revision of its Enforcement Regulation. We welcome the changes allowing the EU to take action and seek compensation from trading partners following a favourable WTO panel ruling even if the decision is not yet final, or the appeal process falls into the void because of the current deadlock in the WTO's Appellate Body. We will monitor closely the implementation of other changes in the Regulation including the expansion of the scope by including services and intellectual property rights.

Finally, the Trade Policy Review could also look at the EU's trade defence instruments, for instance by considering options to reinforce rules on subsidies by looking at the option of the reversal of the proof for State Owned Enterprises (SOEs). A debate should be also initiated on the possibility to develop trade defence instruments for services. Certainly, as the reform of the EU's TDIs is relatively recent, it is important to first conduct a thorough analysis and reflection on the effectiveness of the current policy in close consultation with stakeholders, including businesses.

**Question 13 – What other important topics not covered by the questions above should the Trade Policy Review address?**

There are a few more issues that BusinessEurope would like the Trade Policy Review to tackle. A first category of issues is related to the connection between trade and foreign policy, especially in those cases where third parties' legislation has an extraterritorial effect. The second category is trade and investment.

As we argue in BusinessEurope's position paper "a trade strategy fit for the 21st century", it seems that our trading partners – the U.S. and China most prominently amongst them – are following a more aggressive approach compared to the EU in using trade to pursue foreign policy objectives or, vice versa, using foreign and security policy tools to pursue economic interests. This is a cause of concern for businesses, exemplified by the hurdles we are facing in the area of extraterritorial application of secondary sanctions, export controls legislation as well as unfair subsidies. We believe that there are ways to address these concerns and that the Trade Policy Review should look at these issues as well.

BusinessEurope has recently adopted its position paper on "Foreign Economic Diplomacy", where we discuss concrete ideas to ensure that sanctions are not used to pursue economic interests. Notably, the EU should take a more assertive stance in supporting its companies by developing the necessary tools and pursuing a stronger leadership role in the international scene while maintaining close cooperation with its traditional allies, such as the U.S. European businesses are also experiencing the politicisation of export controls on dual use items. On the one hand, we see a surge in the number of measures adopted by the U.S. in particular, where we experience the detrimental effects of technological decoupling policies, for instance through the control of emerging and foundational technologies – concepts not clearly defined – which jeopardise multilateral research cooperation. These measures mark an important shift in the policy approach of the U.S, in an effort to ensure leadership in high-end products and technologies. However, the impact of this approach is global, as companies, including American ones, rely on global trade and supply chains to be able to deliver new, innovative goods and technologies. China is also working on the adoption of its export controls legislation, which may also contain elements of extraterritorial application, therefore having an impact on non-Chinese companies. Finally, the reform of the EU's export controls Regulation should strike the right balance between legitimate security considerations and imposing disproportionate restrictions on EU companies, which would lead to competitive disadvantages in the midst of the digital transformation of the economy. We hope that the political agreement reached among EU Institutions respects this balance. We stand ready to cooperate with the competent authorities of the Member States and the European Commission by bringing the technical expertise of European companies, the knowledge of the products, the market and the customers. European companies can also share their vast experience of the risk and opportunities in the area of dual-use trade.

Finally, we would also like the Trade Policy Review to look at the question of investment policy more broadly. The agenda on investment facilitation and protection should be reinforced. The recent conclusion of separate EU Investment Protection Agreements (IPAs), following the distinction of competences clarified under CJEU Opinion 2/15, has practically put a halt to, or has at least significantly delayed, the implementation of



investment protection standards. It is important to find ways to unblock this situation and make sure that the important market access opportunities negotiated in the EU's Free trade Agreements are matched with a high level of protection for investments. Moreover, the EU has to remain active in the international discussion on the reform the Investor-to-State Dispute Settlement taking place under the auspices of the United Nations Commission on International Trade Law (UNCITRAL). We would like to stress that these efforts should not lead to the weakening of investment protection globally.

Note: We would like to share a number of BusinessEurope position papers to complement our argumentation in the questions of the public consultation:

- [A trade strategy fit for the 21st century](#)
- [The EU and China – Addressing the systemic challenge](#)
- [EU and USA - How to build a positive agenda](#)
- [Foreign Economic Diplomacy](#)
- [BusinessEurope's views on an EU International Procurement Instrument](#)
- [BusinessEurope Recommendations on the Implementation of Free Trade Agreements](#)
- [Smart Technological Sovereignty: How it could support EU competitiveness](#)
- [What trade can do for climate](#)
- [A better investment climate in Africa - Business views](#)
- [Recommendations on the EU external financing instruments - a BusinessEurope position paper](#)
- [Cross-border data flows - Letter from Markus J. Beyrer](#)
- [Joint Statement by European Business on the recast of the EU Regulation on dual-use export controls](#)
- [Services trade and manufacturing](#)
- [White Paper on foreign subsidies - BusinessEurope's reply to the public consultation](#)